

Doktori Tanulmányok

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The Kafala Sponsorship System in the GCC Countries A Comparative Study Among the GCC Countries

1. Introduction

The need for legislation governing labor relations has arisen since time immemorial. Even in ancient societies that recognized slavery as a social and legal system, they had labor legislations that regulate the relationship between workers and the employer.

Labor law can be traced back to the bygone past where ancient civilizations arose. Although most European writers often link the emergence of labor law with the industrial revolution and apprenticeship systems in the medieval world, some scholars in Mesopotamia (present-day Iraq) have defined labor standards that go back to the Babylonian Code of Hammurabi (the 18th century BCE) in addition to labor and management relations stipulated by Hindu laws (Schregle, J. and Jenks 2017).

While the countries and organizations concerned seek to provide more legal protection for workers in the labor market, the Gulf Cooperation Council countries still adopt the Kafala sponsorship system to regulate the employment of foreigners within the member states of the GCC.

This paper examines the historical origin of the Kafala sponsorship system and presents an analytical comparative study of the Kafala sponsorship system in the GCC countries, to accurately identify the contractual system with foreign workers in the GCC countries.

2. The concept of Kafala Sponsorship system for employment

All GCC countries require any foreigner entering the country to have a sponsor, with a few exceptions that we will mention later in this paper. It is worth noting that this order does not only apply to foreigners arriving to work, but also to visit (Zahra 2015b).

The history of the sponsorship system in the Arab Gulf states goes back to before the discovery of oil when extracting pearls from Bahrain was a popular business that attracted hundreds of foreign divers, which in turn prompted Britain in 1904 to demand sovereignty over foreigners residing in Bahrain. This request was rejected by the ruler of Bahrain at the time, Sheikh Isa bin Ali, Britain surrounded his palace and forced him to resign. Then the Queen's Council was established in Bahrain, which was

headed by a British officer directly controlling foreign affairs. This step marked the beginning of the separation between locals and foreigners.

By 1923, the British delegate was controlling about 4,000 to 7,000 people out of a total population of 100,000, this figure was considered relatively large due to Britain's weak institutional presence in the region, consequently, every captain on his ship became the sponsor and sole liable to the British legate.

This is the real start of the sponsorship system, as Britain controlled the issuance and distribution of residence visas, as well as organizing the residency of foreigners, and creating a different system for foreigners from locals.

The use of the sponsorship system was not new for British officials. They used it regularly throughout the empire to ensure the good behavior of individuals and even entire tribes in areas under their colonization. This practice was particularly widespread in the mid-nineteenth century in India, especially in the North-Western Frontier Province, where the British used it as a way to end the great Indian uprising that broke out there in 1857 by requiring the tribe's notables to sign a written undertaking and present specific individuals from the tribe is held hostage to ensure the good behavior of the entire tribe (Al Shihabi 2018).

By the time the sponsorship system had evolved and expanded to include all Arab Gulf states, taking a completely different concept to its emergence, as it led to delegating responsibility by the state to the private employer to oversee the immigration and employment status of the migrant worker. This situation may create an imbalance between the rights and capabilities of workers and employers to terminate the employment relationship and move in the labor market in the country concerned.

3. The core elements of the kafala sponsorship system

The Kafala sponsorship systems that regulate labor relations in the GCC countries include special legal features, administrative regulations, and sociocultural practices that bind the foreign worker and his employment status to a single specific sponsor who is a citizen of one of the GCC countries, given that there are some differences among the GCC countries. This paper is considered a comparative study of the sponsorship system. in the GCC countries, by analyzing the main elements on which the sponsorship system is based in each country, including the KSA, the EUA, Bahrain, Kuwait, Qatar, and Oman.

3.1. Entry requirements to country destination in Kafala sponsorship systems

To enter the destination country, laws and orders in the GCC states require foreign workers to obtain a sponsor and often remain tied to this same sponsor throughout their stay. The sponsor's name is usually written on the entry visa of a migrant worker, as well as on residency and work permits. This system gives the sponsor a level of control over foreign workers throughout their stay in the country of destination.

In Qatar, the law requires every foreigner granted an entry visa to have a sponsor. This even applies to individuals entering on a temporary visitor visa as well as those entering the country for residence and work (Law No.4 2009).

Recently the term “sponsor” has been replaced by the term “recruited” in the Qatari residency law promulgated in 2016. A recruiter is any entity, employer, head of a family, or host that recruits an expatriate or to whom the residency is transferred under the provisions of the law (Law No.21 2015). Likewise, in the KSA, no foreigner can enter the country except after providing information about the sponsor, his obligations, and his sponsorship for deportation in case he is required to leave the Kingdom. The sponsor may also be the businessman/company you have contracted with (Law No. 17/2/25/1337 1952).

In the Sultanate of Oman, the residence visa is given to a foreigner who entered the Sultanate through his sponsor, and the sponsor must submit to the competent authority a request to leave the sponsored one-two weeks before the expiry of his residency or when his sponsorship is canceled (Decree 1995).

The decree, in Article 4, excluded from the applying of the sponsorship system the following categories: Heads of foreign countries and members of their families and their entourage, heads and members of diplomatic and consular missions accredited to the Sultanate, administrators, technicians, and their families, citizens of the GCC countries, captains and members of the crew of ships and civil aircraft in transit or for temporary landing in the Sultanate’s ports, In addition to tourists, students and athletes upon their arrival or travel within delegations or organized teams (Decree 1995).

Bahraini law, like other laws of the GCC member states, requires foreigners working in Bahrain to be sponsored either through personal sponsorship or through the sponsorship of the contracting institution (Decision No.2 1970).

3.2. Transfer to another employer in Kafala Sponsorship System

In Qatar, a foreign worker can transfer to another employer, according to the rules and procedures that are specified by the Ministry of Administrative Development and Labour. As Qatari law stipulates that if a foreign worker wishes to move to another employer, he must notify the current employer in a written form of his desire to terminate the contract at least one month before the date of termination of the contract. The new employer is obligated to compensate the contracting employer for the value of the ticket and recruitment fees, if any, provided that the compensation does not exceed the worker's basic wage for two months (Law No.21 2015).

This is considered as a tangible transformation in the Qatari sponsorship system if we know that the previous law, which was canceled at the end of 2016, required the approval of all the employer and the Ministry of Administrative Development and Work so that the foreign worker could move to another employer, otherwise, he must wait until the end of his contract if his contract is fixed-term or after five years in the case of indefinite contracts (Law No.4 2009).

It is noteworthy that Qatari law has authorized the Ministry of Administrative Development and Labour to authorize the current employer to loan his foreign workers to another employer to work for six months, renewable for one time.

It is also permissible for a foreign worker to work for two employers according to the written consent of the recruited employer and a request from the foreign worker under the procedures specified by the Ministry of Administrative Development and Labour (Law No.21 2015).

Kuwait has set a set of conditions for transferring a work permit from one employer to another as it stipulates obtaining the permission of the current employer in addition to completing one year of continuous residence in the country for foreign workers brought based on a work permit. As for foreign workers brought under government contracts, the government stipulated the lapse of three years after the worker's continuous residency in the state and the lapse of one year of continuous residence for the worker with the last employer (ILO 2011).

Ministerial Resolution No. 200/2011 regarding the organization of work in the private sector granted the Ministry of Social Affairs and Labor the power to transfer a work permit from one employer to another employer without the need for the approval of the first employer, if public interest reasons so require (Article 22 of the decision). The cases of assault and sexual harassment of the worker are a reason for the Ministry's intervention, to transfer the work permit to another employer (Economic and Social Council 2013).

Bahrain is at the forefront of countries in terms of facilitating worker transfer rules. Before 2002, transferring sponsorship without obtaining the employer's consent was restricted to a limited number of cases: if the employee's contract or period of residency has expired (whichever comes first); If the position for which he was recruited is complete; Or if the institution he works for has closed. Since 2002, the transfer has been permitted without the consent of the current employer even if the contract is still valid, provided that several conditions are met, including notifying the current employer in a written form, in addition to fulfilling all obligations towards the current employer, with the new employer pledging to compensate The current employer for all damages if any, and all fees incurred, such as fees for issuing and renewing work permits, fees paid to the Immigration and Passports Department, and the cost of an airline ticket (Decision No. 40 2002).

In the UAE, significant amendments have occurred related to the transfer from one employer to another, going back to the regulations issued by the Ministry of Interior in 1997 that required the approval of the current sponsor as well as spending at least one year with the current sponsor for transfers within the private sector (Ministry of Interior 1997). As for foreign investors, a ministerial decision was issued in 2003 that allowed the foreign worker to request the transfer of his sponsorship from the institution in which he works to the one he owns or in which he is a partner (Ministry of Interior 2003).

The year 2005 witnessed more precise regulation regarding employer transfer, as the UAE Federal Ministry of Interior issued executive regulations for the transfer of sponsorship that include the conditions under which this transfer can be approved for foreign workers. In general, the two main conditions are obtaining the consent of both the current and future employer In addition to spending a specific time at work for the current sponsor employer, which varies according to the category to which the employee belongs: a) Holders of master's or doctoral degrees need to spend at least one

year with the current employer and can be transferred several times without restrictions; B) Holders of a bachelor's degree or its equivalent need for two years and can transfer twice; C) All other categories must spend at least three years and can transfer only once during their stay in the United Arab Emirates (GLMM 2005). The time required for categories B & C may be reduced to one year if an additional fee of AED 3000 is paid. Moreover, all categories can be completely exempted from the time required in several cases including the closure of the enterprise and its bankruptcy, as long as an additional 3000 AED is paid. The requirement to obtain the consent of the old employer can be waived for some reasons including non-payment of wages. For two months, the facility closed, and workers' complaints cases were referred to the court by the Ministry of Interior (GLMM 2005).

According to the Ministry of Labor in KSA, the Saudi rules regarding the transfer of the sponsor were facilitated in late 2014. Foreign workers have the right to change the sponsor according to the following cases: The first case is to change the sponsor category, as the Ministry of Labor divided the sponsors into categories, foreign workers who work for a sponsor of the red or yellow category can change their sponsors freely to companies from the green category without obtaining the approval of their current sponsor, the other case is if the sponsor fails to issue a valid work permit within three months of the foreigner's arrival in the country, in this case, the employee has the right to request transfer without the employer consent, finally, the foreign employee may request for transfer without the consent of the employer if the employer fails to renew the work or residence permit before its validity expires. Taking into consideration, the employer may object to the transfer in any of the aforementioned cases within five days of the employee submitting the transfer request to the Ministry of Labor (Nitaq Program 2015).

In sum, Qatar's regulations are considered the most flexible regarding the transfer of the employer, followed by Bahrain, which allows the transfer of sponsorship for all categories of workers without the consent of the employer after one year of work. As for the United Arab Emirates, it has exempted certain categories of people from the requirement to obtain the approval of the current sponsor. As Kuwait did, Saudi Arabia is considered the most stringent, as it does not allow a transfer without the consent of the employer unless ministerial approval is granted and within a narrow range.

3.3. Departure and return to the country of residence

The Qatari residency law applied in 2016 in Article (34) allowed a foreign worker to leave the country during the validity period of his residency, without obtaining the permission or consent of the employer. However, it is not permissible for a foreign worker who has been granted residence permits to stay outside the country continuously for more than six months, unless he obtained before his departure permission to return from the competent authority, after paying the prescribed fees. The Minister of Interior, or whoever deputizes for him, may waive the periods stipulated in the Law (Law No.21 2015).

Whereas previously, a foreign worker in Qatar was required to obtain an exit permit from his sponsor to leave the country, either temporarily or permanently. The

only exceptions to this rule are women who are sponsored by the head of household, minors, and visitors who stay thirty days or less. If the sponsor refuses to sign the exit permit or is unable to do so, the expatriate must appoint a sponsor to leave or present a certificate proving that he is not serving any punishment and has no lawsuits, within complex and lengthy procedures (Law No.4 2009).

In Kuwait, foreign employees working in the private sector do not need to obtain an exit permit, unlike foreign employees who work in the public sector and government agencies. A foreign employee can leave the country for a period of up to six months without losing his residence permit. The Kuwaiti residency regulations have allowed in some cases to exceed the period of stay abroad six months without losing a residency, namely students who travel abroad for education, people who go for medical treatment, and those who They accompany them, as well as government and corporate employees whose work requires travel for more than six months (Ministerial Order no.640 1987).

As for Oman, the residency law did not address the issue of whether a foreign worker must obtain the permission of the employer or not the foreigner, the law stipulated that a foreign worker loses his right to residency if he remains outside Oman without a valid reason for more than six consecutive months or eight non-consecutive months in one year or for eighteen months during three years, bearing in mind that this condition does not apply to members of the family of a foreign resident if his residency is valid (Zahra 2015a).

The KSA is one of the most stringent Arab Gulf states regarding foreign worker travel, as foreign workers in the KSA need to obtain an exit permit from the relevant authorities before leaving the country. If a foreign worker wishes to leave the country for a specified period, he can request an exit and return permit that is valid for six months from the date of departure. If the foreign worker is under the sponsorship of the employer, in this case he needs to obtain permission from the employer to get an exit permit. At the end of the employment contract, the foreign worker needs to obtain the consent of the employer to be able to obtain a final exit visa. A foreigner may then stay in the country for two months after issuing any type of visa: exit, return, or final exit (Azhari 2016).

According to Bahraini legislation, a residence permit to work allows its holder to leave the country and re-enter the country several times, without obtaining the permission of the employer sponsor. This residence permit is canceled if the foreigner stays outside the country for more than six months (Decision No.87 2006).

Likewise, the UAE does not require an employer's permission to obtain an exit permit, but the residence permit is canceled if the holder spends more than six months outside the UAE (Ministry of Interior 1997).

3.4. Withhold the travel documents and passports of the foreign worker by the sponsoring employer

The sponsors employer in the GCC countries used to withhold the passports of foreign workers with them throughout sponsorship, considering this measure is a restriction of the freedom of foreign workers and a violation of their rights, later most

of the laws governing residency in the GCC countries stipulated that this procedure is not permissible.

In the KSA, according to a decision issued by the Council of Ministers, it prohibits employers from withholding the passports of foreign workers or their families' members and guarantees the freedom of movement within the Kingdom, in line with the decision the Ministry of Social Affairs and Labor issued a decision prohibiting, according to employers in the private sector, from withholding the travel documents of their foreign workers (Arabia 2009).

In Qatar, the residency law explicitly states that the passport or travel document must be returned to the foreign worker as soon as the procedures for issuing or renewing the residence permit are completed. An exception to this is the case if the foreign workers ask the sponsor in written form to keep the passport or travel documents with him, this exception was unsuccessful by the Qatari legislator because it opens the door to cases in which the sponsor puts pressure on the foreign workers and forces them to write a request to keep a passport with the sponsor (Law No.21 2015)..

In Oman, the Omani Ministry of Labor issued a circular, prohibiting sponsors from withholding foreign workers' passports.

The UAE residency law did not address the issue of the sponsor's seizure of travel documents for foreign workers, with a review of the UAE courts noting that in many labor cases in Dubai, the court ruled in favor of the employees and found that confiscating passports is a violation of their rights. Lawyers working in the United Arab Emirates have confirmed the existence of an administrative order in the Ministry of Interior, stating that passports for foreign workers should not be kept unless they are based on a judicial or administrative order (HRW 2014).

In Kuwait, the residency law did not address the issue of confiscating the passport of a foreign worker by his sponsor, but in 2007 the Kuwaiti Ministry of Social Affairs and Labor issued a special decision prohibiting sponsor employer in Kuwait from retaining travel documents of their foreign workers

In Bahrain, the residency law did not address the issue of confiscation of foreign workers' passports by employers' sponsors, but many court rulings stipulated that this is not permissible in cases filed by foreign workers, most of which were domestic workers (HRW 2012).

3.5. Ban of entering the country

The GCC countries are adopting an unprecedented approach that is to prevent a foreign worker who has terminated his work contract from entering the country in which he worked for a period of often two years, justifying this approach in an attempt to regulate the number of foreigners residing in the country and protect the interests of employers. The rules and procedures differ from state to state in terms of conditions that can lead to a ban on the return period.

In pursuit of reforming the residency system, Qatar no longer prevents a foreign worker who has terminated his work contract from entering the country for two years. The previous residency law stipulated that a foreign worker who had previously resided in Qatar for work could not be granted another entry visa until two years had

passed from the date of his departure. However, the Minister or his authorized representative may waive this period, subject to the written consent of the previous sponsor. Under the current residency law, a foreign worker is not prevented unless he is dismissed from his work as a punitive measure under the labor law, and the dismissal is not challenged before the competent court, or his appeal is rejected. The ban period is four years from the date of his departure .

The labor regulations issued by the Saudi Ministry of Interior stipulated that a foreign worker would be deported if it were proven that he worked for another employer's sponsor account or his account, in addition to preventing him from entering the country for two years. If it is proven that a foreign worker has employed another foreign worker, to work for himself or another employer, he will be fined 5,000 Saudi riyals or imprisonment for a month or both, in addition to deportation (Ammen 2019).

Under Kuwaiti legislation, the sponsoring employer may request the cancellation of the work permit of the foreign employee and deny him the right to work in the country for two years if the worker violates the terms and conditions of his work contract or commits one of the violations stipulated in Labor Law No. 6 of 2010 (Public Authority of Manpower 2010).

According to Omani regulations, every foreign worker who wishes to issue a work entry visa and has previously worked in the Sultanate must wait until two years have passed since his last departure. However, the General Inspector of the Sultanate has the authority to override this period if he considers it to be in the public interest. Moreover, foreign workers who have been deported for having committed acts that constitute crimes need special permission from the Inspector General in addition to the two years (Decree 1995).

In the UAE, if the residency permit of the foreign worker is canceled, it will entail preventing him from entering the country for six months. This does not include cases of transferring sponsorship from one employer to another, provided that highly skilled workers are excluded from the provisions of the ban. In other cases, the ban is extended from entering the country for a year, such as participating in workers' strikes or contracting infectious diseases (Ministry of Interior 1997).

4. Steps towards reforming the Kafala sponsorship system

The sponsorship system in the KSA has been subject to major criticism related to human rights and inequality in rights between the parties to the contractual relationship (Independent 2021).

Under the new contractual system adopted by the Ministry of Human Resources, in addition to the abolition of the sponsorship system, foreign workers have freedom of transfer from one job to another without the employer's consent, they are free to travel outside Saudi Arabia as soon as the employer is notified electronically, and they have the right to move from one job to another during the validity of his contract if they fulfill the contractual duties (DW 2021).

This initiative is considered an important step towards establishing a balanced contractual system, but it is not sufficient if we know that the Kingdom of Saudi Arabia has excluded five professions, which are the private driver, the guard, the domestic

worker, the shepherd, and the gardener, who are the most abusive groups. Although five occupations of employment are excluded and will remain subject to the old sponsorship system, the groups excluded from the initiative constitute 59% of expatriate workers in the private sector, or about 3.7 million foreign workers, who will not benefit from the reforms (Alarabi Aljadeed 2021).

The features of the sponsorship system allow the GCC governments "an effective way to control labor flows inside and outside the country" by accepting large numbers of temporary foreign workers during the period of economic prosperity and expelling them during periods of economic downturn. Therefore, the GCC countries will not abandon this system easily (Murrayt 2012).

In 2019, the UAE implemented a long-term residence visa system (Golden residency), for five or ten years, that would be renewed automatically, upon the availability of the same conditions, for certain categories that include investors, entrepreneurs, and those with specialized talents.

This new system allows residents in the UAE, foreign expatriates, and their families who wish to come to work, live, and study in the country, the possibility to enjoy long-term residency without the need for an Emirati sponsor, with 100% ownership within the emirates of the country, contrary to the customary requirement that there is a local partner with a share of no less than About 51% in business and investment projects within the UAE.

Under Cabinet Resolution No. (56) of 2018 regarding the regulation of residence permits for investors, entrepreneurs, and those with specialized talents, the decision regulated the granting of residence permits to each of the investors, entrepreneurs, those with specialized talents, and researchers in various fields of science and knowledge, in addition to distinguished students (UAE.GOV 2019).

The golden residency system has been criticized, especially that it does not aim to reform the sponsorship system in the Emirates as much as it aims to attract investors, entrepreneurs, and scientific competencies, while the majority of foreign workers are from the categories of domestic workers and are few skilled, for instance, 52% of expatriate workers to the Emirates are domestic workers, in a country where foreign workers constitute more than the number of citizens, in Dubai, for example, 91% of the population are foreign workers (Bel-air 2018).

In Bahrain, Asharq Al-Awsat newspaper reported, in December 2016, that Bahrain will formally abolish the sponsorship system as of April 2017, after which no progress has been made in this regard.

In August 2017, the Labor Market Regulatory Authority began issuing a "flexible work permit" to foreign workers whose work permits had expired and had not been renewed by their employers. Undoubtedly, it is considered a quantum leap because it allows qualified workers to sponsor themselves instead of working under the supervision of the employer sponsor. Those eligible for the program receive a "blue card", which serves as evidence of their legal residency and work status in the country, with many benefits such as permission to work for more than one employer, as well as freely entering and leaving Bahrain. However, the reform remains partial and insufficient, given that it does not apply to "regular workers, domestic workers, and workers who leave work."

In addition, foreign workers are not allowed to obtain a blue card if their passport has expired, or they have a criminal record, or they try to escape from a previous employer, even because of violations. Moreover, the high cost of the permit (about BHD 1178 every two years) is accompanied by additional mandatory healthcare fees, making it unavailable to many workers (ECDHR 2019).

5. Conclusion and recommendations

This article included a comparative study of the legal employment system for foreign workers in the GCC countries, the "sponsorship system", which reviewed the reform steps taken by the GCC states regarding the employment of foreigners in each member state. The article concluded that the sponsorship system currently in place in the Gulf states - except Qatar, which announced its recent abandonment and replacement of the contracting system - is unfit to be a legal basis for contracting with foreign workers, as it places the employer in a legal position that allows him to exploit the foreign worker and deprive him of many His rights, such as his right to movement, his right to change his employer, his right to establish his own business, not to mention the discrimination in rights between foreign workers and local workers.

5.1. The paper recommends the following:

- Abolish the sponsorship system in all GCC states and replacing it with a contractual-based employment system that defines the rights and duties of the foreign worker and the employer, whether a natural or legal person.
- Establish a minimum wage for each category of workers, taking into consideration educational qualifications and years of experience.
- Guarantee foreign workers the freedom of travel and movement and preventing the employer from seizing the foreign worker's passport or travel documents under any circumstances.
- Emphasize the worker's right to transfer from one employer to another, without prejudice to the terms of the contract and the rights of the employer.
- Cancel a ban from obtaining a new residence permit for work for foreign workers whose term of work contract has expired unless the ban is based on a final court ruling.

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