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Workforce Nationalisation and Localisation Programs - Key Considerations

LEGAL BRIEFING (15 Jan. 2019)

*Petroleum Development Oman (***PDO***), the Abu Dhabi National Oil Company (***ADNOC***) and Saudi Aramco have implemented localisation programs (PDO and ADNOC: In Country Value or* ***ICV*** *and Saudi Aramco: In-Kingdom Total Value Add Program or* ***IKTVA***). *While ICV and IKTVA do not necessarily require for workforce to be nationalised, the countries' respective workforce nationalisation programs may require such steps. This legal briefing gives an overview on how workforce nationalisation and localisation programs are connected and what suppliers need to take into consideration.*

1. *What do localisation programs require?*

The national oil companies (**NOC**) of the Sultanate of Oman, the Emirate of Abu Dhabi (United Arab Emirates – **UAE**) and the Kingdom of Saudi Arabia (**KSA**) have all launched localisation programs:

- Petroleum Development Oman's *"In Country Value"* (**ICV**) in 2012;
- Saudi Aramco *"In-Kingdom Total Value Add"* (**IKTVA**) in 2015; and
- ADNOC's *"In Country Value"* (**ICV**) in 2018.

These localisation programs focus on

- Local supplier selection;
- Development of national workforce workers; and
- Localisation of critical functionalities in the oil and gas industry.

While the development of national workforce is not mandatory, depending on the respective localisation program's formula, such steps may be necessary in order to improve the score under the respective localisation program and in order to comply with relevant workforce nationalisation programs.

2. *What do workforce nationalisation programs require?*

Various member states of the Gulf Cooperation Council have implemented workforce nationalisation programs. Such programs focus on employing the local population to minimize the high unemployment rate among local people, developing a national workforce and increasing its contribution to the economy. They are typically also linked to the countries' national vision (e.g. Vision 2020 in the Sultanate of Oman, Vision 2021 in the UAE and Vision 2030 in KSA).

Workforce nationalisation programs are typically conditional on the following aspects:

- Company size;
- Company's activity; and
- Job at hand.

a. *Omanisation*

The Sultanate of Oman has implemented its 'Omanisation' program in 1988. The program includes a set of rules specifying the quotas of Omani nationals required to be employed by private companies operating in various sectors. Such sectors and quotas are updated from time to time. Under the program, certain jobs are restricted to Omanis. Recently, the Omani government has been taking stricter measures with regard to the enforcement of Omanisation. E.g. in January 2018, the government issued a temporary 6-month freeze on the issuance work permits and visas to expatriates in 87 job positions.

b. Saudisation

The 'Saudization' program (Nitaqat) was launched in 2011. Nitaqat operates by classifying employers into six categories:

- Platinum;
- Green (High, Medium and Low);
- Yellow; and
- Red.

Employers ranked in higher categories (Platinum being the highest and Red being the lowest category) benefit from greater incentives (i.e. more flexibility with regard to recruiting and managing expatriate employees, etc.). Lower-graded companies are faced with stricter rules.

The Saudisation percentages imposed on companies under the Nitaqat program vary based on the company's size and activities. As a minimum requirement, however, all companies must employ at least one Saudi national. This requirement can be fulfilled if the business owner or employer is himself a Saudi national. Some jobs (e.g. head of HR) are restricted to Saudi nationals only.

Changes in 2017 introduced increased thresholds for obtaining a higher Nitaqat grading across most industries. Small companies (e.g. between 10-49 employees) active in the oil & gas industry are e.g. required to adhere to a Saudisation quota of at least 66% (previously 56%) in order to be classified as a Platinum entity.

c. Emiratisation

The UAE Government launched its 'Emiratisation' campaign in 2009. The program requires the inclusion of Emiratis in the job sector, particularly in the private sector. Depending on the company size and its business activity, varying quotas will apply.

Companies with lower grades are required to file mandatory financial guarantees, whereas companies with a higher grade would receive certain benefits (e.g. lowers costs for work permits).

3. How are workforce nationalisation and localisation programs connected?

Workforce nationalisation and localisation programs are connected through the inclusion of nationalised workforce in the respective formulas. With regard to ADNOC's ICV this can be best seen by comparing the expat and UAE national salary contribution. Such contributions will typically be rated higher for UAE nationals, thereby giving the respective supplier a higher incentive to employ UAE nationals.

4. What are the obstacles?

Suppliers need to take into consideration that nationals typically have preferential treatment under the respective labour laws. Among other things, this is reflected in the rules and regulations regarding the termination of employment. E.g. in the UAE, the dismissal of UAE nationals is restricted under the Ministerial Decree No. 212 of 2018 on the Regulation of Employing Nationals in the Private Sector. According to this decree, UAE nationals cannot be dismissed in accordance with Art. 120 of the Labour Law (UAE Federal Law No. 8 of 1980 – i.e. for being absent from work without valid reason, disobeying instructions, etc.) or for reasons unrelated to their job. Similar provisions are in force in KSA and Oman.

Experience shows that workforce nationalisation requirements are subject to frequent changes. This is particularly true for KSA. While such changes generally result in restrictions, they typically will not have a negative impact on the localisation program related commitments (ICV Improvement Plan, IKTVA Action Plan, etc.).

Irrespective of that, investors will need to allocate HR resources to manage the changes in the workforce nationalisation programs. While it is expected that nationalisation programs will be intensified (e.g. asking investors to add more nationals to their local workforce in relation to expats over time), such measurements may come at a price due to the following circumstances: national workforce may not be available as required by foreign employers. This can be an issue with regards to both low and high-skilled professionals.

5. Conclusion

The member countries of the Gulf Corporation Council are undergoing rapid changes, as governments cope with the challenges brought on by a looming post-oil era. While the labour markets have been dominated by an expat population and partially face high youth unemployment rates, workforce national programs aim at ensuring the local population is employed. Localisation programs generally require that suppliers source their raw-materials, goods and services locally. However, employing local staff is not usually a condition (but can affect the score under localisation programs). Nonetheless, from an HR perspective, investors need to make themselves familiar with the following aspects:

- Requirements of the workforce nationalisation program on staffing the corporate vehicle, in particular with regard to the business activities;
- Availability of respective skilled national workforce; and
- Impact and legal consequences of recruiting and hiring nationals as compared to expats under the respective localisation formula.
- While there are certainly benefits in terms of computation of the overall score in the case of employing nationals (see ICV 2.0 formula), the overall costs and legal factors accompanying such hires should be taken into consideration.

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