Legal Update

May 2017

CORPORATE AND FOREIGN INVESTMENT

▪ End of one-year grace period

The new Companies Law which came into force on **2 May** 2016 requires in its **Article 224** all companies to be compliant with the new dispositions within one year. Consequently, companies established in Saudi Arabia are required to amend their articles of association, for example: reductions in the **statutory reserve** requirements, the dissolution process resulting from **losses**, fixing the **par value of shares**, and **general assembly meeting and board** requirements, as well as correcting **cross references to specific articles** in the Companies Law. In order to avoid potential repercussions in the future, companies should not delay in amending their constitutional documents to come into compliance with the Companies Law.

▪ Plan to allow expatriates to practise business without Saudi sponsors

New procedures are being studied to license expatriates to invest in **free trade areas** without the need to have a Saudi sponsor, partly in order to combat the practice of "*tasattur*" (doing business in the name of a Saudi to avoid foreign investment restrictions).

The study proposes applying two types of taxes on expatriates participating in this programme. The first type of tax will be assessed on the accounts the expatriates may present including revenues, expenditures, and profits. The second type of tax will be assessed on the **estimated profits** in the event that no dividends are announced. This will depend on the area of practice; the tax will be fixed at 15 % cent for the contracting sector and around 25 % on consultancy services.

LABOUR AND RESIDENCY

▪ Extension of period for advertising vacancies prior to visa applications

As part of Vision 2030, Saudi Arabia has undertaken an initiative to promote the hiring of Saudis (Saudization) in the national workforce. With effect from 1 August 2016, the Ministry of Labour required that for every new visa application by an employer, they must first post a job advertisement on the **TAQAT Gateway** where it must remain **for at least 14 days**. This system was introduced to provide job opportunities to Saudi candidates first.
If the employer is not able to find an appropriate Saudi national candidate, then the employer is able to apply for a new visa. Employers are required to provide evidence of interviews and acceptance or rejection justifications before they can proceed with an application for the new block visas.

From 1 January 2017, the Ministry of Labour and Social Development has extended the required period to advertise a job on the TAQAT portal to **45 days**. Companies should factor the time required to obtain visas to work in Saudi Arabia into their resourcing plans.

- **Redundancy Terminations**

On 29 January 2017, the Saudi Minister of Labour issued Resolution No. 50945 ("Resolution") restricting **termination of groups of Saudi employees** for redundancy.
The Resolution applies to Companies with a **headcount of 50 and above** and does not apply if the Company is declaring bankruptcy or closing down.

A "Group Termination" is defined as: (i) the dismissal of Saudi employees due to **reasons attributable to the Company**, rather than the employees; (ii) where **10 employees or more than 1 %** of the Company's total headcount, whichever is higher, are terminated; and (iii) where the dismissal occurs **within one year of any previous dismissals**.

At first reading, it seems that the resolution applies for a termination of a group of 10 Saudis or more in one time. However, the time condition of one year from the last dismissal calls this statement in question.
Indeed, it would imply that the resolution doesn't apply to a redundancy which occurs more than one year after the last dismissal and, in the same way, to a redundancy which is the first dismissal of employees. Also, if the terminations are distributed over time the resolution shouldn't apply. Ultimately this time condition would have very little interest: the employers would be entitled to the redundancy of 10 Saudis or more every year plus one day.
Therefore, it is possible that the intention of the legislator was to ban the **termination of a number of 10 Saudis or more through one year** (i.e. even separately) and failing that, spreading the terminations over time may be analysed by the Labour Office as a circumvention of the law.

Furthermore, the Resolution states that, in reviewing the Company's notice, the Labour Office should take into account whether the Company can replace its non-Saudi staff with the Saudi employees being dismissed—provided they have similar job functions—or employ the Saudis elsewhere in the Company or its subsidiaries.

Failure to notify the Labour Office or obtain its consent to a Group Termination renders the Company liable to **significant penalties** seriously impairing its ability to employ and retain expatriate staff. Depending on the breach, the penalties may last from one month to two years.

- **Ministry of Labour announces saudization of jobs at malls.**

Foreigners will no longer be allowed to work in Saudi Arabia's numerous **shopping malls**. The Minister of Labour and Social Development issues a decision restricting the work in malls across the kingdom to only Saudi men and women.

- **New grace period for residency violators.**

Saudi Arabia has launched "A Nation without Violations" campaign to give residency and labour law violators the chance to leave the country without having to pay penalties. Violators to take advantage of the **90-day grace period which became effective March 29, 2017**. Undocumented expat workers seeking to correct their status during the new 90 days amnesty period will be able to return to the Kingdom by adhering to legal proceedings. Once the grace period passes, penalties will have levied against violators who remains. Beneficiaries of the campaign are:

1. Umrah and Haj over-stayers
2. Residents with expired iqama
3. Pilgrims without Haj permit
4. Workers with a work permit but no iqama ID card
5. Infilters crossing Saudi borders
6. Runaway workers (Huroob)
7. Illegal workers with valid iqama IDs but who work for different employers or are self-employed.

- **Rental contracts to be registered**

The Council of Ministers stated that rental contracts must now be registered in "*Ijar*" system and that any contract that is not registered **will be considered invalid**. The Ministry of Justice and the Ministry of Housing will lay down the conditions to be incorporated in the contract for the registration on the network and **contracts may be standardized**.

The Council of Ministers has also ordered the Ministry of Labour to ensure the presence of the lease contract registered on the "*Ijar"* network **for the issuance or renewal of work permits** for non-Saudis.

JUDICIARY

- **No appeal allowed in lawsuits involving less than SR20,000**

There will be no room to appeal verdicts issued by general courts over financial disputes involving less than SR20,000, according to a new provision approved by the Supreme Judiciary Council, headed by Minister of Justice Waleed Al-Samaan.
The concerned circuit in the general court has to decide on such cases referred to it **on the scheduled date itself**. The circuit court shall not adjourn examining the case unless essential. In such instances, the deferment shall **not be more than 10 days** and the reason for putting off the case shall be specifically stated in the case sheet. It is also not allowed to postpone the case **for the same reason** for more than once.
The new regulations also stipulate that each circuit has to hold **at least 30 sittings a day**.

- **E-link between Ministry of Justice and Ministry of the Interior increases pace of rulings**

The speed of enforcement of rulings and transactions has increased by 86 % due to the new electronic link between the MOJ and the MOI. At the time of press, the number of transactions and orders between the two ministries stood at 91,776, compared to 49,296 for the same period of the previous year (the paper correspondence previously used between the ministries could result in delays of up to 60 days). The affected areas include the issuance of **travel bans**, **suspension of services**, **notifications**, **arrest warrants**, as well as the removal of the same.

- **Ministry of Justice privatizes electronic services**

In accordance with the aims of the National Transformation Program (2020), the MOJ has elected to privatize its system of electronic authentication in order to enhance efficiency when obtaining official documents for individuals and corporations. Powers of attorney and company documents will soon be issued and legalized through a system developed by the MOJ's private partner: the ***Thiqah Business Services Company***. The MOJ has stated that all such documents will be accepted by it, as well as all other government agencies.

The new system will be rolled out in phases. In the first phase, 279 offices will be licensed to operate the service, though the MOJ's notaries will remain available to authenticate documents. In the second stage, new capabilities will be added to the system in order to facilitate additional services to citizens and residents.

INTELLECTUAL PROPERTY

Like the GCC Patent, the Saudi Trademark Office has confirmed that it has adopted the **GCC Trademark Law and its Implementing Regulations** with effect from 29 September 2016. This is the good news for international brand owners who currently face inconsistencies in trademark rules across the GCC.

- **Impact of the new law.**

  The introduction of the GCC Trademark Law and its Implementing Regulations will possibly have more impact in Saudi Arabia than in any other of the GCC States. This is because the new law and Implementing Regulations contain several provisions that are not present in the old Saudi Trademark Law and it also introduces some important procedural changes.

- **Changes to official fees.**

  The official fees being charged by trademark offices in the GCC states attracted significant attention. The official fees set out in the Implementing Regulations showed some increases and some decreases in official fees. The net effect therefore to register a trademark in Saudi Arabia is that official fees have increased **from SAR 7,000 to SAR 9,000** (US$ 1,867 to US$ 2400).

- **Opposition.**

  Opposition period **decreases to 60 days**.
  The opposition period under the old Saudi Trademark laws was 90 days. The GCC Trademark Law decreases this to 60 days, with **no extension of time being available**.
  Opposition to be heard within the trademark office: Under the old Saudi Trademark Law oppositions are filed before the Board of Grievances with appeals against the refusal of trademark applications being heard by the Minister of Commerce. The GCC Trademark Law and Implementing Regulations now requires **opposition to be heard within the Trademark Office**.

TAX

- **Higher customs duties for 193 products**

In **April 2008**, the KSA government issued a Resolution to reduce the customs duty rates on 193 tariff lines corresponding to **highly consumed products** in KSA by **removing/subsidising the "protection duties"** previously levied on these products. Although the Resolution was intended to be applied for a limited period of time, its validity has been extended several times until now.
Following the announcement of the KSA Annual Fiscal Budget for the year 2017, the KSA government has decided **not to renew the subsidies** which were previously applied.

Product category	Old rate	New rate
Food and beverages	5%	6% - 25%
Fertilizers	5%	12%
Chemicals	5%	20%
Consumer products	5%	10% - 20%
Building and electrical materials	5%	12% - 15%

Businesses are recommended to assess the impact of this new measure on their **supply chain**. This includes engaging internally and as appropriate with suppliers and customers to evaluate how the price of the products is affected; who is responsible for the payment of the increased duties; if the impact can be absorbed by the final consumer or not; or whether there are alternative territories to source the product that enjoy preferential access to the KSA market.

- **New Zakat implementing regulations issued**

On 9 March 2017, the Saudi Arabian Tax Authority issued the **Zakat Implementing Regulations** under Ministerial Resolution No. 2082, dated 28 February 2017 (01/06/1438H). The regulations are effective from the date of their issuance. The regulations supersede all prior directives, resolutions, instructions and circulars issued by the Saudi Arabian General Authority for Zakat and Tax (GAZT).

The regulations are applicable to all commercial activities carried out by resident Saudi and GCC nationals. In order to allow a deduction from the zakat base of partially owned foreign investments, zakat on such investments must be computed based on the audited and attested financial statements, and included in the zakat return of the zakat payer.

While the regulations provide **more clarity** on the zakat assessment basis, they are a consolidation into one document of the current Zakat practices of GAZT with some key changes. One of them is that **salaries and benefits to shareholders/owners may be deductible** provided they are registered with General Organisation for Social Insurance, whilst these were previously denied deduction completely. Effectively salaries to owners up to the GOSI maximum threshold (i.e. SAR 45k per month) should be deductible. It should however be noted that salary payment through GOSI registered systems may trigger additional overall 22% cost.

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- **Selective tax**

The Council of Ministers approved a decision of the GCC Supreme Council, in December 2016, regarding a uniform selective tax. On 8 March 2017, the GAZT released **excise tax regulations** on its official website. Although not officially announced, the excise tax regulations are expected to be effective from 1 April 2017.

A selective tax will be imposed on goods considered **harmful to humans or the environment** and on **luxury items**. The GAZT has identified tobacco products and soft drinks and energy drinks as being the first commodities to be subject to the excise levy. The GCC member states have agreed to impose excise tax rates of 50% on soft drinks, and 100% on energy drinks and tobacco products.

Producers and importers of these products are required to do the following:

- register in the ERAD system under the Excise Tax regime;
- obtain a license;
- file excise tax returns within time limits to be specified in the proposed excise tax bylaws; and
- pay the tax to the GAZT within 15 days.

Severe fines and penalties will be imposed on non-compliant taxpayers.

Done in Riyadh on 18/05/2017

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