

# Redundancy: GCC Considerations

Mandeep Kalsi

April 2016

---

Against this backdrop, which has largely continued into 2016, companies across various sectors in the GCC have been faced with the inevitable task of conducting reorganisation and restructuring exercises with consequent overhead reductions and job role eliminations. In this article, we briefly examine key considerations to be mindful of when seeking to implement redundancy programmes across the GCC.

## Legal framework

Other jurisdictions offer clear and substantive definitions of redundancy, prescribed processes and procedures (including individual and collective consultation obligations) and a redundancy compensation regime. In the GCC, redundancy as a concept is either not recognised at all or, if provided, is only recognised in very limited circumstances.

## UAE, Qatar and Oman

The labour laws in the UAE, Qatar or Oman do not specifically provide for the concept of redundancy or make provision for any redundancy compensation. Any such terminations would generally fall under the ordinary dismissal provisions provided for under the applicable labour laws of such countries. When conducting redundancies, the employer must ensure that it complies with existing provisions applicable to termination of employment (both under the applicable labour laws and contract) and pays the employee his/her full termination payments.

In the UAE, the labour law makes clear that the termination of an unlimited-term contract for a reason unconnected to the employee's performance or outside of the exhaustively defined gross misconduct grounds will be considered arbitrary, enabling the employee to claim arbitrary dismissal compensation, in addition to his/her other contractual and legal entitlements. In cases where an employer is closing down its operations and/or has suffered substantial financial losses, the amount of compensation ultimately awarded to employees has tended to be at the lower end of the scale. The position is similar in Oman. In Qatar, there are no arbitrary dismissal laws and no fixed arbitrary dismissal compensation. An employee would have to go to a court to get an order for this and the judge would determine compensation depending upon the manner and circumstances of the dismissal.

## KSA, Bahrain and Kuwait

The KSA, Bahrain and Kuwait do provide for express recognition of redundancy. In the KSA, changes to the existing labour laws in 2015 introduced new grounds for termination, permitting the employer to validly terminate the employment where the establishment is being permanently closed or if there is a cessation of the business activity where the employee works. Although the concept of redundancy is recognised for the first time in the KSA's labour law, the change to the law does not go so far as to extend to cases where there is a diminution in the requirements of a particular role or the number of employees employed to perform that role. In Kuwait, similar to the KSA, redundancy terminations are restricted to those cases where the establishment is being closed.

In Bahrain, the labour law provides for a more comprehensive definition of redundancy. The employer is permitted to terminate an employee's employment due to the whole or partial closure of the business establishment, a reduction in its size of activity or the replacement of a production system in a manner

that affects the quantity of manpower. However, the termination must not take place unless and until the employer has given notice to the Ministry of Labour at least 30 days prior to issuing the notice of termination to employees. The labour law also provides for a fixed redundancy compensation payment.

## **Process**

Employers generally have flexibility when carrying out redundancy exercises. Often, employers will directly proceed to serve a notice on the employee together with a final statement and release document or discuss the issue with the “at risk” individuals first. We recommend a limited consultation process and procedure to assist in reaching an agreement with impacted employees, whereby the various sums owing will ultimately be paid in return for the employee signing a full and final release or waiver and generally co-operating with the cancellation of his/her visa. Employers could either set this out in a short letter, or alternatively consider entering into a short settlement agreement. The settlement agreement is helpful to set out the timing and mechanism of payments, as well as the inclusion of key clauses such as confidentiality obligations and undertakings. In all the GCC countries, the visa cancellation process itself is very important to ensure that any employee claims are compromised. As part of any settlement package, employers could consider offering some form of an ex-gratia severance payment.

In addition, special consideration should be given when proposing to terminate the employment of nationals of certain of the GCC states. For example, in the UAE, the termination of UAE nationals by those employers falling under the direct jurisdiction of the Ministry of Labour is expressly regulated and requires the prior consent and approval of the Ministry of Labour.

## **Concluding Remarks**

Implementing redundancies is never an easy process (whether for the company or the employee) and for those employers operating across various integrated business units in the GCC states, grappling with the differing legal frameworks and processes can be a daunting exercise. Redundancy policies can be a useful tool in setting out the basic framework to be adopted when implementing redundancy programmes and also provide a degree of transparency and clarity for those involved and/or impacted. The key throughout is to engage with employees at an early stage so as to minimise the prospects of employee dispute and low staff morale.