

Labour and immigration reforms in Gulf countries: a comparative analysis

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There is a limited level of regional integration between the countries composing the Gulf Cooperation Council (GCC)¹. Whilst there are common sources² and some initiatives to adopt common rules³, each GCC country exists as an independent State and as a result, adopts its own laws, regulations and practices.

The field of labour and immigration law is no exception to this. It is, however, interesting to note that several countries of the GCC have adopted reforms in this field almost contemporaneously, between October 2015 and January 2016.

As a matter of fact, each of KSA⁴, Qatar⁵ and the UAE⁶ introduced new laws and regulations during this period.

¹ Countries which are members of the GCC are: Kuwait, Kingdom of Saudi Arabia (KSA), Bahrain, Qatar, the United Arab Emirates (UAE) and Oman. Yemen, although located in the Gulf peninsula, is not a member.

² All GCC countries are civil law countries, where written pieces of legislation constitute the main source of the law. Shariah also plays a role, which is more predominant in KSA than in the other countries.

³ Value Added Tax, which is being discussed between the GCC countries in view of a joint regional introduction, is a case in point.

⁴ The KSA Ministry of Labour amended the KSA labour law (issued via a Royal Decree in September 2005) through the introduction of 38 amendments, which came into force in October 2015. These amendments deal with a variety of issues including rules relating to working hours, the regulation of fixed term contracts, compensation upon termination of employment contracts, amendments relating to the inspection system and penalties to be imposed in the event of violations, and measures to improve the qualification and training of Saudi nationals. These amendments have been widely regarded as a 'mixed bag' with a majority of the changes having been made in favour of employees and only a few in favour of employers. The overall objective seems to bridge the gap between the private and public sectors, thus encouraging Saudi nationals to work in the private sector.

⁵ Qatar amended the Qatar labour law n°14/2004 through law n°1/2015 which introduced the Wage Protection System (WPS). The WPS requires the employer to pay all amounts referred to in the labour contract through a bank transfer to a local bank account in the name of the employee. The WPS entered into force in November 2015. During the same month, a new law n°21/2015 was promulgated in the field of immigration, replacing the current law

Although these changes were not coordinated, it is striking that each of the above mentioned countries all felt the need to amend their labour legislation⁷ at the same time, around ten years after the last significant changes had taken place.

The purpose of this article is to identify whether there are any common trends, similarities or persisting differences in the labour and immigration reforms currently taking place in KSA, the UAE and Qatar⁸.

Historic employer-friendly patterns largely remain in place

Employment laws in the Gulf remain quite simple compared to the sophistication and, sometimes, overly complex labour laws prevailing in Europe.

⁶ n°4/2009 governing the "entry, exit, residency and sponsorship of foreigners in Qatar". The new immigration law will enter into force in December 2016.

⁷ The Ministry of Labour of the UAE issued on 27 September 2015 three decrees – n°764, 765 and 766 – which aim at complementing the UAE federal labour law (issued in 1980, but amended since), which remains in place. These decrees entered into force on 1 January 2016 and introduced significant changes in respect of standard forms of labour contracts, termination of labour contracts and transfer of work permits further to a change of employer.

⁸ This article deals with rules applying to the private sector. Personnel working for the government are subject to separate labour regulations in each country of the region. Certain special zones such as the DIFC in Dubai or the QFC in Qatar have their own employment and immigration legislation which should be adhered to.

⁹ Where appropriate, we will also draw comparisons with rules prevailing in other GCC countries.

The first reason is that there is little or no collective bargaining in the Gulf. Employee committees, trade unions and collective negotiations are very rare and can even be forbidden⁹. The relationship between the employer and the employee remains essentially at an individual level¹⁰.

The second reason is that labour rules are, in general, employer-friendly. The two main examples are: the absence of a minimum salary¹¹; and the ability of the employer to unilaterally terminate the contract, provided a proper contractual notice has been served and end-of-service benefits are paid¹². There are other examples of employer-friendly rules¹³.

However it would be wrong to conclude that GCC labour laws are one-sided. They each contain provisions of public order providing certain minimum advantages and protection to employees¹⁴.

⁹ Trade unions and collective actions such as striking are generally banned; with the exception of nationals in KSA and Qatar. To the best of our knowledge, there are few entities where locals are willing to interact with their employer through a collective form of representation. Interestingly the new amendments in KSA have encouraged employers to permit workers to form workers' committees responsible for staff welfare (in particular, the use of funds resulting from the imposition of fines on employees).

¹⁰ Employers do not need to consider information or consultation obligations, in particular when implementing a redundancy programme.

¹¹ There is no minimum salary for expatriates (although bilateral treaties between manpower exporting countries and importing GCC countries sometimes refer to minimum salaries which are based on the type of work). Minimum salaries may apply for nationals, such as in KSA.

¹² To terminate an open-ended contract, the employer must provide a 'valid reason' in KSA, an 'acceptable reason' in the UAE and the employer does not need to provide any reason in Qatar. A reason is generally considered valid or acceptable when it is related to the work, which is quite broad. In the case of a fixed-term contract, the employer may terminate the contract early in certain limited cases; essentially if the employee has committed a fault of a particular nature. Terminating the contract of nationals is usually more complex and the risk of reinstatement is higher.

¹³ Six-day working week with normal working hours of 48 hours per week (up to 60 hours per week including overtime); the employer can impose fines on the employee in case of disciplinary breach; non-competition provisions do not need to be specifically compensated.

¹⁴ The main employee-friendly provisions are as follows: overtime attracts higher hourly rates; end of service gratuity to be paid by the employer depending on length of employment, even where the employee resigns; payment of notice and of the end-of-gratuity may only be denied if the employee has committed a fault of a particular gravity, which is generally interpreted restrictively; minimum paid holidays; protective rules for women, especially in case of maternity; and shorter hours during the month of Ramadan. One key advantage of working in the Gulf is that residents are not subject to any income tax on their salary and the transfer of money to their home country is not restricted.

Contrary to common belief, there are other parts of the world where employment laws are less prescriptive and less protective of employees than in the Gulf¹⁵.

This minimum level of protection does not apply to certain categories of personnel such as domestic workers, who fall outside of the scope of application of national labour laws.

Representatives of the GCC Ministries of Labour held several meetings in 2013/2014 in an attempt to adopt a unified contract for domestic workers. However, the idea was suddenly abandoned in early 2015¹⁶. This is an example of the difficulties facing GCC countries in adopting common rules in the field of labour and immigration.

Common trend towards greater employee protection

Aside from the unsolved situation of domestic workers, it is fair to say that all GCC countries have been working towards providing more protection and more guarantees in favour of foreign workers.

The one common mechanism which has been generalised is the Wage Protection System. The WPS has been in place in the UAE since 2009. It has now been adopted in Qatar and in KSA. Although administratively burdensome, it proves to be an efficient tool in ensuring blue-collar workers are paid the amounts due under their labour contracts on time.

There is also a common trend to control the application of legal rules more effectively.

This is enabled by the generalisation of e-government solutions, which allow various administrations to easily access data and compare them instantly¹⁷. On-the-ground checks are also more common, with the number of field inspections, labour inspectors and their powers being upgraded in KSA and in Qatar.

¹⁵ Such as in Singapore or in Hong Kong for example.

¹⁶ « Gulf countries abandon idea of unified contract for domestic workers », Doha News, January 5, 2015.

¹⁷ In KSA, data provided by employers can be shared and compared between the Ministry of Labour, the administration in charge of social security contributions (GOSI) and the Saudi Arabian Monetary Agency (SAMA). In Qatar, one example in the field of engineering is that the MMUP, the Ministry in charge of implementing the engineering regulations, has announced it will check with the Ministry of Labour and Social Affairs (MOLSA) the identity of foreigners who have obtained a work visa as an "engineer" in order to check if they have complied with the MMUP registration requirements.

KSA has even introduced a whistle-blowing procedure whereby employees are encouraged to report violations and may be rewarded up to 25% of the fine imposed on the employer.

The UAE has introduced a standard offer letter that should be consistent with the standard labour contract to be used by the employer¹⁸. However, the common practice in the UAE allowing a company contract to complement the standard contract¹⁹ should be maintained, as long as its provisions do not contradict the law.

In Qatar, it is expected that the MOLSA will also introduce a standard contract compliant with the new law. Latest practices have allowed employers to file made-to-measure company contracts, provided they are in compliance with the provisions of the Qatar Labour Law.

Termination of employment is also an area witnessing change. In KSA, the notice period for terminating open-term contracts has been increased from 30 to 60 days for employees paid on a monthly basis²⁰ and, in the UAE, decree 765/2015 deals with termination of employment. It provides for minimum notice periods and minimum compensation for early termination of fixed term contracts.

Different challenges explain persisting differences in terms of immigration rules

Immigration rules are one example where significant differences persist.

Whilst no exit permit or no-objection letter to change employer is generally required in Kuwait, Bahrain and the UAE²¹, exit permits and non-objection letters remain the norm in KSA, Qatar and Oman²². Qatar has recently amended its immigration laws.

¹⁸ As further detailed in decree 764/2015.

¹⁹ The company contract enables the addition of some provisions such as confidentiality or post-termination obligations, which are important for the employer whilst not included in the basic form of contract.

²⁰ However, open-term contracts only apply to Saudi nationals in KSA, as foreigners are deemed to be employed for a fixed-term period or, by default, for the period of their work permit.

²¹ As emphasised by decree n° 766/2015, there are now very limited situations in the UAE where an employee cannot change job without the approval of his former employer. This is particularly the case in the Emirate of Dubai where many companies are established in free zone areas and employees are sponsored by the free zone directly. Transfers of employees between free zones or between a free zone and a company located onshore (in the federal zone) are not restricted.

²² This applies to foreign employees. Nationals are not subject to such restrictions.

However, it remains to be seen how easily employees will be allowed to exit the country freely and to change jobs after the new law has come into force which is expected to happen in December 2016²³.

Another major difference is the 'job nationalisation' initiative. There is now a big push in KSA and Oman to incentivise the hiring and training of the local workforce; whereas there is no such general obligation being implemented in the other GCC countries.²⁴

Nationals in the UAE, Kuwait and Qatar are mainly employed through publically subsidised jobs; while foreigners primarily work in the private sector.

By contrast, nationals in KSA, Bahrain and Oman (where the demography is quite different from that in the other GCC countries) are incentivised to find jobs in the private sector, which is reflected in local laws which place a strong emphasis on the hiring (and training) of locals²⁵.

There is a general trend in the Gulf region which favours the employment of women, (whether foreigners or nationals). This is even the case in KSA, where the liberty of women is traditionally more restricted.

Different rules remain in place regarding the ability of women to work.

In the UAE and Qatar, a woman who is sponsored by her father or husband (under a family visa) can work, provided her employer has obtained the relevant work permit and the sponsor has issued a no-objection letter.

²³ For more details, please refer to our legal news alert issued in November 2015: « *Labour and immigration reforms in Qatar: a legal perspective* ».

²⁴ The labour laws in the UAE and in Qatar provide that employers should prioritise the hiring of nationals over other nationalities and that certain functions or professions are reserved to nationals. There is an Emiratisation policy applying onshore UAE with guidelines by industry. Similarly, Qatar applies a Qatarisation policy which is effectively applied in the energy and banking sectors only (in addition to the public sector). Given the economic and demographic context of these countries, the nationalisation initiatives remain largely theoretical and quite limited in effect. However, some high-profile joint-venture companies, usually set up between foreign multinationals and major local counterparts, have taken the initiative to implement 'nationalisation' programmes that are not otherwise imposed by law.

²⁵ The 'Nitaqat' programme is a case in point: employers in KSA are now obliged to hire a minimum percentage of Saudi employees depending on their sector of activity and on the size of their company. Certain functions are reserved to Saudi nationals. Employers not complying with employment criteria for nationals are prevented from hiring foreign employees and are facing penalties, amongst other sanctions.

In Qatar, it is possible for a woman to obtain a work permit and a residence visa under her own name but this requires the employer to obtain the corresponding opening for a woman on his visa quota approval²⁶. In KSA, women under a family visa are not allowed to work, they need to have their 'iqama' transferred to their employer for this to happen²⁷.

Conclusion

The countries of the Gulf region, despite common roots and obvious similarities, are facing very different challenges. Laws and regulations are both a cause and a consequence of very different 'fundamentals' in the fields of demography, sociology and economy.

In the field of labour laws, it should be noted that Gulf countries are making an effort to provide better protection to employees, through the introduction of additional rules and through a more careful enforcement of the rules. These rules (in particular the WPS and the obligation to register a labour contract consistent with the signed offer letter) are clearly aimed at protecting blue-collar workers who could be the victims of unscrupulous employers.

Immigration laws remain a key test of the free mobility of employees and are a strong indicator of the level of maturity and openness of the respective GCC countries.

All human resources directors we have talked to have insisted on the fact that, whilst compliance with local laws is a must, it is rarely sufficient in practice. A key challenge for companies in this region is to attract and retain employees who tend, more frequently than in other parts of the world, to leave easily to get a better paid job. Offering attractive salaries is one thing, but there is also a need to be imaginative in terms of packages and benefits²⁸ and to build a reputation as a 'good employer' in order to retain (expatriate and, as the case may be, local) talent.

Finally, a key challenge for multinationals is to apply the standards of their groups²⁹ whilst remaining competitive in a region which is known for attracting competition from all over the world. It is hoped that governments and clients in the Gulf region will progressively realise that requiring best practices to be applied by their contractors should mean that awards will not necessarily go to the lowest bidders, for which compliance with labour laws may be seen as an 'adjustment variable'.

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Contact



Arnaud Depierrefeu
Partner

D +974 4409 6725

E arnaud.depierrefeu@simmons-simmons.com

²⁶ In practice, it is more difficult to obtain a work visa for a female employee than for a male employee. In theory, a woman who has obtained a work visa can sponsor her husband; in practice, this is difficult to obtain in the UAE and nearly impossible in Qatar.

²⁷ Other restrictions apply in KSA, such as the need to have separate offices for men and women.

²⁸ In that respect, the absence of employee committees is not always good news for HR directors: when it comes to discussing salary reviews or allocation of benefits, it is not easy to talk to individuals who can be considered as effectively representing the community of workers or employees in the company.

²⁹ Especially in view of the principles of equality and non-discrimination, which are not necessarily a day-to-day reality in many Gulf countries. The challenge is all the more complex when you need to ensure compliance in your own company, but also within your subcontractors and suppliers.

Offices

Abu Dhabi

Simmons & Simmons Middle East LLP
Level 10 The ADNIC Building Khalifa Street
PO Box 5931 Abu Dhabi United Arab Emirates
T +971 2 651 9200 F +971 2 651 9201

Amsterdam

Simmons & Simmons LLP
PO Box 79023 1070 NB
Claude Debussylaan 247 1082 MC Amsterdam
The Netherlands
T +31 20 722 2500 F +31 20 722 2599

Beijing

Simmons & Simmons
33rd Floor China World Tower 3
1 Jianguomenwai Avenue
Beijing 100004 People's Republic of China
T +86 10 8588 4500 F +86 10 8588 4588

Bristol

Simmons & Simmons LLP
One Linear Park Temple Quay
Bristol BS2 0PS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Brussels

Simmons & Simmons LLP
Avenue Louise 149 b 16 1050 Brussels Belgium
T +32 2 542 09 60 F +32 2 542 09 61

Doha

Simmons & Simmons Middle East LLP
Level 5 Al Mirqab Tower Al Corniche Street
PO Box 23540 Doha State of Qatar
T +974 4409 6700 F +974 4409 6701

Dubai

Simmons & Simmons Middle East LLP
Level 7 The Gate Village Building 10
Dubai International Financial Centre
PO Box 506688 Dubai United Arab Emirates
T +971 4 709 6600 F +971 4 709 6601

Düsseldorf

Simmons & Simmons LLP
Kö-Bogen
Königsallee 2a
40212 Düsseldorf Germany
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

Frankfurt

Simmons & Simmons LLP
MesseTurm Friedrich-Ebert-Anlage 49
60308 Frankfurt am Main Germany
T +49 69-90 74 54-0 F +49 69-90 74 54-54

Hong Kong

Simmons & Simmons
13th Floor One Pacific Place
88 Queensway Hong Kong
T +852 2868 1131 F +852 2810 5040

Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office #1209, King Road Tower, Malik Road,
PO Box 864 Jeddah 21421
Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 2 606 9190

Lisbon

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Rua D. Francisco Manuel de Melo 21
1070-085 Lisbon Portugal
T +351 21 313 2000 F +351 21 313 2001

London

Simmons & Simmons LLP
CityPoint One Ropemaker Street
London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Luxembourg

Simmons & Simmons Luxembourg LLP
Royal Monterey 26A Boulevard Royal
Luxembourg L-2429 Luxembourg
T +352 26 21 16 01 F +352 26 21 16 02

Madrid

Simmons & Simmons LLP
Calle Miguel Angel 11 5th floor 28010 Madrid Spain
T +34 91 426 2640 F +34 91 578 2157

Milan

Studio Legale Associato in affiliation with
Simmons & Simmons LLP
Corso Vittorio Emanuele II 1 20122 Milan Italy
T +39 02 72505.1 F +39 02 72505.505

Munich

Simmons & Simmons LLP
Lehel Carré, Thierschplatz 6
80538 Munich Germany
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

Paris

Simmons & Simmons LLP
5 boulevard de la Madeleine 75001 Paris France
T +33 1 53 29 16 29 F +33 1 53 29 16 30

Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Level 18 Princess Al-Anood Tower 2
King Fahad Road Olaya
Riyadh Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 12 606 9190

Shanghai

Simmons & Simmons
40th Floor Park Place 1601 Nanjing Road West
Shanghai 200040 People's Republic of China
T +86 21 6249 0700 F +86 21 6249 0706

Singapore

Simmons & Simmons Asia LLP
12 Marina Boulevard #38-04
Marina Bay Financial Centre Tower 3 Singapore 018982
T +65 6831 5600 F +65 6831 5688

Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho
(Gaikokuho Joint Enterprise TMI Associates)
23rd floor Roppongi Hills Mori Tower
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan
T +81 3 6438 5255 F +81 3 6438 5256

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