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Changing Circumstances: Saudi Labor Law and Recent Developments

The Saudi Arabian Labor and Workmen's Regulations (the "Labor Law") were issued in November, 1969, just a few years before the explosive economic growth of the Kingdom began.¹ Subsequently, there have been a number of supplementary Decisions, Decrees and Orders issued to cope with conditions that could not be foreseen when the comprehensive legislation was promulgated. Of course, the major development has been the tremendous influx of foreign workers to carry out the Kingdom's ambitious development plan.

The population of Saudi Arabia has been variously estimated at 3 to 6 million people with most knowledgeable sources tempering their estimate to the low side, giving an indigenous work force of about 1.5 million. Saudi women are not yet a significant part of the labor pool. Hence it is easy to see that a five year plan expenditure of over approximately 140 billion dollars (1975-1980) requires a sizeable infusion of expatriate labor and indeed, this has been the pattern.

The first group of supplementary decrees has focused on the pressure which development has put on the infrastructure. Resolution 448 required all contractors with government contracts of 100 million Saudi Riyals or more (equivalent to about \$29 million) to bring in all their expatriate labor and to provide them with housing and support services.² The intent was to put a halt to renting in local communities which was driving rents up. Since the issuance of 488, house building has accelerated and modular mobile home-type camps have sprung up all over, easing the housing crunch. In recognition of this, Resolution 1235 was issued in 1977, which required only that housing be pro-

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¹Royal Decree M/21 dated 6/19/1389 A.H. (1969).

²Council of Ministers Resolution No. 448 dated 14/3/1396 A.H. (1976).

vided for expatriate workers "without putting pressure on the local market."³ This has been interpreted to permit the renting of housing for expatriate employees where surplus is available in local communities as long as it does not cause rents to increase.

Ever since the economic boom began and housing became a problem, the Arabian American Oil Company (ARAMCO), the largest local employer after the Saudi government, switched to hiring employees on bachelor status only, except in the case of higher level professional and managerial employees. Recently, the government has codified this approach for all employers in the Kingdom by ruling that only professional expatriate employees may bring their families into the Kingdom.⁴ The troublesome issue, of course, is which employees are considered professionals, but the traditional meaning of this term as used by Aramco and by the government has been to include only those with college degrees. This excludes the bulk of the construction work force.

Another significant problem caused by the influx of big international contractors has been the disappearance of local day labor almost entirely. Citizens of surrounding countries exempt from the Saudi regulations for the admission of foreigners (Yemenis, Bahrainis, Qataris, etc.) were previously hired at high salaries by foreign contractors. As a consequence, small contractors for local jobs could not compete and almost disappeared. To correct this, Resolution 1235 protects this labor pool for small local contractors by requiring internationals to hire Saudis or else bring in expatriates.

The third area that Resolution 1235 covered was the problem of "runaway labor." Many of the expatriates coming in, from Asia in particular, were able to shop around and find higher paying jobs with other employers in the Kingdom. This desertion by expatriate workers left their original employers out-of-pocket recruiting and processing expenses and still in need of an employee. To eliminate this problem, an earlier decision required that foreign workers obtain a release from their original employer in order to work for another in the Kingdom. Violations were reportable to the Ministry of Interior, but deportation of the "runaway" was the only remedy. Under the new Resolution 1235, the employer of a "runaway" can be put in jail for up to six weeks and the firm fined 2000 to 10,000 Saudi Riyals for each workman. The Ministry of Labor and Social Affairs intends to enforce this strictly as the problem has gotten out of hand. The Kingdom's daily newspapers are full of advertisements showing passport photographs and information on "runaways" asking for anyone who has seen them to report to the original

³Council of Ministers Resolution No. 1235 dated Sept. 25, 1977.

⁴Saudi Economic Survey, January 18, 1978, page 7.

employer their whereabouts. An employer is now obliged by law to hold the passport of all expatriate workers it brings into Saudi Arabia.

These latest developments are a gloss on the basic Labor Law promulgated in 1969 which regulates all facets of the employer-employee relationship. Since labor unions are not allowed, the government, by means of the Labor Law, provides a framework of protection for workers and employers. Trained labor inspectors from the Ministry monitor working conditions. In addition, through the Labor Commissions and local labor offices, an employee can raise a claim directly against his employer.

The Labor Law does not apply to professionals or others who work for their own account, such as doctors and lawyers. The Labor Law is an integral party of the general legal framework of Saudi Arabia; hence, the Commissions for the Settlement of Labor Disputes (the "Commissions") use the general rules of Islamic jurisprudence (Shari'ah) to supplement and interpret the statutory rules in resolving disputes. The Commissions also examine general usage in a particular industry and consider trade practices in applying the law.⁵

The Labor Law clearly applies to *all* employees and workers in the Kingdom, regardless of nationality. This issue was litigated shortly after passage of the law and has been reaffirmed in a long line of cases.⁶

The Labor Law has 13 Chapters, only a few of which need be treated here for the purpose of a general understanding of the major provisions governing employers and employees.

The General Provisions set up definitions and exclude family enterprises, agricultural workers and domestic servants from coverage under the Labor Law. Article 6 establishes an "acquired rights" doctrine. It protects as legally enforceable rights any benefit to the employee found in generally accepted practice or in terms which have habitually been granted by companies. Also, Article 6 states that, "Any condition in a contract or agreement by which a worker waives any right accorded him hereunder, even when made prior to the operations hereof, shall be null and void." This is a strong protective Article.

Article 9 obliges the employers and employee to become familiar with the law. Article 16 provides that all records and files and other things called for by the law must be kept in Arabic and that the Arabic text will prevail.

Chapter 2 sets up the Labor Inspection system referred to above. Inspectors have the right to enter the work areas any time of day or night and have broad powers to question and inspect. Chapter 3 establishes a government employment office and provides for licensing of recruiting agents.

⁵Art. 185.

⁶Decisions of the Labor Commission are not published but are given to the parties to a litigation. The author is personally familiar with these cases as he was involved in labor relations in the Kingdom as an employee of Aramco in 1970-71 when they were decided.

Article 41 effectively eliminates the use of "body merchant" contracts for labor supply only. Where a contract is for labor only, by operation of law the workers immediately become employees of the ultimate employer on equal status with his regular employees. Hence, if Employer A wishes to avoid benefits costs by contracting with B for a number of workers who are supervised by A's employees, the law makes them automatically employees of A.

Articles 42 and 43 require the reporting of labor force information that must be sent to the local labor office.

Article 44 requires every employer with one hundred or more workers to train Saudis equal to five percent of his total work force. The training program must be in accord with Ministry of Labor programs. Finding Saudis to train is one of the biggest problem for employers.

Article 48 mandates that first priority for any job be given to Saudis. In order to obtain work permits and entry visas for expatriates, the Labor Ministry must be satisfied that the employer is training Saudis and employing them wherever possible. Although the ambitious development program of the Kingdom has necessitated more liberal procedures for entry of foreigners, including the issuance of "block visas," the Labor Ministry watches this situation carefully and has been known to crack down on certain employers who ignore their obligations. The government has recently revamped procedures in this area, setting up a new committee to handle expatriate visas.

The Labor Law also contains provisions for employment of the handicapped (Articles 51-55) and for apprenticeship programs (Articles 56-69).

The Labor Law distinguishes between contracts for definite and indefinite terms.⁷ A probationary period of ninety days is allowed provided it is included in the contract. In the absence of a specific probationary provision, a worker will be deemed a regular from the first day of employment. An employer can terminate a probationary employee without any liability if he fails probation.⁸

If an employer and employee continue their relationship after expiry of a contract for a definite term, it becomes thereafter an indefinite term contract. Even with an indefinite term contract giving either party the right of termination upon the statutory notice period (30 days for monthly rate employees, 15 days for daily wage workers), there must be a "valid reason" for cancellation or else reinstatement or damages will be ordered.⁹ A valid reason need not rise to the level of termination for cause under Article 83. Where cause exists, no severance award or notice pay is due the employee. A valid reason could be un-

⁷Art. 70.

⁸Art. 71.

⁹Arts. 73, 74 and 75.

satisfactory performance as long as it is *well documented* and the employee has been warned (with a written warning put in his file).

Wages are a particularly sensitive issue and the Labor Law definition of wage is all-inclusive, covering all premiums and allowances such as the "high cost of living allowance."¹⁰ The payment of a premium to expatriates to attract them is permitted;¹¹ but in practice Saudi wages have risen so rapidly over the past few years that on a net take home pay basis (Saudis pay no income tax), Saudis are paid almost as highly as (and in many cases higher than) expatriates. This is the inevitable result of a small Saudi workforce and the legal requirement to hire and train Saudis. Saudis must constitute 75 percent of an employer's workforce and wages paid to Saudis must not be less than 51 percent of total wages.¹² Under today's conditions, this requirement is honored more in the breach. Saudi employees have become a scarce and valuable commodity, with the temptation being to not employ them if possible because of their high cost. Pakistanis, Indians, Phillipinos and other Asians are less costly. However, Saudis have a fundamental priority for all jobs under the law.¹³

The basic wage policy under the law is to limit working hours to 8 hours per day and 48 hours per week.¹⁴ Any work time exceeding these limits is overtime which must be compensated at 150 percent of the regular hourly wage.¹⁵ Furthermore, Friday, the Muslim Holy Day, is a mandatory day of rest with full pay.¹⁶ An employer can work his employees 6 days a week, 8 hours a day and must give them Friday off at full pay. Thus, the straight-time weekly wage is for 56 hours, although overtime must be paid for the 49th hour worked or whenever an employee works more than 8 hours a day regardless of how many weekly hours are worked.

An often litigated issue is that of Friday pay. Such litigation usually arises when a foreign company, unaware of the structure of Saudi law, uses its regular concept in stating that its wage payment is for a 48-hour or 40-hour week. The employee will claim an additional 8 hours of pay due him for Friday. The employee *always* wins these cases. The lesson for the employer is to make a clear distinction between basic straight-time weekly wages which must be paid for 56 hours, and overtime, which must be paid for actual work time in excess of 48 hours a week or over 8 hours a day. Overtime may also be paid for

¹⁰Arts. 7.6 and 124.

¹¹Art. 80.

¹²Art. 45.

¹³Art. 48.

¹⁴Art. 147.

¹⁵Art. 151.

¹⁶Art. 149.

work time in excess of a lesser number of hours, such as 40, as determined by contract. The employer is always free to give the employee more than the law does; under Article 6, this then becomes an acquired right of the employee.

To reiterate, the hourly rate determined on a 56-hour basis must include all allowances and premiums such as cost of living allowances, area premiums, hardship allowances, etc.

Many employers are now following Aramco's wage pattern in using a "balance sheet" approach to compensation and paying employees on the basis of home country wages plus an expatriate premium, with income taxes equalized. With the rapid escalation of Saudi wages over the past two years, this is the only approach that makes economic sense. Thus, Indian and Pakistani workers under the balance sheet system have a basic wage equal to what they would be paid in India or Pakistan for a similar job, plus a reasonable premium (roughly 50 percent in today's market). The same approach is used for U.S., U.K., Phillippines, etc. There can be, and are, wide divergencies in pay levels under this approach, but it works to advantage both for the employer, who can then be sure of paying market price for labor, and for the employee, who gets a premium over what he could earn at home. As long as the employee is insulated from the effects of inflation in the Saudi economy by employer-provided free food and housing, this is a sound approach (remember, the bulk of this work force is in bachelor status). Many techniques to make work in Saudi Arabia more attractive for the expatriate are used, such as special work schedules. One popular schedule used for U.K. and U.S. employees provides for 42 days on the job, 10 hours a day, 6 days a week, followed by 21 days at home, with repatriation travel paid by the employer.

The "balance sheet" approach is grounded in sound economic logic and helps keep inflation under control, as wage escalation is related to home country rates rather than to the overheated Saudi economy.

Employers with more than 20 employees are required to post a set of work rules and define therein any deductions from wages by way of penalties or disciplinary measures.¹⁷ The Ministry of Labor must approve the work rules.

Severance is stipulated as: "½ month's pay for the first five years of service; and 1 month's pay for each subsequent year."¹⁸

Where the employee under an indefinite term contract resigns, the award is reduced to: "⅓ of the award if service is 2-5 years; and ⅔ of the award if service is 5-10 years."¹⁹

¹⁷Art. 125.

¹⁸Art. 87.

¹⁹Art. 88.

When an employee terminates his employment, the employer is obliged to return him to the place of his recruitment.²⁰

Employers also must take adequate measures to provide a safe and healthy place of work.²¹ Workmen must have water for both drinking and washing. One toilet must be provided by the employer for every fifteen workmen.²² Fire prevention and safety are also taken very seriously. In the event of an accident or industrial injury, an investigation is made by the labor office to determine whether the employer fulfilled his obligations, particularly with respect to the training of employees in hazardous occupations.

Free medical services for employees are mandated as follows for a single work site or town within a radius of 15 kilometers:

1. Under 50 employees—employer must provide a first aid cabinet and someone trained in first aid.
2. 50-100 employees—employer must provide a nurse fulltime on-site and a doctor to treat employees and dispense free medicine both during and after working hours in a company-provided clinic facility.
3. Over 100 employees—employer must arrange for in-patient and specialist care for employees, although operations actually performed and incurable disease expense will be reimbursed by the Social Insurance Fund.²³ This treatment may be arranged by contract with local hospitals or by the employer's own medical staff or by some combination of the two. Medical files must be maintained for each employee, showing ordinary and occupational diseases as well as industrial injuries and recording the pre-employment physical.²⁴

If an employer has over 50 workmen, he must set up a Savings and Thrift Plan for them in a form approved by the Minister of Labor.

As discussed previously, the prescribed work day is 8 hours, the work week can be up to 48 hours and Friday is a mandatory day of rest with full pay.²⁵ Work must be broken after five consecutive hours for at least one-half hour. The workman is not supposed to stay at the work place more than 11 hours.²⁶ In practice, during this period of rapid industrialization, the Ministry has agreed to some 12-hour-day schedules in remote areas where circumstances clearly warrant. Ten-hour-day schedules are common for the construction in-

²⁰Art. 85.

²¹Arts. 128 and 129.

²²Art. 129.

²³Art. 134.

²⁴Art. 136.

²⁵Art. 147.

²⁶Art. 148.

dustry. Of course, for work time in excess of 8 hours a day, overtime must be paid.²⁷

After a year of service, the labor law entitles the workman to 15 days annual vacation with full pay. After 10 years it goes up to 21 days. Holidays, designated by the Ministry of Labor, are fully paid.²⁸

Sick pay, where a medical certificate confirms the illness, is full pay for the first 30 days and $\frac{3}{4}$ pay for the next 60 days in any one year.²⁹

A workman gets 3 days off for: marriage, birth of a child, death of spouse or relatives.

There are two levels of commissions for the settlement of labor disputes.

1. The Primary Commissions
2. The Supreme Commission

The Primary Commissions are located in the various provinces and major cities and have final jurisdiction over:

1. disputes where the amount involved does not exceed 3000 SR;
2. stays of execution of termination; and
3. disputes relating to fines or requests for exemptions from fines.

The Primary Commissions are courts of first instance with respect to all other disputes.³⁰ The Supreme Commission hears appeals from the Primary Commission. No further appeal is allowed beyond this body.³¹

Employment of women is a sensitive issue because of the cultural and religious traditions of the Kingdom. The Labor Law clearly envisions a female work force by providing for maternity leaves.³² Juveniles may not be employed under age of 13; over 13 to 18 they can only work 6 hours a day.³³

This is a general view of the law affecting employment and a review of some of the main problems it treats. The most serious problem for the future development of Saudi Arabia is the need for skilled manpower. The obvious sources are the manpower surplus countries of the Middle East, such as Egypt, and of Asia, such as Indian and Pakistan. It is questionable however, if the required skills can be found in sufficient numbers to satisfy the needs of the Kingdom and of the other developing countries in the Gulf area such as Iran, Kuwait and Abu Dhabi. For example, there are about 650 million people in India, but very few trained refinery operators. The Pakistan National Refinery reportedly suffered a 100 percent turnover in four years due to recruiting by

²⁷Art. 151.

²⁸Art. 153.

²⁹Art. 158.

³⁰Arts. 172 and 174.

³¹Arts. 175 and 176.

³²Art. 164.

³³Art. 163.

the Saudi Oil industry. Other skills are even more scarce. In fact, recruiting to date may have pretty well drained off the most highly skilled groups in the plant operation, maintenance and construction industries in some Asian countries.

What is needed, in the author's opinion, is a regional manpower cooperative organization in which the labor-short countries could join with the labor-surplus countries to set up training programs in the surplus countries (such as Pakistan) to develop the specific skills required by the labor-short countries. Saudi Arabia's five-year plan would provide a guide for its needs. The labor-short countries with financial resources like Saudi Arabia could well afford to pay the training expenses in return for getting a guaranteed supply of the specific skills they will need to achieve their development goals. Such an approach on a government to government basis in the context of a regional manpower cooperative organization would be the most logical way to approach this problem. Of course, individual companies with strong financial resources could undertake some training projects like this on a more modest basis. The point is that some structure for regional manpower planning is needed now if the required skills are to be available in the future, given the training lead time for the higher qualifications.

