

Abu Dhabi Oil & Gas Update

Perspectives on latest developments



Security Passes for ADNOC Facilities

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Companies that manufacture and sell products to Abu Dhabi's state companies involved in power, water and petroleum may require their employees to access such facilities in order to provide installation, after-sales and maintenance services. Such access requires a security pass issued by the Critical National Infrastructure Authority (CNIA) of Abu Dhabi. The application procedures for receiving this security pass have recently become substantially more stringent.

Security Pass System in Abu Dhabi

Abu Dhabi established the first public authority dedicated to infrastructure protection in 2007. Following an administrative restructuring in 2012, the CNIA was established as one successor to the previous authority, at which time it was placed under the jurisdiction of the Armed Forces General Directorate. The CNIA head office is at the Al Bateen Air Base on Airport Road in Abu Dhabi.

Part of CNIA's role is reviewing applications for security passes and issuing such security passes which are required for any person to enter a facility that is deemed to be "critical infrastructure"—primarily power, water, and petroleum facilities. Those facilities include all power and desalination plants in Abu Dhabi, and the industrial facilities of GASCO, TAKREER, FERTIL, Elixir, Al Hosn, Borouge, and other ADNOC group companies.

Since the establishment of CNIA in early 2012, a number of companies have experienced a significant change in the procedures for applying for a security pass to enter critical infrastructure facilities such as those of ADNOC group companies. Many of the actual requirements of the security pass application are not published and are only revealed during the application process. The primary problem reported is that individuals with non-Abu Dhabi UAE residence visas, such as persons with a UAE visa issued by a company incorporated in Dubai, are not eligible to apply for a security pass from CNIA. Other problems reported have been that the sponsoring company in Abu Dhabi does not have the proper activities listed on its commercial license. Additionally, it has been reported that vehicles with non-Abu Dhabi UAE license plates are no longer permitted to enter such facilities and transport products from factories or ports originating in other Emirates.

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These new policies have created significant obstacles for companies that are not established in Abu Dhabi but which have qualified technicians elsewhere in the UAE ready to visit facilities and perform the necessary services.

Two options are available for such companies seeking to apply for a security pass from CNIA for employees:

- establishment of a branch of a foreign company in Abu Dhabi with the appropriate activity listed on its commercial license (importantly, this must be a branch of a foreign company, not a branch of a non-Abu Dhabi UAE company such as a Dubai free zone company); or
- secondment of employees to a commercial agent or distributor of the company that is based in Abu Dhabi and properly licensed in a way that its employees can apply for a security pass from CNIA.

This alert briefly sets out the key issues in each of those options.

Branch Establishment

UAE law permits foreign companies to establish a local branch to carry out certain activities of the parent company. It is common for multinationals to establish a business in Abu Dhabi by way of a foreign branch. A branch can be established through a registration process that requires a local branch manager and a UAE national to act as the service agent of the branch (colloquially referred to as a 'sponsor').

Although there are currently no corporate or personal income taxes in the UAE imposed on most companies, business establishment in the UAE presents some logistical challenges and commitments that are rare outside the Middle East. One issue is that the branch must have a physical office location that must be set up and inspected by the authorities before the branch can be finally registered (a mere mailing address is not enough). Also, the documentation of the parent company must be exhaustively notarized and authenticated in the company's home jurisdiction, sent to the UAE, and then translated into Arabic and further notarized and authenticated in the UAE.

The CNIA requires that "oil and gas field services" be listed on the commercial license of a branch that is applying for a security pass for ADNOC group company facilities. This requires the approval of the Supreme Petroleum Council of Abu Dhabi, which has three core requirements for approving a branch to register this as a commercial activity:

- the national agent of the branch must be a UAE national from Abu Dhabi;
- the company must be a foreign company, not a company from another Emirate of the UAE; and
- typically, an equivalent of "oil and gas field services" must be listed on the commercial license of the company in its home jurisdiction.

Power and water companies other than ADNOC group companies may require that a branch have a different type of permitted activity listed on the commercial license of the branch.

Secondment

UAE law requires that an employer sponsor the work and residence visa of foreign national employees, which are generally not permitted to work for any company other than the sponsoring employer. As such, the concept of "secondment" of employees is not recognized in the UAE in the same way that it exists in other jurisdictions.

Even so, it is possible to structure a secondment from a multinational company to a company in Abu Dhabi, and receive a visa in Abu Dhabi, through the right set of contracts. In this way, any seconded employees who acquire an Abu Dhabi residence visa should be able to apply for the CNIA security pass.

This option can be implemented quickly when compared to branch establishment, but it carries risks for the agent and the secondee. As secondment is not a recognized concept, the authorities in the UAE will consider the secondee an employee of the Abu Dhabi-based sponsoring company only. With that sponsorship comes liability for all actions of the employee, such as any damage that could occur to an ADNOC facility. Although in our experience agents are typically keen to start such a secondment relationship, as the risks inherent in that secondment are recognized over time, or if any problems arise that result in damages to the agent, the agent may make claims against the seconding company and cease to cooperate. The seconding company may also be unable to lend the assistance to its employees who are held liable for damage or accidents. As such, the secondment option is not recommended as a permanent solution to obtaining the CNIA security pass.

The current CNIA policy on issuing security passes presents a challenge to companies that have until now been doing business with Abu Dhabi state entities by way of dispatching employees from outside the UAE or from within the UAE such as in Dubai. Even so, the size and scale of ADNOC business means that the two options for applying for a CNIA gate pass should be carefully considered.

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