

A Look at the New Labour Courts in KSA

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Introduction

It has been over three years since the Kingdom of Saudi Arabia ('KSA') embarked on its journey towards reform and modernisation under the ambitious Vision 2030 programme. The rate of change over the past three years demonstrates the commitment of the KSA government to fulfil the various aims under Vision 2030. One of the key aims of Vision 2030 is to diversify the economy away from its dependence on oil and to attract foreign investment to strengthen the economy. In order to encourage more foreign investment, the KSA government has implemented a number of measures to facilitate easier investment into KSA but it is also conscious that investor confidence will be strengthened by confidence in the legal system.

Against that background, we have witnessed a number of changes within the broader legal infrastructure within KSA to increase the efficiency and quality of the judicial system. This article looks at one such change, namely the introduction of formal Labour Courts to determine disputes arising from employment relationships.

Background

When the Labour Law (issued by Royal Decree Number M/51 dated 23 Sha'ban 1426 corresponding to 27 September 2005) was amended in 2015 it introduced the creation of specialised labour courts in order to determine labour disputes in accordance with Article 34 of the Law of Civil Procedures (issued by Royal Decree Number M/1 dated 22 Muharram 1435 corresponding to 25 November 2013). However, no such courts were officially created and, instead, disputes relating to an employment relationship were heard by commissions known as the Preliminary Commission for the Settlement of Labour Disputes ('Preliminary Commissions') which had semi-judicial authority and came within the jurisdiction of the Ministry of Labour ('MoL'). The Preliminary Commissions were not official courts, were not presided over by judges qualified in

Shariah law, and were not subject to the Law of Civil Procedures which applied to other civil courts. Decisions were sometimes considered to be inconsistent and lacking in legal sophistication. Appeals were considered by the High Commission for the Settlement of Labour Disputes and many of the criticisms which were levelled at the Preliminary Commissions also applied to the High Commissions.

New Labour Courts

Pursuant to the Royal Decree number 20712 dated 29 Rabi al Thani 1439H corresponding to 16 January 2018, the new Labour Courts were introduced in KSA on 20 Safar 1440H corresponding to 29 October 2018. The new Labour Courts are under the jurisdiction of the Ministry of Justice. They have jurisdiction over disputes relating to employment contracts, wages, employment rights, injuries, compensation and social insurance claims, among others.

As part of the initial introduction phase, seven Labour Courts have been established across KSA in areas which have historically seen the most labour disputes, including in Riyadh, Jeddah and Dammam. In addition, over 20 circuit courts have been established in various provinces and governorates to deal with labour cases. Six appellate courts will review judgments issued by the first instance Labour Courts.

To support the introduction of specialised Labour Courts, over 50 judges have been appointed to preside over the Labour Courts and have been trained to specialise in labour laws and regulations.

The main objectives for the creation of dedicated Labour Courts with judicial functions and capabilities were to expedite the delivery of justice and to improve both the quality and efficiency of the judicial process in labour disputes.

Below, we explain some of the differences between the approach being adopted by the new Labour Courts as well as some of the trends that are starting to emerge from the practice of the Labour Courts of which employers, who are facing employment litigation in KSA, should take note.

Comparison of Approach in the New Labour Courts compared to old Labour Commissions

We have set out below some comparisons between the new Labour Courts and the old Labour Commissions in the approach taken towards managing employment litigation in KSA:

- **Length of proceedings:** Under the old Labour Commissions, labour disputes would often run for a number of months or sometimes years involving a number of hearings to deal with both factual and legal issues; it was not uncommon for disputes to continue for 12 to 18 months. This led to an inefficient and unsatisfactory system for resolving labour disputes, particularly where the issue related to non-payment of wages. Under the new Labour Courts, labour claims are being determined far more efficiently, sometimes during the first hearing where issues can be determined on the available documents or, where that is not possible, within a matter of days or weeks after the first hearing. By way of illustration, we represented a client in a complex labour claim which was determined by holding seven hearings over nine working days; under the old Labour Commissions, such a claim would likely have taken over a year to determine. Indeed, the President of the Labour Court in Jeddah has informed us that the Jeddah Labour Courts aim to deliver judgment in labour claims within 30 days of the claim being received by the Labour Court following the conclusion of the initial 21-day amicable resolution stage of the proceedings.
- **Role of the judge:** Under the old Labour Commissions, hearings were presided over by 'counsellors' who lacked judicial qualifications. Often, the counsellors in the Labour Commissions adopted a passive approach to managing the litigation, and would need to be directed by the parties or their representatives to consider the relevant legal and factual issues. This, coupled with their lack of judicial

qualification, sometimes produced unpredictable and inconsistent judgments. Under the new Labour Courts, the judges are taking a more proactive role in both managing the litigation process, as well as directing the parties as to what they consider to be the legal and factual issues in the claim. Further, judges in the Labour Court are also directing that other public authorities intervene in labour disputes where necessary to determine certain issues; for example, in a case involving an alleged assault in the workplace, a Labour Court recently directed that the Public Prosecutor should investigate the matter to determine whether an employee had committed an assault which would justify a summary dismissal.

- **Judicial procedures:** The old Labour Commissions were governed by loosely drafted procedural regulations which contributed to the often inefficient management of labour claims. By contrast, procedures in the new Labour Courts are governed by the Law of Civil Procedures which apply to all civil lawsuits in KSA. The Law of Civil Procedures provides a far more comprehensive framework for the administration of legal proceedings in all civil courts. This is likely to lead to a more consistent approach and practice of litigation in the new Labour Courts.

Lessons to Learn from Emerging Trends

We have set out below some lessons which employers, involved in labour disputes in KSA, can learn from trends that are emerging from claims which have been litigated in the new Labour Courts:

- **Prepare for litigation early:** As the new Labour Courts are aiming to deliver judgments as early as possible in the legal proceedings, judges are expecting the parties to come prepared to address the issues at the first hearing. They have suggested that the parties should use the initial amicable resolution stage of the proceedings at the Labour Office as an opportunity to understand what the claim relates to, to reach agreement on any accepted facts or issues and, where a claim has not settled at the amicable resolution stage, should be ready to make submissions on any disputed legal or factual issues during the first hearing. Employers should, therefore, start to prepare their defence to any potential labour claims once they receive notification of a hearing at the amicable resolution stage. This includes collating documents and considering their position in response to any claims advanced by a complainant at the amicable resolution stage so that they are prepared to engage in the litigation proceedings at the first hearing at the Labour Court.
- **Ensure a valid power of attorney is in place:** Related to the point above, employers should ensure that they have an appropriate power of attorney in place in order for a lawyer to legally represent them at a hearing. The new Labour Courts have adopted a robust approach where legal representatives do not have a valid power of attorney to represent an employer in defending a labour claim. Given the international nature of many businesses in KSA, powers of attorney often have to be issued by foreign parties (e.g. shareholders in other jurisdictions), and this process typically takes up to four weeks before the power of attorney can be issued for use in legal proceedings. In order to ensure that an employer's position in the litigation process is not prejudiced, employers should review any existing powers of attorney to check if they will be valid in any potential labour claims.
- **Ensure that due process has been followed:** The Labour Courts are placing considerable emphasis on ensuring that the disciplinary process set out in the Labour Law has been followed before employers issue any disciplinary sanctions, particularly in relation to termination of employment on the grounds of disciplinary offences. Employers should, therefore, be careful to follow the disciplinary process, and comply with the applicable timescales, set out in the Labour Law in order to demonstrate, for example, that a decision to terminate employment on disciplinary grounds was procedurally correct.
- **Ensure that reasons are sufficiently valid in cases of summary dismissal:** Where an employer is considering summary termination of employment, it must ensure that it has a sufficiently strong reason to justify a summary dismissal. The Labour Courts are applying a high threshold to justify summary dismissals, and employers will be required to demonstrate why a summary dismissal, which will deny an employee certain statutory rights (e.g. the end of service award), was warranted. In particular, where the reason for a proposed summary termination relates to potential criminal conduct, for example, misappropriation of money, fraud or forgery, employers should consider whether it is necessary to refer

the matter to the police for investigation in order to demonstrate that there are sufficiently strong grounds to summarily dismiss an employee.

Conclusion

The new Labour Courts are a welcome development in the resolution of labour disputes. Although litigation practitioners are still adapting to the new approach to dealing with labour claims, the overall consensus is that there is increased efficiency in the labour litigation process. However, as the number of labour claims continues to rise (there are currently approximately 7,000 claims a year) and as the issues become more complex, it remains to be seen how the new Labour Courts will manage the increasing demands on its resources and how that affects the administration of justice in dealing with labour disputes as the country continues to move forward towards achieving its aims under Vision 2030.

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