Service Providers and ICV

*The Abu Dhabi National Oil Company (ADNOC) has implemented its localisation program (In Country Value or "**ICV**") in November 2017, taking effect in April 2018. In September 2018 major changes were announced (formula and improvement plan), which took full effect in November 2018. Recently, ADNOC announced that its ICV spend for 2018 will amount to over AED 18 billion (approx. EUR 4.3 billion). As the ICV obligations get passed down the supply chain, the pressure for suppliers and service providers to show a significant ICV score increases steadily. This legal briefing gives an overview of the respective pitfalls service providers face in light of the ICV requirements.*

1. What has happened so far?

ADNOC's "*In Country Value*" (ICV) program is a localization program that aims at focusing on local supplier selection, the development of UAE nationals, and the localization of critical functionalities in the oil and gas industry.[1] The program was first announced in November 2017 and implemented on 1 January 2018.[2] Since 1 April 2018, all suppliers of goods or services to ADNOC and its subsidiaries (ADNOC) are required to calculate and declare their ICV score for the previous financial year, to demonstrate how they are delivering ICV. ICV scores need to be certified by an ADNOC-approved certifying body on an annual basis and submitted by the supplier to ADNOC with each proposal they make.

In September 2018, ADNOC announced changes to the ICV formula, introduced a binding improvement plan and the award strategy.[3] Until now, around 1,500 local suppliers have already obtained ICV certification.

ICV follows a general localization trend in the region, in particular in the oil & gas industry. Saudi Aramco's IKTVA and Petroleum Development Oman's ICV have served as models for ADNOC's ICV.[4]

2. How are service providers affected by ICV?

ICV generally differentiates between suppliers of goods and services. Suppliers of goods often supply after-sales services

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1 Regarding ICV and the supporting documents, please also refer to ADNOC's website: <www.adnoc.ae/en/incountry-value>.

2 Regarding the introduction of ICV, please also refer to our previous briefing: <www.schlueter-graf-knowledge.com/fileadmin/Redaktion/Download/Dokumente/180513_ICV_and_its_Impact_on_Doing_Business_with_ADNOC.pdf>.

3 Regarding the most recent changes to the ICV program, please also refer to our previous briefing: <www.schlueter-graf-knowledge.com/fileadmin/Redaktion/180918_Changing_the_Game_Changer_-_Update_on_ADNOC_s_ICV.pdf>.

4 Regarding IKTVA, please also refer to our separate briefing: <www.schlueter-graf-knowledge.com/fileadmin/Redaktion/Download/180218_IKTVA_and_its_Impact_on_Doing_Business_with_Saudi_Aramco.pdf>.

which are not necessarily covered by the respective license.

3. *How are suppliers affected that provide adjacent services?*

Suppliers that provide adjacent services (e.g. installation) or after-sales services (calibration, maintenance, etc.) may already have a set-up in Abu Dhabi that allows them to carry out services for ADNOC. They will be able to retrieve ICV certification.

Experience shows, however, that suppliers tend to set up in one of the major free zones in other Emirates (e.g. Jebel Ali Free Zone, Dubai Airport Free Zone, Sharjah Airport International Free Zone, etc.). As a rule, such investors will not be able to deploy staff to ADNOC facilities since the companies' business activities are geographically restricted to the respective free zone's area. In order to obtain respective security permits from the Critical Infrastructure & Coastal Protection Authority (CICPA) it is necessary to have a corporate vehicle registered in the Emirate of Abu Dhabi.

Suppliers who have in the past nevertheless engaged to a higher degree in after-sales activities in Abu Dhabi may have circumvented these restrictions by asking ADNOC to provide special passes. This is typically the case when registered vendors are also registered with their parent entity with ADNOC. Effectively, service technicians would be invited from abroad and receive special work permits and security passes to carry out the work.

Alternatively, some suppliers utilize hosting structures under which their contractual partner renders services to ADNOC and they deploy staff to this partner. Such companies would typically be fully licensed to render the respective after-sales services and would be able to obtain relevant CICPA passes.

Under the ICV regime, such structures will not add to the supplier's ICV score. Based on this, suppliers located in one of the UAE's free zones will need to assess how they can carry out services in the Emirate of Abu Dhabi.

4. *How can services be included in the ICV Score?*

Carrying out services in the Emirate of Abu Dhabi typically requires setting-up a corporate vehicle under which service staff can be sponsored and CICPA passes can be applied for (if necessary).

While it remains to be seen whether service providers can utilize any rights under the newly released Foreign Direct Investment Law (Federal Law No. (19) of 2018), Dual Licensing initiatives in Abu Dhabi and Dubai provide promising models to register fully foreign owned corporate vehicles. Abu Dhabi has provided an abstract framework for dual licensing (Administrative Resolution No. (219) of 2018 on the Dual Licensing of Free Zone Companies in the Emirate of Abu Dhabi), while Dubai and other Emirates operate on a case by case basis based on agreements between the respective Free

Zone and the Dubai Department of Economic Developments (DED).

Dual Licensing generally allows to obtain a second license to carry out services. While this model is very promising, details would need to be checked on a case-by-case basis.

In Abu Dhabi, Abu Dhabi Global Markets ("**ADGM**") and Masdar City Free Zone provide a good basis for branching into the mainland. Both free zones have recently entered into agreements with Abu Dhabi's Supreme Petroleum Council ("**SPC**"). Prior to such agreement, the "*onshore and offshore oil field and facilities services*" activity which is necessary to conduct business with ADNOC was reserved for companies registered "on-shore" in Abu Dhabi.

From an ICV perspective, it should be noted that each respective corporate vehicle will have its own ICV score. If e.g. an investor intends to register a branch of a free zone company in the Emirate of Abu Dhabi, the newly registered branch would need to undergo separate ICV certification.

5. Conclusion

ICV evaluation takes account of goods manufactured in the UAE, the value of third party spend in the UAE, a company's investment in the UAE and its Emiratization record, as well as the contribution of expatriate employees. The evaluation also takes account of a supplier's future plans to increase ICV, as well as operating costs, along with any exports created.

Rendering services towards ADNOC, in particular on-site services, will require establishing the necessary basis to render such services. Service providers will need to assess the impact on their operations and may be required to restructure their set-up.

Following a general trend, it is expected that localization initiatives will also become relevant in other sectors sooner rather than later.

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