

Regulating the recruiters



By Elizabeth Williamson

Recruitment agencies have become increasingly prevalent in the Arabian Peninsula; the relatively transient expatriate workforce providing a particularly lucrative market. However, the global economic downturn shifted focus from hiring permanent employees to reducing labour costs and increasing efficiency. Consequently, alternative staffing models emerged, in particular through 'employment businesses' operating as 'manpower suppliers'. The Dubai Outsource Zone (DOZ), dedicated to the demands of outsourcing businesses, has also enabled providers to establish a presence in the region.

As is perhaps inevitable, the division of legal obligations between parties to such arrangements is often uncertain, leaving workers vulnerable to exploitation. However, in 2011 Ministerial Resolution No (1283) of 2010 Concerning Licensing and Organising Private Recruitment Agencies (MRI283) came into force, aimed at regulating this sector.

Licensing

A specific license is required to operate as an employment business in the UAE. Currently these have only been issued to few businesses 'onshore'. Whilst the Ministry of Labour (the Ministry) recently indicated that further licenses may be granted 'onshore', this will only be to employment businesses wholly owned and managed by UAE Nationals. Expatriates may only run employment businesses within a free trade zone.

Protection of workers

A principal objective of MRI 283 is to prevent malpractice within the industry. To achieve this, bank guarantees and deposits must now be submitted by staffing companies, which may be used to compensate workers where necessary. MRI 283 also introduced obligations to:

- employ qualified personnel within the staffing company;
- refrain from obtaining recruitment fees from workers;
- provide a clear explanation of the workers' contractual obligations;
- keep records of all workers; and
- repatriate workers in certain circumstances.

Employment businesses are also now jointly liable with their client for meeting obligations to the workers and are prohibited from providing workers to companies facing collateral labour disputes.

Outsourcing and offshoring

The UAE is seeking to present itself as a viable alternative to the more traditional offshore locations, particularly for senior employees attracted by the tax and lifestyle benefits. MRI283 reflects this, encouraging recruitment of a skilled workforce. The Ministry has also indicated that licenses are increasingly likely to be granted to those supplying skilled individuals as opposed to blue collar workers.

The more limited regulation surrounding business transfer arrangements and outsourcing services within the UAE also provides greater flexibility to adopt alternative staffing models. Businesses have more freedom to dismiss workers following an assignment and are not subject to a consultation process, as is commonly required in other jurisdictions.

One issue yet to be addressed is the assignment of employees of an employment business to the client. Presently no licenses are available within the DOZ permitting manpower supply and whilst practical solutions may be available, these require dialogue with the Free Zone Authority. Even where permission is obtained, the terms of an expatriate's visa prohibit them from working for an entity other than their sponsor and those sponsored by a Free Zone Authority are prohibited from working outside of that Free Zone. Special dispensation may be granted, however often only for a finite period.

Whilst failure to obtain permission has repercussions, the degree of enforcement is again unclear. However, inspections of premises have been known.

The future for manpower supply

MRI 283 demonstrates the UAE Government's determination to promote transparency in the employment intermediary sector and protect temporary workers, however the effect and viability of these changes will require time to assess and it will be interesting to see how the arrangements develop in practice.

Clyde & Co LLP

PO Box 7001, Rolex Tower, Sheikh Zayed Road, Dubai,
United Arab Emirates

Tel: (971) 4 384 4000 Fax: (971) 4 384 4004

Email: elizabeth.williamson@clydeco.ae

www.clydeco.com