

# New immigration law in Qatar – legal update

January 2017

On December 13, 2016 a new law, Law n°21 of 2015 regulating the entry, exit and residency of expatriates in Qatar entered into force (the “New Immigration Law”). This new law was originally promulgated in November 2015. It has now officially entered into force and replaced law n°4 of 2009, also known as the “Old Immigration Law”.

This new law has been widely and incorrectly referred to as a “New Labour Law”, which it is not.

Labour Law n°14 of 2004 (the “Labour Law”) regulates relations between employers and employees in the private sector<sup>1</sup>. The Labour Law has not been amended except for a specific and notable change made in 2015 as further described below. The Labour Law is administered by the Ministry of Administrative Development, Labour and Social Affairs (MADLSA).

The New Immigration Law is separate from the Labour Law, is completely new and regulates how an expatriate may be allowed to enter, reside, work and exit from Qatar. It is administered by the Ministry of Interior (MOI).

Although the matters covered by both these laws are closely intertwined, they should not be confused.

## General background

Over the last few years, Qatar has taken a number of initiatives to modernise its legal framework in the field of labour and immigration<sup>2</sup>.

In particular, law n°1 of 2015 amended one article of the Labour Law and introduced the concept of the “wages protection system” (WPS) whereby all payments due under a local labour contract must be transferred to the bank account of the employee opened with a Qatari bank via WPS. WPS has been in place since 2 November 2015 and has proved a useful step to protect the blue-collar workers, so as to ensure they are paid the amounts due under their labour contract on time.

Qatar has also been working on reforming the “Kafala” system, which was enshrined in the Old Immigration Law. “Kafala” is a system historically widespread in the Middle East whereby any foreigner residing in a State

must be under the protection and responsibility of a ‘kafeel’ (or sponsor). In Qatar, the concept of “Kafala” has progressively been adjusted in order to allow foreigners to become sponsors<sup>3</sup>. In the context of an employment relationship, a key impact of the “Kafala” system has been, and remains, the necessity for a foreign employee to obtain the approval of his or her sponsor (being his or her employer) to exit the country or to transfer his or her sponsorship to a new employer, amongst other things.

With Qatar hosting the FIFA World Cup in 2022 and several countries in the Gulf region having already removed the “Kafala” system<sup>4</sup>, Qatar had been regularly criticised by the international press and NGOs for failing to take steps to introduce meaningful reforms to this system.

<sup>1</sup> With limited exceptions.

<sup>2</sup> For more details on the various initiatives taken, please refer to our article «Labour and Immigration reforms in Qatar: a legal perspective» released in November 2015.

<sup>3</sup> A sponsor can be a foreign-owned or controlled entity (such as a subsidiary or a branch), as long as it is registered for business purposes in the State. A sponsor can also be a foreign individual: for example, a family member coming to Qatar for work may be allowed to sponsor his dependants if they will reside with him (or her) in Qatar, provided his salary is above a certain level. Generally a family sponsor must be male.

<sup>4</sup> «Kafala» has been removed in the UAE, Bahrain and Kuwait. It remains in place in Saudi Arabia and in Oman.

Conscious of the need to look into this issue, in 2013 the State of Qatar commissioned an independent review of the whole labour and immigration system (including the “Kafala”) and of the possible improvements<sup>5</sup>.

Following extensive internal deliberations, in November 2015 the Qatari government eventually released the text of the New Immigration Law: this law is very close in terms of format and substance to the Old Immigration Law but does replace the word of sponsor by that of recruiter (‘mostakdem’ in Arabic).

It provided for a grace period of one year prior to its entry into force in order to allow some time for the Government, employers and employees to prepare themselves for the new rules.

The purpose of this article is to provide some high-level legal and practical feedback on the main changes introduced by the New Immigration Law. The summary below is based on our reading and analysis of the New Immigration Law and of newspaper articles which have reported on awareness seminars organised by the MADLSA and MOI.

Unfortunately, the executive regulations - which are referred to in the text of the new law - have not been released at the time of writing of this article. Therefore, when the executive regulations are issued, and depending on how the new rules are applied in practice, the contents of this article will be subject to change.

## What you need to know about what has changed and what has not

### Signing a local labour contract with a local employer

A foreigner coming to Qatar for work purposes must sign a labour contract with his employer<sup>6</sup>, to be approved by the MADLSA, prior to being granted a residency permit.

This was already the case under the Old Immigration Law. The New Immigration Law has clarified that the prospective migrant workers will be able to see a copy of their employment contract prior to leaving their country of origin<sup>7</sup>.

Since the entry into force of the New Immigration Law, details of the labour contract need to be entered in the IT system of the MADLSA, where limited entries are available. It remains to be seen if the MADLSA will approve the filing of expanded, made-to-measure labour contracts, as long as they contain all necessary requirements listed under the Labour Law.

It is still prohibited to enter into a labour contract with one employer and to effectively work for another one, except in some limited cases. Manpower supply is a regulated and restricted activity in Qatar. This prohibition already existed under the Old Immigration Law and has been confirmed.

### Exiting the country

The exit permit system has not been removed, but some flexibility has been introduced.

There was some confusion with the initial drafting of Article 7 of the New Immigration Law. This Article was already amended by Law 1/2017, promulgated in early January 2017 and became effective immediately. It has been clarified that a foreign employee still needs to make a formal application to his employer to be allowed to exit<sup>8</sup>.

The employer’s consent is still required, either through a single exit or through a multiple exit permit<sup>9</sup>. The process has been made more efficient as a result of Qatar’s e-government system, and the availability of e-gates when entering and departing from Qatar<sup>10</sup>.

<sup>5</sup> «Migrant labour in the construction sector in the State of Qatar»: report released in April 2014 by international law firm DLA Piper.

<sup>6</sup> If an employee has already entered into a labour contract in his or her country of origin which has been signed with the parent company of the Qatar subsidiary or branch which will be the employee’s employer in Qatar, consideration will need to be given as to how the parent company labour contract and local labour contract will interact with each other, noting that the local labour contract should match the local part of the ‘master labour contract’ governed by the law of the country of origin of the employee, subject of course to compliance with the Labour Law in Qatar.

<sup>7</sup> It appears that from now on, a signed labour contract will need to be provided before a work visa is issued, i.e. before a foreign worker is allowed to enter Qatar for work purposes. Under the Old Immigration Law, a work visa was issued first, and an employment contract was to be provided once the employee had arrived in the country, during the process of obtaining his residency permit.

<sup>8</sup> The exit permit is required in the context of a labour relationship. Foreigners who reside in Qatar under a family visa (or those who visit Qatar under a tourist visa) do not need an exit permit. They are free to exit the country, unless they are implicated in a court case where a judge has imposed a travel ban on them. Therefore, the same rule as before continues to apply to the family members and dependants of a foreign employee in Qatar.

<sup>9</sup> Those issued prior to December 13, 2016 are still in force until the date of their expiry. We understand that employers will be able to grant or renew multiple exit permits for a duration of one year under the new regime.

<sup>10</sup> Although many applications are still processed manually, it is possible for an employee to request an exit permit – and for an employer to grant such permit immediately - by submitting an application through the e-government (Metrash) system.

Where an employer rejects an application for an exit permit, the employee will be able to appeal this decision to a special committee called the “Exit Permit Grievance Committee”<sup>11</sup>. The committee has a window of up to 72 hours to decide upon the request.

The committee will conduct an immediate background check on the applicant to ensure that no active or pending criminal proceedings or civil proceedings involving financial matters have been initiated against him or her. From official communications, we understand that the committee will in principle allow the applicant to exit, except if there is a pending legal action or if the employer can convince the committee he has a valid reason to initiate such an action against the employee.

It appears from initial statistics that around 70% of applications are handled successfully (i.e. the committee issues an immediate exit permit or convinces the employer he has no valid reason to refuse such permit)<sup>12</sup>. Other applications were referred to other administrative entities or rejected because of the existence of a travel ban.

## Changing of job

The need for a non-objection letter of the employer to allow an employee to change of job has been partially, but not entirely, removed.

Where an employee has signed an open-term contract, he or she will be allowed to change employer without requiring the consent of his or her current employer, provided he or she has already completed five years of service. We understand from official communications from the MOI and MADLSA that the five-year service period will include time spent with the employer prior to the entry into force of the new law.

However, the employee under an open-term contract wishing to change of job after five years will still need to (i) tender his or her resignation to his or employer as per the notice period provided for in his or her labour contract and (ii) get an official approval (from the MOI and the MADLSA) to be able to change employer<sup>13</sup>.

We understand – although this is not certain yet - that under the New Immigration Law, the new employer will need to have an available “slot” under its visa quota to recruit an expatriate employee from the Qatar market<sup>14</sup>. The process of transfer is supposed to be handled online through the website of the MADLSA, whilst a transfer under the Old Immigration Law was handled via the MOI.

Where an employee has signed a fixed-term contract, he or she will be able to change job without his employer’s approval at the end of his contract period. The same three conditions as above will generally need to be complied with, i.e. (i) the employee should notify their employer of their intention not to renew the contract, (ii) the approval by the authorities for a change of employer will need to be secured and (iii) the new employer will need to have an available “slot” under its visa quota.

In other words, the consent of the employer will still be needed if an employee wishes to change employer prior to the expiry of a five-year service period in the case of an open-ended contract or of the term of employment provided for in the contract in the case of a fixed-term contract<sup>15</sup>.

The consent of the employer may also be needed if there is a non-compete clause in the labour contract restricting the ability of the employee to join a competitor within a prescribed period - a period of up to two years from the expiry of the labour contract may be provided for<sup>16</sup>. Such non-compete clauses may be seen in employment contracts of executives who have access to commercially sensitive information of their employer.

The New Immigration Law allows the authorities to approve the transfer of an employee to another employer on a temporary basis, even if the above criteria have not been complied with where the employer and the employee are involved in court proceedings. This ability extends to employees not covered by the Labour Law if the employer has been ‘abusive’ or if transfer is deemed necessary for the public interest<sup>17</sup>.

<sup>11</sup> The application has to be submitted in paper form at the moment. But the MOI has advised that online applications – through the Metrash system – should be possible in the near future.

<sup>12</sup> Article on first statistics released by the Exit Grievance Committee, issued in the Gulf Times on 29 January 2017.

<sup>13</sup> Under the Old Immigration Law, the authorities conducted a background check of the employee wishing to change of employer: such employee needed to provide a fresh legalised police clearance certificate from his or her country of nationality and a non-legalised police clearance certificate from the Qatar police authorities as well as a legalised copy of his or her diploma and (since June 2016) a legalised up-to-date confirmatory letter from the educational institution where the diploma was obtained from.

<sup>14</sup> Under the Old Immigration Law, an employer who wanted to recruit an employee who was already in Qatar under a work visa did not need to have a “slot” under its visa quota for the employee concerned, unless the recruit was a female employee.

<sup>15</sup> According to article 40 of the Labour Law, a fixed-term contract may last up to five years and be renewed for similar or shorter periods.

<sup>16</sup> As per article 43 of the Labour Law.

<sup>17</sup> This is aimed at covering the situation of domestic workers who are not protected by the Labour Law and who, given their situation, may easily become the victims of abusive employers.

## Staying in or returning to Qatar after the end of an employment contract

A foreigner who has been issued with a residency permit should not remain outside of the country for more than six months; otherwise his permit will be automatically cancelled. This rule was already applicable under the Old Immigration Law.

A foreign employee whose labour contract comes to an end (because it has not been renewed in case of a fixed-term contract or because the employer or the employee has decided to terminate it in case it is open-ended) must proceed with the formalities to cancel his residency permit within 90 days.

The employee has a maximum period of three months (from the end of a previous contract) to find a new employer and to present a new employment contract with that employer. Failing this, he/or she will have to leave Qatar.

Nonetheless, when the employee finds a new job within a period of two years, it should be possible for the new employer to apply for a work visa for the employee without any longer needing to obtain a non-objection certificate from the former employer<sup>18</sup>.

## Keeping and returning the employee's passport

An employee has to hand over his passport to his employer for the purpose of obtaining his or her first residence permit, renewing such permit or cancelling it prior to a final exit from the country.

However, the Old Immigration Law, as well the New Immigration Law, make it clear that the employer must return the passport to the employee once the residency permit has been obtained, renewed or cancelled. The penalty for holding on to the passport in breach of the regulations has been raised from 10,000 to 25,000 QAR.

Nevertheless, it is worth noting that article 8 of the New Immigration Law states that the employer can legally hold an employee's passport, where the employee has requested this in writing. Some concern has been raised as to whether this provision of the New Immigration Law could allow employers to legally confiscate the passport of their employees by making them sign a request letter.

<sup>18</sup> Nonetheless, there have been some rumours that the executive regulations will provide that a foreign employee who terminates his fixed-term contract and leaves the country before the completion of the contract period would not be allowed to return to the country before the end of the contract period. We have not been able to verify this yet.

## Conclusion

As noted above, this article summarises our current understanding of the most salient features of the New Immigration Law.

Two important caveats should be taken into account when reading our comments: (i) the absence of published executive regulations for the new law (which we hope will help, once released, to bring more clarity on a number of questions) and (ii) the fact that, at the time of writing of this article, only a short period of time has elapsed since introduction of the new regime - it will be important to monitor how the new rules are implemented once practice has settled down in the coming months.

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