lex arabiae

Legal News of the Gulf

Vol.XVII – 3rd Issue **July 2013**

Meyer-Reumann & Partners
P.O. Box 9353
Dubai, U.A.E.
Tel: 00971-4-331 7110
Fax: 00971-4-331 3832
dubai@meyer-reumann.com
www.meyer-reumann.com

With offices in Dubai + Abu Dhabi + Alexandria + Baghdad + Cairo + Erbil + Muscat + Riyadh + Tehran

Inside this Issue

lex arabiae

Legal News of the Gulf

Vol. XVII – 3rd Issue **July 2013**

Meyer-Reumann & Partners
P.O.Box 9353
Dubai, U.A.E.
Tel: 00971-4-331 7110
Fax: 00971-4-331 3832
dubai@meyer-reumann.com
www.meyer-reumann.com

With offices in Dubai + Abu Dhabi + Alexandria + Baghdad + Cairo + Erbil + Muscat + Riyadh + Tehran

Inside this Issue (cont.)

United Arab Emirates

Calculation of the End of Service Gratuity after a Termination Agreement

Guiding Principle

The UAE Labour law (Federal Labour Law No. 8/1980) determines that the calculation of gratuity differs for an employee, who has resigned and an employee, whose employment contract has been terminated by the employer. Therefore, while calculating gratuity for employees relocating within the company's group, the question emerges: should they be considered as employees who have resigned or employees whose contract has been terminated. And consequently: is a formal termination letter necessary in both of the above mentioned cases?

A. Scenario

Once a company has decided to expand its footprint in the Middle East and African Region and sets up offices and/or different legal entities in different countries in the region it is during this process, where considerations are made to relocate some employees to different countries in order to take up new assignments/positions.

Sometimes the wish for such relocation is driven by the employee (he looks for a different opportunity in the company group). Sometimes, the change is based on supervision and advice from the management (and thus driven by the management offering a better position in a new entity in the region, where he/she can take charge of the particular market. These different offices may be under the same regional management or might be legally independent entities within the company/s group.

B. Termination of the Employment Contract

With the enactment of the Labour Law the UAE implemented a so-called "End of Service Gratuity"-System. The law requires the employer in compliance of certain conditions to pay an employee a specific amount of money after termination/ending of the employment relationship.

Referring to Article 113 of the UAE-Labour Law ("UAE-LL") an employment contract will be terminated under one of the following cases:

(a) Both parties agree to the termination of the contract under the provision that the employee consents to this in writing.

(b) If the contracted period expires, unless the contract has been explicitly or implicitly extended according to the rules of the Law. – Limited employment contract.

(c) If a contract with an indefinite term was terminated by one of the parties under the conditions set out by the Law regarding notice and the acceptable reasons to cancel the contract without arbitrariness. – Unlimited employment contract.

In any event the leading motivation is to avoid a period without planning security between the date of termination and a new contract is signed. It is also preferable for both parties to know the new conditions for the contract when the old contract is terminated. Based on these advantages, it is relevant if there are legal effects according the UAE-LL in particular for the calculation of the End of Service Gratuity.

C. End of Service Gratuity ("ESG")

I. Duration of Employment and Calculation of the ESG

Employees, who at least served one year continuously, are entitled to the ESG. In the first five years of employment the employee's severance pay amounts to 21 calendar days' salary for each completed year of continuous service (Article 132 (1) UAE-LL). After five years of employment, the amount is calculated at 30 calendar days' salary for each year of service (Article 132 (1) UAE-LL). The assessment of the ESG payment is based on a pro-rata basis. Under the requirement of 12 month continuous service an employee is also entitled to "severance pay for any fraction of a year he actually served" (Article 133 UAE-LL). However, the maximum ESG amount shall not exceed two years salary (Article 132 UAE-LL).

According to Article 134 UAE-LL, the amount will be assessed by the employee's basic salary at the time of termination This does not include additional expenditures such as "housing allowance, transport allowance, travel allowance, overtime pay, representation allowance, cashier's allowances, children education allowance, allowances for recreational and social facilities, and any other bonuses or allowances" (Article 134 UAE-LL).

II. Special provision regarding the amount

1. Reduction of the Amount

In the case of open debts, Article 135 UAE-LL provides that "an employer may deduct any amounts owed to him by a worker from the severance pay".

According to Art. 137 UAE-LL, in case the employee terminates an unlimited contract on "his own initiative" after a minimum of one year and less than five years continuous service, the amount will be assessed as follows:

- 1-3 years of continuous service : 1/3 of the severance pay
- 3-5 years of continuous service : 2/3 of the severance pay
- after 5 years of continuous service : Full amount

In the event of termination of a limited term contract on his own initiative prior to the expiry of his contract period, Article 138 UAE-LL requires a minimum of five years employment to entitle the employee for the severance pay.

Exceptions from the reduction of the severance pay only apply for employees who are employed in the Jebel Ali Free Zone, the Dubai Airport Free Zone and the Dubai International Financial Centre.

a) The Change is driven by the Employee

In the case that the relocation is driven by the employee it is possible that Art 137 UAE-LL is relevant. Depending on the translation Art. 137 UAE-LL reads

"Where a worker under an indefinite

term contract abandons his work at his own initiative after a continuous service of not less than one year and not more than three years, he shall be entitled to one-third of the severance pay provided for in the preceding article. Such a worker shall be entitled to two thirds of the said severance pay if his continuous service exceeds three years up to five years, and to the full severance pay if it exceeds five years."

Whereas this translation refers to the fact who initiated the termination "on the employee's initiative"; another translation reads "if the employee resigns the contract". Both wordings relate to the fact whether the reason for termination is found in the employee's free will. However, the main difference is that in the second translation, it seems that a formal termination by the employee is requested and it also not clear whether the amount will be reduced even though the contract has been terminated by a mutual agreement between the parties.

b) The Change is advised by the Management

If the relocation has been decided by the management and the employee agreed, there is no doubt that the employer has to pay the full gratuity. Art. 137 UAE-LL is not applicable in this case, because the termination of the contract was not based on the will of the employee. This complies with the position of the Ministry of Labour.

c) The Formal Procedure

The question at hand is if Art. 137 UAE-LL is only applicable if the employees terminated the contract by a formal termination, or also in the case that the parties agree to terminate the contract based on the explicit will of the employee to relocate.

(i) The Arabic Wording

It is advisable to have a look on the Arabic wording to evaluate whether the literal translation of the Arabic wording can answer the question. The literal translation of Art. 137 UAE-LL is "If the employee left the job on his own will" or "free willingly". Even the Arabic wording does not clearly say that Art. 137 UAE-LL requires a formal termination by the employee and also the possibility of a reduction in case an agreement was initiated by the employee can not be answered from the wording.

It appears that there is a clear gap in the law because this case was not regulated. Fact is that the Arabic wording does not explicitly require a formal termination, but refers to the free will of the employee.

(ii) The Objective of the Provision

Looking at the objective of. Art 137 UAE-LL it appears to be the counterpart for the provision which adjudges a worker a compensation for arbitrarily dismissal (Art. 123 UAU-LL). The compensation is to indemnify the employee for the time he needs to find a new job caused by the termination by the employer. Art. 137 UAE-LL, however, intends to offer compensation for the decision of the employee in case he terminates the contract; the reason is that the employer possibly invested time and money for the initial training of an employee and it is assumed that this investment is made for at least a period of five years. In case of an early termination which was driven by the employee irrespective of the reason the employer has to be indemnified to compensate the initial investments.

Given the objectives of the provision Art. 137 UAE-LL should be applicable where the change is driven by the employee with the effect that the amount has to be reduced accordingly even if the contract was terminated by an agreement because the initial situation is exactly the same. The only difference is the way both parties handle the situation and how can the way the parties find a solution affect the calculation of the End of service Gratuity.

From the point of view of the employee it could be argued that in case the employee will continue the work for in the same group there is no need to punish him for the relocation from one entity to another from the same group because the initial expenses for the training did not become useless. But this might be the case in same cases but can not be the base of a general evaluation.

(iii) The Ministry of Labour

The view of Ministry of Labor regarding this subject is quite clear in case there is no termination by the employee but a mutual agreement no matter who initiated it, the employee is entitled to the full amount; Art. 137 UAE-LL is only applicable if the employee resigns.

2. Conclusion and Recommendation

The point of view explained by the Ministry of Labor is very formalistic. The result is that in case an employee wants to relocate the employer will wait for his resignation before agreeing with him on the new contract. The procedure will be more complicated. It can not easily be done in one step.

Therefore it appears to be preferable to lay down in a termination agreement the reason of the agreement; and explain that this is made to avoid the formal procedure of a termination and a new contract; based on that the agreement will consider Art. 137 UAE-LL as applicable and this consideration should be declared as fundamental for the agreement. If this way of proceeding will withstand a judicial examination is not clear, a judge could see a conflict with mandatory provisions as the effect is the deduction of the ESG by an agreement.

If a judge would declare the consideration of the application of Art 137 UAE-LL as invalid, the entire agreement will be invalid with the consequence that the old contract will revive. But this result would be the opposite of the leading motivation of the employee. It was his will to relocate and to have the new contract and the company followed his desire. Therefore we can almost exclude that it will come to a judicial examination because the employee will never file a claim.

D. Final Conclusion

- In case the relocation is initiated by the employee and the employer aim to find a solution, a possible mutual agreement should contain that the situation corresponds to the described situation in Art. 137 UAE-LL and that this is the fundamental base of the agreement. The other option is that the employee should resign officially and then sign the new contract with the possible disadvantage regarding the planning security.

- In case the management advised the relocation, the employer can simply make the termination agreement; the employee is entitled to the full amount.
- In case the employee is entitled to other retirement pension, this should be considered as well in a termination agreement.

Francesco Jorno
Meyer-Reumann & Partners,
Dubai Office

GCC

New Trademark Law in the GCC

Guiding Principle

The current Trademark Law was ratified in Saudi Arabia in 2007 and is expected to enter into force in the country six months after its implementing regulations are issued by the GCC Trade Cooperation Committee (consisting of the Trade Ministers of the GCC member states).

The Saudi government's decision approving the unified GCC Trademark Law has recently been published in the country's Official Gazette. The governments of Qatar and the United Arab Emirates have also announced their approval of the unified GCC Trademark Law back in 2007 (Decree No. 18/2007 in Qatar and Federal Decree No. 52/2007 in the UAE), but the Law has still not entered into force in both countries.

The GCC Trademark Law was initially submitted by the GCC General Secretariat and approved by the GCC Trade Cooperation Committee back in 1987. Since then, the GCC member states used the Law for consultative purposes only. By the end of the year 2005, the GCC Trade Cooperation Committee approved amendments to certain articles of the unified Trademark Law and recommended the submission of the amendments to the GCC Supreme Council for endorsement. The Law was then ratified by the Supreme Council in its 27th summit in 2006.

The purpose of the GCC Trademark Law is to eventually replace the local trademarks laws of each of the GCC member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) and, thereby, creating unified implementing regulations for trademark protection in all member states. However, the GCC Trademark Law is not expected to offer for a unified filing system as is the case with the GCC Patent Law. Trademark applications will continue to be filed separately in each GCC member state for protection.

The 50-article Law outlines the general directives and rulings governing trademark registration, renewal, assignment, and cancellation procedures in the GCC countries. The main features of the Trademark Law as approved by the GCC Supreme Council are as follows:

- A trademark may be individual or collective;
- A separate application is required for each class;
- The definition of a trademark has been broadened to include sound and smell marks;

- A trademark is vulnerable to cancellation by any interested party if there has been no effective use of the mark for a period of five consecutive years after registration;
- Claim of priority, based on an earlier-filed foreign application, is possible;
- Trademark registrations are valid for 10 years from filing date and are renewable for like periods. There is a grace period of six months for late renewals;
- Trademark applications accepted by the Registrar will be published for opposition purposes. Oppositions must be filed within 60 days from publication date;
- The Law shall recognize famous trademarks that are well-known in the GCC member states and shall ensure protection thereof even if the marks are not registered;
- The Law gives the right to trademark owners to initiate civil and criminal actions against any infringing party. Penalties include a maximum of five year imprisonment and payment of fines of up to US $ 270,000.

Tarek Jairwdeh

Meyer-Reumann & Partners,

Dubai Office

Iraq

Trademark Protection in the Kurdish Region of Iraq

Guiding Principle

The Trademark Office of the Kurdish Region of Iraq adopted the currently applicable schedule of fees of the Trademark Office of Baghdad by virtue of Ministerial Resolution No. 3306 dated on April 1, 2013. This decision became effective as of June 1, 2013.

Currently there are two Trademark Offices operating in Iraq: One in Baghdad and another one since recently in Erbil in the Kurdish Region. In principle, the registration of trademarks at the Trademark Office of Baghdad covers the whole country including the Kurdish Region. Nevertheless, trademark owners now have the option of seeking additional local protection in this territory at the Trademark Office in Kurdish Region itself. Owners may either choose to file new applications or to validate the registrations that they already have in Baghdad before the Kurdish Trademark Office was established. One fundamental advantage of having trademarks protected in the Kurdish Region (other than providing a central registry in this territory) is that the Kurdish Trademark Offices may start placing the marks on watch at the Customs, allowing for an ex-officio border system.

The question of which route is to be considered in the Kurdish Region (validation or a new application) mainly depends on the particulars of the trademark portfolio in Iraq. Needless to say, if the trademarks are already registered at the Trademark Office of Baghdad, it would be logical to assume that validation at the Trademark Office of the Kurdish Region is the better option. This process would entail the submission of a certified copy of the Iraqi registration as documentary evidence. However, various steps are involved in the process and because both the Trademark Offices of Baghdad and the Kurdish Region are involved in the implementation, delays are to be expected. Therefore, in some instances, even if the trademarks are already registered at the Trademark Office of Baghdad, choosing to file directly at the Trademark Office of the Kurdish Region can be preferrable.

The bottom line is that seeking local protection in the Kurdish Region of Iraq cannot be assessed in black-and-white terms. There are no clear-cut answers to the questions of whether or not protection is necessary, or even the question of which route to pursue. This will all depend on the circumstances involved and on the level of risk that the business is willing to take. In short, protection in the Kurdish Region may be advisable in certain situations noting that the more solid the portfolio is, the better the position of the trademark owners will be in bringing an infringement claim in the future. Trademark owners should of course seek sound advice before they decide on the best route to pursue.

Tarek Jairwdeh
Meyer-Reumann & Partners,
Dubai Office

Iran

The Enforcement of the International Arbitral Awards in the Legal System of the Islamic Republic of Iran - Part II

Guiding Principle

Under private law the Iranian arbitration law permits a dispute be filed before Iranian or international arbitration forums instead of public courts. In 2001, Iran became a member of the New York UN Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Therefore, foreign arbitral awards can also be enforced in Iran as far as they pertain to commercial matters. A few particularities must be taken into account, however, meaning that ultimately even a foreign arbitral award may not be enforceable in Iran. It should always be kept in mind that in accordance with Article 139 of the Iranian Constitution, arbitral decisions of a foreign party with the Iranian government or a governmental company always require the explicit consent of the parliament.

A. Introduction

This article regarding the arbitration system of Iran is Part 2 and a continuation of the article published as Part 1 in our lex arabiae April Edition 2013. Below, we will examine the difficulties resulted from Article 139 of the Iranian Constitution, when a foreign investor is involved in a dispute with the

Iranian State or an Iranian governmental company. So far, this issue has been at the center of a fierce controversy when foreign investors are negotiating their contracts with the Iranian State.

B. Capacity of the Iranian State to Enter into Arbitration Agreements

I. Article 139 of the Iranian Constitution

The Islamic Consultative Assembly's (Parliament) express reservation to Article 139 of the Iranian Constitution brings hesitation for those investors who plan to enter into contracts with the Iranian State. Article 139 states:

"The settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here."

According to the above, investors wishing to settle disputes arising out of contracts entered into with the Iranian State by arbitration must obtain the Iranian Parliament's approval, which is a mandatory provision of the Iranian legal system. Yet such approval has often been sought and indeed obtained in the past. Further, this is not a peculiarity of the Iranian system but a policy followed, under various forms, by a number of other countries.

In order to illustrate the issue, we would like to bring a case study as an example. A joint venture company established between (x) being a public company wholly owned by the Government of Iran with 51% of shareholding and a foreign investor company (y) with 49% of shareholding. They concluded a shareholder agreement governed by the Iranian Law with the Arbitration Clause in which any raised disputes would be referred to ICC arbitration in Paris. In case (x) is involved in a dispute with (y), the reference to arbitration of such dispute would be subject to Article 139 of the Constitution.

In order to settle a dispute by arbitration, the issue should be first referred to the Council of Ministers for approval. In case of obtaining an approval, the Council of Ministers will submit the request to the Parliament. The Parliament's decision will be referred to the Guardian Council.1

It should be noted that if (x) were a company wholly owned by the private sector, from the legal point of view, for referring any raised dispute to ICC arbitration, fulfilment the conditions of Article 139 (i.e. Obtaining the approval from the Council of Ministers and Parliament and the Guardian Council) would not be required.

II. Bilateral Investment Treaties (BITs)

Another possible avenue for foreign

[1] The Guardians Council was constituted in accordance with Article 91 of the Constitution of Iran with a view toward safeguarding the Islamic ordinances and the Constitution and examining the compatibility of legislation passed by the Parliament with Islam.

investors would be to qualify as an «investor» under one of the Bilateral Investment Treaties (BITs) entered into by Iran providing for the settlement of investment disputes between a contracting party and an investor of the other contracting party by arbitration. Iran has entered into a number of these treaties with Afghanistan, Albania, Algeria, Armenia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia & Herzegovina, Bulgaria, China, Croatia, Cyprus, Djibouti, Egypt, Ethiopia, Finland, France, Gambia, Georgia, Germany, Greece, Indonesia, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Macedonia, Malaysia, Moldova, Morocco, North Korea, Oman, Pakistan, Philippines, Poland, Qatar, Romania, Russia, Serbia, South Africa, South Korea, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, Venezuela, Vietnam, Yemen, Zimbabwe.

Generally speaking, in order for the foreign investors to benefit from the protection of BIT entered into by Iran, the following requirements should be fulfilled:

a) They should be "investor" within the meaning of the BIT2;

b) They has made an "investment" in Iran as defined under the BIT3; and

c) Their investment received the approval of the competent authority in Iran (The Organization for Investment, Economic and Technical assistance of Iran).

BITs play an important role for the disputes arising out of expropriation or nationalization and etc. However, there is a Note in some of the BITs stipulating that: "Observance of Article 139 of the Constitution of the Islamic Republic of Iran in relation to referral to arbitration by the Government of the Islamic Republic of Iran is compulsory".

---

[2] The term "investor" with regard to either Contracting Party refers to the following persons who invest in the territory of the other Contracting Party:

(a) Natural persons who, according to the laws of that Contracting Party, are considered to be its nationals;

(b) Corporations, firms or business associations incorporated and constituted under the law in force of either of the Contracting Parties and having their headquarter, seat and real economic activities in the territory of that Party, on the condition that they are approved by the competent authorities of the host Contracting Party."

[3] The term "investment", refers to every kind of property or asset, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the host Contracting Party) and particularly, but not exclusively, including:

(a) Movable and immovable property, as well as rights related thereto;

(b) Shares, stocks or any kind of participation in companies,

(c) Returns reinvested, title to money or to any performance related to an investment having an economic value,

(c) Industrial and intellectual property rights such as patent, utility models, industrial designs or models, trade marks and names, know-how and goodwill, and

(d) Rights to search for, extract and exploit natural resources.

With regard to the value of International treaties by comparison of the Constitution, it is worth noting the following special features of BITs Arbitrations as an International Treaty, which distinguish them from the classical contracts based arbitration typically dealt with through an international arbitral tribunal for example the ICC arbitration:

- Bilateral investment treaties are binding international law agreements entered into between States to provide international law rights that private investors can enforce against their host State. Therefore, they allow an aggrieved investor to directly bring claims against the host State on international law grounds and before an international panel of arbitrators;
- Claims brought in BIT Arbitration are distinct from claims that can be brought pursuant to a contract. Generally, tribunals in BIT Arbitrations will not have jurisdiction to hear purely contractual claims (e.g. delays, unpaid invoices etc.) unless such contractual breaches constitute concurrently violations of a certain substantive provision of the BIT (e.g. discrimination or expropriation and etc.).
- Claims in BIT Arbitration are governed by international law, national law and the treaty provisions. In contrast, an ICC Arbitration would be exclusively governed by the governing law of the contracts concluded between the parties (In most cases, where Iranian State is one of the contracting party the Iranian law is the governing law); and
- BIT Arbitration would involve claims made by the foreign investor against the host State (Iran) for violations of such State's substantive obligations pursuant to the BIT, which may cause damages to its investment.

III. Concluding an Arbitration Agreement with the Iranian State

In general, in order to enter into valid and binding arbitration agreement with Iranian State or any Iranian governmental company, it would be sufficient to include an unconditional arbitration clause into the relevant agreement. For example it could be included that referral of matters in dispute to arbitration by any party shall, if necessary, be subject to the obtaining of the approval of the competence authorities of the Party making such referral, but without prejudice to the referral of any matter in dispute to arbitration by any other Party.

However, some Iranian juries, believing that the provisions of Article 139 of the Constitution being among the mandatory rules of the Iranian law and having a character of the Domestic Public Order, the Iranian Party is under obligation to seek such an approval at the stage of the entry into the agreement rather than at every referee and when the disputes arise.

The Iranian governmental entities have found recently a formula to render inoperative the arbitration clause. The formula which is usually proposed to the Foreign Contracting parties is as follows:

"… In the event that the appropriate authorizations(s) pursuant to Principle 139 of the Constitution of the Islamic Republic of Iran are not granted by the

relevant authorities, the parties' agreement to resolve their disputes through arbitration pursuant to this article shall be considered null and void, the Courts of Iran shall be solely competent to hear and determine any dispute concerning this Agreement."

This kind of reservation will make the arbitration conditional and in the absence of the required approval, some arbitral tribunals have rendered an award, while they have no jurisdiction over the disputes.

A final possibility, albeit risky, would be for investors to enter into an arbitration agreement with the Iranian State notwithstanding the Iranian constitutional requirement. This option might be considered in situations in which Iranian courts are unlikely to interfere in the arbitral process, such as when the venue of arbitration is outside Iran and enforcement of the resulting award is unlikely to be sought in Iran. A number of international arbitration tribunals and national courts have held that a State cannot rely on its internal law to invalidate an arbitration agreement into which it has entered.

There do exist several arbitral precedents that have not paid attention to not complying with the terms of Article 139 like NIOC v. Gatoil (Revue de L'arbitrage, 1993); ELF Aquitaine v. NIOC (Revue de L'arbitrage, 1984); Framatome v. Atomic Energy Organization of Iran (VIII Yearbook, 1983) all decided outside Iran.

Zahra Tahsili

Meyer-Reumann & Partners,

Tehran Office

Oman

Expatriate Employments in the Private Sector in the Sultanate of Oman

Guiding Principle

The countries of the Gulf Cooperation Council (GCC) have been pursuing nationalization initiatives aimed at gradually reducing, and eventually eliminating, their dependence on foreign labour. Private sector businesses in the Sultanate currently employ some 1.488 million workers, of which Omanis account for a mere 14.6 per cent. A recent change in the way Oman will go about the business of injecting more nationals into the workforce suggests that the government aims to boost the number of Omanis in couple of vital private sectors.

A. The Omani Labour Law

I. General information on the Employment Law of Oman

The Omani Constitution guarantees Omani nationals the right to work, prohibits compulsory labour (except for the performance of public services for a fair wage), prohibits discrimination between citizens and generally addresses all relevant employment issues. In the beginning of this year the Omani government asked its departments to propose rules on issuing new permits for recruiting foreign workers, and to assess which sectors should be the focus of efforts to employ Omani nationals. This reflects current trend for Omanisation, the policy aimed at reducing the reliance on foreign workforce in the private-sector employers.

The Omani Labour Law (Royal Decree 35/03) governs labour and employment-related issues and applies to both Omani and expatriate employments in the private sector. In addition to the Constitution and the Law, Ministerial Decisions issued by the Ministry of Manpower (Ministry of Labour) and the Social Insurance Law also apply to the private sector workforce. Both the constitution and the Labour Law provide for employment of Omanis to the maximum possible extent and thus take precedence. Hence for employing a foreigner, the employer must obtain prior labour clearance from the Ministry of Manpower which is subject to conditions:

- qualified Omanis are not sufficiently available for the relevant post;
- and the employer has achieved the minimum Omanisation percentage specified for its sector.

II. Employment Contracts under Omani Labour Law

In Oman, as in other countries, employment contracts are typically entered into for an indefinite duration. Although, in certain situations the definite-term contracts can be an alternative worth considering while employing foreign workforce in the Sultanate. The Omani Labour Law allows for employment contracts to be for a fixed rather than unlimited duration, and explicitly provides that fixed-term contracts shall be effective, stating "The contract of work shall terminate [upon] … the expiry of its period or completion of the work agreed upon." Especially in case of the termination, the fixed-term employment contracts tend to be more beneficial for an employer than those signed for unlimited duration. The Omani courts, in turn, are generally very respectful of fixed-term employment contracts. While the courts often hear unfair dismissal cases brought by employees whose contract of indefinite duration was terminated, the courts are unlikely to countenance unfair dismissal claims by employees who were asked to leave the company upon the expiration of their fixed-term contracts. Although the Omani Labour Law in general favours employees, its respect for fixed-term arrangements is one of the areas where the law is protective of employers.

However they can be used in a variety of circumstances, fixed-term contracts are naturally most useful for hiring employees that will be working on a single, discrete project with a well-defined timeframe.

Fixed-term contracts may also be especially useful to foreign companies that only plan to operate in Oman for a limited period of time. By lowering the risk of unfair dismissal claims, fixed-term contracts could help to protect against overhanging liabilities that could interfere with the company's plans to smoothly conclude its affairs in the Sultanate.

There are subtle but important nuances to the Omani Labour Law, such as the requirement that a fixed-term employment relationship must be severed at the expiration of its term, lest a continuing relationship be deemed by the Labour Law to constitute a renewal of the employment contract for an indefinite period.

B. Expatriate Employments in the Sultanate of Oman

I. Employment Visa

In general, foreign natural persons must obtain a visa to enter and must obtain a permit to reside in the Sultanate. Visas for some nationalities are granted upon arrival. Others must obtain visas in advance. Local sponsorship is required for employment, family-joining and short-term visit visas. Local employers must obtain labour clearance from the Ministry of Manpower before employing a foreign employee. Based on labour clearance, an employment visa is granted to employees to enter Oman. Applications for visas for an employee's spouse and children must be routed through the employer for sponsorship.

II. Conditions prior obtaining Labour Permit for a Foreign Employee

Foreign employees must satisfy certain conditions:

- must be professionally competent with requisite qualifications for the post;
- must comply with Foreigners Residence Law (Royal Decree 16/95);
- must be medically fit;
- must have a contract with employer who has licence to do business; and
- must have a work permit.

Sector-wise, long-term Omanisation targets were introduced by a series of Ministerial Decisions in 2003. These are regarded as mandatory, and exceeding the target percentage entitles employers to preferential treatment in expediting the process of getting labour permits for other foreign employees and in other dealings with Government authorities.

III. Process of obtaining Labour Permits for Foreign Employees in the Sultanate

As stated above, foreign nationals who wish to work in Oman need an employment visa:

- It is granted at the request of a local sponsor and on his responsibility to the foreigner coming to Oman for employment and whose age is not below 21 years old. The hiring company shall appoint a local sponsor to assist with the employment visa application.
- The sponsor must be a local citizen with a full legal capacity, who will become responsible for the truth of the information given in the application forms while obtaining labour clearence permit.
- Job offer/ employment letter proposal from a company duly registered in the Sultanate.
- A letter of invitation from the hiring company, and a signed work permit issued by the Omani Directorate General of Labour Affairs will be submitted by the sponsor on the employee's behalf.
- The person shall be of the same sex as stated in the labour permit, which was beforehand issued by the Directorate General of Labour Affairs.
- The occupation for which the visa is requested must be identical to the one stated in the labour permit.
- Validity of the employment visa- within three months from the date of issuance, for two years, valid for extension and multiple entries.

In cases of transferring the sponsorship within the Sultanate, a release letter from the former sponsor and approved by the Directorate General of Labour is required. All violations, including the delay fine must have been settled while the new visa application is being submitted.

Some nationalities or categories of employees need special permits, such as: Filipino housemaids, who need labour permit from the Filipino Embassy and attested by Oman's Ministry of Foreign Affairs prior to the application. Irrespectively, the nationals of the following countries are also required to submit a medical clearance certificate: Bangladesh, Egypt, Ethiopia, India, Indonesia, Pakistan, the Philippines, Sri Lanka, and Sudan. These certificates must be endorsed by the Omani Ministry of Health.

Omani public authorities are becoming increasingly strict about the employment of foreign nationals, and that require significant skills and employment experience to be assured of being granted an employment visa. In some cases, the authorities will need to be convinced that the position could not adequately be filled by an Omani citizen, furthermore if visa application is denied; the applicant is not entitled to an explanation from the consular authorities.

Catherine Jaskiewicz
Meyer-Reumann & Partners,
Oman Office

Saudi Arabia

Specialized Courts to Implement Verdicts in Saudi Arabia

Guiding Principle

Consistent with the provisions of the Saudi Execution Law, the Saudi judiciary has announced the establishment of new courts specialized in executing verdicts. The primary jurisdiction of these courts is to execute the enforceable verdicts as ratified by the Courts of Appeal. The judges at the new courts shall have the jurisdiction for the compulsory execution and its supervision.

A. The Saudi Execution Law

On 2012, Saudi Arabia promulgated the Execution Law ("SA-EL")4 for the purpose of governing the verdicts execution process in the Kingdom. The new law granted the judges at the execution courts, i.e. the execution judges, the jurisdiction and supervision over compulsory execution, assisted by the necessary execution officers.

The execution judges shall have the jurisdiction to issue decisions and orders relating to execution and shall have the right to obtain the assistance of the police and the competent force, besides

[4] The Saudi Arabian Execution Statute (Law), promulgated by the Royal Decree No. M/53 dated 13.08.1433 A.H. corresponding to 03.07.2012 G, published at the official gazette "Um el Qurah" dated 13.10.1433 A.H. corresponding to 31.08.2012 G (abbrev. "SA-EL").

the order to prevent from travelling and lifting it, the order of detainment, the disclosure of the assets , imprisonment, and to view cases of insolvency.

In line with their jurisdiction, the execution judges are entitled to settle the execution disputes regardless of their value. They have also all the necessary powers to issue the related decisions and orders. All the resolutions of the judges are final, while their verdicts for settling execution disputes or insolvency claims are subject to final appeal.

The compulsory execution may not be undertaken except with an executive bond for a due specific amount right.

Executing non-Saudi verdicts and orders may be ordered by the execution judge under the same conditions prescribed in the regulations of this country for the accredited documents that are to be executed in Saudi Arabia based on reciprocity.

B. The Execution Courts

At the 4th meeting of the Saudi Supreme Council of Magistracy ("SCM") on 07.09.2013, it was announced that new specialized courts for executing verdicts in the Kingdom shall be established. The announcement came consistent with the text of the SA-EL that entitles the SCM to establish such courts if there is a need for that.

The new courts are established with the purpose to execute the enforceable verdicts as ratified by the Courts of Appeal. Such task shall be carried out by granting its judges all the necessary powers and assistance from the other relevant authorities for enforcing these verdicts as clarified in the SA-EL.

The SCM has decided to support the current execution circuits at the general courts as well through dedicating more judges for supervising the execution of verdicts and establishing new circuits specialized for execution.

Hany Kenawi

Meyer-Reumann & Partners,

F:\LDB\lex-arabiae\LA-Databank\01-lex arabiae Issues - Word\2013-03.Jul.doc - 07.10.13 - 13.10.13