

Next Steps In The Push for Emiratisation In The Financial Sector

Laws relating to Emiratisation in the UAE are not a new phenomenon and a reasonably comprehensive legislative framework has developed obligating employers in the UAE to positively discriminate in favour of UAE national employees. Until recently, there has been a distinct lack of enforcement in relation to legal requirements surrounding Emiratisation. However, that is changing and this article explores recent developments in the financial sector to promote Emiratisation.

Legal Framework

In terms of current framework, there are a number of laws which deal either directly or indirectly with Emiratisation and which apply, broadly, to all entities established outside of the free zones. Whilst entities in the free zones are encouraged to act in the 'spirit' of Emiratisation, there is generally no legal requirement to do so.

As a starting point, preferential treatment for UAE national employees was originally documented in the UAE Labour Law (Federal Law No. 8 of 1980 (as amended)) which provides that work is an inherent right for UAE nationals and that non-nationals may be engaged in the UAE only where suitable UAE national employees are not available. This position is supported by a number of ministerial decisions. For example, Ministerial Decision 41 of 2005 requires all commercial entities to ensure that 2% of the workforce is comprised of UAE national employees. More recently, entities with over 1,000 employees are required to engage two UAE national employees in data entry positions.

The banking and insurance sectors have previously been subject to a higher Emiratisation threshold and we explore this further below.

Emiratisation in the Banking and Insurance Sectors

Since 1999, a 4% quota has been applied by the Central Bank to entities in the banking sector meaning that 4% of the workforce must be comprised of UAE national employees. The quota is cumulative, mandating a year on year increase of 4%. Interestingly, there is no minimum threshold, so even a bank with 1 employee is therefore required to comply with the 4% requirement. A similar approach has been taken by the Insurance Authority which has applied a quota of 5%.

Historically, entities in the banking and insurance sectors have consistently met and, in some cases, exceeded Emiratisation requirements. This is almost certainly attributable to the banking and insurance regulators: the UAE Central Bank and the UAE Insurance Authority. Both have taken steps to encourage Emiratisation and ensure that entities falling within the remit of their regulations take all actions necessary to comply in that regard.

It appears that both the Central Bank and Insurance Authority recognise that the sectors regulated by them are now plateauing in terms of Emiratisation figures. In light of the UAE Government's 'Vision 2021', there are indications that the Central Bank and Insurance Authority consider increasing Emiratisation is a priority for the banking and insurance sectors.

Changes Afoot

To date, the Central Bank's Emiratisation targets have been focussed on retail banks which, traditionally, have a large employee population. Representative offices, which tend to have a smaller presence, were largely outside of the scope of Emiratisation targets and obligations. This is no longer the case.

Earlier this year, a notice was issued to all representative offices in the UAE mandating the engagement of one UAE national employee per office by December 2017. There are no further criteria regarding the hire. For example, it is not necessary for the UAE national employee to be hired in a certain role or at a specified level of seniority. There is also no minimum threshold under which the requirement will not apply and therefore offices with only one employee are required to engage one further (UAE national) employee.

In addition to the inclusion of representative offices in the Emiratisation quota system, there have been further developments in respect of the method of setting quotas moving forward. Historically, the quota system was relatively straightforward with each eligible entity being required to meet a 4% or 5% (depending on sector) cumulative year on year quota whereby the workforce was made up of at least a specified number of UAE nationals. This approach has been replaced with the introduction of a points based system: simply put, banks and insurance companies will be allocated target points on an annual basis which will form the basis of their Emiratisation quota. The change is important in that the Central Bank and Insurance Authority are recognising broader efforts relating to Emiratisation and not simply the number of UAE nationals compared to the total number of employees in a workplace.

Very broadly, target points will be calculated with reference to operating income for banks and gross written premiums for insurance companies. Essentially, a revenue based quota. Once the target number of points is set, there are two main ways in which points can be accrued: input points and output points.

Input points can be obtained for training and development efforts. The idea appears to be to incentivise entities to invest in their existing UAE national workforce by encouraging and funding ongoing training and development such that the employees are likely to progress in the organisation and remain in the private sector.

Output points are issued for more tangible Emiratisation efforts, for example, the number and quality of jobs created by an entity for UAE national employees. Perhaps unsurprisingly, hiring UAE nationals in more senior or niche roles will attract more points. For instance, an UAE national hired in a senior management role gives five points, while an UAE national hired for a non-managerial role provides just one point.

Non-Compliance

There have been no announcements in terms of penalties for representative offices which fail to engage an UAE national by the deadline which has recently passed. We are aware that some representative offices are struggling to recruit suitable UAE nationals into identified roles, despite very real attempts to do so.

In comparison, there has been significantly more visibility in respect of penalties for failure to meet points targets. In that regard, it is understood that monetary fines will be levied against those entities which fail to meet targets and that the quantum of such fines will directly correspond with how close an entity is to meeting its target. Interestingly, fines have been expressed as a penalty in the initial stages of implementation of the new scheme. It remains to be seen whether more onerous penalties will be placed on those entities which fail to meet targets going forward.

The Future

The changes identified above demonstrate a clear commitment by the Central Bank and Insurance Authority in relation to Emiratisation. However, more broadly, there have been a number of decrees issued in the past 12 to 18 months dealing with Emiratisation and in light of Vision 2021, we would anticipate that further requirements would be implemented to encourage Emiratisation in the private sector.