

ICV and its Impact on Doing Business with ADNOC

Similar to Saudi Aramco's "In Kingdom Total Value Add" ("IKTVA") programme the Abu Dhabi National Oil Company (ADNOC) has introduced its own localisation programme: In Country Value or "ICV". The procurement-led initiative aims at localising suppliers, developing UAE Nationals (Emiratisation), and critical functions in the oil & gas industry. Investors engaging in business with ADNOC will need to familiarise themselves with the ICV programme. The following legal briefing shall give an overview of the effects and possible solutions.

1. What is ICV?

ICV stands for "In Country Value" programme (www.adnoc.ae/en/in-country-value). ICV is a procurement-led initiative that aims at focusing on local supplier selection, development of United Arab Emirates ("UAE") Nationals, and the localisation of critical functionalities in the oil and gas industry.

ICV was implemented on 1 January 2018. Since 1 April 2018, all suppliers of goods or services to ADNOC and its subsidiaries (hereinafter solely referred to as ADNOC) are required to calculate and declare their ICV score for the previous financial year, to demonstrate how they are delivering ICV. ICV scores need to be certified by an ADNOC approved certifying body on an annual basis and submitted by the supplier to ADNOC with each proposal they make.

2. Why now?

ICV was announced in November 2017. It follows a general localisation trend in the region, in particular in the oil & gas industry. Saudi Aramco's IKTVA and Petroleum Development Oman's ICV have served as models for ADNOC's ICV.¹

3. How does ICV affect existing operations and structures in the Middle East?

Engaging in business with ADNOC will require carrying out

- (i.) self-assessment in accordance with ADNOC's provided material (e.g. excel sheet);
- (ii.) certification of such self-assessment by an accredited certifying body; and
- (iii.) drawing up an ICV Improvement Plan (if contracting directly with ADNOC).

¹ Regarding IKTVA, please also refer to our separate briefing: [www.schlueter-graf-](http://www.schlueter-graf.com/knowledge.com/fileadmin/Redaktion/Download/180218_IKTVA_and_its_Impact_on_Doing_Business_with_Saudi_Aramco.pdf)

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While extensive reporting (*e.g. on company background, human resources etc.*) is not required, companies engaging in business with ADNOC will need to familiarize themselves with the self-assessment tools available on ADNOC's website.²

Within the procurement process, ICV is mainly relevant during the evaluation phase. Bidders having passed the technical evaluation will be ranked in accordance to (i) the best price; and (ii) best ICV score. The bidder with the best ICV score would be asked to match the best price. Should the bidder with the best ICV score not be able to match this price, the bidder with the second best ICV score would be asked to match the price, and so forth.

Upon contract award, ADNOC will require the successful bidder to come up with a so-called ICV Improvement Plan. The ICV Improvement Plan will need to show how the successful bidder will improve his ICV score. The ICV Improvement Plan will be included in the final agreement and is linked with a clause, ultimately allowing ADNOC to terminate the agreement upon non-compliance with such plan.

The above highlights that ICV is one of the corner stones in ADNOC's procurement process. The evaluation scheme applies to all awarded agreements. Based on this, companies not having localized their supplies yet may face disadvantages compared to players who have set-up production facilities in the UAE and/or source locally.

4. *What is the solution, what are the obstacles?*

Players interested in doing business with ADNOC may be required to register themselves in the Emirate of Abu Dhabi to offer their services/products to ADNOC. Faced with the ICV requirements and depending on the volumes to be traded the following set-up options are available:

- Exclusive commercial agent (registered with the Ministry of Economy);
- Branch of a (foreign) company (only for services!); and
- Subsidiary of a foreign company (Limited Liability Company – Joint Venture with Local Shareholder (51% Emirati/49% local)).

Depending on the nature of the supply, certain commercial licenses would need to be obtained. In any case, such vehicles require a license for "*Onshore and Offshore Oil and Gas Field and Facilities Services*". In addition, companies wishing to engage directly with the ADNOC group will need to apply for an approval by the Supreme Petroleum Council ("**SPC**").

For service companies working on the premises of any Abu Dhabi critical establishment it will be necessary to be registered with the Critical Infrastructure and Coastal Protection Authority ("**CICPA**") and for the relevant staff to obtain security permits.

² ADNOC's ICV website:
<www.adnoc.ae/en/in-country-value>.

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Structuring investments into the UAE includes identifying the optimum shareholding structure. While corporate income related tax issues do not play a role (yet) in the UAE, it should be kept in mind that the UAE has an extensive network of double taxation agreements. The same applies with regard to bilateral investment treaties which usually include investor protection:

- fair and equitable treatment;
- protection from expropriation;
- free transfer of means; and
- full protection and security.

Regardless of the above, ADNOC may require the parent company to invest in Abu Dhabi directly. Based on this, there are certain limitations attached to structuring investments in Abu Dhabi.

5. Conclusion

Foreign investors engaging in business with ADNOC will need to keep in mind the following aspects:

- Dealing with ADNOC directly or indirectly will have a different impact on their ICV obligations;
- Regardless of dealing directly or indirectly with ADNOC, suppliers will need to obtain an ICV certification (*for the ICV score to be counted*);
- If dealing indirectly with ADNOC (*e.g. through an EPC contractor*), suppliers will not be asked to come up with an ICV improvement plan. It is, however, expected that EPC contractors will pass on their obligations resulting from their ICV Improvement Plan (back-to-back) to suppliers. This should be kept in mind when drafting / reviewing such contracts.

Keeping in mind the aforementioned issues and planning ahead, will increase the success of carrying out business with ADNOC (and its EPC contractors).

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