Which issues would you most highlight to someone new to your country?

Immigration and visa requirements
Non-Saudi nationals may work in Saudi Arabia if they have prior approval from the Ministry of Labour and the Ministry of Interior. Similar to other Gulf Cooperation Council countries, Saudi Arabia has a sponsorship system, which means that expatriate workers can enter, work and leave the host country only with the permission or assistance of their sponsor. All individuals who come to Saudi Arabia to work must have a sponsor, which can be either a Saudi Arabian national or international company. A non-Saudi national may be employed for only a fixed term corresponding to the duration of his or her work permit and residency visa.

Nationalisation of workforce
Pursuant to the Nitaqat programme implemented by the Ministry of Labour, employers are classified based on the percentage of Saudi nationals that they employ. Establishments will be categorised as premium, green, yellow or red. In general, an employer benefits from being in a higher category through greater flexibility in recruiting and managing expatriate employees, and will face increased penalties when placed in a lower category.

Recruiting female workers
Women are permitted to work but are restricted from working in certain fields and are prohibited from working in hazardous jobs or industries, as set out in a list issued by the Ministry of Labour.

Women must work separately from any male employees (ie, in partitioned offices) and must have separate facilities. There are particular regulations with regard to women working in certain sectors (eg, factories, retail and kitchens).

What do you consider unique to those doing business in your country?

The Nitaqat programme sets high targets for the employment of Saudi nationals. Under the Labour Law, 75% of the total workforce must comprise Saudi nationals. However, under Nitaqat, an employer will be given a quota for the employment of Saudi nationals commensurate with the number of employees and the sector in which the employer operates. Various subsidies and incentives are offered to encourage employers to meet and exceed quotas.

Is there any general advice you would give in the employment area?

The Nitaqat programme and the immigration policy pose various considerations for enterprises looking to conduct business in Saudi Arabia and employ non-Saudi nationals:

- Every employer must have at least one Saudi national employee, regardless of size.
- Certain functions may be undertaken only by Saudi nationals.
- An employer must employ a Saudi national in a job before employing a non-Saudi national in that job.

Against this backdrop of promoting the employment of Saudi nationals, in practice, the termination of their employment can be problematic.

Employers wishing to employ female workers must also take into account the unique legal environment of Saudi Arabia.

Employers should be aware of their duty to contribute to the state pension scheme for Saudi national (Gulf Cooperation Council nationals are also entitled to pension contributions in accordance with their home country’s pension schemes).
employees on an ongoing basis. Further, on termination, employees are entitled to an end of service payment, which employers should accrue in their accounts during the employment period.

Emerging issues/hot topics/proposals for reform

Are there any noteworthy proposals for reform in your jurisdiction?

Clyde & Co LLP

Several long-awaited employment law reforms have recently been implemented. In April 2015 the Council of Ministers approved 38 amendments to the Labour Law, including the following (which will be effective six months from their publication in the Official Gazette):

- Training – employers are required to train their Saudi national employees with a view to enhancing their technical, administrative, vocational and other skills for the purpose of gradually replacing non-Saudi employees. Each employer is required to keep a record showing the names of the Saudi workers who have replaced the non-Saudi nationals. Establishments with 50 or more employees must now train 12% of their Saudi national employees (previously 6%).
- Probation – the maximum probation period has been increased from 90 days to 180 days.
- Fixed-term contract – the maximum permitted duration of a fixed-term contract has been extended from three years to four years. Further, as of October 2015, fixed-term contracts will be converted into indefinite contracts on the third renewal rather than the second, as previously.
- Work regulations – when preparing policies and regulations in line with the prescribed model prepared by the Ministry of Labour, employers may now obtain approval to incorporate additional rules.
- Whistleblowing reward – a financial reward of no more than 25% of the fine imposed on the employer will be given to individuals who assist inspectors by notifying the Ministry of Labour of an employer’s non-compliance with labour regulations.

What are the emerging trends in employment law in your jurisdiction?

Clyde & Co LLP

There is an increased focus on vocational training for Saudi nationals to encourage the incorporation of Saudi nationals into the workforce at all levels. Employers can benefit from subsidies offered for employing Saudi students undertaking vocational training.

The employment relationship

Country specific laws

What laws and regulations govern the employment relationship?

Clyde & Co LLP

The Saudi legal system is based on Sharia law. The employment relationship between employers and employees is governed primarily by the Labour Law (Royal Decree M/51 23 23/1426/September 27 2005), which covers all aspects of the employment relationship, including employment contracts, wages and benefits, leave, working hours and termination. The Labour Law is supplemented by ministerial resolutions issued by the Ministry of Labour.

Who do these cover, including categories of worker?

Clyde & Co LLP

The Labour Law applies to all employers and employees in Saudi Arabia, except:

- expatriates who enter Saudi Arabia to perform specific tasks limited to a duration of two months (ie, those on business visas); and
- domestic servants (eg, maids and drivers).

Several Ministry of Labour resolutions regulate the employment of women in certain sectors, while others regulate the
Misclassification

Are there specific rules regarding employee/contractor classification?

Clyde & Co LLP

The Labour Law does not distinguish between different categories of employee and there are no specific regulations for managerial or executive-level employees, except in relation to working hours and rest periods. However, it does distinguish between Saudi and non-Saudi employees. The Nitaqat programme and the immigration rules mean that there are major differences in how these two categories of employee are dealt with. The concept of self-employment or contracting is extremely limited. The concept of part-time working is recognised, particularly in sectors such as agriculture. However, any commercial activity in Saudi Arabia must be licensed, and thus to have true self-employed status an individual should hold a trade licence.

Contracts

Must an employment contract be in writing?

Clyde & Co LLP

Employment contracts are legal and binding, and should be in writing, particularly for non-Saudi nationals. Arabic is the official language of contracts, employment data and records, and therefore the Arabic contract text will apply in the event of any conflict between contractual provisions and any English documents.

Are any terms implied into employment contracts?

Clyde & Co LLP

The Labour Law sets out an employee’s minimum entitlements and applies to all employer-employee relationships. Employers are free to impose different working terms on an employee, provided that they are more generous to the employee. Therefore, each employment contract is to be read subject to the Labour Law.

Are mandatory arbitration/dispute resolution agreements enforceable?

Clyde & Co LLP

Employee complaints or disputes should be brought to one of the 37 labour offices which mediate labour disputes. If it is unable to resolve the dispute, the office will refer the dispute to one of the competent commissions for the settlement of labour disputes. Arbitration is rarely used in employment disputes due to the high cost and expenses that may be incurred by the parties; however, the Labour Law does not preclude arbitration as an option for resolving employment disputes.

How can employers make changes to existing employment agreements?

Clyde & Co LLP

Neither the employee nor the employer may change the conditions of the contract without the other’s consent. As employment contracts are generally in writing, any changes must also be by written agreement. An employee may terminate the contract without notice if the employer fails to fulfil its contractual obligations.

Foreign workers

Is a distinction drawn between local and foreign workers?

Clyde & Co LLP

Is a distinction drawn between local and foreign workers?
Foreign employees must have a work permit and a residency card (*iqama*) in order to work in Saudi Arabia. All non-Saudi employees’ contracts are deemed to be fixed-term contracts. If an employment contract does not specify its duration, the duration will be taken to be equal to that of the employee’s residency visa and work permit. Contracts for Saudi nationals can be indefinite or for a fixed period (for a specified duration or a specific task). If a fixed-term contract with a Saudi national is renewed for two consecutive terms or for a cumulative period of three years (whichever comes first), the contract will be deemed to be an indefinite contract. As of October 2015, the contract will not become an indefinite contract until the third renewal.

Employers must pay the cost of repatriating non-Saudi nationals on termination of their employment. Although there are limited exceptions to this rule, in practice, if the employee cannot afford the cost of returning home, this obligation will fall on the employer.

The Nitaqat programme and the immigration policy pose various considerations for an enterprise looking to conduct business in Saudi Arabia and employ non-Saudi nationals:

- Every employer must have at least one Saudi national employee, regardless of size.
- Certain functions may be undertaken only by Saudi nationals.
- An employer must employ a Saudi national in a job before employing a non-Saudi national in that job.

In addition, Saudi nationals are entitled to additional or varying benefits (eg, retirement benefits in the form of employer contributions to the state pension scheme).

### Advertising

**What are the requirements relating to advertising positions?**

_Clyde & Co LLP_

In order to obtain a work visa for an expatriate employee, the employer must first show that it has advertised locally to Saudi nationals through the Human Resources Development Fund for a minimum of two weeks.

The non-Saudi employee can be employed and undertake work only as stipulated in the work permit, which cannot be renewed without the employer first ascertaining whether any Saudi nationals with the required skills want the position.

### Background checks

**What can employers do with regard to background checks and inquiries in relation to the following:**

(a) **Criminal records?**

_Clyde & Co LLP_

Police clearance certificates are available, but only in limited circumstances.

(b) **Medical history?**

_Clyde & Co LLP_

Under the immigration procedures, non-Saudi national employees must undergo a medical check. When an expatriate is recruited, he or she must obtain a medical examination certificate in his or her home country including a negative test for contagious diseases (particularly HIV) and up-to-date vaccinations (including meningococcal, hepatitis A and B and, depending on the home country, typhoid).

(c) **Drug screening?**
The law does not expressly prohibit drug screening and, given the serious attitude of the Saudi authorities towards drug possession, pre-employment drug testing is unlikely to result in a backlash against the employer. Alcohol is also prohibited in Saudi Arabia. Employers can carry out random drug and alcohol testing of employees using the Ministry of Labour’s accredited system and registered government-designated clinics. This service is particularly common in the oil and gas industry.

(d) Credit checks?

The Saudi Credit Bureau offers consumer credit information services in Saudi Arabia.

(e) Immigration status?

Employers are required to secure work and residence permits for foreign employees brought into the country. A non-Saudi national employee must carry his or her residence permit for identification purposes at all times. Although it is unlawful, it is common practice for employers to hold employees’ passports until the employee leaves the country, as employers are liable for the administrative cost of the employee’s exit and re-entry.

(f) Social media?

The Cybercrime Law prohibits the processing of information that infringes privacy through electronic means. However, although the law is broadly worded, it is unlikely to prohibit employers from viewing publicly available information on potential employees.

(g) Other?

N/A.

Wages and working time

Is there a national minimum wage and, if so, what is it?

There is no minimum wage. However, the Labour Law states that the Council of Ministers shall set a minimum wage if it becomes necessary.

In order for a Saudi national to be included in the quota set down by the regulations on the employment of nationals in the private sector, the employee must be paid at least Sr3,000 a month.

Are there restrictions on working hours?

The maximum working hours (except for senior employees and managers, who are exempt from relevant provisions) are eight hours a day and 48 hours in a six-day week. An employee's total working hours, including overtime, should not exceed 10 hours a day or 60 hours in a six-day week. Friday is the weekly rest day for all workers. There is also an annual overtime cap of 481 hours.
Certain sectors can operate a nine-hour day, while some are required to operate a seven-hour day for health and safety reasons. The Ministry of Labour sets the maximum number of permitted overtime hours that an employee can be asked to work.

During Ramadan, the statutory working hours are reduced by two hours for Muslim employees.

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<th>Hours and overtime</th>
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<td><strong>What are the requirements for meal and rest breaks?</strong></td>
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<td>Employees should not work more than five consecutive hours without a break of at least 30 minutes in any working day and should not remain at the workplace for more than 11 hours in total. Working hours do not include periods designated for rest, prayers and meals.</td>
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| **How should overtime be calculated?** |
| **Clyde & Co LLP** |
| Overtime is payable at 100% of the employee's usual hourly wage, plus a bonus rate of 50% of basic pay. All work on Fridays and public holidays is considered to be overtime. |

| **What exemptions are there from overtime?** |
| **Clyde & Co LLP** |
| The statutory provisions for working hours and the working week do not apply to executive management (referred to as "persons occupying high positions of authority in management and policy"). In firms where employees work in shifts, employers may increase working hours in excess of eight hours a day or 48 hours a week, subject to certain thresholds. All shifts must be pre-approved by the Ministry of Labour. |

| **Is there a minimum paid holiday entitlement?** |
| **Clyde & Co LLP** |
| The minimum annual paid holiday entitlement is 21 calendar days after one year's service, increasing to 30 calendar days once the employee has completed five years' service. |

| **What are the rules applicable to final pay and deductions from wages?** |
| **Clyde & Co LLP** |
| Employees have a right to a cash payment on termination, calculated as follows:

- 15 days' wages for each of the first five years' employment; and
- 30 days' wages for each year thereafter.

For the purposes of calculating this entitlement, the wage generally includes the total amounts paid to the employee. However, in some circumstances certain payments may be excluded from the calculation.

Due to the lack of interaction between the social security laws (which provide benefits for Saudi national employees) and the Labour Law, the position in Saudi Arabia relating to the end of service payment for Saudi nationals is complex and involves a varied calculation. However, Saudi nationals are entitled to both employer contributions into the state pension scheme and the end of service payment.

The employer must pay the employee his or her wages and settle any entitlements within one week of termination, extended to two weeks for employees who resign.

The employer can deduct any work-related debt from the employee's entitlements. However, only limited categories of
payment may be deducted from the employee's wages without the employee's written consent (e.g., the repayment of loans or fines imposed on the employee).

Record keeping

**What payroll and payment records must be maintained?**

**Saudi Arabia**

Clyde & Co LLP

All employers must be registered with the Ministry of Labour and must maintain up-to-date records of company premises, lists of employees and general manager and employer contact details. In keeping with training obligations, each employer must also keep a record showing the names of the Saudi workers who have received training and who have replaced non-Saudi national employees.

Arabic versions of contracts and records will be taken as the accepted version by the Saudi courts and ministries.

Discrimination, harassment & family leave

**Family and medical leave**

**What is the position in relation to family and medical leave?**

**Saudi Arabia**

Clyde & Co LLP

**Maternity leave**

A female worker is entitled to a minimum of 10 weeks' maternity leave: four weeks to be taken immediately preceding the expected delivery date and six weeks following the birth of the child. The expected delivery date is determined by the firm's physician or pursuant to a medical report certified by a health authority. A woman may not work during the six-week period immediately following delivery under any circumstances. The wage paid during maternity leave varies depending on length of service. Further, the wage payable during annual leave may be affected where a female employee has taken maternity leave in the same year.

**Paternity leave**

Employees are entitled to one day's paternity leave for the birth of a child. However, in many multinationals it is market practice to offer male employees an additional period of leave.

In addition to maternity and paternity leave, an employee is entitled to paid leave in the following cases:

- compassionate leave for the death of a spouse, parent or child;
- marriage; and
- emergency leave for situations beyond the employee’s control (e.g., an illness or an accident involving a family member).

**Harassment**

**What is the position in relation to harassment?**

**Saudi Arabia**

Clyde & Co LLP

No specific laws govern harassment; however, sexual harassment is a criminal offence and a criminal complaint can be made against the perpetrator (including in the employment context).

**Whistleblowing**

**What is the position in relation to whistleblowing?**

**Saudi Arabia**

Clyde & Co LLP
A recent amendment to the Labour Law provided that a whistleblower who assists Ministry of Labour inspectors to detect a violation of the Labour Law can receive up to 25% of the value of the fine imposed on the employer. This provision will come into force in October 2015.

What is the position in relation to:

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<td><strong>(f) Religion?</strong></td>
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Privacy in the workplace

Privacy and monitoring

What are employees’ rights with regard to privacy and monitoring?

Clyde & Co LLP

The Saudi cybercrime legislation imposes criminal penalties on those who invade privacy by using recording equipment or intercepting electronically transmitted data without authorisation. The courts may also apply the principles of Sharia law. As a general principle of Sharia law, an employer is liable for any damage directly suffered by an employee as a consequence of the employer's actions.

Employers should include provisions in employment contracts concerning monitoring and privacy in the workplace.

To what extent can employers regulate off-duty conduct?

Clyde & Co LLP

The Labour Law provides that an employee may be summarily dismissed “if it is established that the worker has committed an act of misconduct or an act lacking honesty or integrity and been finally convicted”. However, the law also provides that contracts of an indefinite term may be terminated only for a “valid reason”. Ideally, this should be a reason based on the employee's work following the conduct of a proper and documented termination procedure by the employer. Employers looking to impose penalties for conduct unrelated to the workplace may face difficulties if the employee has not received a criminal conviction for such conduct.

Are there rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Clyde & Co LLP

Actions that amount to a violation of the employee's privacy using electronic means are prohibited under cybercrime legislation and Sharia law. Generally, an employer should inform employees of its social media policy and obtain their consent to any monitoring in advance.

Trade secrets and restrictive covenants

Intellectual Property

Who owns IP rights created by employees during the course of their employment?

Clyde & Co LLP

Under Saudi patent law, a patent developed by an employee belongs to the employer where the employer can
Demonstrate that the patent was created by the employee in the course of the employment (ie, in the course of performing the role) and using facilities or data made available by the employer. No express legislative provisions govern the ownership of other IP rights created by an employee and there is no general presumption that an employer owns intellectual property created by an employee.

Restrictive covenants

What types of restrictive covenants are recognised and enforceable?

Saudi Arabia

Clyde & Co LLP

Non-compete and confidentiality obligations are specifically recognised under the Labour Law. The employment contract may include a non-disclosure provision valid for a maximum of two years from the date of termination. This provision is valid only if it is limited in regard to the time, place and nature of the business to the extent reasonably necessary to protect the employer’s lawful interests. The Labour Law does not preclude employers from imposing other post-termination restrictions (eg, non-solicitation and non-dealing provisions). Any such restrictions must be reasonable and appropriately limited in scope in order to be enforceable.

Non-compete

Are there any special rules on non-competes for particular classes of employee?

Saudi Arabia

Clyde & Co LLP

An employer may include a non-compete clause in an employment contract or ask an employee to sign a non-compete agreement when he or she starts. According to Article 83 of the Labour Law, this provision is valid only if it is limited in regard to the time, place and nature of the business to the extent reasonably necessary to protect the employer’s lawful interests. The maximum duration of such provision is two years.

In practical terms, employers can ensure that non-Saudi national employees uphold non-compete obligations through the restriction imposed on foreign workers regarding the transfer of sponsorship to a new employer. All foreign workers must be sponsored in order to reside and work in Saudi Arabia. They cannot transfer their sponsorship to another employer if they have not completed at least two years’ continuous service with the existing employer and obtained a letter from their existing employer stating that it does not object to the employee taking an alternative job.

Discipline and grievance procedures

Procedures

Are there specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Saudi Arabia

Clyde & Co LLP

The Ministry of Labour has issued model disciplinary rules for employers to follow when disciplining and dismissing employees.

Dismissing an employee for cause is regulated by Article 80 of the Labour Law, which sets down an exhaustive list of grounds on which an employer may terminate the employment contract without compensation, prior notice or payment of the end of service payment, provided that the employee is given the chance to provide explain his or her behaviour and to argue against termination. This includes any act of physical violence, sabotage or vandalism in the workplace.

In case of an indefinite contract, an employer may dismiss an employee after providing notice for a valid reason. Due process must still be followed.
Termination

Unions and layoffs

Is your country (or a particular area) known to be heavily unionised?

Saudi Arabia

Clyde & Co LLP

No.

What are the rules on trade union recognition?

Saudi Arabia

Clyde & Co LLP

Trade unions are not permitted in Saudi Arabia. However, the Labour Law permits the establishment of worker councils for Saudi nationals only. Recent amendments to the Labour Law encourage employers to form worker committees to oversee staff welfare and to handle the funds collected through fines imposed on workers.

What are the rules on collective bargaining?

Saudi Arabia

Clyde & Co LLP

No particular provisions deal with collective bargaining.

Termination

Notice

Are employers required to give notice of termination?

Saudi Arabia

Clyde & Co LLP

If the employment contract is for an unlimited term, either party may terminate it for a valid reason by serving on the other party no less than:

- 30 days' written notice if the worker is paid monthly; or
- 15 days' written notice for other workers (or the period specified in the contract, if different).

Failure to give adequate notice entitles the other party to compensation equivalent to the notice period required or remaining (as the case may be).

The Labour Law also lists specific circumstances in which the employer or employee may terminate employment without notice.

An employee on an indefinite term contract is also entitled to written reasons for termination of employment.

Redundancies

What are the rules that govern redundancy procedures?

Saudi Arabia

Clyde & Co LLP

Recent amendments to the Labour Law (applicable from October 2015) allow the employer to terminate the employment contract validly if the business is closed permanently or the business unit or operation in which the employee is employed is closed.

In any case, as a matter of best practice and to reduce the risk of successful arbitrary dismissal claims, an employer should meet with its employees and follow a consultation process.
Are there particular rules for collective redundancies/mass layoffs?

Clyde & Co LLP

Recent amendments to the Labour Law allow the employer to terminate the employment contract validly if the business is closed permanently or the business unit or operation in which the employee is employed is closed.

In any case, as a matter of best practice and to reduce the risk of successful arbitrary dismissal claims, an employer should meet with its employees and follow a consultation process.

What protections do employees have on dismissal?

Clyde & Co LLP

If the employment contract is for an unlimited term, either party may terminate it for a valid reason by serving on the other party no less than:

- 30 days' written notice if the worker is paid monthly; or
- 15 days' written notice for other workers (or the period specified in the contract, if different).

Failure to give adequate notice entitles the other party to compensation equivalent to the notice period required or remaining (as the case may be).

An employer without a valid reason for termination or which does not follow due process may face a successful claim for compensation for unjustified termination.

The level of compensation for termination of either a fixed-term or an indefinite contract depends on whether the employee is a Saudi national or an expatriate, and whether the fixed-term contract provides for a contractual notice period.

Further, in the case of a Saudi national, the employer may be ordered to reinstate the employee.

Which tribunals or courts have jurisdiction to hear complaints?

Clyde & Co LLP

At first instance, employment disputes should be brought to the labour office in the locality where the employee works. The labour office will attempt to mediate the labour dispute.

If the dispute is not settled at this stage, it may be referred to one of the competent commissions empowered to settle labour disputes. There are two committees: the Initial Committee for the Settlement of Labour Disputes and the Supreme Committee for the Settlement of Labour Disputes.

The initial committee is effectively the first-instance court for labour disputes.

What is the procedure and typical timescale?

Clyde & Co LLP

Cases involving claims under the Labour Law or arising out of employment contracts will be accepted by the relevant labour office only within 12 months of termination. Further, any complaint regarding breach of the Labour Law, a regulation or a decision must be brought within 12 months of the violation occurring. However, in practice, employees can bring claims within 12 months of termination for violations that occur during the course of employment.

Before commencing litigation, the parties should attempt to resolve disputes internally. Even once a claim has been made, the relevant labour office will propose a settlement to the parties, which they are free to accept or reject.

Where a settlement cannot be achieved, the claim will be heard by one of the labour dispute settlement committees.
Decisions of the initial committee may be appealed within 30 days of receiving the judgment. If the decision is not appealed within the specified period, it shall be deemed final and enforceable.

Appeals

What is the route for appeals?

Saudi Arabia

Clyde & Co LLP

Certain types of decision issued by the initial committee may not be appealed. Others may be appealed to the Supreme Committee for the Settlement of Labour Disputes.

Each supreme committee circuit shall have jurisdiction to rule finally on appeals before it.

The supreme committee has the power to review part or all of a case and, if necessary, to:

- call witnesses to give evidence;
- access any premises for the purpose of conducting investigation; and
- examine all of the relevant records and documents (and require the submission of further documents and evidence as necessary).

All supreme committee circuit decisions are enforceable as of the date of issue.