

## Saudization Update 2011

**The Saudi Minister of Labour recently announced that companies classified as 'red' would be penalised from 26 November 2011. Do you currently comply with the *Nitaqat* programme?**

The term "Saudization" refers to the various initiatives of the government of the Kingdom of Saudi Arabia ("KSA") to encourage the employment of Saudi nationals in the private sector. Saudization policies have been pursued by the government since at least the mid-1990s and, in the spring of 2011, the latest Saudization initiative was launched under the auspices of the Ministry of Labour ("MOL"): the *Nitaqat* programme.

"Nitaqat" in Arabic literally means "categories". Under the programme, companies are categorised according to a basic colour scheme: red, yellow, green and premium. In summary, companies classified as green or premium are fulfilling MOL-sanctioned Saudization requirements and will receive specified benefits. On the other hand, those companies classified as red or yellow are non-compliant and will be subject to various sanctions.

This briefing provides an overview of the main tenets of Saudi law applicable to Saudization, as well as the features of, and the latest developments introduced by, the *Nitaqat* programme.

### Legal Basis

Prior to the announcement of the *Nitaqat* programme in 2011, there were two principal sources of law relating to Saudization:

- Article 26 of the Saudi Labour Law, as enacted by Royal Decree M/51 dated 23/8/1425H (8 October 2004), which came into force on 25/3/1427H (23 April 2006) (the "**Labour Law**"); and
- Resolution No. 50 of the Council of Ministers dated 21/4/1415H (27 September 1994) ("**Resolution No. 50**").

These were supplemented by several MOL circulars and resolutions in relation to Saudization, including:

- the circular issued by the Minister of Labour on 1/6/1423H (10 August 2002) (the "**Circular**"); and
- Resolution No. 4/3767 dated 28/2/1427H (28 March 2006) issued by the Minister of Labour ("**Resolution No. 4/3767**").

The Labour Law provides that Saudi nationals must comprise at least 75% of an employer's workforce, although the Minister of Labour has the authority to reduce this percentage where sufficient qualified Saudi nationals are not available.

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### Key Issues

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If you would like to know more about the subjects covered in this publication or our services, please contact:

[Khalid Al-Abdulkareem](#)  
+966 1 478 0220 Ext 14

[Tim Plews](#)  
+966 1 478 0220 Ext 41

[Mike Taylor](#)  
+971 43620 638

[Omar Rashid](#)  
+966 1 478 0220 Ext 71

[Sahel Mughal](#)  
+966 1 478 0220 Ext 70

[Majid Al-Sheikh](#)  
+966 1 478 0220 Ext 60

Al-Jadaan & Partners Law Firm  
P.O. Box 3515  
Riyadh 11481  
Kingdom of Saudi Arabia  
[www.aljadaan.com](http://www.aljadaan.com)

Resolution No. 50 requires all Saudi companies that employ twenty (20) or more people to increase the number of Saudi nationals in the workforce by at least 5% annually. However, Resolution No. 50 does not set a minimum percentage of Saudi employees that a company must have when it is first established.

The Circular requires that Saudi nationals comprise 30% of the workforce of every Saudi company which employs more than twenty (20) employees, subject to certain limited exceptions.

Resolution No. 4/3767 freezes this 'Saudization percentage' at 30% and permits that it be reduced for specific activities to below 30%. This percentage, as well as the threshold of twenty employees set out in Resolution No. 50 and the Circular, has been modified by the Nitaqat programme.

In the spring of 2011, Royal Order No. A/79 dated 13/04/1432H (18 March 2011) was issued (the "Royal Order"), requiring the Minister of Labour and the Minister of Commerce and Industry to convene with the Saudi business community in relation to Saudization.

The Royal Order further provides that the MOL must issue quarterly reports detailing (i) the percentage of Saudi nationals that have been recruited and (ii) the plans and procedures in place to create jobs for Saudis.

Pursuant to the Royal Order, and under the authority granted to the Minister of Labour by the Labour Law, the MOL announced the Nitaqat programme as its new Saudization initiative.

## Nitaqat Programme

### *Timing*

With rising unemployment figures among Saudi nationals, the political impetus behind Nitaqat has been substantial. Compliance with the programme is mandatory from September 2011. In addition, The Saudi Minister of Labour recently announced that companies classified as 'red' would be penalised from 26 November 2011.

### *Application*

All Saudi companies (whether owned by Saudis or non-Saudis) with at least ten (10) employees are required to comply with the Nitaqat programme.

The percentage of Saudi nationals required to be employed by each company will depend on two factors:

- the activity of the company; and
- the number of employees working for the company.

For example, if a company is engaged in wholesale and retail trade activity, the Saudization percentages that determine under which category the company is classified will be contingent on the number of people it employs, as follows:

<i>Wholesale &amp; Retail Trade</i>	Red		Yellow		Green		Premium
	From	To	From	To	From	To	From
<b>No. of employees</b>							
10-49	0%	4%	5%	9%	10%	26%	27%
50-499	0%	4%	5%	16%	17%	33%	34%
500-2999	0%	9%	10%	23%	24%	34%	35%
3000+	0%	9%	10%	24%	25%	36%	37%

If the Saudization percentage falls within the green or premium categories, the company will be deemed compliant. The percentages differ from activity to activity and therefore the former 'universal' Saudization percentage of 30% under Resolution No. 4/3767 no longer applies.

### *Multiple Activities*

In circumstances where a company engages in multiple activities, a Saudization percentage will be calculated by the MOL in respect of **each activity**. For example, if a company engages in contracting activity (from its head office) but also has a branch which primarily conducts agricultural activity, the MOL will assess the head office and the branch separately. Different Saudization percentages will be applicable for the main office and the branch according to the number of employees working in each activity. The MOL will issue two 'Saudization certificates' for the company: one for each activity. For example, where the company is classified as green or premium for contracting but red or yellow for agriculture, then the benefits associated with green or premium will be available in respect of contracting and the penalties associated with red or yellow will be applicable in respect of agriculture. We understand that there will be no 'cross contamination' of penalties (or benefits) between activities within the same company (subject to the section headed 'Sanctions' below).

Conversely, where a company has several premises but engages only in one activity, then a single table of Saudization percentages (like the table above) will apply to the company as a whole, across all its premises. In these circumstances, the MOL will issue one Saudization certificate.

As is often the case, if a company's constitutional documents (e.g. its articles of association) contain a long list of activities which the company is authorised to conduct, this will not be determinative for the purposes of the Nitaqat programme. Rather, a 'main activity' is usually registered in the company's file at the MOL, which file is customarily opened as part of the incorporation process. We have been informed by MOL officials that it is this main activity which will be used by the MOL as the basis on which to determine the Saudization percentages for such a company under the Nitaqat programme.

## **Classifications under the Nitaqat Programme**

As outlined above, there are four categories into which companies are classified under the Nitaqat programme: premium, green, yellow and red. The features of each are explained in further detail below.

### **1. Premium Category**

A company will be classified under the premium category where it has substantially exceeded the prescribed Saudization requirements. The company will be able to take advantage of the following entitlements and benefits:

*From 07/1432H (June 2011)*

- Ability to renew employment permits for employees, provided the existing permit is valid for at least 3 months.
- Ability to apply for visas for expatriate workers once every two months provided that the company's classification does not fall below green.

*From 13/10/1432H (11 September 2011)*

- Ability to obtain new visas for any profession provided that the company's classification does not fall below green.
- Ability to change the registered profession of expatriate workers, including to jobs exclusively reserved for Saudi nationals. However, the jobs listed in Resolution No. 50 which are restricted for Saudi nationals only (i.e. HR managers, government liaison officers, receptionists, security guards, cashiers and recruitment agents), remain so restricted.
- Ability to recruit expatriates and change their registered professions, provided that the company's classification does not fall below green.
- Ability to recruit expatriates without requiring them to have completed a two year term with their current sponsor, provided that the company's classification does not fall below premium.
- In circumstances where certain of the company's government certificates and licences have expired (e.g. municipality permits, commercial registration certificates and zakat and income tax certificates), the MOL will continue to provide services to the company for up to one year.

*From 1/1/1433H (26 November 2011)*

- Ability to recruit expatriates from companies classified as red without requiring a non-objection letter from their current employer, provided that the company's classification does not fall below green.

*From 1/4/1433H (23 February 2012)*

- Ability to recruit expatriates from companies classified as yellow without requiring a non-objection letter from their current employer, provided that the company's classification does not fall below green.

## **2. Green Category**

Companies classified as green are in compliance with Saudization requirements and will be able to take advantage of the following entitlements and benefits:

*From 07/1432H (June 2011)*

- Ability to renew employment permits for their employees, provided the existing permit is valid for at least 3 months.
- Ability to apply for visas for expatriate workers once every two months, provided that the company's classification does not fall below green.

*From 13/10/1432H (11 September 2011)*

- Companies will be granted one work visa following the permanent departure of two expatriate employees.
- Ability to change the registered professions of expatriate workers but not to jobs exclusively reserved for Saudi nationals.
- In circumstances where certain of the company's government certificates and licences have expired (e.g. municipality permits, commercial registration certificates and zakat and income tax certificates), the MOL will continue to provide services to the company for up to 6 months.

*From 1/1/1433H (26 November 2011)*

- Ability to recruit expatriates from companies classified as red without requiring a non-objection letter from their current employer, provided that the company's classification does not fall below green.

*From 1/4/1433H (23 February 2012)*

- Ability to recruit expatriates from companies classified as yellow without requiring a non-objection letter from their current employer, provided that the company's classification does not fall below green.

## **3. Yellow Category**

Companies classified as yellow are not in compliance with Saudization requirements and will be subject to the following:

*From 09/07/1432H (11 June 2011) to 29/03/1433H (22 February 2012)*

- Ability to renew employment permits for employees, provided the existing permit is valid for at least 3 months.

*From 13/10/1432H (11 September 2011)*

- Rejection of the company's applications for new work visas.
- Companies will be granted one work visa following the permanent departure of two expatriate employees.
- Inability to change the registered professions of expatriates.
- Inability to recruit expatriates or transfer their sponsorships.

*From 1/4/1433H (23 February 2012)*

- Ability to renew employment permits for employees, provided an employee's total residency period in KSA is less than 6 years.
- Expatriate employees will be able to leave without objection to work for green or premium companies.

#### 4. Red Category

Companies classified as red are substantially non-compliant with Saudization requirements and will be subject to the following:

*From 09/07/1432H (11 June 2011) to 29/03/1433H (22 February 2012)*

- Ability to renew employment permits for employees, provided the existing permit is valid for at least 3 months.

*From 13/10/1432H (11 September 2011)*

- Inability to apply for new work visas.
- Inability to change the registered professions of expatriates.
- Inability to recruit expatriates or transfer their sponsorships.

*From 1/4/1433H (23 February 2012)*

- Inability to renew employment permits.
- Expatriate employees will be able to leave without objection to work for green or premium companies.

#### Sanctions

Notwithstanding the above, red and yellow companies have a grace period in which to improve their current Saudization categorisation. Red companies should upgrade to yellow before 26 November 2011 and yellow companies should upgrade to green before 23 February 2012, following which dates the sanctions listed above will apply respectively.

It is important to note that if a company is classified as red **in respect of any activity**, such company will not be able to register any new branch or activity with the MOL.

Resolution No. 50 set out a number of sanctions applicable to companies that were not in compliance with Saudization requirements. Two of these sanctions, namely the suspension of an employer's applications (i) for work visas and (ii) to transfer the sponsorship of an employee, have been incorporated into the Nitaqat programme. This leaves the following three sanctions, provided for in Resolution No. 50, which will continue to apply alongside the Nitaqat programme:

- Inability to apply for Saudi government tenders.
- Inability to apply for Saudi government loans.
- Inability to apply for Saudi government incentives otherwise available to the private sector.

Precisely how the above sanctions will work in practice will depend on how stringently various government authorities insist on Saudization requirements as part of their application processes. The indications are that there will be a renewed focus on such requirements.

#### Next Steps

In order to check which Saudization percentages apply to a particular company, the MOL maintains a website (currently only in Arabic) via which these can be obtained once relevant company information is inputted.

Our sources for this note are the MOL website (in its current form) and our discussions with MOL officials. Our contacts within the MOL have informed us that, as at the time of writing, the implementation of the Nitaqat programme may be subject to change following internal consultations and workshops which are currently taking place within the MOL. The Minister of Labour recently announced that Nitaqat-compliant companies (i.e. those in the green and premium categories) would receive extra benefits, in addition to those already announced and set out above. The MOL also expects to publish a handbook in the near future which will provide further guidance in respect of how the Nitaqat programme will operate going forward.

Please do not hesitate to contact us should you have any queries.