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A comprehensive multi-jurisdictional analysis on COVID-19 testing in the Middle East

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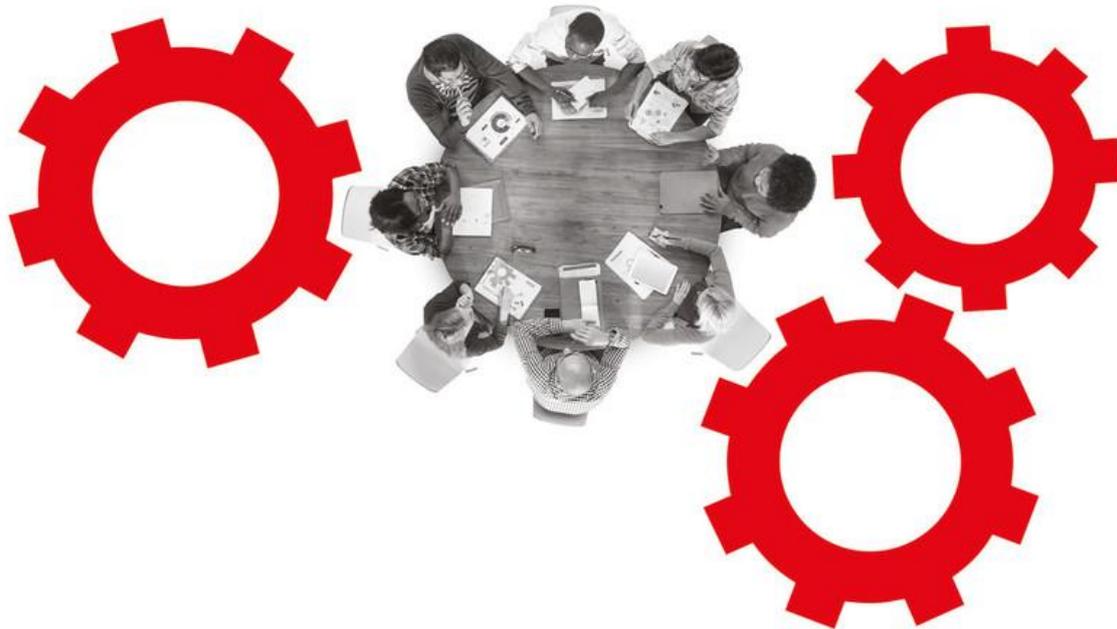


Introductory remarks

On 11 March 2020, the World Health Organization (WHO) officially declared the coronavirus (“COVID-19”) a global pandemic.

COVID-19 has affected more than 210 countries and almost every single industry. As a result, companies have been seeking clarity in many aspects including but not limited to approved test kits and their availability and the ability of employers to impose certain measures in the work place to protect their contractors, employees and laborers.

At the forefront of legal queries within this area; which tests can be conducted and approved by the relevant authorities, and what are the measures that can be taken by employers to ensure the safety of their employees? This report provides an overview of the questions and answers in relation to the measures enacted by the different governments in jurisdictions within which we operate, namely the United Arab Emirates (UAE), Iraq, Jordan, Qatar and Saudi Arabia.





Questions and answers

Which COVID-19 test kits are approved by relevant authorities and does the performance of testing require any government notification?

UAE



Applicable Authorities:

- Ministry of Health and Prevention ("MoHP")
- Abu Dhabi Health Authority (HAAD)
- Dubai Health Authority (DHA)

Applicable Laws:

- Federal Law No 4 of 1983 governing the import, manufacture, sale and distribution of pharmaceuticals and the regulation of pharmacists and pharmacies ("the Pharmaceutical Law")
- Federal Law No 14 of 1995 governing the import of drugs into the UAE ("Import of Drugs Law")
- Federal Law No 14 of 2014 concerning the Prevention of Communicable Diseases (the "Communicable Diseases Law")
- Cabinet Decision No. 33 of 2016 On the Implementing Regulation to Federal Law No. 14 of 2014 on the Control of Communicable Diseases ("Implementing Regulation of the Law")
- Medical Device Registration Guideline (2011)
- the Ministerial Decision No. 281 of the year 2020 in the matter regulating remote work in private sector establishments during the application of precautionary measures to limit the spread of the new Corona virus ("Ministerial Decision No. 281")
- The Resolution of the Attorney General No. 38 of 2020 on the Implementation of the List of Violations and Administrative Sanctions issued under Cabinet Resolution No. 17 of 2020 ("Resolution No. 38")

All medicines must be registered with the MoHP before they can be distributed and used in the UAE market.

Test kits could come under the Pharmaceuticals Law to the extent they contain substances capable of being classed as drugs or pharmaceutical preparations within the scope of Pharmaceuticals Law. In this case (and under Import of Drugs law and Medical Device Registration Guideline (2011)) in order to be used in the UAE, the test kits would need to be registered in the official medications register approved by the MoHP for the registration of pharmaceutical companies and their products.

Available tests in the country are currently being carried out by hospitals and testing centers. The Government has recently opened a number of testing centers including 13 drive through testing centers, open to all. The first testing center was established in Zayed sports city in Abu Dhabi.

Saudi Arabia



All medical devices (intended to be used in Saudi Arabia) must be approved by and registered with the Saudi Food & Drug Authority ("SFDA"). Medical devices are primarily regulated by Medical Devices

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Interim Regulations¹. A 'Medical Device' is defined as 'any instrument, apparatus, implement, machine, appliance, implant, in vitro reagent or calibrator, software, material or other similar or related article, intended by the manufacturer to be used, alone or in combination, for human beings for diagnosis of a disease'. The testing kit will therefore be considered a medical device requiring the approval of the SFDA for use in Saudi Arabia.

In certain instances of justiciable emergency, the requirement for the entire approval and registration process with the SFDA can be waived. Given that COVID-19 has been declared a global pandemic by the WHO, and that access to the test kits has been difficult, it may be the case that the SFDA has waived some or all of the approval and registration requirements for COVID-19 test kits which are being imported into Saudi Arabia.

The Saudi Ministry of Health (SMoH) is currently controlling the testing and treatment of certain illnesses (communicable diseases) which are included in a list issued by the SMoH. This includes diseases such as Tuberculosis, HIV, Hepatitis, malaria etc. Accordingly, tests for such diseases may only be carried out in government hospitals or facilities. It is unclear if COVID-19 has been added to the list of these diseases by the SMoH.

The Ministry of Human Resources obliges each entity to provide basic examination on a daily basis for each employee that enters its establishment, and to report any suspected cases. Given the characteristics and the current situation, it is likely that the Saudi government is seeking to have control over how the testing of this particular disease is carried out to ensure accuracy of the results. It is therefore recommended that a suspected case is reported at the service center set up by the MoH at UAN 937.



¹

Issued by the Saudi Food and Drug Authority's Board of Directors decree number 1-8-1429 and dated 27 December 2008

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Jordan



Generally, any testing used in Jordan is subject to prior approvals and licensing by the Jordanian Ministry of Health (JMoH) and any other legal entity that may have authority, such as the Jordan Food and Drug Administration. At present, in order for relevant entities and laboratories to administer the tests, the JMoH must permit and authorize such administration.

Qatar



The test kits could come under the scope of Law No. 1 of 1986 on the Registration of Pharmaceutical Companies and their Products (the "Pharmaceuticals Law") to the extent that the test kits contain substances capable of being classed as drugs or pharmaceutical preparations.

Pursuant to articles 2 and 5 of the Pharmaceuticals Law, in order for test kits to be used in Qatar, they would need to be registered in the official medications register approved by the committee for the registration of pharmaceutical companies and their products.

Iraq



All tests related to COVID-19 should be processed at government laboratories or private laboratories licensed by the Iraqi Ministry of Health (IMoH).

Pursuant to the Council of Ministries' Decision dated 26 March 2020 (the "Decision"), the Government decided to form the "National Committee of Health and Safety" (the "Committee") in order to control the spread of COVID-19. Under the Decision the Committee is authorized to issue the relevant policies and general plans, and to identify the best structure to implement them. The Committee is granted broad powers to take all the necessary measures to limit and control the spread of the virus across the country.



Which measures are being undertaken to administer COVID-19 tests and which obligations are in place to communicate results?

UAE



Available tests are currently being undertaken either in health facilities or by way of drive through testing (under the supervision of the MoHP). The test results are communicated with the person who undertook the test and all relevant health authorities. The test takes five minutes to perform. For the drive through process, the individual remains seated in the car and a healthcare worker takes a nasal swab from the individual. An SMS text will then be sent to the individual notifying them of test results; this can take up to 48 hours. If the individual does not have apparent symptoms of the virus and still wishes to take the test, the individual may do so at a cost starting from AED370. In all events the results will be communicated to the health authorities and the latter will take actions accordingly.

In general, administration of the test and communication of results shall be carried out by the MoHP and the relevant health authority as provided under article 15 of the Communicable Diseases Law.

COVID-19 testing is currently carried out only in dedicated medical centers and so a company would not have the ability to test its employees on site. Given the sensitivity of the situation and the current exclusive control on pandemic related communications, any public announcements of results would be issued by the MoHP by way of press briefings.

Saudi Arabia



SFDA provides guidance on the supervision of the use of a particular medical device (if required) at the point of approval and registration of the same in Saudi Arabia. Accordingly, if the SFDA believes that medical supervision in the administration of COVID-19 tests (using the specified test kits) is required, then the same is likely to be communicated at the point of approval and registration of the device/test kit with the SFDA. We are currently not aware of any specific supervision or reporting requirements in respect of the COVID-19 test kits.

Jordan



In general, all laboratories are required by law to have a medically licensed supervisor to enable the laboratory to conduct its work. As for the current situation, a laboratory licensed to administer the tests has confirmed they have had JMoH officials inspect the premises and verify who will be conducting the tests.

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Qatar



The administration of COVID-19 tests and the communication of results are subject to the general health regulatory environment and in accordance with any preventive measures deemed necessary under Law No. 17 of 1990 (the "Infections Diseases Law"), as amended by Law No. 9 of 2020 which recently came into effect after being published in the official Gazette on 26 March 2020 as a matter of urgency. In addition to this, drive through COVID-19 testing have also recently been made available.

COVID-19 testing is currently carried out only in dedicated medical centers and so a company would not have the ability to test its employees on site. Given the sensitivity of the pandemic and the state's current exclusive control on pandemic related communications, any public announcements of results would be issued by the Supreme Committee for Crisis Management by way of press briefings.

Iraq



According to Diwan Order No. 55 of 2020 the decisions of the Committee included forming a crisis cell in each governorate headed by the governor and membership of the Health Department and the supporting authorities to follow up and implement the Committee's decisions and extend the suspension of entry of foreign arrivals directly or indirectly for certain countries (i.e. China, Iran). The Minister of Health stressed the importance of awareness and educating the people in Iraq on the seriousness of the COVID-19 in coordination with the office of the health and environment.

Testing is taking place in specialist licensed private laboratories and in new laboratories that have been opened in each province. Unlike other jurisdictions, testing for COVID-19 is not heavily regulated.



Are employers entitled to request employees to share their test results?

UAE

There is no law strictly covering this point. An employer does not have an express right as such to force employees to share their test results. Under article 4 of the Communicable Diseases Law, an employer must immediately notify the MoHP or the closest health entity of a suspected infection.

In addition, under article 2 of the Ministerial Decision No. 281, private sector employers are required to provide screening points at the entrance to labor accommodation and workplaces. At these screening points, employees will have their temperature measured and asked if they are experiencing COVID-19 symptoms. This process will take place before departure to the workplace or upon arrival, and again after leaving the workplace or upon arrival at the labor accommodation.

In the event that the test result is positive, the relevant department at the MoHP will take strict measures by either requesting the employee to self-isolate for 14 days (if the case is not serious or there are no apparent symptoms) or stay in hospital. The relevant authority will most likely communicate the results to the employer to ensure that other colleagues are not affected.

Saudi Arabia

The employee is required to report to the employer (i.e. the competent administration in the entity) if the employee:

- exhibits symptoms of high temperature
 - exhibits coughing or shortness of breath; or
 - comes into contact with an infected or suspected case.
- The employee is required to report to the employer about any other employee who:
 - exhibits symptoms of high temperature, coughing or shortness of breath;
 - comes into contact with an infected or suspected case; or
 - entered the Kingdom without following the precautionary procedures for the quarantine specified by the Ministry of Health.
- The employer is obliged to report to the Ministry:
 - known/confirmed cases where the employee has been tested by a registered medical practitioner; and
 - any employee mixing with the known/confirmed cases.

The report shall be made in accordance with a "disclosure mechanism" is not defined in the Saudi laws and regulations. However, pursuant to Article 65.5 of the Saudi Labor Law, the employee is required to: *"Undergo, upon the employer's request, the medical examinations required prior to or during employment to ensure that he is free from occupational or communicable diseases."*

In addition, Article 121 of the Labor Law states that: *"An employer shall maintain the firm in a clean and hygienic condition. He shall provide lighting, supply potable and washing water and comply with other rules, measures and standards of occupational protection, health and safety in accordance with what is specified in the Minister's decision."*

Based on the above mentioned articles, employers are at liberty to use their own disclosure mechanism to ensure the privacy and confidentiality of their employees' data, keeping in mind that any report provided to the government based on their instructions will not be considered a breach of employee

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privacy or confidentiality. Also, employers have the authority (in our view an obligation) to ask their employees to take the necessary medical examinations to ensure they are free from communicable diseases such as COVID-19.

Jordan

In the current situation, only the lab personnel (the supervising doctor or lab specialist) is entitled to receive the results and is only permitted to inform the patient of such results. In the event the results are positive, the supervising doctor or the lab specialist is obligated by law to inform the Ministry of Health to allow the Ministry to act in accordance with the law (e.g. requiring patient to quarantine as required by the law and the government).

Qatar

Law No. 9 of 2020 was published in the official Gazette on 26 March 2020 on an urgent basis to amend the Infections Diseases Law and is now in place. This new law places a strict duty on employers to report any suspected or confirmed cases of COVID-19 to the authorities. Any breach of this duty would constitute a criminal offence penalized by imprisonment up to three years and/or a fine of QAR200,000.

In addition, employers have general duties under Law No. 14 of 2004 On the Promulgation of the Labor Law aimed at protecting employees from risks related to their work which would apply in the context of COVID-19, as follows:

- pursuant to article 99, employers have a duty to inform employees of any risks related to their work, as well as of any related preventive measures that must be complied with to avoid any risks related to the employees' work;
- pursuant to article 100, employers have a duty to take necessary precautionary measures in order to protect employees from any disease that may result from work carried out at their workplace; and
- pursuant to article 103, employers have a duty to take necessary measures to ensure the hygiene of workplaces.

In theory, in the event that COVID-19 testing would be readily available to the public, it would be reasonable for an employer to require the same disclosure from its employees/contractors and request that employees/contractors share their COVID-19 test results. In practice, however, the health authorities in Qatar and the Supreme Committee for Crisis Management currently have exclusive control over the testing and disclosure of COVID-19 test results are pursuant to the Infectious Diseases Law, and any infected individual would immediately be placed in government controlled quarantine.

Iraq

The employer is required to keep the business environment safe. Iraq Labor Law No. 37 of 2015 states that employees must take all measures to ensure safety at the business location. It is therefore reasonable that the employer request that the employee or the contractor share their test results to ensure safety for all in the workplace.

Can employers force employees to carry out the test prior to accessing the place of work?

UAE



As mentioned in the answer to question 3, article 2 of the Ministerial Decision No. 281 provides that private sector employers are required to provide screening points at the entrance of the labor accommodation and workplace. Also employers are under the obligation to notify the MoHP in case they have any suspicion or doubt of its employees.

Saudi Arabia



Please refer to our response in question three. In order to comply with Article 121 of the Labor Law, the employer can make the testing of employees/contractors a condition to gain access to work facilities. However, since it would be challenging to test all employees/and contractors, the testing can be made a condition precedent for such employees who show COVID-19 related symptoms. As mentioned above, the Ministry of Human Resources obliges each entity to provide basic examination on a daily basis and report any suspected cases. The employer is also obliged to prepare "isolation policies and procedures" in order to effectively and immediately isolate cases, and to train employees in applying these policies and procedures.

Jordan



As the Defense Law was enacted on 18 March 2020, the Jordanian government has implemented a lockdown of Jordan and no individuals are permitted to leave their houses except for certain sectors (such as hospitals, the police departments and markets for daily needs). However, to this date, the government has not yet issued any decisions in relation to how matters will be conducted after the lockdown decision is lifted (i.e. whether companies can request testing as a condition to enter work premises when they are once again allowed to operate their businesses).

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Qatar



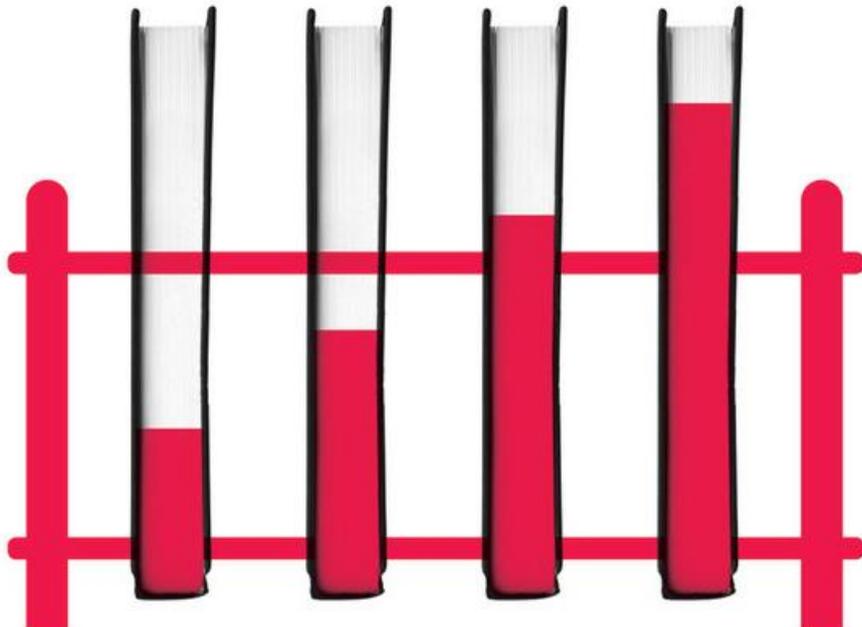
We believe that this would be possible pursuant to articles 100 and 103 of the Labor law, as set out above. However, we are not aware of employees currently being preventively tested for COVID-19. Pursuant to oral guidance obtained from the official COVID-19 hotline established by the Ministry of Public Health, the only individuals being tested are those showing symptoms and who are confirmed contacts of infected individuals.

To date, the most invasive protective measures that are recognized are the so-called "thermometer guns" to detect any elevated body heat of employees coupled with a general duty to monitor any respiratory symptoms related to such body heat pursuant to the Qatari Ministry of Administrative Development, Labor and Social Affairs Guidelines (the "MADLSA Guidelines") issued by the Ministry of Labor on 2 April 2020 as a set of mandatory guidelines applicable to private sector companies implementing preventive measures to curb the spread of COVID-19. The MADLSA Guidelines advise employers to use "thermometer guns" on employees before them being transported to the workplace and accommodation areas.

Iraq



As mentioned above, all test procedures should be processed under the Iraqi MoH's observation or in specialist licensed private laboratories; therefore, notifying the authorities about positive cases of COVID-19 is an obligation as the test must be carried out by the authority or licensed staff who shall notify the authorities about any positive case.



What are the notification requirements?

UAE

According to article 2 of the Ministerial Resolution No. 281, private sector establishments are under an obligation to report cases of workers showing symptoms of the virus or suspected of being infected.

According to article 4 of the Communicable Diseases Law, the employer immediately notify the MoHP or the closest health authority of a suspected infection.

In terms of sanctions, the Resolution of the Attorney General No. 38 provides a list of violations including for the violation of the provisions of the Implementing Regulation of the Law. The said Resolution provides that if an individual refuses to undergo a medical test upon demand from the relevant authority he/she will be subject to a fine of AED 5,000.

All tests are currently being undertaken by either hospitals or test centers (under the supervision of governmental bodies), therefore all results are linked to the MoHP.

Article 15 of the Communicable Diseases Law provides that the MoHP, health entity and employer shall work together to minimise the spread of a communicable disease. This may include closure of certain places such as educational institution, cinema, sports gym, club etc. The closure shall be issued by the Minister.

Saudi Arabia

There are reporting duties on medical facilities to the authorities given the emergency of the virus. It is therefore possible that the employee's condition will be reported independently of the employer and the preventive medicine department or team would seek to trace who the employee had come into contact with and which individuals will need to be tested.

As for the reporting responsibilities mentioned under question 3, the employee or the employer shall:

- Notify the Ministry of Health:
 - If the information² of the suspected/confirmed case is known.
- Notify the Police Department:
 - If the information of the suspected/confirmed case is not known.

² name, contact number and ID number

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Jordan



The laboratories must provide the JMoH with the results in the event they are positive and the JMoH will subject such person to quarantine at the approved hospitals to be treated. In the event a positive result is found in the premises of one of the sectors permitted to work in this period, such as hospitals, JMoH is permitted to shut down such premises for a period of not less than 14 days and conduct a full sanitary sweep in addition to obligating all personal to undergo the tests to ascertain the number of those affected by COVID-19.

Qatar



In theory positive cases would need to be immediately notified to government authorities – please see our answer to question number 3 above. In practice, the health authorities currently have exclusive control over the testing and disclosure of COVID-19 test results pursuant to the Infectious Diseases Law. Any infected individual would immediately be placed in government controlled quarantine, with the results being transmitted to, and made public by, the Supreme Committee for Crisis Management.

There is no set list setting out the information that must be provided specifically for COVID-19. Under the Infectious Diseases Law, the name, residence permit number, address and contacts of the infected individual would have to be provided in order to be able to prevent the spread of COVID-19 (e.g. testing the contacts of the infected individual and sanitizing their residences or places of prior gathering). Pursuant to article 10 of the Infectious Diseases Law as amended by article 3 of the soon-to-be-published Law No. 9 of 2020, the relevant health authority must take all necessary measures to prevent the spread of COVID-19. This includes preventing gatherings of any type, restricting movement or controlling crossing in certain places or times and the closure of the employer's establishment on the grounds that it may cause hazard to the public health. In addition, the MADLSA Guidelines provide that the infected individual must be quarantined in the relevant quarantine centres and provided all necessary medical care, food and lodging free of charge.

Iraq



Employers should report any positive cases and provide the authorities with information such as location, name of employee, copy of the test result and any other useful information. Once the authorities receive notification about positive cases, they will start precautionary measures by testing other employees and ensure that positive cases stay in quarantine till prove the safety of the touching case

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