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United Arab Emirates' Legal Framework of Migration

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United Arab Emirates' Legal Framework of Migration*

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Abstract: The following explanatory note outlines the main legislative texts including laws, regulations and cabinet and ministerial decisions, which govern the inward migration of foreigners to the United Arab Emirates and some elements of the outward migration of Emirati citizens.

Keywords: UAE, Laws and Regulations, Irregularity, Migration, Citizenship, Trafficking, Sponsorship, Labour Rights.

Introduction

One of the most notable changes to the UAE regulatory framework of migration pertains to the issue of transfer of sponsorship. Cabinet Resolution No. 25 of 2010 and its implementing Ministerial Decision No. 1186 of 2010 have introduced greater flexibility to the transfer system. Under the new rules, an employee may transfer to another employer without the need to obtain a Non-Objection Certificate (NOC) from his/her previous employer and without being subject to a six month if s/he is offered a salary of 5000 Dirhams, 7000 Dirhams or 12,000 Dirhams for high school diploma, diploma or Bachelor's degree holders respectively.¹

In 2015, further changes were enacted in the form of three new ministerial decisions with the aim of improving the situation of foreign workers in the country. Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a Permit to a Worker for Employment by a New Employer nullified the aforementioned Ministerial Decision No. 1186 of 2010 and introduced new rules applicable to granting of new visas to persons who were employed on unlimited contracts and fixed-term contracts. Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment

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Relations clarifies the termination conditions for the aforementioned unlimited and fixed-term contracts. Ministerial Decree No. 764 of 2015 introduces a mandatory employment offer which needs to be submitted to the Ministry of Labour before an entry permit is granted to an expatriate employee. The terms and conditions of the employment contract, which is subsequently signed between the two parties, cannot differ from the employment offer unless more favorable terms to the employee are agreed upon.

A number of federal and Emirate-level laws and regulations have been enacted to address labour issues including the introduction of a mid-day break to protect construction and other outdoor workers from heat-related injuries in 2005, and the introduction of the Wage Protection System (WPS) in 2009, which aims to crack down on nonpayment of salaries in the private sector.² In 2012, The UAE Federal National Council approved a draft law to protect the rights of domestic workers (provisions include paid vacation and sick leave). However, the measure still awaits the president’s signature.

In 2013, the UAE government amended Federal Law No. 51 of 2006 on Combating Human Trafficking. The amendments were introduced in a measure to improve the protections offered to victims, establish harsher penalties for committing crimes defined under the law, and specify investigation and trial procedures in human trafficking cases.

The UAE Labour Law is a Federal Law, which governs the employment of both nationals and non-nationals. It covers a number of aspects including contracts, wages, working hours and leave. The law however is not applicable to foreign domestic workers.

Federal Law No. 6 of 1973 on the Entry and Residence of Aliens was last amended in 2007 and governs the stay of foreigners in the country, as well as their entry, exit and grounds for their deportation. A foreigner may be deported, even if he is a holder of a residence permit, if his deportation is part of a court judgment, or if he has no evident means to earn a living, or if it is considered by the Security authorities as required by public policy, security or morals. The deportation order, which is issued by the Ministry of Interior, may include members of the foreigner’s family who are supported by him.³



Legal Framework	Outward Migration	Inward Migration
General Legal References	<ul style="list-style-type: none"> • 1971, The Constitution of the United Arab Emirates.⁴ • 1972, Federal Law No. 17 of 1972 Concerning Nationality and Passports.⁵ • 2006, Law No. 51 of 2006 on Combatting the Crimes of Human Trafficking.⁶ 	<ul style="list-style-type: none"> • 1971, The Constitution of the United Arab Emirates.⁷ • 1973, Federal Law No. 6 of 1973 on Entry and Residence of Aliens.⁸ • 1997, Ministerial Decision No. 360 of 1997 Issuing the Implementing Regulations of Federal Law No. 6 of 1973 Regarding Entry and Residence of Foreigners.⁹

Legal Framework	Outward Migration	Inward Migration
General Legal References		<ul style="list-style-type: none"> • 1996, Federal Law No. 13 for 1996 Concerning Aliens Entry and Residence, Amending Some Provisions of the Federal Law No. 6 for 1973 Relating to Immigration and Residence.¹⁰ • 2005, Law No. 23 of 2005 Regarding the Health Insurance Scheme for the Emirate of Abu Dhabi.¹¹ • 1982, Ministerial Resolution No. 2/37 of 1982 Regarding the Level of Medical Care an Employer Shall Provide to Workers.¹² • 2006, Law No. 51 of 2006 on Combatting the Crimes of Human Trafficking.¹³ • 2013, Law No. 11 of 2013 Regarding the Health Insurance Scheme for the Emirate of Dubai.¹⁴ • 2014, Ministerial Decision No. 377 of 2014 Amending Some Provisions of the Implementing Regulations of Federal Law No. 6 of 1973 Regarding the Entry and Residence of Foreigners.¹⁵ • 2015, Ministerial Decree No. 764 of 2015 on Ministry of Labour-approved Standard Employment Contracts.¹⁶ • 2015, Ministry of Labour Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations.¹⁷ • 2015, Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a Permit to a Worker for Employment by a New Employer.¹⁸

Legal Framework	Outward Migration	Inward Migration
Entry and Exit	Visas	Visas
General Legal References	<p>UAE citizens do not need a visa to enter other Gulf Cooperation Council (GCC) countries.</p>	<p>The requirements for entering the UAE for foreigners include holding a valid passport or travel document and a valid entry visa [Article 2, Federal Law No. 6 of 1973 on Entry & Residence of Aliens].</p> <p>A foreigner entering the country by virtue of a visa or an entry permit shall leave it upon expiry or cancellation unless he obtained a residence permit during that period. For citizens of countries exempted from the visa condition, they shall leave within thirty days of entry unless they have obtained a residence permit [Art. 12, Federal Law No. 6 of 1973].</p> <p>Foreigners may only be granted an entry permit or visa if they have a sponsor who resides in the country. The sponsor may be either a citizen or a resident [Art. 13(C), Ministerial Decision No. 360 of 1997]. This decision was amended by Ministerial Decision No. 377 of 2014. Under the new Art. 13, a number of conditions need to be met by a foreigner seeking an entry permit or visa. The conditions include:</p> <ol style="list-style-type: none"> a. Having a valid passport or travel document enabling him to enter the country and return to the country in which he resides or his country of origin. b. Having approval from the competent authorities depending on his reason for entering the country. c. Having a sponsor who resides in the country; the sponsor may be either a citizen or a natural or juridical foreigner. d. Not being banned from entering the country. e. Having never been deported unless he obtains special permission to re-enter in accordance with Article 91. f. Being medically fit.

Legal Framework	Outward Migration	Inward Migration
Irregular Migration		<p>Any foreigner who enters the UAE illegally is subject to a penalty of imprisonment for a minimum period of one month and/or payment of a fine of ten thousand Dirhams or more. The Court shall also order his deportation from the country. [Art. 31, Federal Law No. 6 of 1973].</p>
<p style="text-align: center;">Human Trafficking</p> <p>Penalizations: Whoever commits any of the human trafficking crimes as defined by the law, shall be punished by temporary imprisonment for a term of not less than five years. The penalty shall be life imprisonment if any one of the following conditions is met: The perpetrator of the crime has created, organized, assumed a leading role in, or solicited others to join an organized criminal gang; the victim is a woman, child, or handicapped person; the crime is committed through deceit, involved the use of force or threat of murder or bodily harm or involved physical or psychological torture; the crime is committed by two or more people, or by an armed person; the perpetrator is a member of an organized criminal gang, or has consciously taken part in the activities of that gang.; the perpetrator is the spouse, a relative, descendent, or guardian of the victim; the perpetrator is a public servant or commissioned with a public task; the crime is transnational [Art. 2, Law No. 51 of 2006 on Combatting Crimes of Human Trafficking].</p>		

Legal Framework	Outward Migration	Inward Migration
	<p style="text-align: center;">International Agreements Regarding Irregular Migration</p> <ul style="list-style-type: none"> ● United Nations Convention against Transnational Organized Crime (ratified on May 07, 2007) ● Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (acceded to on January 21, 2009). ● Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air (not a party) 	
Rights and Settlement	<p>Equality and Non-discrimination: The UAE Constitution guarantees the equality of individuals before the law and prohibits discrimination between citizens on the basis of origin, creed, or social status [Art. 25].</p> <p>Residence: A foreigner entering the country by virtue of a visa or an entry permit must leave it upon expiry or cancellation thereof, unless he obtained a residence permit during that period. For citizens of countries exempted from the visa condition, they shall leave within thirty days of entry unless they have obtained a residence permit [Art. 12, Federal Law No. 6 of 1973]. The residence permit shall be issued for a period of three years, renewable upon expiry. The Director General of Nationality and Residence shall also issue a residence card. If lost, the foreigner shall report this to the Directorate [Art. 17, Federal Law No. 13 of 1996]. Every foreigner whose visa or residence permit has expired or been cancelled and who has failed to either renew it - if possible - or leave within a period of thirty days of its expiry, shall be liable to a fine of 100 Dirhams per each day of illegal stay in the country. (Art. 21, of Act cited previously in this para).</p>	

Legal Framework	Outward Migration	Inward Migration
Rights and Settlement		<p>Participation in Social Insurance Schemes is not mandatory at the Federal level. The Emirate of Abu Dhabi requires subscription to the health insurance scheme by non-nationals and their families residing in the Emirate. Every employer is required to provide health insurance coverage for all his employees/workers and their family members covering the employee's/worker's wife and three children under 18 years of age. Every sponsor must subscribe to the scheme for any person under his sponsorship from the date of his arrival to the State unless such a person is entitled to health insurance coverage through his employer [Articles 4 & 5, Law No. 23 of 2005]. In the Emirate of Dubai, the responsibility to subscribe to health insurance schemes falls on the employer for his non-national employees. It may also be extended to his family members at the employer's discretion. A sponsor is also responsible for ensuring that individuals under his sponsorship are insured, so long as they are not covered by an employer [Article 9, Law No. 11 of 2013].</p> <p>Family Reunification may be granted to the wife of a sponsored foreigner if his monthly salary is 3000 Dirhams or more and accommodation is provided by the employer, or if his monthly salary is 4000 Dirhams (excluding accommodation). A number of categories are exempt from this condition and may be granted residence permits for their wives and children (unmarried females and males below the age of eighteen). These are teachers, imams, and bus drivers of various academic institutions [Article 31(D), Ministerial Decision No. 360/1997].</p>

Legal Framework	Outward Migration	Inward Migration
Labour		<p>Access to Healthcare: Every employer employing fifty or more workers shall post the following information on the main entrance used by workers to enter the workplace workplaces: The headquarters of the clinic designated for the workers; the working hours of the clinic, and the addresses of the hospitals and specialist doctors entrusted with treating the workers and the times dedicated for treatment [Article 9, Ministerial Resolution No. 37/2 of 1982].</p> <p>Freedom of Movement: The Constitution guarantees the freedom of movement and residence to citizens within the limits of the law [Article 29, of the Constitution].</p>
	<p style="text-align: center;">Agreements Regarding Labour Migration</p> <p>Bilateral Agreements: Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the Field of Manpower (July 3, 2007); Memorandum of Understanding between the Government of the United Arab Emirates and the Republic of the Philippines in the field of Manpower (April 9, 2007); Protocol on China’s Sending Doctors to the United Arab Emirates (1992); Protocol on China’s Further Sending Nurses to the United Arab Emirates (1992); Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of the United Arab Emirates in the Field of Manpower Agreement (December 18, 2007); Memorandum of Understanding with India on Manpower Sourcing in (2006); A revised Memorandum of Understanding with India on Manpower Sourcing (September 2011); Protocol to Streamline Admission of Indian Contract Workers by way of an Electronic Contract Registration and Validation System (April 2012); Memorandum of Understanding with Thailand in relation to Labour Force (November 01, 2007); Memorandum of Understanding with Pakistan on labour issues (December 2006); Agreement with Bangladesh on Cooperation in the Field of Manpower (2007); Memorandum of Understanding with Sri Lanka on Domestic Workers (May 27, 2007).</p> <p>International Agreements: 9 ILO Conventions ratified¹⁹</p>	

Legal Framework	Outward Migration	Inward Migration
<p>Citizenship</p>	<p>Citizenship shall be withdrawn from any citizen who acquires the nationality of a foreign country [Article 15(C), Federal Law No. 17 of 1972].</p> <p>Citizens may not be deported or expelled from the United Arab Emirates [Article 37, of the Constitution].</p> <p>UAE nationality is protected by law. Citizens may not lose their nationality or have it withdrawn, save for exceptional situations, which shall be defined by law. [Article 8, of the Constitution].</p>	<p>Naturalization: A naturalised citizen shall lose his citizenship in a number of cases including residing abroad continuously for four years without having a good reason for doing so. The withdrawal of nationality may be applied to his naturalised wife and children [Art. 16, Federal Law No. 17 of 1972].</p> <p>Acquisition of UAE Citizenship: UAE citizenship may be granted upon request to a foreigner who meets the following requirements: any fully competent Arab who has resided continuously and legally in any of the member Emirates continuously for at least seven years prior to submitting a naturalization application on condition he has lawful source of living, be well reputed and not convicted of a crime against honor or integrity [Art. 6, Ibid.].</p> <p>Citizenship may also be granted to a non-Arab foreigner who is fully competent and residing continuously and legally in any of the member Emirates for at least twenty years after the implementation of Federal Law No. 17 of 1972 and who meets the following criteria: He must have a lawful source of living; be well reputed; not convicted of a crime against honor or integrity; and proficient in the Arabic language [Art. 8, Ibid.].</p>
<p>International Protection</p>		<p>The extradition of political refugees is prohibited under article 38 of the Constitution.</p> <p>International agreements Related to International Protection: The United Arab Emirates has not acceded to the 1951 Convention relating to the status of refugees.</p>

Endnotes

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19. These include the following Conventions: Forced Labour Convention (No. 29), Abolition of Forced Labour Convention (No. 105), Discrimination (Employment and Occupation) Convention (No. 111), Labour Inspection Convention (No. 81), Hours of Work (Industry) Convention, 1919 (No. 1).

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