Reforming the employment landscape in KSA: a look at significant upcoming labour reforms

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Introduction

On 4 November 2020, the Ministry of Human Resources and Social Development ('MHRSD') announced that it will implement the Labour Reforms Initiative ('LRI') to partially abolish the *kafala* system in the Kingdom of Saudi Arabia ('KSA') under which sponsoring employers have the right to restrict the movement of foreign workers both in terms of their employment mobility and their ability to exit and re-enter the country. The LRI represents one of the most significant reforms to the labour and immigration system in the KSA for over 70 years. It will be implemented on 14 March 2021 and will apply to millions of foreign workers employed in the private sector.

In addition to the significant changes that will be introduced through the LRI, the MHRSD has also recently published draft amendments to the Labour Law issued by Royal Decree Number M/51 dated 23 Sha'ban 1426 (corresponding to 27 September 2005) (the 'Labour Law') which, at the time of writing, are subject to public consultation.

Both of these developments continue the recent drive to modernise and liberate the labour market in the KSA in line with the Saudi government's Vision 2030 strategy. Central to the government's labour strategy are the objectives of improving the labour market conditions for Saudi nationals whilst, at the same time, increasing the quality and competitiveness of the labour market by seeking to attract the best foreign talent. The LRI and the proposed reforms to the Labour Law both seek to further these twin objectives.

In this article, we look at the key features of the LRI as well as outline some of the proposed amendments to the Labour Law.

Brief background to the *kafala* system

The KSA has been operating under the *kafala* system since the 1950s by which foreign workers are only permitted to work and reside in the country under the sponsorship of their employer (the '*kafeel*"). As the *kafeel*, the sponsoring employer is solely empowered to obtain, renew and cancel the work and residency permits of its foreign workers, as well as their visas for entering and exiting the KSA. Additionally, the sponsoring employer can object to the foreign worker wishing to change employers or to leave the country. Where a foreign worker fails to obtain permission from their sponsoring employer, they can be reported as having absconded and be at risk of having their immigration status compromised and ultimately be deported. The *kafala* system has hindered the free movement of workers and, in some cases, has allowed them to be exploited by unscrupulous employers.

LRI

The changes that will be initiated by the LRI will significantly reform the labour market by giving foreign workers a greater degree of autonomy over their movements and choice of employer. In order to enact the key changes of the LRI into law, the MHRSD issued Ministerial Resolution number 51848 on 19/03/1442 corresponding to 5 November 2020. The LRI will change the current employment and immigration system in three key areas: (1) transfer of employment; (2) exit and re-entry visas, and (3) final exit visas. We have set out below the details currently available in respect of each of these areas affected by the LRI. We anticipate that further details relating to the LRI will be published in due course.

Transfer of employment

Under the LRI, foreign workers will have the ability to change employers by transferring sponsorship of their work and residence permit to another employer without requiring their current employer's 'no objection' consent. At present, the current employer can withhold this consent without any reason or justification which effectively scuppers the ability of a foreign worker to change employer.

Following the implementation of the LRI in March 2021, foreign workers will be able to change employer without needing their current employer's consent subject to certain qualifying conditions. These stipulate that a worker must:

1. be an expatriate who is working under the Saudi labour system (i.e. be employed in the KSA and subject to the Labour Law);
2. complete one calendar year of service for the current employer, beginning from the date of the worker's entry into the KSA;
3. have a valid and duly attested employment contract;
4. have a job offer from the new employer submitted through the online "Qiwa" portal; and
5. submit a notice of the transfer request to the current employer giving a minimum of 90 days' notice unless the parties agree otherwise.

In addition to the eligibility conditions applicable to workers, the LRI also contain conditions for new employers to meet in order to be eligible to request the transfer of foreign workers. The prospective employer must be compliant with:

1. its Saudisation requirements and eligible to obtain visas to employ foreign workers as per the applicable regulations;
2. the Wage Protection System regulations which require the timely payment of wages and payroll data to be filed regularly;
3. the electronic Contract Registration Program regulations which require employment contracts to be registered; and
4. the Self-Evaluation Program regulations which is an employer's own assessment of its compliance with the MHRSD's rules and regulations.

Notwithstanding the above, the LRI also set out certain circumstances in which foreign workers are entitled to transfer to new employers without having to comply with the above conditions. These circumstances are where:

1. the worker does not have a registered contract with the employer within three months from the worker's date of entry into the KSA;
2. the worker does not receive a salary for three consecutive months;
3. the employer is absent due to travel, imprisonment, death, or for any other reason;
4. the worker's work permit or residence permit expires and is not renewed;

5. the worker reports a commercial concealment violation by the employer, provided the worker is not involved in the concealment offence;
6. a labour dispute arises between the worker and the employer, and the employer or its representative fails to attend two litigation hearings at any judicial level despite being notified of the hearing dates or does not attend two amicable settlement hearings at the Labour Office; and
7. the employer approves the foreign worker's transfer request.

Exit and re-entry visas

At present, foreign workers need their employers to obtain exit and re-entry visas for them if they wish to travel in and out of the KSA. The visa costs are borne by employers but, unless there is a contractual commitment to do so, there is no obligation on the employer to obtain the visas.

Following the implementation of the LRI, foreign workers will be able to submit their own applications for exit and re-entry visas via the online Absher platform giving them freedom to exit and re-enter the KSA independently of the employer. This will be subject to limited eligibility conditions, which require that the worker must:

1. be an expatriate who is working under the Saudi labour system;
2. have a valid residency permit;
3. have a duly attested employment contract;
4. pay the applicable fees for the exit and re-entry visa;
5. not have any outstanding government fees or fines; and
6. declare through the online Absher platform that they fully understand the measures entailed by their failure to return before the end of the leave period approved by the employer.

Final exit visas

Foreign workers also require a final exit visa at the end of their employment to leave the country in compliance with immigration protocols. Failure to leave the KSA on a final exit visa could result in the worker being considered as having absconded or illegal overstayer which would compromise their ability to leave and/or return to the KSA for work purposes. The final exit visa can only be obtained by the employer and employers are obligated to pay for the cost of it.

The LRI will allow foreign workers to submit their own electronic applications for a final exit visa via the Absher platform. They will therefore have freedom to exit KSA on a final exit basis subject to limited eligibility conditions which require that the worker must:

1. be an expatriate who is working under the Saudi labour system;
2. have a valid residency permit;
3. have a duly attested employment contract;
4. not have any outstanding government fees or fines; and
5. declare through the Absher platform that they understand the measures entailed by their decision to exit KSA before fulfilling their contract or applying through the Absher platform.

Proposed amendments to the Labour Law

The MHRSD published draft amendments to the Labour Law in January 2021. However, no timetable has been provided as to when the amendments will be implemented, if at all. The amendments are subject to consultation and this process ends after one month.

The proposals to amend the Labour Law include revising the provisions relating to:

- an employer's obligation to bear the recruitment and repatriation costs of foreign workers;
- probation periods;
- a reduction in weekly working hours;
- an increase in the maternity leave period;
- the statutory termination provisions; and
- increasing the compensation payable by employers for unlawful termination.

If introduced, the proposed changes to the Labour Law will build on the last significant amendments that were made to it in October 2015 and will continue the government's agenda to improve employment rights for workers and to make private sector employment an attractive proposition for its citizens and foreign workers.

Conclusion

As KSA continues to diversify its economy away from the oil sector as part of its Vision 2030 strategy, it has sought to improve and modernise the conditions of the Saudi labour market in recent years. The LRI and proposed amendments to the Labour Law are further evidence of the government's ambition to create a labour market which not only promotes employment opportunities for local talent, but also attracts the best foreign talent.

However, the reforms to the Kafala system have stopped short of a total abolition and it remains to be seen to what extent they will increase the freedom of workers who are not able to afford the visa fees if their employers do not continue to cover the cost of them. Whilst removing the need for an employer's consent to a transfer is a significant step forward in improving employment mobility, it will not be available to employees until after they have completed one year of employment.

Nevertheless, foreign investors looking to enter the KSA market and those who are already established here should be confident that the labour market will provide the right conditions to create a competitively skilled and qualified workforce for their businesses. Given the scale and rate of developments over recent years, we can expect further positive developments in the coming years.

In the meantime, employers should prepare for the changes brought in by the LRI on 14 March 2021 including ensuring that new employment contracts are reviewed and amended as required.

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