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A PRACTICAL GUIDE TO THE NEW AMENDMENTS TO THE LABOUR LAW

Since its implementation some 36 years ago, UAE Federal Law Number 8 of 1980 (the "Labour Law") has undergone few material amendments. This remains the case today, despite the introduction of 3 new Ministerial Decrees concerning labour matters. The reforms, which came in to effect on 1 January 2016, do not drastically amend the existing Labour Law, but rather codify the way in which it is applied in practice by the Courts.

1. Offer Letters and Contracts

Ministerial Decree 764 of 2015 takes effect before a worker is even admitted into the UAE for the purpose of employment. Ministry of Labour ("MOL") approval shall only be granted once the worker has signed a formal offer letter which bears identical terms to those that will be contained within his official employment contract. This signed offer letter must then be presented to the MOL, which has issued a template in this regard.

Thereafter, the terms of the official employment contract may not be altered from the terms of the offer letter unless the revised terms are more favourable to the employee and approved by him and no additional terms may be added unless they are approved by the MOL. Although MOL contracts may not appear to be substantially different to those issued before the passing of Decree 764, the Decree has the effect that the MOL contract shall be openly considered as the instrument laying out the terms and conditions integral to a worker's employment, as opposed to a registration document.

The purpose of Decree 764, and in particular the implementation of compulsory and registered offer letters, is to ensure that workers are not recruited into the UAE under false promises. The new system shall ensure that all workers are aware of their true salary and other entitlements before committing to a contract of employment.

Given that the vast majority of employees in mainland UAE are party to MOL employment contracts irrespective of their trade, profession, role or level, it is understandable that there are some circumstances in which the pre-2016 MOL contract template did not cover all of the necessary terms and conditions of employment. In order to circumvent uncertainty further down the line, it has become commonplace for employers and employees to also enter into private, more substantial employment agreements containing more detailed provisions. The Labour Law does not prohibit this, insofar as nothing in the long-form agreement contradicts any provision of the MOL contract or the Labour Law. Given the restrictions Decree 764 places upon any addition or amendment to the terms of the template offer letter, concerns have been raised as to whether the offer letter will be sufficiently all-inclusive. However, to date, there is nothing to suggest that an employer cannot issue a longer, more substantial offer letter in addition to the MOL template, on the understanding that (1) nothing therein conflicts with the MOL template or the Labour Law,

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and (2) whereas such terms may be included in a long-form employment agreement, they shall not appear in the MOL contract.

Henceforth, the MOL application procedure shall be as follows:

Serial	Procedure
1	Signed, pro forma MOL offer letter should be submitted to the MOL Tasheel Centre. This will include full details of the employee's salary.
2	After approval is obtained, employee should undergo medical test and ID application.
3	All documents should then be submitted to the MOL, and the parties will sign the contract. However, full contract details will not be displayed at this stage on account of the fact that the parties will have already agreed to the terms by way of the offer letter.
4	Once the MOL approves the contract, copies will be issued online.

2. Termination

Ministerial Decree 765 of 2015 provides clarification with regard to termination provisions. As was previously the case, the applicable requirements shall depend primarily upon whether the contract in question is of limited or unlimited duration.

Unlimited Contracts

The position here has always been relatively clear. Save for in the event of an Article 120 summary termination without notice or as otherwise agreed between the parties, the Labour Law has always required the terminating party to serve notice in conjunction with the notice period specified in the contract. The contractually-agreed notice period was not subject to any limitation in terms of length, with the default position being 1 (one) month should the contract be silent in this regard. However, Decree 765 now requires that a notice period must be no shorter than 1 (one) month and no longer than 3 (three) months.
The reasons for which a contract may be terminated remain relatively unchanged – the parties may terminate unilaterally on notice, immediately as per the conditions of Articles 120 or 121 or further to the relevant investigative procedures pursuant to Articles 110 and 111. Further, provisions pertaining to arbitrary dismissal remain the same. However Decree 765 emphasizes the importance of termination in compliance with "legally mandated procedures". Although this is likely to mean the procedures already in place regarding reasons for termination and the applicable notice period, it is possible that the MOL will issue further guidance later on this year.

Limited Contracts

The position with respect to limited contracts is somewhat different. Not only has the maximum duration of a limited contract been decreased from 4 (four) years to 2 (two) years, but the termination process has been overhauled in strong favour of the employee. Pre-Decree 765, there was some confusion regarding the applicable notice period upon the termination of a limited-term contract – however, the Courts often held that no notice period applied, as the parties entered into the contract intending that it would run for its full term. Instead of a notice period, compensation was payable to the terminated party. Conversely,

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the Decree has the effect that a non-terminating party shall enjoy the benefits of both a notice period and compensation. As with unlimited contracts, a limited contract shall be subject to a termination notice period of no less than 1 (one) month and no more than 3 (three) months – thereafter, compensation shall be payable to the non-terminating party as per the contractually-agreed amount. As was originally the case, this compensation may not exceed 3 months' salary equivalent if payable by the employer, or 1.5 months' salary equivalent if payable by the employee. In the event that the remaining duration of contract is less than 3 (three) months at the point of termination, the compensation shall be capped as per the remaining salary due (and half this amount if it is payable by the employee).
No amendment to the procedures regarding the termination of a limited contract shall affect either party's right to terminate with immediate effect in keeping with the provisions of Articles 120 or 121, nor upon the expiry of the contractual term.

3. Labour Bans

Until Ministerial Decree 766 of 2015 came into force, the circumstances in which a worker could become subject to a labour ban were somewhat unclear. The clarification provided by way of Decree 766 not only seeks to assist in attaining fluidity in the market, but also looks to encourage employers and employees alike to respect the reasonable requirements of their contracts when considering termination.

Unlimited Contracts

As was previously the case, it shall be difficult for any employee of skill level 1, 2 or 3 (i.e anyone holding the qualification of a High School diploma or higher) to incur a labour ban. Henceforth, no ban shall apply in the following circumstances:

- If the parties mutually terminate the contract, provided that the employee has served for no less than 6 months (although the 6 month provision shall not apply to any worker attaining skill level 1, 2 or 3);
- If one party terminates the contract, but complies with the notice provisions as per the contract and the Labour Law, provided that the employee has served for no less than 6 months (again, the 6 month provision shall not apply to any worker attaining skill level 1, 2 or 3); or
- If the employer terminates the contract without cause, provided that the employee has served for no less than 6 months (the 6 month provision shall once more be inapplicable to any worker attaining skill level 1, 2 or 3).

Limited Contracts

Employees on limited contracts have always been more vulnerable where labour bans are concerned. Although it is still the case that limited-term workers shall be more susceptible to labour bans than their unlimited-term colleagues, the instances in which a ban may be imposed have been radically reduced by Decree 766. No ban shall be incurred in the following circumstances:

- If the contractual term expires and the contract is not renewed;

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- If the parties mutually agree to terminate the contract before the expiry of the fixed term, provided that the employee has served for no less than 6 months (although the 6 month provision shall not apply to any worker attaining skill level 1, 2 or 3);
- If the employer terminates the contract without cause, provided that the employee has served for no less than 6 months (the 6 month provision shall again by inapplicable to any worker attaining skill level 1, 2 or 3); or
- If either party unilaterally terminates the contract AFTER the term has been renewed, provided that:

    - The terminating party adheres to the notice requirements of the contract (if the contract renewed before Decree 766 came into effect and there is no prior agreement between the parties regarding the length of the notice period, the default notice period shall be 3 months); and
    - The terminating party honours his requirements regarding the payment of compensation for early termination.

Further, no ban shall apply to any worker (of either limited or unlimited term) in the following circumstances:

- If the employer is deemed to be in breach of any of his obligations under the contract (including but not limited to the non-payment of wages for in excess of 60 days);
- If the employer company shuts down, thus preventing the worker from performing (as evidenced by an inspection report confirming that the business has been inactive for in excess of 2 months AND the worker has reported to the MOL during this period); or
- If the Labour Court provides a final ruling stating that the worker is owed wages for no less than 2 months, compensation for arbitrary dismissal, compensation for premature termination of the contract or any other due outstanding from the employer.

In the event that the criteria of any of the above are fully satisfied, a new work permit shall be granted and no ban shall apply.

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