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# THE EMPLOYMENT LAW REVIEW

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SIXTH EDITION

EDITOR  
ERIKA C COLLINS

LAW BUSINESS RESEARCH

# THE EMPLOYMENT LAW REVIEW

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# THE EMPLOYMENT LAW REVIEW

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Sixth Edition

Editor  
ERIKA C COLLINS

LAW BUSINESS RESEARCH LTD

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# EDITOR'S PREFACE

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It is hard to believe that we are now on our sixth edition of *The Employment Law Review*. When we published the first edition of this book six years ago, I noted my belief that a book of this sort was long overdue given the importance to multinational corporations of understanding and complying with the laws of the various jurisdictions in which they operate. It has given me great pleasure to see the past editions of this book used over the last several years for just this purpose – as a tool to aid practitioners and human resources professionals in identifying issues that may present challenges to their clients and companies. The various editions of this book have highlighted changes in the laws of many jurisdictions over the past few years, making even clearer the need for a consolidated and up-to-date reference guide of this sort.

Global diversity and inclusion initiatives remained a hot topic in 2014. Many companies have unrolled initiatives regarding ‘unconscious’ bias, which is addressed in the first general interest chapter on global diversity. Looking abroad, recent legal developments regarding gender and transgender recognition will affect multinational corporations both in terms of law and policy, as underscored by recent legal developments out of India.

Our second general interest chapter tracks another active year of mergers and acquisitions after a brief decline following the financial crisis. This chapter, which addresses employment issues in cross-border corporate transactions, along with the relevant country-specific chapters, will aid practitioners and human resources professionals in conducting due diligence and providing other employment-related support in connection with cross-border M&A deals.

The third general interest chapter covers the increasing trend of clients considering or revising company’s social media and mobile device management policies. In particular, there is an increase in the number of organisations that are moving toward ‘bring your own device’ programmes and this chapter addresses issues for consideration by multinational employers in rolling out policies of this sort. ‘Bring your own device’ issues remain a topic of concern because more and more jurisdictions have passed or are beginning to consider passing privacy legislation that places significant restrictions

on the processing of employee personal data. This chapter introduces practice pointers regarding monitoring of employee social media use at work as well as some steps to consider before making an employment decision based on information found on social media.

In addition to these three general-interest chapters, the sixth edition of *The Employment Law Review* includes 48 country-specific chapters. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, particularly Gideon Robertson, Katherine Jablonowska, Adam Myers, Eve Ryle-Hodges and Shani Bans, for their hard work and continued support. I also wish to thank all of our contributors, as well as my associates, Jon Dueltgen and Courtney Bowman, for their efforts to bring this edition to fruition.

**Erika C Collins**

Proskauer Rose LLP

New York

February 2015

## Chapter 40

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# SAUDI ARABIA

*Amgad T Husein, John M B Balouziyeh and Jonathan G Burns*<sup>1</sup>

### I INTRODUCTION

Saudi Arabian law is based fundamentally on shariah law as taught by the Hanbali school of jurisprudence. Secondly, the Saudi Arabian authorities and governmental agencies issue, *inter alia*, royal decrees, resolutions and circulars that have the effect of creating binding law. Generally, the codified law in Saudi Arabia is limited solely to matters of commercial law and public order.

The employment law framework in Saudi Arabia is based on the Labour and Workmen Law, enacted by Royal Decree No. M/51, dated 27 September 2005 (the Labour Law) as well as by shariah law, as interpreted and applied in Saudi Arabia.

In addition to the Labour Law, numerous subsequent circulars enacted by the Ministry of Labour are applicable to any relationship pursuant to which a party agrees to work in Saudi Arabia for another party. The Labour Law applies to and governs the employment relationship between the two parties.

The Commission for the Settlement of Labour Disputes (the Commission) is the Saudi Arabian entity primarily responsible for adjudicating labour disputes. However, before a case may reach the Commission, it must first be heard by the Labour Office for mandatory mediation. Only if the employer or employee refuses to accept the non-binding decision of the mediator may the case advance to the Commission.

As a general rule, the Labour Law is drafted in favour of the employee, creating statutory rights that the employee may not waive (Article 6 Labour Law). Among other issues, it regulates the employment of non-Saudis, training and qualification of employees, labour relations, work conditions, part-time work, protection against occupational hazards and industrial accidents and the employment of women and minors. The most

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<sup>1</sup> Amgad T Husein is a partner and John M B Balouziyeh and Jonathan G Burns are associates at Dentons in association with the Law Firm of Wael A Alissa.



common areas of dispute under the Labour Law between the employer and employee relate to the scope of wages, working hours, overtime pay, termination and severance pay.

## II YEAR IN REVIEW

### i Saudisation

The hot topic of 2014 continued to be the national policy of encouraging the employment of Saudi nationals in the private sector, known as ‘Saudisation’. Saudisation was enacted due to the pressure exerted by Saudi Arabian nationals complaining that the job market had been saturated by Saudi Arabia’s significant expatriate population, leading to high unemployment rates among Saudi nationals. In response, the Ministry of Labour in October 2011 stated that it would cut the number of foreign workers in Saudi Arabia from the current rate of 31 per cent of the population to 20 per cent over the next several years.

As it currently stands, Saudisation is regulated by the Nitaqat programme, which labels companies as platinum, green, yellow or red, based on a formula involving two or more of the following variables: the number of employees, the size of the company<sup>2</sup> and, under certain circumstances, the activities of the company.<sup>3</sup> A failure to hire required percentages of employees under the Nitaqat programme may result in fines, non-renewal of residency permits and non-issuance of future employment visas.

The following table is provided as general guidance with regard to the various classifications under the Nitaqat programme. It also applies to a conglomerate that owns companies that cross various sectors.<sup>4</sup>

| <i>Number of employees</i>             | <i>Red</i> | <i>Yellow</i> | <i>Green</i> | <i>Platinum</i> |
|--|------------|---------------|--------------|-----------------|
| <i>500 or more<br/>(large company)</i> | 0–9%       | 10–23%        | 24–39%       | 40–100%         |
| <i>50 to 499<br/>(medium company)</i>  | 0–4%       | 5–16%         | 17–39%       | 40–100%         |

2 For instance, large companies are required to employ a greater number of Saudi nationals than small companies.

3 For instance, small laboratories with between 10 and 49 employees must employ between 10 and 14 per cent Saudi nationals to remain in the yellow category. In contrast, in a company of the same size in the agricultural industry, only 2–4 per cent of employees must be Saudi.

4 It is important to note that the percentages discussed herein are subject to constant change, based on Saudi public policy considerations. For example, in 2012, in an effort to boost the number of Saudi women and Saudi handicapped persons employed by companies, the Nitaqat programme counted one Saudi female as two Saudi males and one handicapped Saudi as four Saudi males. When it became evident, however, that Saudi males were having a difficult time finding employment, the distinction between Saudi males and females was eliminated (so that Saudi males and females count equally). The weighting for handicapped Saudis does, however, remain in place.

| 10 to 49<br>(small company)  | 0–3%  | 4–9% | 10–39% | 40–100% |
|--|---|------|--------|---------|
| 1 to 9<br>(very small company)   | Percentages do not apply; a fixed requirement of employing at least one Saudi national (including the employer or business owner himself) is applied. |      |        |         |
| Red: high risk that the company will not be able to grant visas or renew its commercial registration.        |   |      |        |         |
| Yellow: moderate risk that the company will not be able to grant visas or renew its commercial registration. |   |      |        |         |
| Green: satisfaction of minimum requirements; no risk.  |   |      |        |         |
| Platinum: exceeds minimum requirements; no risk.   |   |      |        |         |

Implementation of the Nitaqat programme is still evolving, and Saudi Arabia has entered a second Saudisation phase which focuses on the quality of local employment and salaries of Saudi nationals compared with their non-Saudi counterparts in the private sector. During this phase, the authorities have implemented certain measures and discussed further options for achieving the goal of increasing the employment of Saudi Arabian men and women, including new taxes imposed on companies employing foreign workers.<sup>5</sup> Additionally, the Ministry of Labour required employers to pay a Saudi employee a minimum monthly wage of 3,000 Saudi riyals to count him or her as a ‘full Saudi employee’ under the Nitaqat programme. Most recently, however, the Ministry of Labour has announced intentions to set a minimum monthly wage for Saudi employees at 5,300 Saudi riyals and 2,500 Saudi riyals for expatriate employees. Ostensibly, this will be implemented independently from the Nitaqat programme.

In response to increasing pressure from international human rights groups and internal dialogue on the future of Saudi Arabia’s economy, the Saudi Arabian authorities have also continued in their commitment to encourage the employment of Saudi women. Nonetheless, the Ministry of Labour issued its Guide for Female Employment in the Private Sector towards the end of 2013, which places restrictions on, *inter alia*, the employment of women at night, the sectors of employment in which women are allowed to work and the work setting for female employees.

## ii Ministry of Labour crackdown on illegal immigrants

Related to Saudisation, issues with illegal immigrant workers remained at the fore in 2014. In March 2013, the Council of Ministers adopted a series of decisions to drive out illegal foreign employees and illegal cover businesses. One such decision was the amendment to Article 39 of the Labour Law, preventing sponsors from allowing their employees to work for others. Another decision empowered the Ministry of Labour to inspect facilities and investigate irregularities discovered by inspectors, and then forward their findings to the Ministry of Interior to apply penalties to violators of the Labour Law.

On 1 April 2013, the Ministry of Labour invoked the above-mentioned initiative and directed labour officials to raid office buildings and set up document checkpoints

<sup>5</sup> Two of the taxes include a fine of 2,400 Saudi riyals for each foreigner employed in excess of the total number of Saudi nationals employed by the same company and a fine of up to 100,000 Saudi riyals for each employee caught under the sponsorship of a different employer.

of areas suspected to contain illegal immigrants with expired residency permits.<sup>6</sup> As a result, an estimated 150,000 to 200,000 illegal immigrants, the vast majority of whom were low-income skilled workers, either left the country voluntarily or were deported by officials of the Ministry of Labour.

In July 2013, the Ministry of Labour, after three months of inspections and investigations, declared a three-month ‘amnesty period’ which lasted until 3 November 2013. During this period, illegal expatriate workers were given the opportunity to legalise their residency and labour status without penalty or risk of deportation. According to the Ministries of Foreign Affairs, Labour and Interior, the amnesty period turned out to be a success – hundreds of thousands of undocumented expatriate workers, including those overstaying their haj visas and runaway workers who escaped from their employers, rectified their residency and labour status.

Following the 2013 crackdowns and the amnesty period, 1.2 million expatriate workers exited Saudi Arabia. As a result, economists say, Saudi Arabia’s non-oil GDP growth in the private sector dropped, but only slightly. Nonetheless, employers in industries heavily dependent on expatriate workers (including mainly manual labourers, such as the construction sector) have reported devastating losses.

In spite of the economic damage caused by 2013’s labour crackdown, 2014 saw weekly if not daily reports of further crackdowns and raids conducted, which generally led to the deportation of hundreds of illegal foreign workers at a time. In addition, the authorities implemented disciplinary measures on the employers responsible for hiring illegal workers. Near the end of 2014, the Passport Department declared that the hiring of illegal workers is punishable with up to two years’ imprisonment, a fine not exceeding 100,000 Saudi riyals, or both.

### **III SIGNIFICANT CASES**

Saudi Arabia is not a jurisdiction where case law forms binding precedent or is a source of law. Further, case law is not even available to the public for review. Therefore, any review of the laws governing Saudi labour law should focus on laws, implementation rules, circulars and other regulations put forth by the Ministry of Labour and other relevant government institutions, as well as the knowledge and experience of counsel.

## **IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP**

### **i Employment relationship**

As defined by the Labour Law, employment relationships in Saudi Arabia are created by a ‘contract concluded between an employer and the employee, whereby the latter undertakes to work under the management or supervision of the former for a wage’ (Article 50 Labour Law).

---

<sup>6</sup> Labour officials targeted nearly 250,000 small and medium-sized business that failed to employ at least one Saudi.

The employment contract must be duplicated, with one copy to be retained by each of the two parties. However, the law provides for situations where an employment contract is not in writing (and thus not signed). In this case, the contract is deemed to exist, but the employee alone may establish its existence and his or her entitlements arising therefrom. To do so, he or she may introduce any evidence, including testimony as to oral agreements entered into, in order to prove the existence of the contract. When the contract is not written, either party may demand at any time that it be put in writing (Article 51 Labour Law).

Discussing specifically employment contracts for non-Saudi nationals, the Labour Law requires that they be in writing (Article 37 Labour Law). The law does not state what would come to transpire if such a contract were not in writing. Presumably, Article 51, which recognises employment contracts even if they are not written, would come to apply. Under Article 51, the employee is allowed to prove the existence of an unwritten employment contract by any means available.

For Saudi employees, both fixed-term and at-will employment contracts are permitted. Fixed-term contracts automatically terminate upon expiration of the term as specified in the contract, without giving rise to any claim against the employer should it opt against renewal.

For non-Saudi employees, only fixed-term employment contracts are available. The employment contract for non-Saudi employees must specifically define the duration of the contract. However, if the contract does not include a term specifying the duration, then the duration of the work permit shall serve as the term of the employment contract (Article 37 Labour Law).

It is recommended that an employment contract be made in writing and, even though not required under the Labour Law, signed by both parties to bind the parties to certain terms generally required under Saudi Arabian law and to avoid disputes. It is recommended that all employment contracts in Saudi Arabia include the following terms:

- a* a probation period (see subsection ii, *infra*);
- b* a stipulation of salary to be paid in Saudi riyals;
- c* a provision noting Article 98 of the Labour Law, which states that employees shall not work more than eight hours a day during non-holidays, and no more than six hours a day during the month of Ramadan;
- d* a provision providing at least 21 days of annual vacation, to be increased to at least 30 days if the employee spends five consecutive years working for the employer, as required by Article 109.1 of the Labour Law;
- e* a provision providing the employee an entitlement to days off with full pay during national holidays as set forth by the Ministry of Labour, and pursuant to Article 112 of the Labour Law, including:
  - Eid al-Fitr (marking the end of Ramadan);
  - Eid al-Adha (Festival of Sacrifice); and
  - the Saudi Arabian national day;
- f* a provision providing for sick leave during a single year pursuant to Article 117 of the Labour Law, including:
  - sick leave for the first 30 days at full pay for the first 30 days;
  - 60 days following the 30-day period at 75 per cent pay; and

- 30 days following the 60-day period without pay, provided that the employee can substantiate his or her sickness; and
- g* a provision providing for an end of service reward pursuant to Articles 84 and 85 of the Labour Law. The employer must pay the employee a reward for his or her period of service, the calculation of which is dependent on whether the employment relationship has expired, was terminated by the employer, or was terminated as a result of the employee's resignation from the employer.

In each of the cases specified in (g), the end of service reward shall be calculated as follows:

- a* dismissal or expiration of the employment relationship:
- half a month's wages<sup>7</sup> for each of the first five years the employee has worked for the employer; and
  - a full month's wage for each year following the first five years (collectively the 'EoS reward').
- b* resignation:
- one-third of the EoS reward for an employee whose period of service was not less than two consecutive years and not more than five years;
  - two-thirds of the EoS reward for an employee whose period of service was greater than five years and not more than ten years; or
  - the entire EoS reward if the employee's period of service is greater than 10 years.

Parties must conclude an employment contract before the start of the employment relationship. The process for amending or changing an employment contract or the terms of employment are the same as those that apply to contracts generally in Saudi Arabia: through mutual rescission, termination or completion of the term of an existing contract, followed by the execution of a new contract, or otherwise by executing a valid substitute agreement that, with the agreement of both parties, expressly or impliedly revokes a former contract and includes new terms.

## **ii Probationary periods**

Article 53 of the Labour Law allows for one 90-day probationary period, which may be extended if the probationary period falls during either Eid al-Fitr or Eid al-Adha or both. During the probationary period, the employer may terminate the employment contract for any reason whatsoever. The Labour Law does not impose any notice period requirement on a party seeking to terminate the employment relationship during the probation period.

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<sup>7</sup> The Labour law defines a wage as the 'actual wage', which includes all amounts paid to the employee under an employment contract, including fixed and periodic allowances (e.g., transportation and accommodation) and any other accrued amounts owed to the employee (e.g., commission and profit).

An employer may not place an employee on more than one probationary period, unless both the employer and employee agree to a second probationary period, of up to 90 days, and the scope of employment involves a different profession or work (Article 54 Labour Law).<sup>8</sup>

### **iii Establishing a presence**

A foreign company may not hire employees without being officially registered to carry on business in Saudi Arabia. Moreover, a company may not hire employees through an agency or another third party without being registered in Saudi Arabia. This is because of the Labour Law's requirement that employees be under the sponsorship of their employers (Article 39 Labour Law). The only way around this requirement is for a foreign company to pay a local agent to have one of the agent's employees seconded to the foreign company for a set period of time. During this period, the employee will remain under the sponsorship of the agency, which will continue to pay the employee's salary and provide his or her benefits. The foreign company may pay the agency a contractually agreed fee in exchange for the services rendered by the agency's employee.

A foreign company that is not officially registered in Saudi Arabia may engage an independent contractor.

Saudi law defines a permanent establishment in Saudi Arabia of a foreign company as the permanent place of the foreign company's activity through which the company carries out business in Saudi Arabia. Under the Income Tax Law (ITL), the following are deemed to constitute permanent establishments:

- a* business carried out through the company's agents in Saudi Arabia (Article 4(a) ITL);
- b* construction sites, assembly facilities, sites used for surveying for natural resources, a fixed base where a non-resident natural person carries out business (Article 4(b) ITL); and
- c* a branch of a non-resident company licensed to carry out business in Saudi Arabia (Article 4(b) ITL).

Sites used for storage, displaying goods belonging to the non-resident, keeping stock belonging to the non-resident for the purpose of processing by another person or for the collection of information for the non-resident are not deemed to constitute a permanent establishment (Article 4(c) ITL).

Therefore, if the work of a contractor comes to create a relationship of agency with a foreign company through the formation of a relationship whereby the parties agree to the contractor's acting on behalf of the foreign company and subject to the foreign company's control, the contractor's business in Saudi Arabia on the foreign company's behalf can come to be deemed a permanent establishment of the foreign company, thus

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<sup>8</sup> Recently, an exception has been made for household (domestic) help employed in Saudi Arabia. In July of 2013, the Council of Ministers passed a law that, among many other things, gave employers the right to place household help on probation for a maximum of three months.

triggering certain tax and reporting duties. For example, any payments made from the contractor to any person or company that is not resident in Saudi Arabia must pay a withholding tax on behalf of the non-resident when the payment derived from any activity in Saudi Arabia (Article 68 ITL). This withholding tax may range from anywhere between 5 and 20 per cent of the payments to be made.

The employer must provide employees with health care in accordance with the standards set forth by the Minister of Labour, taking into account the provisions of the Council of Cooperative Health Insurance (Article 144 Labour Law), whose directives require employers to provide health insurance to all of their employees based in Saudi Arabia.<sup>9</sup> In addition to the legally mandated minimum, some companies also provide other insurance, such as business travel and accident insurance, to their employees.

At the conclusion of an employment contract, the employer must provide the employee a certificate of service and settle the employee's entitlements, including the end of service reward (Article 88 Labour Law). If the employee is non-Saudi, the employer must also bear the costs of a ticket for a return flight to the employee's homeland (Article 40.1 Labour Law).

## **V RESTRICTIVE COVENANTS**

Article 83 of the Labour Law permits non-compete clauses in the employment contracts of employees whose scope of employment necessarily entails that they shall become acquainted with the employer's customers or have access to the employer's trade secrets. For non-compete clauses to be valid, they must be in writing and include the following terms and conditions, which must be narrowly tailored to protect the legitimate interests of the employer:

- a* the duration of the clause, which shall not exceed two years as of the date of termination of the employment contract;
- b* the area in which the employee shall be prohibited from seeking employment with a competitor; and
- c* the type of work that the employee shall be prohibited from engaging in with a competitor.

## **VI WAGES**

### **i Working time**

Article 98 of the Labour Law provides that employees shall not work more than eight hours a day or 48 hours in a week during non-holidays (normal working hours), and no more than six hours a day or 36 hours during the month of Ramadan.<sup>10</sup> Article 106 of

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<sup>9</sup> The Saudi comprehensive healthcare insurance scheme covers family members and other dependants holding a residency permit in Saudi Arabia.

<sup>10</sup> Days, months and years mentioned in the Labour Law are references to the Hijri (Islamic), and not the Gregorian, calendar, unless otherwise stated in the employment contract or agreed with the employee. The Hijri calendar year is approximately 11 days shorter than the

the Labour Law provides an exception to the normal working hours period, and allows working hours to reach up to 10 hours a day or 60 hours per week (extended working hours) in the following circumstances:

- a* annual inventory activities, budgeting, liquidation, closing of accounts and preparations for discount and seasonal sales, so long as the extended working hours do not exceed 30 days a year;
- b* if the work is intended to prevent occurrence of a hazardous accident, mitigate its impact or avoid imminent losses in perishable materials;
- c* if the operation is intended to confront extraordinary work pressures; and
- d* holidays, other seasons, occasions and seasonal activities defined by a minister's decision.

Articles 150 and 163 of the Labour Law place limitations on the number of hours that women and minors can work during the night. Women may not work at night for a 'period of at least 11 consecutive hours' except in certain enumerated instances, such as in the case of force majeure or emergency, or if the work takes place in a shop that sells women's supplies. Minors may not work for a 'period of at least 12 consecutive hours' without receiving approval from the Ministry of Labour.

## **ii Overtime**

Article 107 of the Labour Law requires that employees be paid overtime compensation – calculated as the regular wage plus 50 per cent of the regular wage – for employees who work beyond the normal working hours or during national holidays. In addition, Article 101 mandates that no employee working overtime can work for more than five consecutive hours without a break for rest, meals and prayer. Each break may not be less than 30 minutes during the working hours.

## **VII FOREIGN WORKERS**

Employers must compile and keep detailed paperwork regarding their employees for the purpose of obtaining employment visas, contributing to the Occupational Hazards Branch of the General Organisation for Social Insurance, and so forth. However, there is no central database or register in which companies must participate or contribute employee information.

There is no strict limit on the number of foreign workers a workplace or company may have. However, there are required minimums as to the number of Saudi employees that a company must have in relation to the number of foreign workers hired. Therefore, the more foreign employees that are hired, the more Saudis must also be hired. Failure to hire the required percentage of Saudi nationals under the Saudisation policy may result in fines, non-renewal of residency permits and non-issuance of future employment visas.

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Gregorian calendar year. In most cases, and as a matter of practice, employers and employees use the Gregorian calendar. This should be made clear in the employment contract.



There is only one tax that companies must pay for foreign workers: the contribution to the Occupational Hazards Branch of the General Organisation for Social Insurance. The employer's payment of 2 per cent of the employees' total wages is out of its own pocket rather than deducted from the employee's salary. For Saudi Arabian employees, the employer must pay an additional 9 per cent of the employees' total wages out of pocket to the Annuities Branch of the General Organisation for Social Insurance.

Foreign workers are protected under the Labour Law, and are permitted to work in Saudi Arabia so long as they uphold the provisions of the Labour Law and secure valid work permits from the Ministry of Labour. Article 33 of the Labour Law imposes the following conditions precedent to the issuance of work permits to foreigners:

- a* the employee has entered the country legally;
- b* the employee possesses educational qualifications and professional qualifications that the country needs and that the nationals do not possess; and
- c* the employee has entered into a valid employment contract with his or her employer, whereby the employer agrees to hold itself responsible for the employee.

## **VIII GLOBAL POLICIES**

As a preliminary matter, both the employer and the employee must acquaint themselves with all contents and provisions of the Labour Law so that each party may be aware of its obligations. In addition, all employers with at least 10 employees are required to submit any and all internal work rules to the Ministry of Labour for approval. Once approved, the employer is required to post the rules in a conspicuous location within the employer's establishment, or use any other method of communication to make employees aware of the rules (Article 13 Labour Law).

There are no internal disciplinary rules required by Saudi Arabian law. However, the Labour Law does set forth a list of permissive internal work policies and disciplinary measures that an employer may invoke. An employer has the power to impose the following penalties:

- a* a fine, in which the employer must specify in a written record the employee's name, wages, the amount of the fine, and the cause and date of the fine;
- b* deprivation or postponement of allowance, but only for one year and no longer;
- c* postponement of promotions, but only for one year and no longer;
- d* suspension from work and withholding of wages, the latter of which must be prospective and not retroactive for work already completed by the employee; and
- e* dismissal.

Each of these measures must be comprehensive in nature, and define the scope of the measures, with particular emphasis on the privileges and rules related to violations and disciplinary penalties (Article 12 Labour Law).

Moreover, there are no mandatory global policies required under Saudi Arabian law. It is advisable, however, that all companies seeking to establish a uniform set of global policies declare adherence to Saudi Arabian laws and regulations when drafting, for example, the following common corporate global policies:

- a* A workplace standards policy, which should be written such that it does not contravene shariah law including, but not limited to, the prohibition against the consumption of alcohol, pork and pork products on the employer's premises.
- b* An anti-bribery policy, which should adhere to the Combating Bribery Law, enacted by Royal Decree No. M/36, dated 1 July 1992, which seeks to counter both the offer and receipt of bribes involving public officials in Saudi Arabia. Under the Combating Bribery Law, a public official<sup>11</sup> is deemed as having received a bribe if such public official has solicited for him or herself or a third party, or accepted or received a promise or gift for the purpose of obtaining or retaining business or securing some other improper advantage.<sup>12</sup> Further, an anti-bribery policy should additionally require employees to comply with the US Foreign Corrupt Practices and, if a shareholder of the employer has a presence in the UK, the UK Bribery Act.
- c* An anti-money laundering policy, which should comply with the relevant anti-money laundering legislation in Saudi Arabia, which is the 2008 Anti-Money Laundering and Counter-Terrorist Financing Rules.
- d* A corporate authority and executive committee policy, which may need to take into consideration the following Saudi Arabian laws and regulations:
  - the Capital Market Law, enacted by Royal Decree No. M/30 dated 31 July 2003;
  - the Regulations for Companies promulgated under Royal Decree No. M/6 dated 20 July 1965, as amended;
  - the bankruptcy-related portions of the Commercial Court Law, dated 1 June 1930;
  - the Bankruptcy Preventive Settlement Law, dated 24 January 1996;
  - the Banking Control Law, enacted by Royal Decree No. M/5, dated 11 June 1966;

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11 A 'public official' includes: (1) a person employed by any of the Saudi Arabian public administrative authorities, regardless of whether the employment is permanent or temporary; (2) an arbitrator or expert appointed by the Saudi Arabian government or any entity having judicial specialisation; (3) a person assigned by a government authority or any other administrative authority to perform a specific assignment; (4) a person employed by a joint-stock company or company in which the state has a holding, a company that carries out banking operations or a company that manages and runs or maintains a public facility or that is performing a public service; and (5) certain chairmen and directors of companies.

12 A public official is deemed as having received a bribe if he or she has solicited for him or herself or a third party, or accepted or received a promise or gift in exchange for: (1) abstaining from carrying out his or her duties; (2) violating the functions of his or her duties; (3) performing or abstaining from one's duties as a result of a request, recommendation or mediation; (4) exercising real or alleged influence in order to obtain or attempt to obtain from any public authority any act, decision, contract, licence, job, service or any other kind of a benefit or advantage; and (5) lobbying a government authority on the basis of his or her position.

- the 2006 Corporate Governance Regulations;
  - the 2006 Real Estate Investment Fund Regulations;
  - the 2007 Mergers and Acquisition Regulations; and
  - the Commercial Agencies Law, enacted by Royal Decree No. M/11 dated 22 July 1962, as amended.
- e* A securities trading policy, which should adhere to the relevant legislation in Saudi Arabia, which includes the Capital Market Law.
- f* A records retention policy, which should comply with the Law of Commercial Books (the CB Law) (discussed in more detail in Section XI, *infra*).

In addition to the above, it is also advisable that companies operating in Saudi Arabia include a policy that the company and its employees are expected to conduct themselves in a manner that does not offend local laws, practices and customs in Saudi Arabia, or do anything that would bring prejudice to the company in Saudi Arabia.

## IX TRANSLATION

Article 9 of the Labour Law mandates that all data, records, files, employment contracts, and all other documents provided for in the Labour Law, including any other decision issued by the Ministry of Labour, shall be written in Arabic. In this regard, between an employment document translated in Arabic and the same contract translated in a foreign language, the general rule is that the Arabic version shall prevail. In addition, it is recommended that employee handbooks and company policies be translated into Arabic in the event that the global policies become subject to litigation in the Saudi Arabian courts. It is common practice for most information to be in English, which is also the common commercial language.

## X EMPLOYEE REPRESENTATION

In April of 2013, the Ministry of Labour announced that it would promulgate legislation for the establishment of the General Union of Saudi Workers (the Workers' Union), which will aim to represent Saudi employees in their efforts to improve salaries and working conditions, seek promotions, increase benefits, and ensure vocational safety.<sup>13</sup> The Workers' Union will only be available to businesses employing more than 100 employees. At year end 2014, the Workers' Union was still not operational.

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13 See *Arab News*, 'Labor Unions to be a reality soon,' (12 April 2013) available at [www.arabnews.com/news/447872](http://www.arabnews.com/news/447872).

## **XI DATA PROTECTION**

### **i Requirements for registration**

Article 1 of the CB Law requires that ‘every merchant shall keep the commercial books required by the nature and importance of his trade in a way that shows his exact financial status and the rights and obligations pertaining to the merchant’s trade’. Moreover, Articles 6 and 8 of the CB Law, when read together, provide that all merchants keep for 10 years ‘an exact copy of all correspondence and documents relating to his trade, issued or received by him’, which shall be ‘kept in a regular way that facilitates review of the accounting entries, and ensures, where necessary, ascertaining of profits and losses’.

Articles 3 to 6 of the CB Law suggest that a company must identify the information being processed, including, but not limited to, financial transactions, inventory and other company financially related information.

### **ii Background checks**

Background checks and credit checks are permitted. In practice, there are no areas that are prohibited from investigation and review.

## **XII DISCONTINUING EMPLOYMENT**

### **i Dismissal**

Under the Labour Law, an employee may not, regardless of whether the contract is an indefinite or fixed-term contract, be dismissed without cause unless the dismissal occurred during and pursuant to the employee’s validly negotiated probationary period. Rather, dismissal must be supported by a ‘valid reason’ specified in a written notice. There is no guidance as to the scope of a ‘valid reason’ and there is some evidence to suggest that courts are more willing to find a ‘valid reason’ for dismissal when the employee is an expatriate, rather than a Saudi Arabian national.

An employer may dismiss an employee bound to a fixed-term contract in one of the following three ways: (1) non-renewal of the employment contract at the end of the contract’s duration; (2) an event that triggers any of the contract’s terms with respect to dismissal or termination, unless such terms are contrary to the Labour Law or to Saudi public policy; or (3) a conversion of the fixed-term contract to an indefinite term employment contract, which permits termination with notice by the parties and with a valid reason.

In the event that none of these options are applicable, the Labour Court may, nonetheless, be willing to approve the dismissal of the employee for other reasons that it may deem valid, provided that adequate compensation is paid to the employee (e.g., the equivalent of three months’ salary).

As a last resort, an employer may terminate an employment agreement with cause if the employee engages in egregiously inappropriate behaviour (e.g., by assaulting the employer; see below for a more detailed discussion of for-cause termination). In these cases, the employer must give the employee a chance to object to the termination and state its reasons for the same (Article 80 Labour Law).

Dismissal of employees bound to indefinite-term employment contracts, in addition to a valid reason, requires that the employee receive written notice describing the reason for the dismissal. Employees who are paid monthly must receive the notice at least 30 days prior to the termination, whereas all other employees must receive such notice at least 15 days in advance. The employer may, however, forgo the employee's respective statutory notice period in exchange for a payment to the employee equal to the employee's wage for the duration of the notice period.

As a general rule, an employer must provide a dismissed employee with a statutory end of service reward or indemnity. The Labour Law, however, does not require the employer to pay the reward or any other indemnity in the following cases of for-cause termination:

- a* the employee assaults the employer or any of his or her superiors;
- b* the employee fails to obey the orders of his or her superiors or does not meet the essential obligations under his or her employment contract;
- c* if there is proof to suggest that the employee has adopted bad conduct or behaviour, or has committed an act affecting honour or integrity;
- d* the employee commits an act with the intention to cause material loss to the employer;
- e* the employee resorts to forgery in order to obtain the job;
- f* the employee is hired on probation (i.e., the employer dismisses the employee during a contractual probationary period);
- g* the employee is absent without a valid reason;
- h* the employee unlawfully takes advantage of his or her position with the employer in order to receive personal gains; or
- i* the employee discloses work-related confidential information or trade secrets (Article 80 Labour Law).

Irrespective of the way in which the employee is terminated, the employer is required to pay the employee's wages and settle all of the employee's entitlements within one week of the dismissal or termination date. If the employee is an expatriate worker, then the employer must also bear the costs of a return ticket to the employee's homeland.

In cases in which an employer wishes to terminate an employee for cause, but the employee disputes the basis of the termination, the parties may enter into a settlement agreement in order to avoid protracted litigation before the Commission for the Settlement of Labour Disputes, which has jurisdiction to adjudicate disputes between employers and employees. Usually, agreements to settle are entered into between the parties after an employee has already filed a complaint.

## **ii Redundancies**

Redundancies are deemed to be valid reasons for terminating employment contracts. If company restructuring or some other business decisions lead to redundancies in personnel, a company may terminate certain redundant employees, provided that it fulfils the statutorily mandated notice period or makes payment in lieu thereof.

### **XIII TRANSFER OF BUSINESS**

The Labour Law offers protection to employees affected by a merger, acquisition or other business transfer recognised under Saudi Arabian law. Article 18 provides that all employment contracts affected by a valid business transfer shall be deemed as continuous, regardless of whether the contract is with the predecessor company or the successor company.

Both the predecessor and the successor shall be held jointly liable for all of the employee's entitlements for the period preceding the business transfer, including, but not limited to, severance awards and wages. However, with respect to individual establishments involved in a transfer of ownership, the successor and predecessor may, but are not required to, agree on the transfer of all previous entitlements of the employees to the new owner subject to the employees' written approval. If an employee does not approve of the agreement, then he or she may demand termination of his or her employment contract and delivery of all of his or her entitlements from the predecessor.

### **XIV OUTLOOK**

Companies doing business in Saudi Arabia should anticipate a continuation of the Saudi policy restricting expatriate employment and conditioning the issuance of employment visas to foreign workers on satisfactory levels of employment of Saudi nationals. Saudi policy is likely to begin to require ever-increasing percentages of Saudi nationals among workforces, even in fields where there is a shortage of skills among Saudi nationals.

## Appendix 1

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