

Working Towards Vision 2030: Key Employment Considerations in KSA

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Since the launch of its flagship “Vision 2030” initiative in 2016, the Kingdom of Saudi Arabia (KSA or the Kingdom) has steadily been taking measures to diversify its economy away from its dependence on oil and government spending in response to the challenges brought by lower global energy prices. Vision 2030 is centred on establishing a modernized legal and investment framework that boosts private sector activity, attracts foreign investors and encourages the employment of Saudi workers in line with the Kingdom’s ‘Saudisation’ programme. In order to achieve the ambitions of Vision 2030, a number of reforms have and will continue to be implemented to create further investment incentives for investors looking to establish or expand their presence in the Kingdom.

As opportunities in the Kingdom develop, both local and foreign investors will need to consider a number of key factors which will drive their planning, strategy and operations. This article focuses on some of the employment aspects of operating a business within the Kingdom which all investors will need to consider if seeking to take advantage of the wide-ranging opportunities presented by Vision 2030. It will also discuss key employment developments that are likely over the coming years in the context of Vision 2030.

The legal framework

The KSA legal system is based on and underpinned by Shari’ah law. Matters relating to employment relationship are governed by the Labour Law issued by Royal Decree Number M/51 dated 23 Sha’ban 1426 (corresponding to 27 September 2005), as amended from time to time (the Labour Law). It covers all aspects of the employment life-cycle from recruitment through to termination and dispute resolution. The Labour Law is supplemented by Ministerial Resolutions and circulars issued by the Ministry of Labour and Social Development (MLSD) which has overall responsibility for employment matters.

Businesses seeking to invest in KSA should take note of some of the key features of the Labour Law:

- The Labour Law applies to all workers in KSA and broadly provides equal rights to both Saudi and non-Saudi nationals although it provides preferential treatment to Saudi nationals in certain respects.
- A non-Saudi national may only be employed for a fixed term corresponding to the duration of their work and residence permit (see further below for information relating to work and residence permits).
- A non-Saudi national under the sponsorship of his employer is prohibited from working for another employer without formally transferring his sponsorship to the new employer.
Employment contracts may be for fixed or indefinite terms (although the contract term for non-Saudi employees will always be fixed corresponding to their work and residence permit).
- An employer may request an employee to undergo a probationary period of no more than 90 days, which can be extended by agreement of the parties to a further period of up to ninety days.
- The maximum working hours are eight hours a day and 48 hours per week (although this does not apply to senior employees and managers).
- Employees are entitled to a minimum of 21 days paid holiday increasing to 30 days after five years’ service.
- Indefinite term contracts terminate at the discretion of either party provided written notice is given to the other party stating the valid reason for termination. At least sixty days’ notice is required for contracts where the worker is paid monthly or not less than thirty days’ notice in any other case.
- An employer can dismiss employees validly by way of redundancy if the business is closed permanently or the activity in which the employee is employed ceases to be carried out by the business.

- The retirement age is 60 for men and 55 for women.
- Employees are entitled to claim compensation for an unlawful termination of employment but do not have the right to reinstatement.
- An end-of-service award is payable on termination of employment based on length of service and salary.
- Employers must make social insurance contributions for employees to the General Organisation for Social Insurance (GOSI).
- Employers must provide medical insurance that covers the employee and the employee's dependants.

Immigration and sponsorship requirements

All employees must be registered with the MLSD and GOSI. While Saudi nationals and GCC nationals do not require any immigration approvals to work in KSA, non-Saudi (and non-GCC) nationals must be sponsored by their employer to work in KSA. In order to obtain sponsorship, employees must seek prior approval from both the MLSD and the Ministry of Interior to obtain a work and residence permit (known as an Iqama) by submitting a number of documents including attested educational and professional qualifications. As explained further below, whether or not an employee is granted a work permit is dependent on a number of factors, of which the employer's compliance with its Saudisation requirements is the most important. Once an Iqama has been issued, the employee is under the sponsorship of his employer. The Labour Law prohibits employers from allowing an employee to work for another party and from employing an employee of another party.

Saudisation and the promotion of the local workforce

A key measure to achieving Vision 2030, and one of the most important issues that a foreign company should be aware of in doing business in KSA, is the national policy of encouraging and prioritising employment of Saudi nationals in the private sector, known as Saudisation. This policy is implemented through the 'Nitaqat' programme which operates by classifying employers into six categories – Platinum, Green (High, Medium and Low), Yellow and Red – depending on various factors such as the size and activity of the company; the percentage of Saudi nationals in the workforce compared to expatriate employees; the average salaries of Saudi employees; and retention rates of Saudi employees. In general, an employer benefits from being in a higher category through greater incentives such as flexibility in recruiting and managing expatriate employees, lower processing fees, and other administrative benefits. By contrast, lower graded entities will have restricted immigration and sponsorship benefits.

The Saudisation percentages imposed on companies under the Nitaqat programme vary based not only on the size of the company but also the activities of the company. For example, small laboratories with between 10 and 49 employees must employ 10% to 14% Saudi nationals in order to remain in the yellow category. In contrast, in the agricultural industry, only 2% to 4% of Saudi employees are required for a company of the same size. These percentage requirements are subject to constant change based on KSA public policy considerations. As a minimum requirement, however, all companies must employ at least one Saudi national. This requirement can be fulfilled if the business owner or employer is himself a Saudi national. Some jobs (e.g. head of HR) and sectors within the economy (e.g. car rental outlets, mobile phone shops) are restricted to only Saudi nationals and a further 12 sales-related activities will be restricted to Saudi nationals only from September 2018.

Recent changes to the Nitaqat system in September 2017 introduced increased thresholds for obtaining a higher Nitaqat grading across most industries. The increased Nitaqat thresholds apply to companies of different sizes across more than 60 industries. Some examples of the increased Nitaqat thresholds include:

- 'Small' (i.e. a total headcount of 10-49 employees) oil and gas companies are now required to adhere to a Saudisation percentage of at least 66% (rather than the previous threshold of 56%) in order to be classified as a Platinum entity.
- Small financial institutions are now required to adhere to a Saudisation percentage of at least 88% (rather than the previous threshold of 80%) in order to be classified as a Platinum entity.

- Small IT companies are now required to adhere to a Saudisation percentage of at least 56% (rather than the previous threshold of 30%) in order to be classified as a Platinum entity.

It is important to note that, if a foreign company fails to employ its quota of Saudi nationals (dependent on its Nitaqat requirement), the MLSA can refuse to renew the Iqamas of the company's expatriate employees. Moreover, the Ministry of Commerce and Industry can refuse to renew a commercial registration certificate or cancel it altogether.

Levies on foreign employees

As a measure to compliment the Saudisation policy, certain levies have been applied to foreign employees and their dependents over recent years to discourage the employment of foreign nationals by making it more expensive to recruit and retain foreign employees. For example:

- In 2013 a levy was applied for every foreign employee where the ratio of foreign employees to Saudi nationals was greater than 1:1. This levy is payable by the employer.
- In July 2017 a levy was applied to each dependent of a foreign employee. This levy is payable by the employee although some employers support their employees in meeting this cost.
- In January 2018 a new levy was applied for each foreign employee employed by an employer.

Each of these three levies are incurred on a monthly basis but must be paid as an annual lump sum in order to renew a foreign employee's or his dependent's Iqamas. Further, the levies increase incrementally on a yearly basis.

Employers will therefore need to factor in these additional costs of employing foreign employees when planning their workforce in KSA.

Women in the workplace

A prominent goal of Vision 2030 is to increase the participation of women in the workforce from 22% to 30%. Under recent changes to the Saudisation policy, certain jobs and sectors have been restricted to women (commonly known as 'feminisation'). For example, certain shops in shopping malls, outdoor markets and standalone locations selling women's products and accessories must be staffed entirely by women. From September 2018, these jobs will be restricted to Saudi women only. Further, the widely-reported lifting of a ban on women driving in KSA is due to come into force in June 2018 with a view to removing one of the widely perceived obstacles to the employment of women in KSA, thus making access to workplaces easier for women as well as creating new job opportunities.

As the number of female graduates entering the employment market increases each year, and given the importance placed on increasing employment opportunities for women in KSA, businesses and investors will need to ensure they comply with the various requirements relating to women in the workplace. For example, under the Labour Law and the associated Work Regulations, there are certain requirements relating to females in the workplace including the following:

- Employers must provide female employees with their own space in the workplace that is segregated from men.
- Female staff must wear modest, loose and non-transparent clothing.
- A woman and a man must not stay alone together in a workplace.
- Save in certain circumstances (e.g. hospitals) women may not perform night work.
- Women are not allowed to be employed in hazardous or harmful jobs or industries (e.g. as construction workers).

Similarly, the Labour Law also provides a number of rights for female employees, for example:

- Women are entitled to fully-paid maternity leave for a period of 10 weeks.
- There are various maternity-related rights afforded to female employees on issues such as leave to attend to sick babies or babies with special needs; time off for nursing babies for a period of up to 24 months; and the right not to be dismissed while on maternity leave or as a result of sickness absence

arising from childbirth.

- A Muslim female worker whose husband passes away will be entitled to fully paid leave for a minimum period of four months and 10 days (in accordance with Sharia law). A non-Muslim worker whose husband passes away shall be entitled to fully paid leave of 15 days.

As further opportunities develop under Vision 2030, women will become an increasingly integral part of the workforce in KSA. In particular, women are likely to play an important role in the development of the proposed tourism, retail and leisure industries which are key to KSA's ambitions to diversify its economy. Against that broader backdrop, it is possible that further reforms will be proposed aimed at enabling greater participation of women in different sectors of a newly diversified economy.

Dispute resolution

Disputes arising from an employment relationship should be brought to a Labour Office in the locality where the employee works. The Labour Office will attempt to resolve the dispute amicably without further recourse to formal litigation. If the dispute cannot be resolved amicably at the Labour Office, the matter will be escalated to a formal claim at the Preliminary Commission for the Settlement of Disputes ('Preliminary Commission') which is effectively a first instance court for employment disputes. Any such claims must generally be submitted to the Preliminary Commission within 12 months of the occurrence of the offence which forms the subject of the claim. The decision of the Preliminary Commission may be appealed to the High Commission for the Settlement of Disputes, which is the appellate court. Appeals must be lodged within 30 days of receiving the judgment of the Preliminary Commission.

It should be noted that there is no concept of judicial precedent in KSA meaning that a decision of a court will have no binding authority in respect of another case. Further, there is no system of court reporting in KSA. As a result it is not always possible to reach a conclusive interpretation of Saudi Arabian law, and predict how the court will adjudicate on a particular transaction or issue.

Future developments

Privatisation

One of the most anticipated developments under Vision 2030 is the proposed privatisation of various sectors such as the energy, health, education and water sectors. A key challenge for investors seeking to take advantage of the opportunities presented by such large scale privatisations will be ensuring that their businesses are comprised of a skilled workforce which is also compliant with its Saudisation requirements. In order to achieve this we are likely see an increased focus on training initiatives for Saudi nationals to not only develop workers with the relevant knowledge and skills, but also to increase the employment rates of the local population and thereby strengthen the economy.

Creation of jobs through development of different sectors

In order to reduce unemployment levels within KSA, a key goal of Vision 2030 is to create jobs through the development of various sectors. For example, the expansion of the retail sector is expected to create one million jobs for Saudi nationals by 2030. Similarly, the localisation of the defence industry and the resultant stimulus to other industrial sectors such as industrial equipment, communications and information technology, will also create more job opportunities and increase the need for specialised training.

Flexible working

As the country transitions to a modern and diverse economy, it is likely there will be a need for increased flexible working arrangements to widen participation in the economy. This is particularly in light of developments of new industries such as tourism and entertainment where work engagements may be of a more temporary and less-structured nature. Similarly, as more women enter the national workforce, there may be a need to develop greater flexible working initiatives to ensure they are supported in the workplace whilst also managing any family-related commitments.

Conclusion

As the country moves into a new era under Vision 2030, local and foreign investors seeking to capitalise on the vast opportunities on offer will need to consider the employment related issues of their business activities in KSA. By planning carefully, businesses can ensure they comply with the various regulatory requirements relating to their workforce and thereby reduce the risk of interference in their business due to non-compliance. With the largest population in the region becoming increasingly qualified and engaged in the economy, and supported by foreign skilled workers, investors should feel confident that their human resource needs can be met as they seek to take advantage of the opportunities presented by Vision 2030.

Al Tamimi & Company's Employment team has two dedicated lawyers based in Saudi Arabia who advise on the full range of employment related matters in the country. For further information please contact Zahir Qayum (z.qayum@tamimi.com) or Mohsin Khan (mohsin.khan@tamimi.com).