Coronavirus (COVID-19) in Saudi Arabia
Amendment of the Saudi Labour Law
Implementing Regulation

On 13/08/1441H corresponding to 6 April 2020, the Ministry of Human Resources and Social Development ("HRSD") has issued resolution No. 142906 to add an article No. 41 (the "Article") to the Labour Law Implementing Regulation as part of its role to support the efforts of the government to control the implications of the COVID-19 outbreak. The Article attempts to restructure the contractual relationship between employers and employees in special circumstances, such as outbreaks.

According to the Article, once the government has taken measures to tackle a certain case or circumstance by reducing the working hours, or taking precautionary measures based on its own discretion or following a recommendation by an international organization to limit the aggravation of that case or situation, (described as "force majeure", in paragraph 5 of Article 74 of the labour law) the Ministry allows the employer to firstly agree with the employee, within the first six months following the start of the enforcement of the Article providing procedures. The World Health Organization had declared that we are in a Pandemic as of 17/07/1441H corresponding to 11 March 2020.

فقد أتاحت الوزارة وفقًا للمادة خلال الستة أشهر التالية لاتخاذ الدبولة أي إجراءات استدعت تقليل ساعات العمل أو أي تدابير احترازية تحد من تفاقم أي حالة وفقًا لتقديرها أو بناءً على توصيات أي من المنظمات العالمية مما يشمله وصف القوة الفاخرة في الفقرة الخامسة من المادة الرابعة والسبعين من نظام العمل والتي قد تحول دون القيام بالالتزامات واردة في نظام العمل أو لائحته التنفيذية أو عقد العمل، فإن أصحاب العمل بناءً على إجراءات أي من العيارات التي أوردها المادة الجديدة يتفق ابتداً مع العامل على الخيارات التي أوردها المادة الجديدة.

ونلاحظ في هذا الشأن أن منظمة الصحة العالمية أقرت أننا في جائحة بتاريخ 17/07/1441H الموافق 11/03/2020م.
Without rephrasing what the Article provides, the options (with the assumptions provided in the Article) are mainly, reducing the employee’s wage to coincide with the actual working hours, use of annual leave or granting exceptional leave.

Upon exhaustion of the said options, termination for Force Majeure may be admissible provided that the employer has not benefited from any government subsidy to cope with the pandemic. Otherwise, the employer may not terminate for Force Majeure and the employee will continue in all events to have the right to terminate their employment contract.

Is the Outbreak Deemed as a Force Majeure in KSA?

We refer to our previous paper on Force Majeure. Generally speaking, our preliminary view is that it may differ from case to case in light of the absence of a Royal Decision, statutory definition, legislative context or judicial precints from which we can establish if this outbreak is a Force Majeure. Therefore Force Majeure will not be automatically applicable in all cases. Further, determining whether a specific employment contract is affected by the outbreak to the extent of Force Majeure or not is dependent on each case in the sector and any support granted. In the absence of specific criteria under KSA laws, as previously stated, and the absence of mutual agreement, the competent judge will have the authority to decide on each case based on his sole discretion.

SANED Compensation

On 15/08/1441H corresponding to 8 April 2020, the King issued a royal order ("Royal Order") to approve exceptions to the application of Unemployment Insurance Law ("SANED") in the private sector institutions, that have been impacted by the current precautionary measures. The exceptions were from articles 8, 10 and 14 of SANED. Instead of terminating the employment contract of a Saudi employee, the employer has the right to apply for compensation request to the General Organization for Social Insurance ("GOSI") for his employees at 60% of the registered wage in GOSI for a duration of 3 months, at a maximum GOSI pay of no more than of SAR 9,000 monthly.

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Such compensation will be paid according to the following:
- in accordance with the unemployment insurance scheme pursuant to the Royal Order
- the employee must have been registered with SANED before 1 January 2020
- 100% of Saudis working with employers having only 5 employees or less;
- 70% of Saudis working with employers having more than 5 employees;
- there is no need for the employer to pay the monthly wages for the benefited workers;
- the employer must register their request for their entity, followed by the employee request on GOSI’s website; and
- entities and employees can apply for the compensation during April.

The Royal Order urged private sector firms to resume payment of wages straight after the compensation ends. Furthermore, firms should continue paying wages for Saudi and non-Saudi workers who were not included in this compensation.

In the application of the Royal Order we refer to our previous paper on Force Majeure and its applicability on employment contracts. It varies from one situation to another depending on the sectors and impact on the entity/employment contract.

Finally, there are some legal considerations in dealing with Furloughed contracts:

1. Employers have no right to force an employee to work during the period of disbursing compensation. Employers should not block such employees from working for others.

2. The employee’s GOSI registration will resume from the following month on which the Furlough will end, and the beneficiaries do not have the right request for GOSI retroactive registration.

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3. The legal modification of the employment contract under the government furlough scheme is a contract on hold, and it cannot be modified as ended or terminated. Therefore, the legal implication of ended or terminated contract will not apply.

3. أن التكييف القانوني لعقد العمل الذي يخضع للدعم تحت نظام ساند أنه عقد معلق ولا يعد عقدًا منتهيًا أو مفسوخًا. وبالتالي فلا يوجد ما يترتب قانونياً على الإنهاء أو الفسخ.