THE EMPLOYMENT LAW REVIEW

Ninth Edition

Editor
Erika C Collins

THE LAWREVIEWS

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PREFACE

Every winter we survey milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. At that time, I read the Preface that I wrote for the first edition back in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. This continues to hold true today, and this ninth edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see *The Employment Law Review* grow and develop over the past eight years to satisfy the initial purpose of this text: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2017 in nations across the globe, and this is the topic of the second general interest chapter. In 2017, many countries in Asia and Europe, as well as South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulation to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, social media and mobile device management policies. Mobile devices and social media have a prominent role in and impact on both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement 'bring-your-own-device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy.

Bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

In 2015, we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2017, we saw several new, interesting and impactful cases that further illustrate the widespread and constantly changing global norms and values concerning religion in the workplace. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these four general interest chapters, this ninth edition of *The Employment Law Review* includes 46 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all of our contributors and my associate, Marissa Mastroianni, for her invaluable efforts to bring this edition to fruition.

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February 2018

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Erika Collins is a partner in the labour and employment law department and co-head of the international labour and employment law group of Proskauer Rose, resident in the New York office. Ms Collins advises and counsels multinational public and private companies on a wide range of cross-border employment and human resources matters throughout the Americas, Europe, Africa and Asia.

Ms Collins represents US and non-US employers in all aspects of company growth and restructuring, from office openings, executive hires and workforce expansions to company downsizing, employment terminations, mass lay-offs and office closures. She advises clients on preparing competitive employment packages and agreements, such as separation, expatriate and consulting agreements, that are compliant with local laws, as well as on payroll, benefits and vacation issues. Ms Collins regularly conducts multi-country audits of employment laws and practices in order to provide advice to clients regarding compliance with data privacy, fixed term contracts, outsourcing, and working time and leave regulations among numerous other issues.

Additionally, Ms Collins advises employers on sexual harassment and other misconduct allegations, as well as cross-border investigations. She also is experienced in conducting due

diligence on international subsidiaries and advising on applicable business transfer laws and employee transition issues in cross-border M&A transactions.

Ms Collins is the editor of *The Employment Law Review*, which covers employment laws in 46 countries. In addition to authoring numerous articles on international employment topics, Ms Collins is a regular speaker at the International Bar Association and the American Bar Association. Topics on which she has written and spoken recently include: cross-border transfers of executives; global mobility issues for multinationals; employment issues in cross-border M&A transactions; the landscape of issues in international employment law; global diversity programmes; the intersection of EU privacy and anti-discrimination laws; and cross-border investigations.

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Chapter 38

SAUDI ARABIA

John Balouziyeh and Jonathan Burns[1]

I INTRODUCTION

Saudi Arabian law is based fundamentally on shariah (Islamic law) as taught by the *Hanbali* school of jurisprudence. Secondarily, 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 mainly 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 23/8/1426 H, corresponding to 27/9/2005 G (as amended) (the Labour Law) and its Implementing Regulations enacted by Ministerial Resolution No. 1982 dated 28/6/1437 H corresponding to 6/4/2016 G (the 2016 IRs), as well as by shariah, as interpreted and applied in Saudi Arabia.

In addition to the Labour Law (LL), numerous subsequent circulars enacted by the Ministry of Labour (MOL) 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) under the aegis of the Ministry of Justice is the Saudi Arabian entity that is currently primarily responsible for adjudicating labour disputes.[2] However, before a case reaches 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 LL). 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 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.

1 John Balouziyeh and Jonathan Burns are associates at Dentons in association with The Law Firm of Wael A Alissa.

2 In 2015, the MOL and Ministry of Justice announced that jurisdiction over labour disputes would be transferred to the Ministry of Justice and a proper tribunal system implemented. In 2016, the Ministry of Justice announced that specialised labour courts would begin operating during the current Hijri year of 1438 (corresponding to 2 October 2016 to 21 September 2017) after designated assistant judges had completed specialised training on resolving labour disputes.

II YEAR IN REVIEW

i Saudisation

Whereas previous years saw a more relaxed approach towards Saudisation (the national policy of encouraging employment of Saudi nationals in the private sector) and a move towards revising certain elements of the Labour Law in favour of employers, the hot topic of 2017 was an intensified Saudisation campaign and a significant increase in pressure on employers, their non-Saudi employees and even their families to comply with the country's Saudisation policies.

Saudisation has always been an influential and controversial topic. It was originally enacted as a result of pressure exerted by Saudi Arabian nationals complaining that the job market had been saturated by the significant expatriate population, leading to high unemployment rates among Saudi nationals. In response, in October 2011 the MOL 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.

The policy of Saudisation is implemented, enforced and regulated by several government programmes and policies, and is reflected in nearly every facet of the public and private sectors. For example, foreign companies wishing to establish a presence in Saudi Arabia must include in their application packet to the Saudi Arabian General Investment Authority a plan for hiring and training Saudi nationals as employees, while any company undertaking a government contract is required to adhere to certain Saudisation and localisation measures. As another example, companies are required to draft and adopt a detailed internal Saudisation plan whereby each position of employment within the company is described and a time frame for replacing non-Saudi employees with Saudi employees is specified. In addition to other Saudisation measures, legislation lists 18 jobs that may not be held by non-Saudis, in addition to employing a minimum and maximum age limit for expatriate employees.

The Nitaqat programme, a Saudisation initiative, labels companies as platinum, green, yellow or red based on a formula involving two or more of the following variables: (1) the number of employees; (2) the size of the company;[3] and, under certain circumstances, (3) the activities of the company.[4] Failure to hire the required percentages of employees under the Nitaqat programme may result in fines, non-renewal of residency permits, non-issuance of future employment visas and similar actions.

Implementation of the Nitaqat programme is still evolving, and Saudi Arabia entered a second Saudisation phase that focuses on the quality of local employment and salaries of Saudi nationals compared to their expatriate counterparts in the private sector.

Previously, the MOL required employers to pay a Saudi employee a minimum monthly wage of 3,000 Saudi riyals in order to count him or her as a 'full Saudi employee' under the Nitaqat programme. In 2014, the MOL announced intentions to set a minimum monthly wage of 5,300 Saudi riyals for Saudi employees and 2,500 Saudi riyals for expatriate employees. However, at the time of writing, this has not come to fruition.

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

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

ii 2017 Saudisation issues

Article 77

As mentioned in subsection i, above, 2017 saw an intensified Saudisation campaign and significantly increased pressure on employers and non-Saudi employees and families.

Saudi Arabia is a country that is highly dependent on state spending, which is in turn fuelled by income from the sale of oil. In that regard, oil prices reached historic lows in November 2014 falling to around half of previous amounts and, since then, the country has slowly prepared for the eventuality that historically low oil prices will be the new normal for years to come (if not forever), which has in turn sparked the beginnings of a renaissance in the country that aims to diversify its human capital and economy.

Nevertheless, in the short term, depressed oil prices have resulted in austerity measures at the government level and significantly decreased state spending, which, in turn, has caused employers to tighten spending, reduce hiring and increase lay-offs. As it is generally accepted among employers that expatriate employees add more value to the employer than local Saudi employees, and at a much cheaper cost , the natural inclination of most employers is to lay-off Saudi employees in favour of retaining non-Saudis. This has caused a backlash by Saudisation activists – particularly with respect to Article 77 of the Labour Law, which came into effect with the October 2015 amendments to the Labour Law.

Specifically, Article 77 permits an employer to terminate the employment of a Saudi employee with payment of a small penalty of at least two months wages (or more depending on the employee's length of service). Saudisation activists have demanded a repeal or revision of Article 77, and on at least two separate occasions representatives in the Shoura Council have promised to undertake a review of the Article with an aim towards making the provision more fair to Saudi citizens.

Despite the popular backlash against Article 77, the labour courts continue to apply the law as written and will, in general, uphold a proper termination under Article 77. Nevertheless, Saudi employees appear to be emboldened by the country's intensified Saudisation campaigns and are more likely to appeal to the labour courts, the MOL and even to the media and via Twitter to put pressure on employers. For example, it is not uncommon to read stories in the media in which employers have faced a raid or investigation based on an anonymous tip that a company is engaged in anti-Saudisation behaviour, which can result in fines and other penalties.

Regulation of terminating Saudi employees

As a result of Article 77 and financial pressures, employers have been required to lay-off more employees. In early 2017, the MOL made announcements rebuking the 'mass termination' of Saudi employees, which was defined as the higher of 10 individuals or a number of Saudi employees representing more than one per cent of the company's entire workforce. The MOL announced that employers wishing to terminate a 'mass' of Saudi employees must obtain prior approval by showing just cause and financial justification for the mass termination to the MOL and, if not complied with, the company will face fines and penalties.

The issue arose again mid-year when a telecommunications company was featured in the media for an unapproved mass termination of Saudi employees that went viral on Twitter. The MOL announced that the company would be denied government services pending an investigation.

Expatriate dependants fees

In addition to the above, in July 2017 the Ministry of Finance increased the fees that expatriates must pay for having dependants residing in the country. Employers who act as sponsors for expatriate employees are required to pay the fee, which they then typically deduct from the employee's salary. This has resulted in a significant departure of families from Saudi Arabia although, in some cases, a single breadwinner has stayed behind to continue working.

Many in the business community have decried this action on the basis that it has forced consumers who are purchasing goods and services and contributing to the local economy to leave. However, Saudisation activists have supported the measure on the grounds that non-Saudi dependants who are reaching employment age should not be competing against Saudis in their own country, and that non-Saudis should not view their residence and employment in Saudi Arabia as permanent, but should return to their homelands with their families, thus opening employment opportunities and freeing up more jobs for Saudis.

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 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 MOL 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 LL).

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 LL). The 2016 IRs use a standard form of work contract as a template, presumably in an attempt to make contract drafting easier for employers and encourage them to have a written contract, since this is often overlooked, resulting in disputes.

With regard to employment contracts for non-Saudi nationals, the Labour Law requires that they be in writing (Article 37 LL). The law does not state what would transpire if such a contract were not in writing. Presumably, Article 51, which recognises employment contracts even if they are not written, would 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'[5] employment contracts are permitted. Fixed-term contracts automatically terminate upon expiration of the duration 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 define with particularity 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 LL).

It is recommended that an employment contract be made in writing and, even though not required under the Labour Law, signed by both parties in order 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 (as discussed below);

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;[6]

e a provision providing the employee an entitlement to days off with full pay during national holidays as set forth by the MOL, and pursuant to Article 112 of the Labour Law and Article 25 of the 2016 IRs, including:
- four days for Eid al-Fitr (marking the end of Ramadan);
- four days for Eid al-Adha (Festival of Sacrifice); and
- 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;
- 60 days following the first 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 these cases, the end of service reward shall be calculated as follows:

5 As further discussed below, the term 'at will' does not strictly apply to indefinite term contracts, since 60 days' notice and a 'valid reason' are still required to terminate the contract. That is, parties are not permitted to immediately terminate an indefinite contract without any reason as in most at-will jurisdictions.

6 Article 25 of the 2016 IRs clarified that national holidays and sick days falling within an employee's annual leave shall not count towards the 21 or 30 days of minimum annual leave.

- employee dismissal or expiration of employment relationship – half a month's wages[7] 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); and
- employee 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 10 years; and 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, either party may terminate the employment contract for any reason whatsoever, unless the contract states that only one party is entitled to do so. The Labour Law does not impose any notice period requirement on a party seeking to terminate the employment relationship during the probation period.

According to the amendments to the Labour Law that took effect in 2015, the parties may agree to extend the probation period for an additional 90 days after the first probation period expires. Prior to implementation of the 2016 IRs, it was unclear if such extended probation period could be decided from the start by stipulating a 180-day probation period in the employment contract, or if the employer and employee were required to execute a separate agreement providing for an additional 90-day probation period after completion of the first 90-day probation period. Pursuant to Article 20 of the 2016 IRs, the latter view prevails – that is, an employee may be subject to a total 180-day probation period, but it must be separated into two 90-day periods. The first 90-day period must be included in the employment contract, and the second 90-day period must be mutually agreed in a separate writing by the employer and employee.

Further, according to Article 54, an employer may place an employee on an additional probationary period as long as both parties agree and either (1) the scope of employment involves a different profession or work,[8] or (2) the employee has returned from a leave of absence of six months or more.

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

8 Recently, an exception was 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.

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 LL). 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 of a foreign company in Saudi Arabia 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 results in a relationship of agency with a foreign company 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 be deemed as a permanent establishment of the foreign company, thus 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 MOL, taking into account the provisions of the Council of Cooperative Health Insurance (Article 144 LL), whose directives require employers to provide health insurance to all of their employees based in Saudi Arabia.[9] In addition to the legally mandated minimum, some companies also provide other insurance, such as business travel and accident insurance, to their employees.

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

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 LL). 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 LL).

V RESTRICTIVE COVENANTS

Article 83.1 of the Labour Law permits non-competition clauses in the employment contracts of employees whose scope of employment necessarily entails that they shall become acquainted with the employer's customers. For non-competition 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 venue by 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.

In addition, Article 83.2 permits confidentiality clauses in the employment contracts of employees whose scope of employment necessarily entails that they shall become acquainted with the employer's business or trade secrets. For confidentiality clauses to be valid, they must be in writing and specific in terms of time, place, and type of work.

According to Article 83.3, an employer may sue an existing or former employee for breach of non-competition or confidentiality undertakings within one year of discovering the violation.

VI WAGES

i Payment

According to the recent and ongoing implementation of the Wage Protection System in Saudi Arabia, Article 90.2 of the Labour Law provides that all employee wages shall be paid into each employee's account through an accredited in-country bank. At the end of 2017, the Wage Protection System entered its 11th stage, where its requirements became applicable to all firms in Saudi Arabia employing 60 or more employees. The MOL stated that stages 11 to 16 of the System will cover firms employing between 11 and 80 employees, but no date has been finalised for application to firms with fewer than 11 employees.

ii 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.[10] Article 106 of the Labour

10 Days, months and years mentioned in the Labour Law are references to the Hijri (Islamic) calendar, and not the Gregorian calendar, unless otherwise stated in the employment contract or agreed with the

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.

Article 101 provides that no employee shall work more than five hours without a minimum break of 30 minutes for rest, prayer and meals, and that no employee shall be required to remain at the workplace for more than 12 hours in one day.

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 MOL.

iii 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. Pursuant to Article 23 of the 2016 IRs, an employee's yearly overtime shall not exceed 720 hours, unless by exception of the MOL.

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. Article 16 of the 2016 IRs requires employers to draft, adopt and implement an internal Saudisation plan. The plan must include, for example, a description of each job position in the company describing its tasks and duties, a time frame for replacing non-Saudi employees with Saudi employees, and providing training to Saudi Arabian employees. Employers must also maintain a record of Saudi employees who have replaced non-Saudi employees. 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

employee. The Hijri calendar year is approximately 11 days shorter than the 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.

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.

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, as well as 1 per cent of the employees' total wages out of pocket for Saned, the unemployment insurance scheme implemented by 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 MOL. 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 are required to adopt internal work rules.

A standard form of internal work rules was provided in previous implementing regulations. However, pursuant to the 2016 IRs, a new standard form of internal work rules was adopted. Pursuant to Article 4 of the 2016 IRs, companies must log on to the MOL's E-Portal and either accept the MOL's standard form of internal work rules or, alternatively, insert additional terms, which will be reviewed electronically by the MOL for consistency against Saudi Arabian rules and regulations. However, existing companies that have already adopted internal work rules are exempt from this requirement so long as their current rules are not inconsistent with the Labour Law or its implementing regulations.

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 LL).

The Labour Law sets forth a list of permissive internal work policies and disciplinary measures that an employer may invoke. Under the Labour Law, 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 66 LL).

Further, the standard form of internal work rules under the 2016 IRs lays out a specific and detailed scheme for discipline carried out by employers specifying the type of penalty that may be applied for 49 specific acts depending on whether the act was committed for the first, second, third or fourth time.

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 should be written such that it does not contravene the shariah, 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 should adhere to the Combating Bribery Law, enacted by Royal Decree No. M/36, dated 29/12/1412 H, corresponding to 1/7/1992 G, 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[11] is deemed as having received a bribe if such public official has solicited for himself 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.[12] Further, an anti-bribery policy should additionally require employees to comply with the US Foreign Corrupt Practices Act and, if a shareholder of the employer has a presence in the UK, the UK Bribery Act.

c An anti-money laundering policy should comply with the relevant anti-money laundering legislation in Saudi Arabia, which is the 2017 Anti-Money Laundering Law.

d A corporate authority and executive committee policy 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 2/6/1424 H, corresponding to 31/7/2003 G;
- the Regulations for Companies promulgated under Royal Decree No. 3/1437, dated 28/1/1437 H, corresponding to 10/11/2015 G;
- the bankruptcy-related portions of the Commercial Court Law, dated 4/2/1349 H, corresponding to 1/6/1930 G;

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 Bankruptcy Preventive Settlement Law, dated 4/9/1416 H, corresponding to 24/1/1996 G;
- the Banking Control Law, enacted by Royal Decree No. M/5, dated 22/2/1386, corresponding to 11/6/1966 G;
- the 2017 Corporate Governance Regulations;
- the 2006 Real Estate Investment Fund Regulations;
- the 2007 Mergers and Acquisition Regulations (as amended); and
- the Commercial Agencies Law, enacted by Royal Decree No. M/11 dated 20/2/1382 H, corresponding to 22/7/1962 G, as amended.

e A securities trading policy should adhere to the relevant legislation in Saudi Arabia, which includes the Capital Market Law.

f A records retention policy should comply with the Law of Commercial Books (the CB Law) (discussed in more detail in Section XI).

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 MOL, 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 take precedence. 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 2013, the MOL 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.[13] The Workers' Union will only be available to businesses employing more than 100 employees. At the time of writing, the Workers' Union was still not operational.

13 See Arab News, 'Labour Unions to be a reality soon,' (12 April 2013) available at: 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 must 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 with particularity 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;[14] (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 60 days' notice and a valid reason.

In the event that none of these options is 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).

14 However, pursuant to Article 19 of the 2016 IRs, the MOL adopted a standard form of work contract which encompasses obligatory as well as optional terms. Employers are not required to use the standard form of work contract, but employment contracts may not have any terms that are inconsistent with the standard form. Pursuant to Article 2 of the standard contract, it is obligatory that all fixed-term contracts are automatically renewed unless either party notifies the other in writing otherwise at least 30 days prior to the expiration date of the contract. Thus, employers may not let an employee go simply by failing to renew the fixed-term contract at the expiration of its term. Rather, the employer now must affirmatively provide 30 days' notice prior to the expiration date.

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 his or her reasons for the same (Article 80 LL).

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 60 days prior to the termination, whereas all other employees must receive such notice at least 30 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 dismissed during his or her contractual probationary period;
g the employee is absent without a valid reason for a period of time specified in the Labour Law, so long as a warning is first served;
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 LL).

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, unless the employee resigns in the absence of a legitimate reason (Article 40.2 LL).

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, conclusion of certain activities and closure

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.

In addition, where a company ceases operations in a certain activity, or ceases operations altogether, the amendments to the Labour Law that went into effect in 2015 provide as a matter of statute that the relevant employees working in such operations may be terminated (Article 74 LL).

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 (Article 18 LL).

Notwithstanding Article 18 of the Labour Law, Article 11, which provided that both parties are jointly responsible to provide employees with all rights and privileges granted by the original employer where the employer sells all or part of its business to another, was amended as part of the 2015 amendments to remove such joint responsibility and place sole responsibility on the successor.

Thus, it would appear at present that there is a conflict between Articles 11 and 18 of the Labour Law.

XIV OUTLOOK

Saudi Arabia is currently experiencing growing pains as state spending is curtailed as a result of depressed oil prices, and this is reflected in the labour market and the pressure on companies to comply with Saudisation policies by focusing on the hiring, training and promotion of Saudi employees. There is hope that a renaissance of diversification will bring a renewed sense of optimism to the economy, but, for the time being, companies doing business in Saudi Arabia should anticipate a continuation of the intensified Saudisation campaign and anti-expatriate sentiment experienced in 2017. Long-standing policies of restricting expatriate employment and conditioning the issuance of employment visas to foreign workers on satisfactory levels of employment of Saudi nationals will remain and Saudi policy is likely to require ever-increasing percentages of Saudi nationals among workforces, even in fields where there is a shortage of skills among Saudi nationals, as well as higher protections for Saudi employees generally.

Appendix 1

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John's practice focuses on commercial law as it relates to company formation, corporate restructuring, and compliance with Saudi labour and business law. Prior to joining Dentons, John worked on international arbitration and investment disputes as a legal fellow in the US Department of State. He also clerked at various international law firms and courts, including the Court of Justice of the Andean Community (international trade law). He is the author, editor or translator of various books and articles dealing with international and comparative law, including *A Legal Guide to Doing Business in Saudi Arabia* (Thomson Reuters, 2013) (co-author).

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