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The Legal Framework of the Sponsorship Systems of the Gulf Cooperation Council Countries: A Comparative Examination

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The Legal Framework of the Sponsorship Systems of the Gulf Cooperation Council Countries: A Comparative Examination*

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Abstract: The sponsorship system of the Arab Gulf countries comprises rules and regulations that tie the residence of a migrant worker to his/her sponsor in the country. This paper offers an in-depth examination of the legal framework of the sponsorship system of the countries of the Gulf Cooperation Council (GCC) – Qatar, Saudi Arabia, Kuwait, Bahrain, Oman and the United Arab Emirates. It looks at different aspects of the system starting with the requirement for sponsorship and ending with the rules on absconding and repatriation.

Keywords: Bahrain; Foreign Labour; Kuwait; Oman; Qatar; Saudi Arabia; Sponsorship; UAE

Introduction

This paper will systematically examine and compare the legal frameworks of the sponsorship systems the Gulf Cooperation Council (GCC) countries: Qatar, Saudi Arabia, Kuwait, Bahrain, Oman and the United Arab Emirates (UAE). The objective is to delineate the established rules and procedures of their legal systems and highlight the similarities and differences between them. This will serve the purpose of creating a more comprehensive and deeper understanding among researchers and advocates alike of the specificity of each case. Studying the degree to which the rules and regulations of each system are implemented in each country is beyond the scope and purpose of this paper. There exists a large body of reports detailing the problems with the sponsorship system and describing its negative impact on the interests and needs of migrants in the Gulf countries.

* This is an expanded version of a previous paper entitled “The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: a Comparative Examination” (Explanatory Note - GLMM - EN - No. 7/2014), also written by Maysa Zahra.

Underlying the sponsorship system of each of the six GCC countries is the position that foreign workers are not to be treated as migrant workers. Migrant workers make a significant contribution to the economies of their host country by providing a cheap and productive labour force and to their countries of origin through remittances. Unfortunately, especially in the case of unskilled migrant workers, they have historically not been accorded sufficient protection and rights under the legal frameworks of both sending and receiving countries and are therefore vulnerable to exploitation. The international framework on migration evolved in response to these problems in an effort to ensure that certain rights and protections are extended to them; this includes both binding international law and guiding principles and best practices. ILO standards on migration provide tools for both migrant sending and receiving countries to manage migration flows and ensure adequate protection for this vulnerable category of workers. Under the *kafala* (sponsorship) system of the GCC countries, foreign workers are considered to be temporary contractual workers. This forms the basis upon which the system has been constructed.

Structurally speaking, the sponsorship system has common features across all six countries. First, it is both administered and regulated by the Ministries of Interior. In practical terms, this means that the institution that grants migrant workers their residency rights is the same one that enforces those decisions without outside intervention by the courts or other governmental bodies. Second, the system is constructed around the model of employer sponsorship of foreign labour. Thus while the responsibility for granting or withholding residency rights to foreign labour is held by one institution, the enforcement of that system is highly dispersed among the various employers. The responsibility for a migrant worker and his/her residency in the country lies with the various employers, whether citizens or foreign residents in the case of domestic workers, or companies and institutions.¹

The Requirement for Sponsorship

All the GCC countries require any foreigner entering the country to have a sponsor, - with a few exceptions that will be elaborated upon in subsequent sections of this paper. This not only applies to foreigners entering the country for employment purposes but also to visitors.

In Qatar, the law requires each foreigner granted an entry visa to have a sponsor.² This applies to individuals entering on a temporary visit visa or those entering the country for residence and work.³ Under the new Qatari Residence Law, which was promulgated in late October 2015 and is set to come into effect within one year of its publication, the term “sponsor” is replaced by the term “recruiter.” A recruiter is any entity, employer, head of family, or host, who recruits an expat or to whom the expatriate’s residence is transferred in accordance with the provisions of the law.⁴ Similarly in Saudi Arabia, any foreigner permitted to enter the country must submit information about the sponsor for his obligations and commitments and a guarantor for his deportation in case he is required to leave the Kingdom. The sponsor may also be the businessman/company who has contracted him. If he fails to do that, he is required to pay an amount equivalent to the cost of his return and undertake to report to the Foreigners Control Office once every week at least.⁵

The Aliens’ Residence Law and its implementing regulations are the primary legal sources for Kuwait’s sponsorship system. This law requires all migrant workers to have a local sponsor, who must also

be their employer. It is worth noting that this law does not employ the term “sponsors” but instead uses the term “recruiters.” However, implementing regulations do refer to them as “sponsors.”⁶

Under Bahraini law, foreigners working in Bahrain must obtain a work permit either through personal sponsorship or through the establishment employing them.⁷ In Oman, the residence permit of a foreigner is issued through his sponsor.⁸ Similarly, Emirati law stipulates that a foreigner may be granted an entry permit or visa if, along with meeting other conditions, he has a sponsor who resides in the country. The sponsor may be either a citizen or a natural or juridical foreigner.⁹ A foreigner may sponsor a domestic if he has a monthly salary of at least Dh6,000 (among other conditions).¹⁰

Requirement to Return Passport

The sponsor in Qatar is required by law to return the passport or travel document to the sponsored individual once the procedures for issuing or renewing the residence permit are completed.¹¹ The new law on residence adds an exception to this requirement by permitting employers to hold onto the passport if requested to do so by the employee in writing. The employer is expected to return the passport to the employee upon his/her request.¹² In Saudi Arabia, a decision by the Council of Ministers prohibits employers from retaining the passports of migrant workers or members of their families and guarantees their freedom of movement within the Kingdom provided they hold a valid residence permit.¹³ In 2007, the Kuwaiti Ministry of Social Affairs and Labour issued a specific decree prohibiting employers in the private sector from retaining the travel documents of their workers.¹⁴ The Bahraini Penal Code creates the legal basis for the liability of persons who withhold the passports of workers.¹⁵ Moreover, numerous rulings issued by the Discrimination Court prohibit employers from confiscating the passports of workers.¹⁶ The Omani Ministry of Manpower issued Circular No. 2 in 2006 prohibiting employers from withholding the passports of foreign workers.¹⁷ In a number of court cases in Dubai, the court has ruled in favour of employees and held that the confiscation of passports violates the right to freedom of movement and is prohibited by UAE law.¹⁸ Lawyers working in the UAE have confirmed the existence of an internal administrative order within the Ministry of Interior, stating that passports should not be retained unless express authority is obtained from the court or the police.

Four of the six countries have enacted legislation specifically prohibiting the confiscation of passports in an effort to reduce abuse of the system by employers and in response to widespread criticism. Both Bahrain and the UAE have ruled against employers who have withheld the passports of their employees but have not enacted specific legislation prohibiting the practice.

Transfer of Sponsorship

The transfer of sponsorship is a main feature of the sponsorship systems of all six GCC countries. Once a foreign worker enters the country under the sponsorship of an employer, s/he is generally not permitted to transfer their sponsorship and work for another employer, without obtaining the approval of the original sponsor for the duration of the contract. The rules differ from one country to another in terms of the conditions that must be met before a transfer can take place.

Under the current residence law, which will be repealed once the new law enters into force sometime at the end of 2016, it is only possible to transfer the sponsorship of a worker in Qatar through a written agreement between the new and former employer with the approval of the competent authority of the Ministry of Labour.¹⁹ The new law requires the approval of both the employer and the competent authority within the Ministry of Labour and Social Affairs for the transfer of employment before the end of the work contract. The expatriate may transfer to another employer immediately upon the expiry of his work contract, in the case of limited term contracts or after five years in the case of unlimited contracts, also subject to obtaining the approval of both the employer and the Ministry. The Minister or his nominee may approve the transfer of employment of any expatriate worker on a temporary basis if a suit is filed between him and his recruiter.

In cases where the Labour Law does not apply to the expatriate worker, the Minister or his nominee may approve the transfer of the expatriate to any other employer in the event of abuse by the employer or as if deemed to be in the public's interest. For the same reasons and if requested by the worker and approved by the Ministry of Labour, the transfer of a worker who is subject to the Labour Law may be approved.²⁰

Saudi Arabia uses the term “transfer of services” in lieu of “transfer of sponsorship.” The change was effected in an attempt to deflect criticism of the Saudi sponsorship system. To transfer the services of a foreign employee from one employer to another, the former must hold valid residence and work permits and must have spent at least one year working for the current employer. The employee needs an officially certified waiver from the current employer, which must be submitted within one month of its signature to the Ministry of Labour. The transfer of services must also include the written approval of the employee to work for the employer requesting the transfer. In certain cases, the Minister of Labour may decide to transfer the services without approval from the current employer and these include: the existence of a lawsuit between the employee and current employer where the latter has caused the lawsuit to be prolonged; the existence of humanitarian justifications requiring the unification of the family or other similar reasons; and other cases as determined by the Minister.²¹

According to the Nitaqat guide issued by the Ministry of Labour, Saudi rules on transfer of services were eased in late 2014. Foreigners employed by yellow or red category sponsors may freely change their sponsorship to green category companies without obtaining the approval of their current sponsor. If the sponsor fails to issue a valid work permit within three months of the foreigner's arrival in the country, the employee has a right to request transfer without approval. Lastly, the employee may request transfer without approval if the employer fails to renew the work permit before its expiry or the residence permit one month prior to its expiry.²² However, according to an announcement made by the Ministry of Labour, the employer may object to the transfer in any of the above cases within five days of the employee's application to the Ministry.²³

The conditions set by Kuwait for the transfer of the work permit from one employer to another include obtaining the permission of the previous employer and the completion of one year of continuous residence in the country for foreign workers recruited on the basis of a work permit, the lapse of three years of continuous labour residence in the country for foreign workers recruited to work on government

contracts, and the lapse of one year of continuous labour residence with the last employer for workers who are locally contracted.²⁴ A number of cases are exempted from the previous conditions including but not limited to holders of university degrees or their equivalent, locally contracted workers, husbands and children of Kuwaiti women who hold another nationality.²⁵ The transfer of any foreign worker to another employer without the permission of the previous employer is permitted after the lapse of three years of continuous employment.²⁶

In the case of domestic workers, the Kuwaiti Ministry of Interior's standardised domestic labour contract, which came into effect in 2006, no longer permits them to transfer their residence to another employer. If they leave their employer or are terminated, they are to be immediately deported. A previous directive, which is replaced by the standardised contract, enabled domestic workers to transfer to a different visa sponsor once every two years, with the consent of the former sponsor.²⁷ In mid 2015, Kuwait passed a new law regulating the work of domestic labour, which guarantees them certain protections. However, the new law does not enable domestic workers to transfer their sponsorship to another employer without the current employer's approval before the end of their contract.

Bahrain has been the frontrunner in terms of relaxing the rules on transfer. In 2002, transfer of sponsorship without obtaining the approval of the employer was confined to a limited number of situations: if an employee's contract or residence period expires (whichever comes first); if the job for which he was recruited is completed; or if the establishment for which he is working is closed for business. Transfer without the approval of the current employer if the contract is still valid was permitted if a number of conditions were fulfilled and these include: notifying the employer in writing and serving the agreed upon notice period, which may not exceed three months; not having any commitments to the current employer under the law; the new employer agreeing to reimburse the current employer for all the costs borne by him proportionate to the remaining period of the contract and these cover the fees for issuing and renewing work permits, fees paid to the Immigration and Passports Department, and the cost of the air ticket.²⁸

A new law regulating the labour market was enacted in Bahrain in 2006, which made it possible for foreign workers to transfer their employment to another employer – as long as this does not contravene the rights of the original employer under the law or the work contract – and gave them an adequate period of time once their work permit had expired or been cancelled to find new employment.²⁹ These rules were amended in 2009 to require workers who wished to transfer employment before the expiry or cancellation of the work permit to notify their current employer through registered mail in accordance with the conditions set in the employment contract, which may not exceed three months prior to the transfer. Under the new rules, workers who wished to transfer after the expiry or cancellation of their work permit by the employer must notify the Labour Market Regulatory Authority (LMRA) 30 days prior to expiry or within five working days of the cancellation. The notification may be done electronically and the worker is to be granted 30 days to transfer but he may not work during this period.³⁰ Unfortunately, the rules on transfer were yet again amended in 2011 stipulating that the foreign worker may transfer without the approval of his current employer only after spending at least one year in his current job.³¹

Under the *kafala* system in Oman, foreign workers who have not completed their service period of two years may only transfer to a new employer if they obtain a non-objection certificate from their current employer without being subject to the two year ban. If the worker has completed two years of service, he will need the approval of both his former employer and the Directorate General of Labour before he can seek new employment.³² An amendment to the Executive Regulations of the Foreigners' Residence Law of 1996 was introduced in 2014 stipulating that the transfer of a foreigner's residence shall take place in accordance with procedures and conditions specified by the Inspector General and that the transfer of a foreigner's sponsorship to a new sponsor entails the transfer of his resident dependents directly to that sponsor.³³

In the UAE, a number of changes have been introduced to the regulations on transfer over the past decade. The regulations from 1997 required the approval of the former sponsor as well as spending at least one year with the former sponsor for transfers within the private sector.³⁴ In accordance with a ministerial decision issued in 2003 regarding investors, a foreign worker may request to transfer his sponsorship from the establishment at which he is employed to the one he owns or in which he is a partner. The transfer of a foreign partner or owner to an establishment, which is subject to the labour law, may only be approved if he belongs to one of the categories permitted to transfer sponsorship.³⁵

In 2005, the executive regulations for the transfer of sponsorship were promulgated listing the conditions under which such transfer may be approved for foreign workers. The two main conditions were: obtaining the approval of both the old and new employer and spending a specific amount of time working for the current sponsor/employer, which varies according to the category to which an employee belongs: a) holders of graduate or postgraduate degrees need to spend at least one year with their current employer and may transfer multiple times without restrictions; b) holders of an undergraduate degree or its equivalent need two years and may transfer twice; and c) all other categories must spend at least three years and may transfer only once during their work stay in the UAE.³⁶ The time required for categories b & c may be reduced to one year if an additional fee of 3000 Dirhams is paid. Moreover, all categories may be completely exempted from the time required in a number of cases including the establishment's closure and bankruptcy, so long as an additional 3000 Dirhams is paid.³⁷ The requirement of obtaining the approval of the old employer could be waived under certain conditions including non-payment of wages for two months, submission of a complaint by a worker against his employer for non-assignment of work due to closure of the establishment, and cases of worker complaints referred to court by the Ministry.³⁸

In summary, Bahrain has adopted the most general regulation in the sense that it permits transfer of sponsorship for all categories of workers without the approval of the employer after one year of employment. Both Kuwait and the UAE have exempted certain categories of persons from the requirement of obtaining the current sponsor's approval. Saudi Arabia and Qatar only allow certain cases to be transferred without the employer's consent if Ministerial approval has been granted.

Ban on Return

In an effort to regulate the number of foreigners residing in the country at any given time and protect the interests of employers, the GCC countries have enacted legislation that requires foreigners to spend a certain amount of time outside the country after the end of the original work contract, based upon which

they were granted residence. The laws differ from one country to another in terms of the conditions that can result in the ban on the return period.

Until very recently, Qatar has taken an all-encompassing approach. In accordance with the still in force old residence law, a foreigner who has previously resided in Qatar for employment purposes may not be granted another entry visa until two years have lapsed from the date of his departure. However, this period may be waived by the Minister or his authorised representative, subject to a written approval from the previous sponsor.³⁹ As part of its efforts to reform its sponsorship system, under the new residence law the ban of two years no longer exists. Under both the old and new law, a foreign worker dismissed as a punitive measure in accordance with the labour law, who has not challenged the dismissal before the competent court or whose challenge has been rejected, is denied re-entry for work purposes for four years from the date of his departure.⁴⁰

Under Kuwaiti law, the employer may request to cancel the work permit for an employee and deny him the right to work in the country for two years if the worker has violated the terms and conditions of his contract, or if his service was terminated in accordance with the disciplinary chapter of Art. 55 of Law No. 38 of 1964.⁴¹

In Saudi Arabia, the worker may be banned from returning to the country for work for a period of two years if he is caught working for an employer other than the one who recruited him, and whose name is on his work permit, prior to his release by the latter and the obtaining of approval of the concerned authority for the transfer of services.⁴²

The Bahraini Aliens Immigration and Residence Act of 1965 stipulates that a foreigner whose residence permit has been cancelled may not apply for another one for a period of 52 weeks from the date he receives notice of its cancellation.⁴³

Omani regulations prohibit the issuance of a work entry visa for a foreigner who has previously worked in the Sultanate until two years have passed since his last departure. However, the Inspector General has the authority to waive this period if it is deemed to be in the public interest.⁴⁴ Moreover, foreigners who have been deported for committing a crime or felony need special permission from the Inspector General in addition to the two-year ban period.⁴⁵

In the UAE, with the exception of cases of transfer of sponsorship, cancellation of a residence permit issued for the purpose of work resulted in a six-month ban period.⁴⁶ This was the case if the employment contract was unlimited and the employee's contract was terminated before he had completed a year of employment. If, on the other hand, the employment contract was time limited and the employment was terminated prior to its expiry, then the ban was extended to one year.⁴⁷ However, a number of categories of highly skilled workers were excluded from the ban.⁴⁸ A 2006 ministerial decision identifies a number of cases in which the ban period is extended to one year from the foreign worker's departure date and these include the end of the work relationship due to participation in or instigation of an unlawful strike, cancellation of the work permit due to contracting an infectious disease, and cancellation of the worker's residence permit due to a deportation order.⁴⁹

A change to the rules was introduced in 2010, which related to foreign workers seeking a new work permit upon the completion of their service period with the current employer. Previously, and except for cases of transfer of sponsorship mentioned earlier, a six month ban period applied from the date of can-

cellation of the labour card.⁵⁰ Under the new regulation, the ban period may be waived if two conditions are met: employment has been terminated by mutual agreement; and the worker has spent at least two years with the employer.⁵¹ In a number of cases (such as the employer failing to fulfill his obligations), the first condition is waived.⁵² The second condition of spending two years with the current employer is waived if the new employer offers the worker a higher position and a salary equal or above that set by the ministry against his or her qualifications.⁵³

Further changes have been made under the new Decree No. 766 of 2015, which will come into force of January 1, 2016 and nullify the previously mentioned Ministerial Decision No. 1186 of 2010. New rules have been set for both term and non-term contracts (also known as limited and unlimited contracts).

For term contracts, workers may be granted a new work permit at the end of the employment relationship in the following cases: expiry and non-renewal of the contract; mutual consent to end the contract before its expiry if the worker has completed six months with the employer (workers that possess skill levels 1, 2, and 3; those who hold a university degree, post secondary diploma or high school diploma, respectively. are exempt from this time period); termination of employment by the employer if the worker has completed six months with the employer and provided that the reason for the termination is not his/her non-compliance (workers that possess skill levels 1, 2, and 3 are exempt from this time period); and subject to certain conditions, if either party acts unilaterally to terminate the employment contract.

In the case of non-term contracts mutual consent giving a notice period of up to three months and termination of employment by the employer for reasons other than non-compliance are instances in which a new work permit may be granted to the worker if s/he has completed six months of employment (this period is waived for workers that possess skill levels 1, 2, and 3).

For all types of contracts, a new work permit may be granted if the employer fails to meet contractual or legal obligations, the worker files a complaint against the employer if s/he is not assigned work due to the business being shut down, and a labour complaint is referred to the court by the Ministry and the final ruling in favour of the worker is issued.

Exit Permits & Absence Abroad

The stay of a foreigner in the GCC countries is heavily regulated in terms of his/her ability to temporarily or permanently exit the country. As of the date of publication of this paper, a foreign worker in Qatar must obtain an exit permit from his sponsor in order to leave the country whether temporarily or permanently. The only exceptions to this rule are women sponsored by the head of the family, minors, and visitors staying thirty days or less. If the sponsor refuses to sign the exit permit or is unable to do so and has not appointed a deputy, then the expatriate must appoint a departure sponsor or submit a certificate proving he is not serving any sentences and has no pending lawsuits from the court of jurisdiction fifteen days after having published his intended date of departure in two daily newspapers.⁵⁴ Once the new residency law enters into force in late 2016, obtaining an exit permit will be subject to the approval of the competent authority at the Ministry of Interior and the recruiter. The former has to be informed of the foreign employee's intention to leave the country at least three working days before the exit date. The

recruiter (formerly sponsor) may object to the exit, in which case the employee may submit a petition to the Exit Petitions Committee. If the petition to exit is driven by an emergency situation, the Committee is required to decide on his exit request within three working days.⁵⁵ A foreigner may leave the country for a period of six months without losing his residency.⁵⁶

Foreigners residing in Saudi Arabia need to obtain an exit permit before leaving the country. If the foreigner wishes to leave the country for a specific period of time during the given period of residence, he can request an exit and re-entry permit valid for a period of six months from the date of departure.⁵⁷ If sponsored by an employer, the foreign worker needs to obtain the permission of his employer to obtain the exit permit.⁵⁸ At the end of the employment contract, a foreign worker needs to obtain the approval of his employer in order to be able to obtain a final exit visa. The foreigner may then remain in the country for a period of two months after the issue of either type of visa: exit and re-entry or final exit.⁵⁹ If the foreigner is a dependent, then s/he may obtain an exit and re-entry visa upon the request of the head of the family (the sponsor) valid for one trip only and for a period of nine to twelve months for study purposes.⁶⁰

An exit permit is not required in Kuwait except for foreign employees of ministries and some other government institutions.⁶¹ A resident is permitted to leave the country for a period of six months without losing residency. In the following cases, the stay abroad period may exceed six months without losing residency: Students going abroad for education; people going for medical treatment and those accompanying them; government and company employees whose work requires them to travel for a period exceeding six months.⁶²

Both Bahrain and the UAE do not require foreign workers to obtain an exit permit from their employer. In accordance with Bahraini legislation, a residence permit allows its holder to leave and re-enter the country multiple times. This residence permit is cancelled if the foreigner remains outside the country for more than six months.⁶³ Similarly in the UAE, the residence permit is cancelled if its holder spends more than six months abroad.⁶⁴

In terms of exit permits, Oman requires the sponsor to submit to the competent authority a sponsored exit request two weeks prior to the expiry of the residence permit, in case of its non-renewal or cancellation.⁶⁵ A foreigner loses his residency right if he remains outside Oman without a valid reason for six continuous months or eight non-continuous months in a year or for eighteen months within a three-year period. This, however, does not apply to a foreigner's dependents.⁶⁶

The UAE, Bahrain, and Kuwait do not require foreign workers, with the exception of those employed by ministries and other government institutions in the case of Kuwait, to obtain an exit permit from the employer before leaving the country temporarily or permanently.

Self-Sponsorship

In certain limited cases, a foreigner may be permitted to act as his own sponsor. This right is extended to foreign investors in all six countries and a number of other cases in Qatar and Kuwait.

A number of different categories of persons may sponsor themselves in Qatar. According to the *Workers' Rights Handbook* published by the Qatari National Human Rights Committee, these categories

include investors subject to Law No. (13) of 2000 concerning non-Qatari capital investments in economic activities, owners and benefactors of real estate and residence units according to law No. (17) of 2004 concerning the organisation and benefit of non-Qataris from real estate and residence units, and any other categories decided by a ruling from the Council of Ministers.⁶⁷

In Saudi Arabia, foreign investors and non-Saudi staff are sponsored by the licensed firm, which may be partially or fully owned by the foreign investor. In effect, this means that foreign investors may sponsor themselves through their companies.⁶⁸

Foreigners in Kuwait may sponsor themselves and obtain a residence for two to five years, provided they can support themselves financially for the duration of their stay and can produce a certificate of good conduct. This form of residence can be renewed upon expiry. Self-sponsored expatriates may sponsor their wives and children and are entitled to run their own business.⁶⁹ Recent news reports claim that this article (No. 24) may be activated for foreigners who have resided in the country for a minimum of 15 years, have no criminal record, and have high academic qualifications and earn a minimum monthly salary of KD500.⁷⁰

In addition, foreigners may be granted regular residence to practice economic or industrial activity or a certain profession or craft, provided they submit the required permit to practice the activity, profession, or craft.⁷¹ The Ministry of Social Affairs and Labour recently announced the re-activation of the procedure to issue residence to foreigners engaged in business activity subject to meeting certain conditions including having a share of KD100,000 in a company and presenting a clearance certificate from the Ministry of Commerce and Industry which refers to the company's budget for the previous two years. Prior to 1975, such a residence was issued under the aforementioned article (No. 19) to professionals and craftsmen but the procedure has been suspended since 1975.⁷²

Personal sponsorship is permitted in Bahrain for three categories of foreign workers: a retired foreigner who has worked in Bahrain or any other GCC country for 15 years or more,⁷³ a foreigner who owns a residence in the country that is both registered to his name and is worth no less than BD50,000, and a foreigner who is an investing partner in a company which operates in the country and whose share is no less than BD100,000.⁷⁴ For all three categories, a number of other conditions listed in the decision must be met. A residence permit may also be granted to the wife and minor children of these foreigners.⁷⁵

In Oman, a residence permit may be granted to the owner of a constructed unit and his immediate family, which is valid for two years and may be renewed thrice.⁷⁶ An investor visa may also be granted to foreigner who is at least twenty-one years old and wishes to invest in the country.⁷⁷

The UAE allows investors who own or are partners in an establishment to sponsor themselves through that establishment.⁷⁸

Dependent Sponsorship

The entry, residence, and employment of dependents of foreigners residing in Kuwait, Saudi Arabia, and Qatar are subject to very specific rules and regulations. The reason is that each of these countries aims to limit the number of foreigners in the country as much as possible.

A foreign worker residing in Qatar may obtain residence permits for the spouse, male children who have not completed their studies up to the age of 25, and unmarried daughters. The Minister or his authorised representative may also extend this to the parents of the foreign worker.⁷⁹

In Saudi Arabia, the residence permit of a foreigner who has a right to family reunion (explained later) includes the wife and children who are less than eighteen years old. Once male children turn eighteen, they are required to obtain an independent residence permit in accordance with stipulated provisions. Unmarried female children may continue to be sponsored by their fathers beyond the age of eighteen.⁸⁰ In order to limit the number of foreigners in the Kingdom, Saudi Arabia has chosen to grant the right to seek residence for their families (wife and children) to foreigners working in certain high-level professions. The first category includes university professors, teachers from all educational institutions including professional training centers, doctors, pharmacists, veterinarians, engineers including chemical and agricultural engineers, entomologists, computer specialists, weapons specialists, all of whom must be graduates of universities, institutes, and specialised scientific institutes. In addition, this category includes directors of companies or institutions, which have 100 employees, and individuals who have acquired a long-term residence of five years or more. The second category includes accountants, lawyers, academics, radiology and laboratory assistants, surveyors, drafters, and engineers all of whom must be graduates of specialised scientific institutes; residents in the Kingdom for a year or more; and earning a monthly salary of SR4,000 or more.⁸¹

In 2013, a regulation allowing a Saudi woman married to a foreigner to sponsor her husband and children came into effect.⁸²

The rules for dependents of sponsored individuals are more elaborate in Kuwait. According to a Ministerial Order issued in 1992, a dependent residence visa may be granted to the wife of a foreigner working in the government sector and three of his children if his monthly salary is no less than KD450. Another Ministerial order stipulates that the fee for each of the aforementioned individuals is KD10 per annum.⁸³ If he has more than three children, then he must pay an annual fee of KD100 for each additional child for the first year and KD10 for each following year.⁸⁴ If the dependent is a family member other than a wife or child then he must pay an annual fee of KD200 per person.

A foreigner employed in the private sector can apply for a dependent residence visa for his wife and only two of his children if his monthly salary is no less than KD650 for an annual fee of KD100 for each of them for the first year and KD10 for each following year.⁸⁵ Obtaining a visa for additional children or family members, other than a wife or child, requires the foreigner to pay an annual fee of KD200 per person.⁸⁶ Exempted from the previous rules are a Kuwaiti citizen's foreign wife and a divorced or widowed foreign wife of a Kuwaiti citizen if they had children. These two exemptions are also applicable to GCC citizens who reside in Kuwait.⁸⁷

These rules are without prejudice to the rules of the 1987 Ministerial Order which implements the Aliens Residence Law of 1959 and allows for granting a regular visa for dependents so long as the resident is able to provide for them for the duration of their stay, informs the General Administration for Immigration Affairs of their place of residence, and bears the cost of their repatriation.⁸⁸

In Bahrain, a residence permit may be granted to the spouse and minor children of a foreign worker or a business owner. Adult children (above eighteen) may be granted residence if they are studying in

the Kingdom. One of the stipulated conditions for this type of permit is the foreigner having a monthly income of no less than BD250. Dependents may also be given multiple return visas for the duration of their residence.⁸⁹

Oman requires the local sponsor to request a reunification visa for his employee's spouse and minor children (younger than 21). This type of visa may also be granted to the foreign wife of an Omani citizen upon his request. In case the marriage is dissolved, the foreign spouse's residence is cancelled.⁹⁰ In 2013, news reports emerged about a decision of the Omani Royal Police which sets a minimum limit of 600 Omani Riyal in monthly wages for foreigners to be able to bring their families to Oman on dependent visas.⁹¹

A number of conditions are set by the UAE for the sponsorship of the spouse, unmarried female children and minor male children (below eighteen). Adult male children may obtain a residence permit sponsored by a higher education institution if they are studying in the country. The most important condition is a minimum salary requirement of Dh3,000 if the employer provides accommodation and Dh4,000 if he does not. A number of categories are exempt from the salary condition, namely teachers, imams, and bus drivers who transport students.⁹² A previous Council of Ministers Decision from 1994 specifies the categories of persons⁹³ permitted to sponsor the residence of family members and limits the ability of businessmen to sponsor family members to those who have a minimum share of Dh70,000 or a third of the total share. These categories also need to make a salary of Dh4,000 if the employer provides accommodation and Dh5,000 if he does not.⁹⁴

Dependent Employment

In terms of dependents seeking employment in Qatar, the law clearly defines for each category of residents who their sponsor should be. Male foreigners must be sponsored by their employers, whereas women are to be sponsored by the person supporting her and with whom she is residing even if she takes up employment.⁹⁵ Once the new residence law comes into effect, the head of the family may, but does not necessarily have to, continue to be responsible for women after they find employment within Qatar.⁹⁶

New regulations issued in Saudi Arabia in 2013 by the Ministry of Labour allow dependents of foreign workers to seek employment if s/he is 18 years of age, has lived in the Kingdom for at least a year, and has obtained the sponsorship of the employer. The employer must obtain the approval of the dependent's main sponsor. If a dependent leaves his or her employment and goes back to being a dependent of a foreign worker, he or she must remain in that status for at least one year before seeking another job.⁹⁷ Children of Saudi women married to foreigners may seek employment in the private sector and do not need to transfer their sponsorship to their employer. The foreign husband of a Saudi woman may also seek employment in the private sector provided he has a valid passport, which enables him to travel back to his home country at any time.⁹⁸

Kuwaiti regulations also permit the transfer of a dependent's residence to a work residence subject to the approval of the original sponsor and the lapse of at least one year in the country.⁹⁹

Dependents residing in Bahrain may not work without obtaining the proper permits and changing their residence permits to reflect their new status.¹⁰⁰ Furthermore, foreigners and their dependents,

who have been granted a residence permit under personal sponsorship, may not seek employment in the public or private sector.¹⁰¹

The Omani Royal Police decision of 2013 on the minimum wage required for family reunification prohibits dependents from seeking employment in Oman. However, this rule does not apply to dependents already in the country on family visas.¹⁰²

According to a UAE Ministerial Decision of 2010, a work permit may be granted to individuals whose residence is sponsored by their parents if they fall into one of these three categories: females (18 years old), the husband of a national woman, and the children of a national woman.¹⁰³ Foreign mothers who are sponsored by their national sons may also be granted permission to work in the private sector.¹⁰⁴ Other categories of foreign dependents need to transfer sponsorship to their employer should they wish to work in the country.

Looking at the rules on dependent sponsorship, Kuwait places the heaviest burden on the foreign worker with the requirement of a minimum salary as well as the imposition of annual fees. Qatar only requires the foreign worker to meet the specified minimum salary requirement. Saudi Arabia, on the other hand, has not introduced the monetary requirement but has instead chosen to regulate the issue of family residence by limiting it to foreigners working in certain professions.

Seconding Workers

Seconding workers refers to the practice of temporarily loaning the services of an employee to another employer while still under the sponsorship of the original employee.

Generally speaking, sponsors in Qatar are prohibited from permitting their workers to be employed by anyone else. The competent authority may however authorise a sponsor to lend the foreign workers he sponsors to another employer for no more than six months, which may be renewed for another six months. The competent authority may also grant permission to a foreigner to work for another employer outside the regular working hours of his original employment provided that his sponsor agrees to it in writing. The approval of the Ministry of Labour must be obtained for workers who are subject to the labour law. In all cases, visas may not be assigned or transferred to third parties in any manner whatsoever nor can they be used by third parties, whether such transfer, assignment, or use is remunerated or not.¹⁰⁵

A similar provision exists in Kuwaiti law which prohibits the employer from employing workers who do not hold a work permit or those who hold a work permit to work for another employer, even if the work is temporary and the original employer's approval has been obtained. Should that happen, the worker's permit will be revoked and he will be repatriated at the expense of the employer.¹⁰⁶

In Saudi Arabia, employers may not allow their workers to work for others and may not employ the workers of others themselves unless they follow legal rules and procedures related to the transfer of sponsorship.¹⁰⁷

Oman prohibits employers from allowing a foreign employee to work for another employer or employ a foreigner, who is authorised to work for another employer or residing in the country illegally.¹⁰⁸

In 2010, the UAE promulgated a decision allowing the issuance of temporary work permits and work permits for part-time work for a number of categories. The categories include workers who are registered with the Ministry and have a valid work permit; individuals sponsored by their parents who are eligible for a work permit; and students older than 18. Such work permits may not be issued to employees older than 65 and are subject to the approval of the current employer if applicable.¹⁰⁹ Moreover, under a 2005 Cabinet Decision, the Minister of Labour and Social Affairs may allow the secondment of construction labourers from one firm to another subject to a number of conditions. The number of labourers should not be less than twenty, the new employer should have an actual need for them, and the consent of the current employer must be obtained.¹¹⁰

Qatar and the UAE's rules on seconding workers are the most permissive, allowing foreign workers to seek additional employment, subject only to the approval of the sponsor and the competent authority.

Repatriation and Absconding

As a general rule, the sponsorship systems of all the GCC countries require the employer to bear the responsibility and costs of repatriating their foreign employees.

Under the old Qatari Residence Law, which is still in effect, the sponsor has the obligation to repatriate the foreign worker after the expiry or cancellation of his residence permit or when an order to repatriate him/ her is issued. If the foreign worker refrains from departing, then the sponsor must notify the competent authority to repatriate him and pay the costs associated with it. However, the sponsor is not obligated to pay the costs of repatriation if the foreign worker is not subject to the labour law (domestic workers) after the lapse of thirty days from the date of his reporting the worker's escape. Furthermore, whoever employs a foreigner without sponsoring them is responsible for paying repatriation expenses in addition to the prescribed penalty. The sponsor must also bear the expenses of burial or transportation of the body of a deceased foreign worker to his/her country of origin.¹¹¹ The new residence law requires the recruiter to notify the competent authority within fourteen days of the expatriate leaving his employment or refusing to leave the country after his residence permit has been cancelled or expired. In terms of repatriation, the recruiter has to bear the expenses of the expatriate's return to his country of origin and in case of death, the expense of burying the body of the expatriate or transporting it to his family. It is worth noting that under the new law, no mention is made of the time limitation on the repatriation of domestic workers who have escaped.¹¹²

Saudi labour law requires the employer to bear the costs of the exit visa and return ticket to the worker's home country at the end of his/her employment.¹¹³ The residence regulations stipulate that if the sponsor insists on cancelling his sponsorship for strong reasons and no new sponsor offer is submitted, then the foreign resident is to be detained if found and must leave the country within one week.¹¹⁴

In Kuwait, the employer is required to pay the costs for repatriating the worker. If the worker discontinues his employment and joins another employer, then the latter employer must bear the costs of repatriation so long as the discontinuation of the previous employment has been reported and no violation of the law has taken place.¹¹⁵ In a number of cases, the employer is exempted from paying the costs of repatriation and these include: the worker being fired in accordance with the provisions of the labour law; the worker refusing the engagement without just cause; the worker ending the work contract in vio-

lation of its terms and conditions; and the worker absconding from work and joining another employer. Once the former employer reports this, the new employer must bear the costs of repatriation. In all of the aforementioned cases, the Ministry of Labour may revoke the worker's permit for at least two years.¹¹⁶

The responsibility to repatriate workers at the end of the employment contract or cancellation of the work permit, per Bahraini law, lies with the last employer.¹¹⁷ In response to inquiries submitted by Human Rights Watch to the Bahraini Ministry of Foreign Affairs, it was clarified that Bahraini legislation does not define absconding or "escaping from work" [their emphasis] as a crime. However, abandoning work is often treated as a violation of the terms of residence.¹¹⁸

The new Omani labour law assigns the employer the responsibility to repatriate a non-Omani worker to his country at the end of employment unless his sponsorship is transferred to another employer. Should the employer fail to repatriate, the government bears the cost of repatriation, which is subsequently recovered from the employer.¹¹⁹ Employers in Oman are required to publish an absconding notification if the employee has been absent for seven days without the sponsor's knowledge or approval.¹²⁰ Once the truth of the employer's notification is verified, the worker is required to pay the cost of the labour card and any related fines and s/he loses his right to gratuity for the period preceding the date of his absconding.¹²¹

In a similar vein, the UAE labour law requires the most recent employer to bear the cost of repatriation for foreign workers.¹²² The UAE also requires employers to submit an absconding report if a worker misses work for seven consecutive days and the employer does not know his whereabouts or a valid reason for the absence. Workers whose employment ends in absconding are permanently banned from working in the country.¹²³

Concluding Remarks

Upon closer examination of the sponsorship systems of the GCC countries, it is clear that they are not only structurally but also functionally similar; it is not merely the way in which the systems have been constructed that is comparable but also the manner in which they operate. The rules in all six countries have been formulated around the needs of the employer as the baseline and subsequently amended in response to some of the abuses that have resulted from that. This is evident, for example, in the case of the legislation regarding the prohibition on holding the worker's passport and the requirement to return it once all the necessary paperwork has been completed.

A number of reasons could be posited for the similarity in the sponsorship systems of the six countries. The sponsorship system is said to have evolved from the Bedouin tradition of hospitality, which is based on the concept of offering guests protection and taking responsibility for them.¹²⁴ The *kafala* system may also have evolved from Islamic Shari'a law relating to personal *kafala*/ guarantees.¹²⁵ Given their geographical proximity and shared cultural heritage, it is possible to understand how all six countries may have applied this concept to their legal systems. The countries also share a similar history in terms of their need for migrant workers. The discovery of oil led to rapid development and the need for manpower to execute projects. This led to a rapid influx of foreign labour. Coupled with the increase in the national population's wealth, this created a dependence on foreign labour to carry out jobs that were considered inferior by the local population (mainly in the construction and services sectors). Therefore,

all six countries found themselves faced with the same challenge of trying to balance their high dependence on foreign labour and their need to limit the influx of foreigners in order to guarantee the numerical superiority of their national population. Another factor, which may have led to the similarity in the legal frameworks of the sponsorship systems in these countries, is the political and economic alliance that exists between them in the form of the Gulf Cooperation Council (GCC). This alliance is a platform through which the Gulf countries formulate much of their economic and political policies, exchange information, and plan strategies for dealing with the common issues facing them including the issue of population imbalance.¹²⁶

It is important to note, however, that some of the GCC countries have taken bigger steps to amend the sponsorship system, which should result in better protection for migrant workers. Bahrain and the UAE have both enacted legislation over the last few years easing the restrictions on transfer of sponsorship, which has led to greater labour mobility. Kuwait has recently adopted legislation granting domestic workers enforceable labour rights. Addressing the human and labour rights issues that have arisen from the sponsorship system will require changes at the legislative level in each of the six countries as well as the introduction of new procedures operationalizing those changes to ensure their proper implementation.

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