

## Doing Business in the Muslim World – Practical Issues for Employers and Employees

The Muslim World stretches through the countries of North West and North Africa (the Maghreb), North East Africa, Turkey, and across the Arabian Peninsula (the GCC Countries and Yemen) into Iraq and Iran and the substantial Muslim populations of the Indian subcontinent, Malaysia and Indonesia. The considerations affecting Western, and particularly US companies, doing business across this broad swathe of the world vary considerably from region to region. Although there are some common threads, there are major variations ranging from the more conservative Kingdom of Saudi Arabia to the much more liberal UAE. It is pertinent for employers and employees alike to recognize there are vast differences between countries and even cities when considering opportunities in the Middle East.

In the GCC, there is the common thread that the legal system is underpinned by Sharia law. Although this does not hugely affect day-to-day commercial transactions, it may impact employment in ways that need to be understood by expatriate employees sent to these regions and by their head offices seeking to operate a universal HR policy throughout the world.

A good example of the variations within one country, highlighting the need for a detailed specialist approach, is found in the UAE. The UAE is a federation of seven Emirates, each ruled by its own monarchy, but there are wide differences among the different Emirates, with Dubai being the most liberal and Sharjah the most conservative. Sharjah, for example, has enacted a Decency Law that prescribes appropriate standards of dress for both men and women so not to offend Muslim principles. Men wearing "bling" were recently warned that this was in breach of the law. They were instructed not to wear gold jewelry, or more than two small pieces of jewelry of any kind, including a watch and a non-gold ring.

Even in countries with a single centralized government, such as Saudi Arabia, there are great and obvious cultural differences from one city to the other. The capital city of Riyadh, which houses the main government ministries, is traditionally conservative with its residents being modest in their clothing and in their public interactions with the opposite sex. Meanwhile, the city of Jeddah, which is under the authority of the centralized government, is consistently recognized by Saudis for its difference and favored by expatriates for its cosmopolitan lifestyle and liberal views.

These same differences exist in Yemen. The capital, Sana'a, in the North of Yemen, is quite conservative compared to Aden in the South. Overall, Yemen is not as conservative as Saudi Arabia and not as liberal as the UAE, with the exception of Sharjah. Yemeni law has no mandatory dress code. However, residents are expected to dress modestly. Although most local women wear the Abaya and veil (on the road and workplace), it is very common to see expatriate women wearing normal western clothes throughout the country.

The UAE is generally regarded as the more liberal end of the spectrum, with countries such as Oman being more conservative – although not to the extent of Saudi Arabia. An example of this conservatism can be found in the Omani penal code, which provides that anyone found guilty of insulting the dignity of another may be imprisoned for six months. A number of expatriates have found themselves prosecuted under this provision.

Egypt is a multicultural society. Besides being Islamic, it is proud of its long and unique history. Egyptians are quite accommodating, but firm in their beliefs. Egyptians do not like confrontation. The Egyptian bureaucracy respects authority but also has its own firm ways. They, therefore, lend themselves to easy misinterpretation and disappointments. It is important to be careful and listen to what your counterpart wants to say - frequently in hints rather than in plain words. Egyptians tend to be very religious, in a very softer manner than many other Islamic countries.

Situated in North Africa, the Kingdom of Morocco was a French protectorate from 1912 to 1956, and the legal system is heavily influenced by the French legal system. King Mohammed VI is the current ruler and is perceived to be very much in favor of modernization. King Mohammed VI has instituted some legal reforms, including economic liberalisation that has attracted foreign investment. Over the past decade, Morocco has embarked on an ambitious programme of structural reforms in several fields, aiming to further liberalise its markets and enhance the competitiveness of its economy.

While Malaysia has a predominantly Muslim population, it is a secular state. Islamic law is only applicable to Muslims and is mainly confined to matters relating to family law.

Although it has the world's largest Muslim population, Indonesia also recognizes Christianity, Buddhism and Hinduism as official religions. In recognizing these religions, Indonesia's constitution, under the human rights section, provides that everyone has the right to work with fair and reasonable compensation and treatment in employment. This right is confirmed in the Indonesian Labor Law which provides that discrimination based on gender, race, religion, politics and disability is prohibited. However, it should be noted that Aceh, which is considered a province with a unique history, has recently adopted Sharia law.

#### *Conflicts with American Law*

Against this backdrop, multi-national companies – particularly those based in the United States – have to balance a number of competing interests. While companies must ensure that their businesses in the Muslim world comply with all local law, at the same time, they have to determine where the line should be drawn on balancing local customs and mores against the company's corporate culture and code of conduct. For example, most U.S.-based multi-nationals have adopted a code of conduct prohibiting discrimination on the basis of sexual orientation. When operating in many of the Muslim-dominated countries, such as Malaysia, which ban homosexual acts, a company must determine whether its anti-discrimination policy

will nevertheless apply. These companies straddle a fine line between not wanting to be seen as encouraging or condoning these activities – which might violate local criminal law – while at the same time, not tolerating intentional or subtle forms of discrimination.

On top of this, U.S.-based companies must comply with United States federal law which prohibits any form of illegal discrimination applied to U.S. citizens working overseas. The only exception is where local law actually prohibits certain activities. For example, an employer may avoid liability for violation of Title VII of the Civil Rights Act of 1964, which prohibits discrimination of race, color, religion, sex or national origin, by presenting proof that compliance with Title VII would cause a violation of the laws of the country where the employee works. The "foreign laws defense" was added to the Civil Rights Act of 1991 and does not include cultural preferences or biases. The protections of Title VII only cover U.S. citizens working abroad for an American company or a foreign entity controlled by an American company.

Finally, American companies should be mindful of the need to reasonably accommodate Muslim religious practices at work in Islamic countries in the same way in which they are used to doing so in America. For example, to an extent which there are Muslim holidays, if there is a need to fast, or wear certain religious attire, companies should make reasonable attempts to accommodate those activities so long as those activities do not unduly affect the workplace. In some cases, as indicated below, countries may mandate that certain Muslim holidays be observed or certain attire either be worn or prohibited.

### *Women*

It is a common misconception that career opportunities for women in the Muslim world are limited. Throughout the GCC, there are many women, including expatriates, who play a prominent role in the business world.

In Saudi Arabia, the segregation of the sexes in the workplace across most industries creates extra impediments for employers that hinder the employment of women. Companies must comply with Saudi regulations that require employers to provide offices and restroom facilities for females that are separated from those of their male counterparts. Although integration of the sexes is acceptable in common areas and meeting rooms, a lack of understanding of the regulations and their implementation may deter companies from employing women in key positions. This is not a matter of prejudice against women, but more to do with balancing conservative interpretation of the traditional role of women and their integration in the workplace. It continues to be a cultural norm for women in Saudi Arabia to wear a dress-like overgarment, called a "abaya", when in public and sometimes on the job.

Also, despite the government's effort to carry out reforms on the issue of female drivers, Saudi Arabia remains the only country in the world where females are not permitted to drive. Nevertheless, there are signs of change in the workplace as evidenced by the increasing number of female lawyers, bankers and other businesswomen, but companies should act with caution when placing female

employees in senior positions and should always consult employment experts in the region.

Elsewhere in the Muslim world, there should be fewer concerns generally, with the most liberal jurisdiction being the UAE where there have been positive efforts to promote the role of women. For example, at the Federal Government level, there are now four female government ministers. Law firms operating in the UAE commonly have female partners and, in many businesses, employees are recruited purely on their qualifications and perceived ability with no sex discrimination and with the knowledge that clients throughout the region treat women in business the same as they do men, assuming they have the same responsibilities.

Although segregation is very common in social events in Yemen, there is no segregation between men and women in the workplace and sex-based discrimination in employment is not tolerated. More and more women are seen in business in Yemen nowadays, and are sometimes favored by employers due to a perception that they are more disciplined and committed to their work than their male counterparts. Women drive in Yemen and occupy many political and ministerial positions.

Similarly, in Malaysia there is no gender segregation in the workplace or in public places.

### *Harassment*

Most multi-national companies have policies forbidding sexual and other forms of discriminatory harassment. Sexual harassment, in particular, continues to be a problem both in North America and throughout the world. While some Muslim countries may not have laws specifically prohibiting this type of behavior in the employment or workplace context, companies should not condone it. In fact, in the GCC, sexual harassment is a criminal offense. When problems arise, companies should hold wrongdoers accountable, not because they have violated a local law, but because they are acting in violation of company policy. From a preventative standpoint, sophisticated companies should consider conducting training on a local level that includes cultural norms, so that their employees understand what type of behavior will be considered unacceptable. In countries where the notion of harassment is a foreign concept, this would be particularly important to minimize the risk of problems.

As mentioned above, the Indonesian Labor Law prohibits discrimination in the workplace based on gender, religion, race and politics. Sex discrimination lawsuits are not common and there is no law regulating how women dress or mandating that the sexes be separated in the workplace. While Indonesia has no specific regulation on workplace sexual harassment, this would be considered a criminal offense. The best approach in Indonesia and elsewhere is for the employer's policy to define unacceptable behavior.

Throughout Morocco, there are plenty of women, including expatriates, who play a prominent role in business. There is no segregation between men and women in the work place and Morocco has increased its efforts to reduce discrimination against

women and promote gender equality. However, the country remains divided between traditionalists and modernists, and the government is forced to straddle the line between these two competing ideologies.

### *Sexual Relations*

Unlike jurisdictions that prohibit discrimination against homosexuality and even allow same-gender marriage, the practice of homosexual acts is a criminal offense punishable by fines, imprisonment and possible deportation in all the countries under discussion in this article. Indonesia has not criminalized homosexuals, except for the Aceh region, and imposing criminal sentences for such behavior are quite rare.

However in the GCC, even in the most liberal of the countries, all sexual relations, including adultery outside wedlock, constitute a criminal offense punishable by fines, imprisonment and even more severe punishments. This raises a number of issues for expatriates and their employers coming from jurisdictions where cohabitation and casual sexual encounters do not involve any criminal prosecutions. In Malaysia, sexual relations outside wedlock are only an offense for Muslims. Expatriates, however, are advised not to engage in such relations with Muslims since this could very well result in their deportation.

Premarital sex may result in the detainment of nationals and, in some instances, deportation of expatriates in Saudi Arabia. Recently, a 32-year old Saudi national was arrested after boasting about his private sex life on the television network of Lebanese Broadcast Corp. (LBC), a company owned by a Saudi Prince Al-Waleed bin Talal. Both the Saudi national and LBC have been reprimanded for their role in the program. The government revoked the LBC's media license, prompting the closure of their Jeddah office. If convicted, the accused Saudi faces severe penalties for discussing this on television.

Even with these strict laws, there is no doubt many people in this geographical region are cohabiting, as well as indulging in casual sexual relations. The important issue for employers is that they cannot be involved in or condone any such activities. In most jurisdictions, it is a criminal offense not to report circumstances that a person is aware of and believes may constitute a criminal offense. Employers should certainly not make accommodations for cohabiting partners nor engage in fraudulent practices to secure a work visa for a "house spouse," including taking the person onto their books as an employee and clawing back his/her nominal salary by deducting from the real employee's salary. Such actions would involve an employer in both a criminal conspiracy in relation to sexual offense and fraud in relation to employment practice.

### *Drugs and Alcohol*

Recreational use and possession of illegal drugs are strictly prohibited in all the aforementioned countries with the exception of Yemen, which permits the chewing of "Qat", a local narcotic leaf which is wide spread in Yemen and some neighboring countries such as Djibouti and Ethiopia. Even though it is very common to see people

chewing Qat in Yemen, more and more companies nowadays are adopting policies that ban the chewing of Qat at all their sites during the workday.

Certain prescription drugs, especially narcotics, are illegal and should not be brought into these jurisdictions. Even in the most liberal state, there have been prosecutions for possession of prescription drugs brought from overseas by foreigners, although foreigners who can produce satisfactory evidence of their medical condition and the need for the particular medication or prescription are generally not prosecuted.

In addition, the merest trace of any illegal drugs found on any inhabitant of these states, or a visitor passing through, will result in prosecution and deportation for expatriates following any jail sentence. Also, there still are death penalties for the more serious drug offenses.

In light of the above, companies should formulate policies, which put their employees on notice of these drug laws and will hold them accountable for any violations.

The consumption of alcohol is permitted in Malaysia for non-Muslims and is readily available in bars and most restaurants and shops. During company functions, employers may serve alcohol but should always be sensitive to the feelings of their Muslim guests and employees, particularly if most of the attendees are Muslims.

There is zero tolerance of alcohol in Saudi Arabia and Kuwait whether for Muslims or expatriates and there are no clubs, bars or restaurants that serve alcoholic beverages. The UAE is again the most liberal in the GCC, except for Sharjah, which is dry, and alcohol permits are issued to allow non-Muslim expatriates to purchase alcohol for transportation to and consumption in their homes. The UAE, except Sharjah, is also host to a large number of bars, restaurants and clubs, which serve alcohol to non-Muslims. In Yemen, alcohol is only offered by five-star hotels.

Employers should ensure that their employees are aware of the applicable laws and if employees are going to consume alcohol at home in countries where that is allowed, their employer should encourage them to obtain the official permit. Otherwise, purchasing and transporting alcohol will be a criminal offense in licensed premises.

Not surprisingly, there is also zero tolerance of drinking and driving. Even a minor infringement, involving no damage to third-party property or injury or death is likely to result in the offender spending a month in prison upon conviction. The sentence increases up to seven years' of imprisonment for an accident involving the death of more than one person.

Indonesia adopted a death penalty for bringing and distributing narcotics in Indonesia. Consumption of drugs, if prescribed, is allowed in the workplace. However, if the employer suspects the employee of abusing prescription drugs, the employer can require the employee to take test. While alcohol consumption is more relaxed in Indonesia, it is still prohibited to consume alcohol during working hours and in the workplace. This behavior should be addressed in an employer's personnel policies and employees should be told that a violation may lead to discipline or

termination. It is not unlawful, however, to serve alcohol at company parties and other work-related functions.

There is a real tolerance of alcohol in Morocco and there are a lot of clubs, bars or restaurants that serve alcoholic beverages. Alcohol can also be purchased in local supermarkets and Morocco even produces local wine. Legally, alcohol permits are issued to allow non-Muslim Moroccan, expatriates and tourists to purchase and drink alcohol. However, local citizens also drink alcohol and the Moroccan labor code stipulates that being drunk in the workplace can justify termination.

The issue of alcohol becomes more acute in the Holy Month of Ramadhan. During that month, alcohol permits are suspended, the mini bars in hotels are emptied and, although this varies from country to country, the bars in hotels are closed. In Oman, not even water may be consumed in public by expats during daylight hours.

### *Religion*

Religion is probably the most delicate topic. Many parts of the Muslim world have high numbers of expatriates and Nationals who are non-Muslim. Although non-Muslims are not generally discriminated against based on religious grounds in terms of employment, there are laws in all the GCC countries that will impact the activities of "missionaries." It is an offense to try to convert a Muslim to another faith and it is also an offense to dishonour Islam. People have been arrested, prosecuted, imprisoned and then deported for giving away bibles on the street. Having said that, at the most liberal end of the spectrum, in the UAE and Dubai alone, is home to more than 30 churches of various Christian denominations and most, if not all, were given the land for the churches by the government. There are also places of worship for Hindus and Buddhists and there is generally a very high level of toleration. Iraq has always been home to a Christian minority and provides ample places of worship throughout the country. In Qatar, the first Christian church opened in 2008 on land provided by the government.

Although there remains an indigenous Jewish population in Yemen, any expatriate Jewish person considering moving to the region or a company considering moving Jewish personnel to the region, would need to consider that they will not be able to worship in public and, in some jurisdictions, there would be issues concerning residence visas. In general, worship in the home for any faith is a private matter that will rarely be subject to any intrusion. However, congregation in large groups may be illegal and prohibited.

Similarly, the Malaysian government prohibits any attempt to preach to or convert Muslims. A foreign national may be detained and/or deported if he is found engaged in such activities. It is an offense in Malaysia to insult or dishonour any religion.

Foreign companies will also have to comply with Muslim and national holidays, as well as different weekends (Thursday and Friday or Friday and Saturday) than those in most of the rest of world. However, in most of the jurisdictions there is nothing to prevent a company from granting additional holidays to staff that might coincide with religious holidays that they wish to take or simply allowing employees to be absent

as part of their annual holiday entitlement or on certain days that are important to their religion. In Malaysia, except for 2 of its 14 states, Saturday and Sunday are recognized as the official weekend for the government and private offices.

For Muslim employees, there should be sufficient flexibility to allow them to pray when required by their religion, including during the working day. In all of the countries of the region, reduced working hours are provided by legislation during the Holy Month of Ramadan (the 9<sup>th</sup> month of the Islamic calendar), which this year (1430) occurred around the 20<sup>th</sup> of August in the Gregorian calendar.

Since Indonesia recognizes four major religions, the constitution guarantees the right to worship and adopts the major holidays of these religions. Indonesia requires employers to provide a religious holiday allowance, which is considered as the 13<sup>th</sup> month salary. It is usually provided to the employees two weeks before the Eid al-Fitr or Christmas. For those who practice Buddhism or Hinduism, their holiday allowances will be provided before their major holidays or they may elect to have their holiday allowance taken before Eid al-Fitr or Christmas.

The Moroccan constitution provides for the freedom to practice one's religion. Islam is the official state religion. Non-Muslim foreign communities openly practice their faiths. Even more, the government provides tax benefits, land and building grants, subsidies and customs exemptions for imports necessary for the religious activities of the major religious groups, including Muslims, Jews and Christians.

The following Islamic holy days are national holidays in Morocco: Eid al-Adha, Islamic New Year, the birth of the Prophet Muhammad, and Eid al-Fitr. Other religious groups observed religious holy days without interference from government authorities. There is generally an amicable relationship among religious groups in Morocco and non-Muslims and foreigners can attend their religious services without any restrictions.

#### *Racial and Other Discrimination*

In the GCC, there are affirmative action rules designed to secure local nationals a percentage of jobs in certain industries as there is a general duty to employ nationals before considering expatriate workers. Certain roles are also reserved for nationals by law and legislation has increasingly focused on knowledge transfer to locals by way of an obligation on private sector employers to provide vocational training to nationals. Care should also be taken when terminating a national's employment, particularly in Saudi Arabia and the UAE, where recent legislation obliges employers to follow a prescribed termination process when dismissing a national employee. This may result in a national having preference or being given special treatment. There are generally few "anti-discrimination" laws or protected classes and it is not unusual to find advertisements for jobs that specify age, sex, nationality, etc. Of course, a foreign company can follow its own policies as long as it does not breach local laws on employment of nationals or gender. Generally, however, the multi-cultural and multi-racial workforces in the region work well together.

Indonesia regulates the positions that expatriates can take and the term of such positions. Their law has taken the view that expatriates should transfer the knowledge to Indonesians so they can take over after the term of engagement expires. This is reflected in the fees paid by the expatriate and his/her employer, which are contributed to funds for training Indonesians. One position that expatriates are not allowed to fill is that of a human resources manager or director because it is viewed as a delicate position for mediating between the employer and employees.

Morocco adopted strategies and measures to ensure that all citizens enjoy equal rights without discrimination. It initiated and implemented a national plan for gender equality and another plan for human rights education to bring awareness against racial discrimination, particularly against all forms of racial discrimination. It added programs to enhance protection of the Amazigh culture. Non-Moroccans are also fully protected against discrimination. However, any employer wishing to recruit a foreign worker must first obtain authorization from the employment governmental institution. This authorization is granted by a stamp on the employment contract and the contract is valid from the date of stamping. As a new requirement, foreign employees can only be hired following the delivery by the Agence Nationale de Promotion de l'emploi et des Compétences (ANAPEC), a certificate stating that no Moroccan nationals wish to apply for or are qualified for the position.

#### *The System of Sponsorship*

There has been, throughout the GCC, a system of sponsorship whereby any expat wishing to work in a country must be "sponsored" by a company or individual. This system has certain defects and in some cases has been abused. Bahrain and Kuwait are moving away from this system and the chief of police in Dubai has called for its abolition. It remains to be seen whether other GCC countries follow suit.

Indonesia still requires sponsorship by a company or individual for any expatriate to work in Indonesia.

#### *Conclusion*

Multi-national businesses doing business in the Muslim world face numerous challenges in the human resources and employment law arena. Great care must be taken to understand what is specifically prohibited by local law and how local customs and traditions affect the workplace. Sophisticated employers should anticipate that conflicts may arise between these laws and customs and a company's own code of conduct. The key is to act in a proactive way to determine – before operations are established – how these matters will be handled. There is no substitute for local knowledge. Care must be taken in retaining the services of experienced, local lawyers who understand and have experience dealing with these exact types of issues. In-house counsel and human resource executives should work with these individuals ahead of time so that when operations are established, the risk of human resource conflicts and legal problems are greatly minimized.

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