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The International Comparative Legal Guide to:

Corporate Immigration 2019

6th Edition

A practical cross-border insight into corporate immigration law

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Dear Industry Colleagues,

On behalf of the Global Migration Section (GMS) of the American Immigration Lawyers Association (AILA), we would like to thank Global Legal Group (GLG) for its support and effort in publishing this edition of *The International Comparative Legal Guide to: Corporate Immigration.* We are very pleased to have GLG as a strategic partner of AILA and the GMS, and to again have the opportunity to contribute to GLG's guide on corporate immigration. Each annual publication of the guide raises the bar for quality and breadth of information provided, and the 2019 edition is no exception.

The invitation to participate in this publication was well-received by the world's leading law firms, which validates the continued growth and interest in corporate immigration worldwide, even in a current geopolitical environment of rising nationalism and protectionism. We would like to express our deep gratitude to all of the contributors for their time and expertise, particularly those who have contributed to multiple editions of this guide. This 2019 edition has brought together preeminent law firms across the globe, providing a worldwide legal update to the practice of corporate immigration, in a single volume. The GMS is proud and pleased to contribute, and hopes you find this edition helpful and interesting.

Founded in 1946, AILA is the preeminent U.S. national association of more than 15,000 attorneys and law professors who practice and teach immigration law. The GMS is a community of nearly 900 AILA members and International Associates who are interested in furthering the practice of global migration. Each year the GMS organises a forum for learning that offers networking opportunities for international and U.S. immigration attorneys, with the next such forum scheduled for June 2020 in San Diego, California. Additional upcoming events of note include the third annual GMS European Conference, which is presented in collaboration with the Center for International Legal Studies, and will be held February 6-9, 2020 in Prague, Czech Republic. For a listing of all AILA conferences, visit www.aila.org/calendar.

AILA, including the GMS, is always looking for ways to improve, and better serve our members internationally, as the practice of immigration law inherently is the practice of international law. If you have suggestions for AILA in this light, please feel free to reach out to us, or any other member of the GMS.

Sincerely,

Audrey Lustgarten, AILA Global Migration Section Steering Committee Chair, 2018–2019.

Bushra Malik, AILA Global Migration Section Steering Committee Chair, 2019–2020.

What is in Store Under the UK's Proposal for a Future Immigration System?

Kingsley Napley LLP

Nicolas Rollason

The UK's Immigration White Paper – Adjusting to New Realities

In its White Paper on the future of UK immigration, the UK Government has proposed a major overhaul of the UK's immigration system once the UK leaves the EU and EU free movement comes to an end. When that will be is unclear. The UK's departure date has already been extended beyond the original date of 29 March 2019 and at the time of writing, the British Prime Minister Theresa May announced her imminent resignation. Whether the UK is able to find the consensus needed to leave the EU with a Withdrawal Agreement and have a transitional period before any new immigration system is implemented is also unclear.

Notwithstanding this, the Government published its White Paper "The UK's future skills-based immigration system" on 18 December 2018. It has since embarked on a 12-month process of stakeholder engagement in 2019 to take the views of business, the UK's regional administrations and civic society on what that new system should look like.

The White Paper[i] follows on from the recommendation of the Migration Advisory Committee (MAC), which undertook a major consultation process and produced a significant evidence-based report on what the features of any new policy should be.[ii] The White Paper's proposal is aiming to smooth the changeover to a new system under which nationals of the EEA (the EU, and Norway, Iceland and Liechtenstein) and Switzerland will be treated in the same way as non-EEA nationals, and to provide a period (until 2025) within which employers will be able to adjust. Broadly, its aims are to reform labour migration policy, while at the same time moving to a more responsive, digitally based and user-friendly system.

The key proposed changes to the system are as follows:

- Abolishing the current numerical cap on new hire Tier 2 workers.
- Abolishing the Resident Labour Market Test (RLMT) required for new hires and those switching employers in the UK.
- Maintaining a minimum salary threshold for employer sponsorship.
- Minimising the time it takes to hire a skilled migrant and aiming to process the great majority of work visas within two to three weeks.
- Allowing nationals from low-risk countries to switch work visa categories in the UK.
- Reducing the skills threshold for sponsored roles to allow sponsorship of intermediate roles.
- Introducing a time-limited route for temporary short-term workers, with "cooling-off" mechanisms to prevent them staying permanently.
- Introducing more flexibility for overseas students to stay on and switch into work routes.

The proposals are underpinned by a plan to overhaul the delivery of Government services in the immigration sphere, which promises to "transform our operational systems and processes, using the latest digital technology to streamline and improve our service to individuals and employers". This includes digital visas and immigration status confirmation, the use of e-gates for more nationals and the expansion of the UK's e-borders programme, together with a new Electronic Travel Authorisation (ETA) for visitors. Reducing bureaucracy and increasing compliance though automated digital checking are also a clear goal of the new system.

A Radical New Immigration Policy?

Two of the above proposals bring in radical changes to the current Tier 2 sponsorship regime. The first is abolishing the controversial annual numerical limit (currently 20,700) on the number of "restricted" Tier 2 (General) visas available to employers. These visas are generally used for new hires not already in the UK. This policy has been highly controversial since it was introduced in 2010. It formed part of the Government's aim to significantly reduce net migration to the UK, a policy which is widely seen as having failed. The limit created a number of crises when it was reached, with the Government having to take doctors and nurses out of the limit when NHS hospitals were unable to hire critical staff in 2018. The process of applying through the Home Office's monthly allocation panel was also seen as highly bureaucratic and added significantly to the overall time it took for employers to be able to bring in the staff they wanted.

The second and probably more radical proposal is to do away with the Resident Labour Market Test (RLMT), a central pillar of UK employer-sponsored visa routes for the last 30 years or more. One of the key justifications for the RLMT was the protection of resident jobs and ensuring that employers give preference to "settled" workers (British and EEA nationals and permanent residents) in their recruitment search, with Tier 2 sponsorship only allowed where there are no suitably qualified settled applicants for a skilled role. The policy architecture built up around the RLMT includes UKVI guidance covering the contents of adverts, for how long and where they must be advertised, as well as a requirement to retain significant data on applicants. In addition, the guidance is aimed at ensuring the RLMT is not circumvented or abused, including a requirement for the sponsored roles advertised to be a "genuine vacancy" and not designed to only be met by the non-EEA national the employer has already identified.

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The plan to abandon the RLMT, while extremely welcome, is all the more radical as, while there were many complex reasons behind voters' decisions to support a leave vote in the 2016 EU Referendum, concerns about immigration clearly played a part.[iii] Much of the Conservative Government's policy and Ministerial statements from 2010 and beyond the EU Referendum restated the mantra of protecting British jobs and reducing net migration.[iv] Paradoxically, the Referendum vote, and the subsequent decision to end free movement, may in fact lead to the design of one of the most liberal, technology-focused and market-based immigration systems in the world, with no obvious "protectionist" mechanism to ensure preference for resident employees.

A Market-Based System for the Future?

At first glance, it appears that the new policy will move away for its current numerical limits and regulatory restriction on hiring and will use pricing mechanisms and price "signals" (and underlying supply and demand theory) to determine not only who is sponsored under the new system, but the optimal number of migrants who will be able to be admitted.

Market-based admission policy tools are widely used in some economies, but often in the wider context of complimentary policy tools that control numbers and protect native workers. In Singapore, for example, the "foreign worker levy" is overtly applied as a "pricing mechanism to regulate the number of foreign workers" admitted. The levy charged increases as the employer's proportion of foreign workers increases and reduces for higher-skilled workers with specified sector-related qualifications.[v] The levy is much higher than the UK's Immigration Skills Charge ("ISC") – for roles in the services sector, it totals up to $7,200 (£4,110) per year for each worker working in a business hiring the highest percentage of foreign workers. The levy is part of a wider architecture which also includes quotas (known as "dependency ratio ceilings") which specify the maximum number of foreign workers allowed as a percentage of the employer's workforce or in ratio to local workers paid the prevailing wage (Local Qualifying Salary) in each sector. These mechanisms are there with the stated aim of ensuring preference for Singaporean workers.

The UK is clearly not moving towards a pure market-based approach to its skilled migration policy. This approach has been suggested (in an auction format) by the MAC and some free-market think tanks.[vi] The idea of an immigration tariff as an admission mechanism has also recently been suggested in the US[vii] and considered (and rejected) by the Australian Government in 2016,[viii] although these have focussed more on admission payments paid by the migrants themselves rather than by sponsoring employers. These views are in no way mainstream and have a range of challenges beyond the scope of this chapter.

The UK's Migration Policy Toolbox – Full of Blunt Instruments?

It appears that retaining a minimum salary threshold for sponsorship (currently £30,000 for Tier 2 with some exceptions for students and younger workers) will also continue to be one of the main policy tools in determining the "price" for hiring migrants. The level of the threshold has yet to be agreed, with the principal concerns being that a rate of £30,000 per annum would be too high for many of the intermediate and lower skilled roles that were previously filled by EU migrants. If a threshold is agreed at around this level, there will most likely need to be some deviation from this to address special categories and a replication of some current exemptions (e.g. graduates switching into work) as well as carve-outs to deal with specific skills shortages and sector issues. But it should be remembered that adjusting salary levels in response to employer demand can be extremely difficult – labour markets often do not work smoothly, with rigidities arising from regulatory or budgetary constraints, such as wage constraints in the public sector.

The second major pricing tool is the cost of sponsorship. This is a rather new phenomenon, as historically, immigration application fees have tended to be fairly modest. However, the UK's policy on visa fees since 2011 has been to seek to fully self-fund the immigration system from the fees paid by migrants and employers, thereby reducing the burden on taxpayers. This has seen standard Tier 2 visa fees (for the main applicant and each dependant) increase by 248% in the period 2011–19. The Immigration Health Surcharge (IHS) fees introduced in 2015 as a mandatory contribution per person for access to UK NHS medical services (previously free to foreign workers) doubled to £400 per year in December 2018. Finally, the Immigration Skills Charge applied to the new hire Tier 2 (General) visas is £1,000 per worker per year of the migrant's visa for large employers, with a reduced rate of £364 for SMEs, charities and universities. Combined, these fees can add a one-off premium to the initial cost of hiring a non-UK national of up to 28% of a basic £30,000 annual salary (based on a total of around £8,500 for these fees for a five-year visa for a large employer). Add to that the visa fees for any accompanying family members, which many employers pay, and this premium can easily increase to over £18,000 (or a 60% premium) for a Tier 2 worker with three dependants, excluding any legal fees and any priority processing fees. Many employers will cover the cost of the family's visas.

If sponsorship is maintained as a central pillar of at least part of the future immigration system, this creates the third mechanism for a market-based approach. These are essentially indirect "non-tariff barriers" to hiring migrants. Sponsoring employers must first apply and pay to become sponsors, as well as design, implement and continually monitor their immigration compliance regimes. This often entails additional headcount costs to manage compliance regimes and policies, and right to work checks, as well as the external legal advisory costs to support, audit and maintain these compliance systems. While the White Paper offers to reduce the bureaucratic burden of sponsorship, many of these compliance roles are now deeply embedded in UK HR and mobility teams.

Finally, through the application of the skills threshold (currently degree level roles at RQF 6) the Government still controls one of the most important levers for determining the number (and skills level) of migrants coming to the UK. The White Paper proposes to widen this to include mid-level roles at RQF 3, bringing many technical roles and managerial roles in retail and hospitality within the ambit of the employer-sponsored immigration system. Whether this is a long-term solution or only a transitional one aimed at helping UK employers adjust to a post-free movement world remains to be seen. But what it will mean in the short run appears to be a significant expansion of the Tier 2 system.

There are many problems with using these price mechanisms as tools to regulate the flow of labour migration. Data on labour market shortages and employer demand, both at the micro and macro level, tends to be imperfect and takes time to be identified with significant lags. Salary levels don't always reflect the skills needed within a complex changing labour market. A new system will need to be underpinned by real-time, dynamic data collection and analysis. The ONS will have to improve the quality and extent of data it collects and synthesises and is already reviewing its collection of migration data.[ix] The MAC may well have to do more than its current annual and specialist reports to provide the analysis.

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Selling the New Policy

The post-Brexit immigration system will see some seismic shifts in in the size and composition of labour migration flows, with a shift away from the EEA migrant labour over time to more non-EEA sponsored workers. If Brexit does eventually happen (and this remains far from clear) and free movement is not continued, it is clear that a new policy will be needed. Employers in the UK remain concerned that the ending of free movement will adversely affect their ability to access the talent they need. The level of any future minimum salary threshold has become highly contentious in the reactions to the White Paper and in stakeholder discussions. A transitional period of adjustment to allow employers to fill lower-skilled roles may work, but there are significant concerns about the use of temporary immigration schemes that do not allow migrants to integrate or be trained. This is part of the trade-off which UK employers are having to face. There will be winners and losers.

It is generally accepted that labour migration policy should maximise the overall income gains and net benefits for the host country and minimise adverse distributional effects for residents. With public attitudes against immigration softening[x] and the notion that the UK will be "taking back control" of immigration after the end of 40 years of EU free movement, this may be the best opportunity the Government has to propose a radical shift in labour migration policy with limited public resistance. However, it is vital that Government engages in a meaningful process of considering how best to "sell" the policy to the public. Trust in the Government on migration issues appears to be at a low ebb[xi] and if there is anything that might be learned from the Brexit vote and its painful and continuing aftermath, it is that Governments, not just in the UK, may need to bring the wider public with them when designing new immigration policies.

It may be that the technical policy details are too nuanced to make it into the wider public discourse away from business stakeholder engagement. But the Government must be alive to the possibility that, once the UK gets through the adjustment period and the dust has settled, the public might question how we arrived at this new liberal market-based system.

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Nicolas has extensive expertise across all immigration routes, with a widely-recognised breadth of knowledge enabling him and his team to offer clear solutions to complex immigration problems. He is a well-known expert in EU immigration law and has litigated key test cases before the European Court of Justice. He is regularly consulted by the UK immigration authorities on proposed changes to UK immigration rules and policy. He is a regular conference speaker and has written chapters on immigration in numerous publications. He is a long-standing member of the Immigration Law Practitioners Association, the American Immigration Lawyers' Association and the Alliance of Business Immigration Lawyers, and a founding member of the European Immigration Lawyers' Network. Nicolas is listed as a leading figure in the *Who's Who of Corporate Immigration Law, Chambers UK* and *The Legal 500 UK.*

Kingsley Napley

Kingsley Napley's immigration team is recognised as one of the best in the UK with over 15 years in the top tier of *Chambers UK* and *The Legal 500*. The team has an established reputation for providing clear strategic immigration advice tailored to each situation and client. The business immigration team supports global clients in all their immigration needs, ranging from companies setting up in the UK to multinationals transferring high volumes of staff into the UK and across the world. The team's excellent relationships with the UK immigration authorities and its high-level policy work, as well as its focus on client care, enable it to deliver a service underpinned by excellence, integrity and providing added value.

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The Peripatetic Businessman's Route to Global Mobility

CS Global Partners

Micha-Rose Emmett

Introduction

Year on year, international trade grows as countries focus on how to open up their markets to other regions. Despite growing trade across borders, Governments do not necessarily apply this to the movement of people as countries remain sceptical of opening up their borders to the migration of human beings. In particular, the mobility of businesspersons remains constrained by limitations of entry into both developed and developing nations. Applying for visas to visit may seem straightforward at first, but as the need to reapply for visas continues, the growing frustration of this physical barrier is debilitating to burgeoning deals as business relationships mature. As seen in the CS Global Monthly Visa Digest, it is noted that various countries endeavour to negotiate free movement for businesspersons and tourists, as there is an understanding that this not only creates strong international relations between the countries, but also promotes opportunities for trade and export. Countries in Africa, the Caribbean and Central Asia are busily pursuing visitation opportunities for comrades from other developing countries – a move that will promote greater trade and business prospects.

As countries welcome growth into new markets, astute individuals also recognise the importance of spreading the risk of their business portfolios, with an increasing trend of entry into new markets, whilst continuing to maintain a foothold in their home country. As it is now commonplace for executives to travel globally on a regular basis, a level of flexibility to move across borders easily is required to be competitive in the international market space. Ordinary tasks, such as investigating new business opportunities, attending last-minute meetings, and going to conferences, require flexibility and mobility. This is exacerbated by the fast-paced nature of today's business world, in which we have grown accustomed to immediate feedback, quick turnaround times, and easy communication – sometimes not possible over a Skype call. Those who lack flexibility and mobility therefore are at a disadvantage – vulnerable to being outperformed in a dynamic international environment.

Emerging and developing markets have become ever more interesting to international investors, but in the event of poor international relations between the countries, investors may be trapped between their country of origin and the host investment country, thereby jeopardising a new business partnership. Countries like China and India are producing skilled labourers, businesspersons, and entrepreneurs, whose innovative drive is partly echoed in their nation's GDP growth. The option of an alternative citizenship that provides ease of travel can be a game-changer for these nationals.

Even though the race to secure a second citizenship has become commonplace among international businesspersons and their families, the barriers to entry have become impassable. It is unwise to remain confined to a single market, therefore the smart businessperson continues to seek solutions to facilitate their global reach. The prospect of obtaining a second, or even third citizenship is revolutionising the possibilities of the smart entrepreneur. However, the question that many persons entitled to only one citizenship ask; what is the best route to become a global citizen? With an increasing number of programmes mushrooming around the world, the challenge remains which route to invest in.

The Path to Second Citizenship

The most prevalent citizenship routes for those who are not dual citizens by birth include permanent residence and marriage. Yet both of these options require years of living in a host country prior to being able to claim citizenship. In the United Kingdom, for example, spouses of UK citizens must wait three years before they can naturalise. Similarly, in the United States, a Green Card holder must generally wait five years before being able to convert residency into citizenship. In addition, language tests apply, and knowledge tests encompassing local history, law, and culture are often non-waivable requirements. Both the United Kingdom and United States citizenship models insist on a basic knowledge of English, and a passing mark in the 'Life in the UK' test and Civics Test respectively.

Businesspersons, company executives and investors are time-poor and are unable to fuss over these onerous conditions. They need sensible, efficient options that have a solid legal basis facilitating a smooth path to obtaining a second citizenship.

Thanks to its ability to generate win-win scenarios for both nations and investors, citizenship by investment has since been adopted – and adapted – by other Caribbean islands, European nations, and a handful of small Asian countries. Some jurisdictions, established residence by investment programmes as an alternative – these nations, such as Portugal, the United Kingdom, Canada, the United States, and Australia, offer residence permits, and citizenship following years of living in the country. Over the past few years, the number of citizenship and residence by investment programmes have increased significantly. Even though there is more choice, this does not mean that there are better options available. What are the criteria for assessing a solid option?

Residence by investment differs from citizenship by investment, as residents continue to face the uncertainty of losing their immigrant status by failing to abide by its conditions, for example, minimum stay requirements. Moreover, because residence is often only a vehicle to citizenship, residents are constantly wary that the residence

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programme might come to an end – leaving them with no viable route to citizenship.

Citizenship by investment gives the certainty of a lifelong status that can be passed on to one's descendants. Citizenship programmes are also more likely to withstand the test of time, as many find their roots as far down as in national constitutions. In the Commonwealth of Dominica, for example, authority for the Citizenship by Investment Programme can be drawn from section 101 of the Constitution.

When choosing between residence and citizenship, applicants must thus consider their ability to meet all residence requirements, and the speed at which they must obtain the assurance of a fixed status. Another key consideration is the reputability of the immigration route applicants are about to take as the decision to obtain a second citizenship will follow the individual for a lifetime.

Programmes that espouse transparency and that reform their procedures to meet best practice standards, enjoy strong reputations that enable them to improve the international standing of their citizens.

St Kitts and Nevis offers an excellent example of how a nation can embrace integrity, having run a citizenship by investment programme for the last 35 years, it faced the challenges of the 21st century. However, through the speedy reform of its procedures and a constant aspiration to lead the citizenship by investment industry, St Kitts and Nevis currently stands as the world's oldest and most respected nation offering citizenship by investment. Today, Kittitians and Nevisians can boast membership in a number of transnational bodies that support and sustain the island-nation, and visa-free travel to nearly 160 countries and territories worldwide – a clear demonstration of trust on behalf of the international community.

First devised in 1984 in the Caribbean twin island-nation of St Kitts and Nevis, citizenship by investment is a legal procedure allowing applicants to receive citizenship upon making a significant economic contribution to a host country. Citizenship by investment is thus founded on the premise that a commitment on the part of the applicant to improve the economic standing of a nation is sufficient to earn that applicant the right to become a citizen, irrespective of whether that applicant held any previous link to the nation.

In light of this principle, almost no citizenship by investment jurisdiction imposes residence requirements on its citizens. In the Caribbean, where five nations have embraced citizenship by investment, only Antigua and Barbuda require applicants to travel to its shores. Currently, applicants for citizenship by investment must visit either island for five days within five years of receiving citizenship. Failure to do so results in loss of citizenship, although there is flexibility as to when the applicant can travel to the jurisdiction – for example, all five days may be spent in Antigua and Barbuda in a single trip. Another prominent exception, this time originating from Europe, is provided by Malta, where applicants must prove a 'genuine link' to the island by completing 12 months of residency therein.

A handful of citizenship by investment jurisdictions retain some form of 'travel' pre- or post-condition of citizenship. In Cyprus, for example, applicants are required to travel to the country, or any Cypriot Consulate, at least once for the purposes of signing their certificate of naturalisation and giving biometrics.

In addition to offering no, or limited, residence and travel requirements, citizenship by investment jurisdictions are also gaining prominence for their processing proficiency. The Caribbean islands of Dominica, Grenada, St Kitts and Nevis, St Lucia, and Antigua and Barbuda, all stand out for their ability to process applications in around three months. St Kitts and Nevis is set apart from its peers, however, having launched the world's first-ever citizenship by investment Accelerated Application Process (AAP). The AAP, approved in October 2016, is a premium option by which applicants can ensure that both their certificates of registration and their passports are issued within 60 days of submission of their application. *Bona fide* applicants who select the AAP are therefore guaranteed to receive their new documentation within a fixed timeframe.

Speedy processing can partly be attributed to citizenship by investment jurisdictions developing a dedicated 'Citizenship by Investment Unit' to monitor and evaluate the application. Units are often composed of individuals experienced in compliance, as well as in anti-money laundering and the identification of financial crime.

From the perspective of applicants, processing is facilitated by the fact that citizenship by investment jurisdictions rarely request that they fulfil language or culture tests. None of the Caribbean jurisdictions, for example, expect applicants or their family members to learn English, despite this being the countries' official language. The same is true of mandatory interviews. Once a staple of the citizenship process, in the context of citizenship by investment interviews are generally reserved for cases needing special attention on the part of the relevant Unit.

It should not be assumed, however, that by not assessing the applicant in person the host country is relinquishing its right to in-depth scrutiny. Citizenship by investment jurisdictions – particularly those of the Caribbean and Malta – have espoused multi-tiered due diligence systems, with a view to vetting applicants originating from across the globe. To begin with, these jurisdictions only accept applications submitted through authorised agents, who themselves have a duty to the local government to ensure that their clients are genuine applicants for citizenship. Secondly, international, independent due diligence firms specialised in performing background checks are hired for their investigative expertise. Checks are made both online, and on the ground, where evidence provided by the applicant is verified against, among other things, local testimony. Emphasis is placed not just on the applicant's personal circumstances, including family and professional connections, but also on the source of the applicant's funds. Applications can be approved, delayed for cause, or denied – and it is these due diligence checks that play the largest role in defining how an application will fare after submission.

Citizenship by investment countries guard themselves against illicit actors by making provisions in their nationality laws affording governments the right to deprive an individual of citizenship if it is later found that the citizen provided false or incorrect information, or concealed any material fact, during the application. Passport revocation has also occurred, as a matter of policy, when the individual in receipt of the passport used it to perform illicit activities. A significant takeaway, thus, is these countries' determination to continue to review their applicants even after citizenship is obtained.

Applicants' good behaviour, whether past, present, or future, is crucial to their eligibility for citizenship by investment. What else, then, must applicants demonstrate to be approved for citizenship? Citizenship by investment programmes are only available to those who are over the age of 18. Applicants must also show they are in good health, primarily by submitting evidence that they are free from serious and contagious disease. Good moral character must be substantiated by personal or professional references. Finally, the applicant must be both willing and able to make the required investment.

As a rule, citizenship by investment programmes offer two forms of qualifying investments: a donation to a national fund; or the

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purchase of pre-approved real estate. Certain programmes allow investments in entrepreneurial projects or in government bonds, although these are often more costly alternatives. European programmes tend to give applicants less investment choice, with Malta for example, requiring that the applicant contribute to the local National Development and Social Fund, purchase or rent property and invest in government securities. By contrast, the Caribbean operates on a personal preference system, allowing applicants to determine the investment that best suits their needs.

For the busy executive, the quickest route to citizenship is at all times the national fund donation. This is because it is a one-time transaction made directly to the government and requires no additional effort. This differs substantially from the real estate purchase, which comes with a number of supplementary steps, such as obtaining a land valuation, performing a survey, hiring a local attorney or conveyancer, and signing a sale and purchase agreement.

The Benefits of Second Citizenship

Having outlined one of today's most effective means of obtaining second citizenship for businesspersons, it is now essential to turn our attention to the core reasons why such a businessperson would choose a citizenship solution.

a. Mobility rights

If an entrepreneur is hindered in his or her ability to travel freely, they may lose out on opportunities in growing markets. Solid business relationships rely on building a lasting rapport with overseas partners and prospective associates. A second citizenship from a country with numerous visa-free travel agreements, allows that same entrepreneur to visit countries freely, share in time-sensitive business opportunities, and take the initiative to enter new markets.

Citizenship of Malta, for example, comes with the ability to participate in the United States' Visa Waiver Programme. Grenada, a tri-island nation in the Caribbean, is one of a handful of countries whose citizens can travel to the People's Republic of China without a visa. This is especially important to Chinese nationals who relinquish their citizenship of origin, but who wish to visit their families freely or continue to oversee their local properties or ventures.

St Kitts and Nevis has forged a strong relationship with Russia, so Kittitian/Nevisian businesspersons no longer need to endure the lengthy Russian visa application when preparing to travel to Moscow.

European Union Member States, including Cyprus and Malta, can afford their citizens even more freedom of movement rights, endowing them with the ability to travel and settle in any other EU state.

b. Preserving business channels

Relationships with international businesses take effort and commitment to form, but, once established, they can bring significant benefits, playing to each partner's comparative advantage. Whether these relationships will persist into the future is generally up to a businessperson's dedication to their continuation, as well as to the overall administration and success of the joint enterprise. At times, however, external events can force even the strongest partnerships to break. A second citizenship can help preserve business channels even in the face of socio-diplomatic pressure.

c. Property rights

Foreign businesspersons looking to expand their real estate portfolio, whether commercial or residential, often find that they cannot independently purchase land without collaborating with a national of the country. Cambodia is a case in point, as the country disallows foreign ownership of Cambodian land where that ownership constitutes the majority stake in the land. A foreign investor could, for example, set up a company to invest in Cambodian real estate, but he would only be able to retain at most 49% of that company's shares. The remaining 51% would have to belong to a Cambodian national. An immediate solution would be for the investor to apply for Cambodian citizenship, something that can be obtained following a contribution of between 1.25 billion and 1 billion Cambodian riels (about US$300,000).

d. Safety

Working internationally means encountering diverse cultures, and at times, prejudices that may serve as hindrances to effective business. For example, certain Middle Eastern countries, including Lebanon and Saudi Arabia, bar entry to those with an Israeli border stamp on their passport, or presenting any other evidence of a prior or intended visit to Israel. Someone wishing to work with Israeli and Lebanese partners would thus find it difficult to include both these nations into a single business trip, or to visit one country without first having obtained a new, stamp-free passport. It should also be noted that not all countries issue a new passport with ease, and that even fewer do so when one's previous passport has not expired. A second citizenship – and a second passport – could alleviate this problem.

When travel to a country is necessary or desirable, but one's identity could itself invite danger, a second citizenship may not just be a key business tool, but a lifeline. Where personal security is jeopardised, the value of a travel document from a remote country that is rarely in the media's eye cannot be understated. Several island-states fit this requirement for relative anonymity.

Conclusion

The growing popularity of citizenship by investment programmes is evidence of how effective this solution is for the peripatetic entrepreneur. It is almost irresponsible for a seasoned businessperson to not have a second citizenship. However, it is imperative that the applicant seeks out a citizenship programme that is well-respected, has been operational for many years and maintains a strong due diligence process, especially in light of the reasons why an international entrepreneur would need their alternative citizenship. Today, it is worth considering a second citizenship as a much needed commodity.

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Micha-Rose Emmett is the CEO of CS Global Partners, a world-leading legal advisory that specialises in intelligent citizenship solutions.

A dual-qualified attorney in South Africa and the United Kingdom, Micha has years of practice in the fields of citizenship, residence, immigration, and foreign investment law. Micha has also travelled extensively to provide consultancy services to governments and private firms. The jurisdictions she has worked in include the United Kingdom, the United Arab Emirates and multiple nations in the Caribbean, Africa, Asia and continental Europe.

In her role as a government advisor, Micha has spearheaded many of the recent developments in the field of citizenship by investment.

Micha is a member of several philanthropic organisations focusing on gender equality and education.

CS GLOBAL PARTNERS

CS Global Partners is an international, industry-leading legal consultancy firm specialising in citizenship and residency solutions. Headquartered in the heart of London with offices across Asia, the Middle East and Africa, CS Global Partners offers tailored, strategic advice to both the clients and the countries it represents. Driving economic prosperity and transforming lives in the process, CS Global Partners transcends the traditional investment immigration industry framework, supporting the governments of Dominica and St Kitts and Nevis to promote their CBI programmes worldwide. CS Global Partners are also authorised marketing promoters for St Lucia in Far East Asia.

Led by Micha-Rose Emmett, a dual-qualified attorney with years of practice in citizenship and residence by investment, the CS Global Partners team is highly international, multicultural, and multilingual. They are fluent in 14 languages, including the Romance languages – French, Italian and Spanish; the Germanic languages – English, German and Finnish; as well as Greek, Russian, Arabic, Mandarin Chinese, Cantonese, Hindi, Punjabi, and Afrikaans.

CS Global Partners' legal background, RCBI expertise and drive to find win-win solutions for applicants, governments and native citizens has brought them a reputation for excellence. While upholding high industry standards and leading by example, their 99% approval rate for applications speaks for itself.

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Open for Business in an Era of American and British Nationalism: Business-Friendly Immigration Policies Around the Globe

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Immigration has become an even more controversial and divisive topic in the US and the UK than usual over the past few years. In the US, the Trump administration has chosen to both propagate anti-immigrant rhetoric and to take concrete action to make the US a much less welcoming, appealing place for temporary and permanent immigrants alike. Processing times for most types of immigration applications have slowed markedly and adjudication criteria have been tightened to the point that even the strongest cases may now be routinely subjected to burdensome requests for evidence or summarily denied.[1] In this unpredictable environment, employers are unable to predict if and when they will be able to get the key talent they need to run their businesses. Likewise, prospective employees are unable to foresee if and when they might be able to take up jobs in the US and, as a result, many top candidates are choosing to take positions in other countries that offer more business-friendly, predictable immigration systems.

Similarly, in the UK, anti-immigrant sentiment was a major driving force behind the 2016 vote to leave the European Union. Although Brexit has been temporarily postponed until later in 2019, the uncertainty and looming prospect of the exit from the EU is already having a significant impact on businesses and immigrants in the UK. Due to both the uncertainty surrounding Brexit and concern over not being able to get the key talent that they need, many businesses are choosing to move or to open new offices elsewhere.[2]

In contrast to the US and the UK's restrictionist approaches (or in some instances because of it), many other countries are "open for business" and only too happy to welcome the businesses, employees and investment that the US and UK are turning away. For instance, the Netherlands has purposefully shifted its immigration policy from "restrictive" to "selective" and has established a recognised sponsor system where select companies can obtain work permits for key employees via a simple online system in as little as two weeks. Switzerland has also chosen to adopt a selective immigration policy, providing attractive immigration options for highly qualified and specialised professionals, entrepreneurs and foreign students that graduate from Swiss universities, who are granted extended residence in order to be able to search for local employment.

Ireland has likewise taken measures to reduce the immigration "red tape" that businesses face by introducing a Trusted Partner Initiative to speed adjudication of employment permits and reduce the documentation needed. Unlike many other jurisdictions, Ireland's immigration rules have kept pace with the business reality that short-term assignments are often the norm, offering a streamlined short term "atypical" permit for workers who will be in Ireland for less than 90 days. Similarly, France modernised its immigration system in 2016 by passing business-friendly immigration reforms that allow short term assignments of 90 days or less in certain skilled categories to be carried out without the need for a work permit. Under Mexico's 2012 Migration Law, visitors coming to Mexico for less than six months who will continue to be remunerated abroad do not need a work permit regardless of the type of work activities they will engage in.

Although the EU Blue Card, intended as an immigration solution to facilitate the employment of skilled workers meeting a wage threshold, has not taken off in some jurisdictions due to technical and logistical challenges in implementation, it has been a resounding success in Germany, which issues 84% of all Blue Cards. Germany is continuing on its trajectory of welcoming skilled immigrants and plans to adopt the Immigration Act for Skilled Workers in 2020 to further streamline the process for employers to bring foreign talent to Germany.

Last but not least, given its location, Canada is the number one business-friendly alternative for companies and employees seeking refuge from the restrictive and burdensome immigration policies in the US. In line with its bid to become "Silicon Valley North", Canada introduced a Global Skills Strategy in 2017 to provide Canadian employers with faster access to highly skilled foreign talent, and continues to work to find innovative ways to attract business, investment and talent from its neighbour to the south.

This chapter seeks to provide a high-level overview of the innovative, open immigration policies that these countries have chosen to adopt.

Canada

In recent years, Canada has done an outstanding job opening its country and companies to global talent. Offering both a growing, educated population as well as intimate access to the United States and Europe, the country has taken major steps forward in attracting prominent companies to its borders. Indeed, the moniker of "Silicon Valley North" has never rang truer than today.

In 2017, the Canadian Government debuted its "Global Skills Strategy", promising to deliver faster access to highly skilled foreign talent helping Canadian companies grow and prosper, as well as newfound facilitation for innovative companies to open up in the country. This ambitious plan focused on reducing barriers and regulatory provisions, helping attract foreign investment and accelerating the process to bring in foreign talent. It has been a massive success for global mobility programs looking to access Canada and neighbouring countries.

There are two core elements of the Global Skills Strategy that best display this "open for business mentality", which are Expedited Work Permit Processing, and the Global Talent Stream.

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Expedited Processing

Under the Global Skills Strategy, companies can get workers into Canada with two-week processing for those that meet the necessary criteria. Namely: 1) that they are Labour Market Impact Assessment Exempt (for example, intra-company transferees); 2) that they are applying from outside Canada; 3) that the job is employer-specific and sufficiently specialised; and 4) that they have used the appropriate portals.

Global Talent Stream

The Global Talent Stream is another programme that makes Canada stand out on an international level. This recently made permanent programme offers expedited access to unique, specialised and highly skilled temporary foreign workers. It is intended for innovative, high potential growth companies to scale up and grow, while generally supporting Canadian companies seeking to hire highly skilled foreign workers within in-demand occupations. The programme is divided into two "streams":

- Category A is for innovative, high-growth, high-potential companies that have been specifically referred to the programme by a Designated Government Partner in order to hire their unique and specialised talent.
- Category B functions to serve Canadian businesses that are seeking to hire highly skilled foreign workers to fill specific "in-demand" occupations on the Global Talent Occupations List. These "in-demand" occupations include many popular information technology positions, including software engineers, computer systems managers, computer engineers and web developers, among others.

Both Category A and Category B firms are required to work with the department of Employment and Social Development (ESDC) to develop a Labour Market Benefits Plan (LMBP) that demonstrates their commitment to activities that will track overall job creation, skills and training investments and demonstrate the benefit to the Canadian economy through the employment of the highly-skilled global talent, and, in so doing, access the unprecedented speed and efficiency that the Global Talent Stream can offer.

In turbulent times below Canada's southern border, the Canadian government has made sure that such uncertainty has been to Canada's gain. The government has shown itself to be receptive to industry needs, and proactive in ensuring that they are met. Now, more than ever, companies need the consistency and predictability offered by countries like Canada to ensure their needs are met.

France

France has demonstrated that it is "open for business" through business-friendly immigration reform since 2016, when certain categories of short-term (90 days or less) assignments became exempt from work permits. This includes the following professional activities:

- sporting, cultural, artistic and scientific events;
- conferences, seminars and trade shows;
- film production and distribution, audio-visual, and performance and recording industry when the entertainer or technical staff is attached directly to production or construction;
- modeling and artistic poses;
- domestic workers during the stay of their employer in France;
- audit and expertise in IT, management, finance, insurance, architecture and engineering when the assignee is seconded (under the provisions of Article L. 1262-1 of the Labour Code); and
- occasional lectures by visiting professors.

Foreign employees who are sent to France to perform the professional activities listed above are no longer subject to prior authorisation to work. However, non-EU foreign workers remain subject to the Schengen rules relating to entry and residence in the Schengen area.

Multi-year authorisations

Until 2016 all professional immigration categories were subject to annual renewal. We now have multi-year authorisation to work and live in France across most professional immigration categories, such as inter-company transferees and students. This reduces the burden the immigration process places on both businesses and foreign employees.

The multi-annual Talent Passport scheme

The multi-year residence card "Passport Talent" streamlined the French immigration system, bringing together under a single residence permit 10 categories of professional activities. The Passport Talent is usually valid for four years.

Family members can receive a "Family Passport" residence permit for a duration of which will be equal to that of the principal and will include the right to work.

First application: If the foreign national resides outside of France, the decision to issue the Passport Talent visa stamp is made by the consular authority and the residence permit is then issued by the prefect with jurisdiction over where the foreign national will reside in France. When the envisaged duration of stay in France is 12 months or less, a joint long-stay visa and permit to stay (VLS-TS) is issued for the duration of the stay. When the duration of the stay exceeds 12 months, a long stay visa and residence permit is issued, according to the contract or the nature of the project.

If the foreign national is already admitted to reside on French territory, the decision to issue the Passport Talent shall be made by the prefect of his/her place of residence in France.

Renewal: the renewal must be requested within two months of the expiry of the VLS-TS or the application of residence permit. Renewal is subject to compliance with the initial conditions and certain additional conditions for the specific categories of business creator, innovative economic project holder, or economic investor.

The 10 Talent Passport categories are:

- European Blue Card Worker.
- Employee on Assignment.
- Researcher.
- Performing Artist.
- Young Graduate Employee or Employee of an Innovative Company.
- Creator of Business.
- Innovative Economic Project holder.
- Corporate Officer.
- Foreigner of International or National Fame.
- Economic Investor.

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The multi-annual ICT posted worker

The multi-annual residence permit, referred to as an ICT posted worker, may be issued to a foreign employee who is a non-EU national posted by his/her employer to an affiliate company in France and for the purpose of holding a senior management position, or to provide expertise without a contract of employment with the host entity in France.

The conditions required to qualify for the ICT posted worker permit are:

- A minimum of three months of continuous seniority in the group.
- Intra-group posting.
- Assignment for a senior management position or contribution of expertise.
- Assignment of up to three years.
- No minimum pay threshold.
- The conditions of remuneration must be commensurate with the nature of the employment and it is necessary to show sufficient resources to meet his/her own needs and, where appropriate, those of his/her family members.

Greater intra-EU mobility for ICT posted workers

The introduction of the ICT mobile posted work permit has provided greater flexibility in intra-EU employee transfers. This permit is issued to foreign employees holding an ICT residence permit issued by another member state of the EU, and who is assigned to France for more than 90 days as an intra-group transfer.

The conditions to qualify for the ICT mobile posted worker status are as follows:

- Intra-group posting.
- Having already received admission to another EU country as a posted ICT employee.
- Demonstrate the employment conditions specific to the ICT posting with legal remuneration thresholds applying.
- Show sufficient resources.

Germany

Over the past years, Germany has successfully introduced immigration regulations to make the country more attractive for foreign skilled workers and more open for businesses. Additionally, administrative procedures at the German employment agency have been revised to reduce processing times.

The German immigration system follows the approach of regulating case groups, which contain the conditions for entry, residence and work of foreign nationals in Germany.

The German immigration options available for skilled workers follow:

- EU Blue Card.
- Residence permit for work purposes as a foreign specialist.
- ICT Card for intra-company-transferees.

The EU Blue Card is the central residence permit for foreign academics who will work in Germany on a local employment contract and receive an annual gross salary of at least EUR 53,600. It does not require the involvement of the German employment agency but is issued directly by the German immigration authorities (German missions abroad or foreign offices in Germany) that help reduce processing times. To ensure the permanent stay of such foreign academics in Germany, the EU Blue Card is associated with certain benefits, including, amongst others, a permanent settlement permit for Germany that can be obtained after a shorter period of time and ensures an easier route to family reunification.

In comparison with all EU countries, Germany is the leader in issuing EU Blue Cards. In 2016, 84% of all Blue Cards issued in the EU were issued by Germany.

To further attract foreign academics, German immigration law contains regulations for a job seeker visa, allowing them to enter Germany to seek an appropriate employment opportunity, which is dictated by their university degree. Such a job seeker visa can be issued for a maximum duration of six months.

If the preconditions for an EU Blue Card are not met, foreign skilled workers on a local employment contract can apply for a residence permit for the purpose of work as a foreign specialist with specific knowledge/qualifications. This residence permit requires the approval from the German employment agency. It is possible to obtain this work approval directly at the German employment agency in a separate procedure called pre-audit enquiry, while the foreign nationals are still abroad, and before they have filed for a visa at the German missions. The processing times of the pre-audit enquiry are generally 7–10 days after electronic filing. The advantage of the pre-audit enquiry is planning security for the foreign skilled workers and the German employer, and the subsequent visa application procedure is expedited.

The ICT Card, introduced on August 1, 2017, is a special residence permit for the intra-company-transfer (ICT) of foreign executives, specialists and trainees to the German entity of an international operating enterprise. It is issued for a maximum time period of three years and requires the approval of the intended ICT by the German employment agency. At introduction, the processing times at the German employment agency for the ICT approval were around two to three months after filing with substantial documentation required for review and adjudication. To meet the demand of global enterprises for expedited processing, the German employment agency employed more personnel and drafted new ICT application forms, which now contain more information relating to the case and reduced the required documents to be submitted. As a result, the processing times for an ICT approval have been shortened to seven to 10 days.

Germany plans to adopt a new regulation called "Immigration Act for Skilled Workers (*Fachkräfteeinwanderungsgesetz*)" as of the beginning of 2020. For this, new immigration regulations are to be introduced and procedures facilitated. The major aspects are:

- A uniform definition of skilled workers, which includes foreign academics and foreign employees with a qualified vocational training.
- Omission of a priority job market test, upon recognised qualification and employment contract in Germany.
- Waiver of the limitation to shortage occupations, in case of a qualified vocational training.
- Possibility for skilled workers with a qualified vocational training to come to Germany for a limited time to search for a job (prerequisite: German language skills and maintenance of livelihood).

The intention of this new regulation is to enable entry of foreign academics and skilled workers with a recognised qualified vocational training, a targeted and controlled immigration, into the German labour market.

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Ireland

Ireland is very much pro-business. As IDA Ireland, Ireland's inward promotions agency, succinctly states, "we favour green lights over red tape", which is why we are one of the best countries in the world for ease of doing business. New business is welcomed and supported by the flow of talent coming from our schools, universities and abroad, to work for high performing companies across a range of cutting-edge sectors.

The Irish Employment Permits Regime

Currently there are nine different employment permit schemes catering to a wide range of employment structures and assignment scenarios. Two of the most frequently used are the Critical Skills Employment Permit Scheme (CSEP) and the Intra-Company Transfer Employment Permit Scheme (ICT).

The CSEP is designed to attract highly skilled workers into the labour market with the aim of encouraging them to take up permanent residence in Ireland. Eligible occupations are deemed to be critically important to growing Ireland's economy, are in high demand and highly skilled, and in significant shortage of supply in our labour market. Occupations such as ICT professionals, professional engineers and technologists are highlighted.

The ICT employment permit is designed to facilitate the transfer of senior management, key personnel or trainees who are non-EEA nationals from an overseas branch of a multi-national corporation to its Irish branch. In particular, ICT employment permits can be invaluable in the initial establishment of a foreign direct investment company. Therefore, they play a crucial role in contributing to Ireland's achievement of its job growth ambitions.

Atypical Working Scheme ("AWS") and Business Visitors

The Irish employment permit schemes, referred to above, typically cater for work assignments of 90 days or more. However, the AWS aims to address short-term employment scenarios of less than 90 consecutive days, which are atypical and are not catered for under the relevant legislation of departmental guidelines.

The AWS coupled with the 90-day business visitor/business visa permission and the option to work in Ireland for 14 days or less without any form of employment permit (subject to any entry visa requirements being complied with) means that the vast majority of work assignments and business activities, regardless of the time period in question are a possibility.

Third Level Graduate Scheme

This scheme allows legally resident, non-EEA, third level graduates to remain in Ireland for the purposes of seeking employment and applying for an employment permit. The scheme enables non-EEA graduates: (a) to remain in Ireland for a specific period (12–24 months depending on the third level qualification secured) to obtain an offer of permanent employment; (b) to work a limited number of hours per week (40 hours) so that they can support themselves while searching for permanent employment; and (c) apply for an employment permit on the basis of this offer of employment. It is another way in which Irish based companies are being facilitated in harnessing the talent that they need.

Trusted Partner Initiative ("TPI")

The objective of the TPI is to ease the administrative burden on employers in expansion mode and to remove the requirement that they replicate the same corporate information in respect to each employment permit application submitted to the Irish authorities.

The TPI will streamline and expedite the employment permit application process for employers (four weeks approximately in the TPI queue versus 12 weeks approximately in the standard queue). It is aimed primarily at high volume users of the employment permits regime. This may include companies in expansion mode and startup companies.

Spouses/Partners of CSEP holders

As a result of a recent policy change, spouses/partners will no longer require an employment permit to work in Ireland. The change will allow the spouse/partner to reside in the state under Stamp 1 immigration conditions. Stamp 1 holders have direct access to the Irish labour market without the need for an employment permit.

Success of Ireland

Five of the Top 10 companies on Forbes' list of the "World's Most Innovative Companies" have Irish operations. This underlines Ireland's success in attracting cutting-edge FDI investment across a range of sectors.

In particular, Ireland has become the global technology hub of choice when it comes to attracting the strategic business activities of ICT companies. This has earned Ireland the reputation for being the heart of ICT in Europe. The industry employs over 37,000 people and generates €35 billion in exports annually. World renowned enterprises such as Microsoft, Amazon, Dell, Facebook, Airbnb, Stripe and Salesforce have all established operations in Ireland.

Mexico

The immigration regime in Mexico was substantially modified with the entry of the Migration Law in November 2012. This occurred in the aftermath of a rise in immigrants' human rights' violations and sought to align the country's immigration laws with the liberal approach that the country had established in recent decades regarding the attraction of foreign investment and the free movement of people. The business- and work-related immigration statuses were simplified alongside a streamlining of processes to adhere to the provisions set forth in the several multilateral and bilateral agreements that Mexico is a part of, including free trade agreements with 46 countries that are responsible for 60% of the global gross domestic product. From an immigration perspective, it is noteworthy that many of these treaties, which primarily address the liberalisation of commerce, also contain provisions on the free transit of people for work- and business-related purposes.

The new federal administration, which has been in office since December 1, 2018, has embraced the protection of migrants' human rights and the development of Mexico's southeastern region as the axis of their migratory programme. However, following pressure from U.S. President Donald Trump's administration plans to build a wall along the U.S. southern border, as well as the exodus of large caravans of migrants coming mainly from Central American countries transiting to the north, the Mexican government now faces unprecedented challenges to maintain a welcoming approach with

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massive flows of irregular migrants escaping from violence and poverty without a life plan or economic resources.

This is relevant in the political perspective as the number of irregular immigrants entering Mexico grows, alongside the U.S. government's pressure for Mexico to deter massive flows of immigrants heading to the U.S. These pressures may lead to a shift from the humanitarian views on irregular immigration back to a contention policy.

Notwithstanding the above, during the nearly one decade that has followed the enactment of the Migration Law, Mexico has expanded the list of countries whose nationals do not require a visa to enter the country, approved flexibilities for business travellers, and expanded visa-waiver alternatives to facilitate business travel.

The requirements to secure a work permit have been relaxed for foreign applicants, provided that there is a local Mexican company that holds a valid registration certificate that can act as a sponsor. Foreign applicants no longer need to demonstrate professional or technical capacities to conduct work activities in the country as the sponsor is now solely responsible for assessing the foreign employee's capability to fill the position offered. Thus, this has streamlined the process of procuring a work visa, which can typically be obtained within one or two months.

From an immigration standpoint, foreigners who are not paid locally in Mexico may also request a long-term visa that would allow them to stay for up to four years on the grounds of invitation from a Mexican-based entity. This immigration status for non-remunerated activities allows foreigners to perform a variety of professional activities, such as technical training, systems installation, after-sales service, auditing, hands-on technical work, market rollout and integration, public relations, inventory, software development and consulting.

Although the Migration Law in Mexico exists at a federal level, some localities have disproportionally benefited from the flexible immigration policies, including the State of Jalisco. Jalisco has become a magnet for IT talent during the last three decades and has created a potential route for talent relocation from countries that have adopted a restrictive approach, including the U.S. during President Donald Trump's administration. According to Mexico's Minister of Economic Development, in 2019 the State of Jalisco attracted $222 million investment that led to the creation of nearly 4,400 jobs as a result of both the Government's and private sector's efforts to promote Jalisco as the new Silicon Valley.

The Netherlands

Characterised as the "first modern economy in the world", the Netherlands has placed itself at the forefront of international trade since the 16th century. Our government policies remain dedicated to ensuring an attractive international business climate; we hold high rankings on all relevant international business indexes, and our citizens appear to be living in the 6th Happiest Place on Earth. Home to 15,000 foreign companies, 50% of the Netherlands' GDP is derived internationally.

The 2013 Modern Migration Policies Act and European Directives

In 2008, the government initiated an immigration reform which resulted in the 2013 Modern Migration Policies Act. This legislation specifically aimed to shift our immigration policy from "restrictive" to "selective", meaning that the policy would facilitate the immigration of skilled migrants, such as workers, students, researchers, self-employed individuals and investors, while remaining restrictive for others.

Skilled employment

Skilled migrants who wish to work in the Netherlands may qualify under one of three skilled worker immigration categories, which are very transparent and have a high level of predictability with regards to outcome. The three categories are the 'Highly Skilled Migrant Programme' (HSMP), the 'European Blue Card' (EBC) and the 'Intra-Corporate Transfer (ICT); applications under these categories are not subject to a resident labour market test. Under the HSMP, the skilled worker of a recognised sponsor is eligible if he or she will be earning a monthly salary that meets the designated threshold (2019: €4,500, €3,299 if the person is 29 or younger, or €2,364 if the person is a qualifying graduate) and is in line with the Dutch market level. This makes the outcome of an immigration application under the HSMP highly predictable, and the overall success rate is high with 93% of applications lodged in 2017 granted. To be eligible under EBC, skilled workers of ordinary sponsors must have an academic degree received after three years of study, and a monthly salary of at least €5,272. Finally, transferees who are posted while remaining in home country employment must meet the conditions of the ICT-programme, as dictated by the Immigration and Naturalisation Service of the Netherlands.

Recognised sponsor status

To further facilitate sponsors of skilled migrants, the Modern Migration Policies Act has introduced a sponsor licence system referred to as "recognised sponsor status". This designated recognition offers many benefits, including shorter processing times (applications are typically decided within two weeks), little to no required support materials, and the option to submit these applications online. Additionally, migrant workers have access to so called "expat centers" which expedite and facilitate the post-arrival formalities of this process.

Graduates

The immigration policy also aims to retain migrant graduates and encourage foreign graduates from the Top 200 universities to move to the Netherlands for employment purposes: these graduates can be eligible for an orientation year residence permit to search for a skilled job, which can then be converted, while in the country, to a residence permit under the HSMP. To ensure a graduate's employability under the HSMP, a special, much lower, monthly salary threshold was set (2019: €2,364).

Self-employed and start-ups

Applications under the self-employment scheme are tested against a transparent points-based system, which makes the outcome predictable. Applicants who are unable to score sufficient points under this system may be alternatively eligible under the start-up visa scheme, which allows an initial residency for one year, under more lenient conditions, to establish a new business. These categories are not relevant for United States and Japanese nationals, who may instead rely on a special scheme based on the Treaties of Friendship and Trade between the Netherlands and these countries, allowing immigration for self-employment based on an investment of (in most cases) €4,500 into a company they incorporate.

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Investors

Foreign investors can be eligible for a Dutch residence permit in return for investing €1,250,000 in a Dutch innovative company, a SEED fund, a venture capital fund, or a joint venture which is investing in innovative companies.

Considerations

Besides being transparent and facilitative, all the above-mentioned schemes and categories allow family reunification and offer a path to permanent residence or citizenship. The skilled worker and investor categories allow dependents to work without restrictions.

Job Creation, Investment and Brexit

According to the most recent data provided by the Netherlands Foreign Investment Agency, 372 foreign companies, such as Giant, Timberland and DAZN, generated 9,847 additional jobs in the Netherlands in 2018. Collectively, these companies contributed €2,85 billion to the Dutch economy. In 2017, 357 companies invested €1.67 billion. In 2018, the Invest in Holland network brought 42 companies to the Netherlands as a result of Brexit, accounting for 1,923 jobs and some €291 million in investments. Companies signaling expansion of their offices in the Netherlands partly due to Brexit include Norinchukin, TVT Media, MarketAxess, Azimo and UK P&I. The European Medicines Agency has already moved to Amsterdam. In 2019, companies such as Discovery and Bloomberg announced their intention to invest in the Netherlands due to the United Kingdom's intended departure from the EU.

Switzerland

Switzerland manages to stay highly competitive while remaining a very attractive location for companies as well as individuals seeking a safe and productive work and living environment. The ease of establishing new businesses, the political and economic stability, and a fair legal framework contribute as much to its popularity as the functioning social security and pension schemes, and the widespread use of English amongst the country's own national languages.

Switzerland has a high foreign national population and continues to address the topic of immigration in public political discussion. In recent years the annual net immigration has declined due to the economic recovery of several EU countries, prompting the Swiss Federal Council to issue higher work permit quota numbers for non-EU/EFTA nationals for 2019. These now have risen to the level encountered before the Mass Immigration in 2014. This ensures that the country can grant work permits for specialists from non-EU/EFTA countries as well as for EU/EFTA nationals on assignment to Switzerland.

Bilateral agreements with the EU/EFTA countries ensure that the free movement of persons continues to lead to an active participation in the European economy and a mobile workforce. Through measures taken to prevent wage and social dumping, as well as the mutual recognition of professional qualifications and the coordination of social insurance issues, a coherent implementation is achieved despite Switzerland not being a member of the EU.

In particular, immigration to Switzerland is encouraged in the following categories:

1. Investment in existing businesses.
2. Creation of new businesses which favour the local economy and contribute to a diverse economic life.

A tiered immigration system is in place with different permit types according to the purpose and the duration of stay (eight-day exemption, online notification, 120-day permits with maximum flexibility, and straightforward registration processes for residents).

In addition, Switzerland has taken steps to ensure that non-EU/EFTA graduates from Swiss universities are granted extended residence in order to search for local employment, and are also exempt from the usually applicable labour market testing in cases in which the position is of high economic or scientific value. On the political side there are currently discussions about further providing easier access to such graduates in order to prevent "brain drain".

Swiss cantons, as well as multi-cantonal economic regions, have set up economic promotion offices which successfully communicate the specific region's advantages to companies or entire industries, partly creating hubs/clusters that further attract start-ups and international students interested in new fields of business such as cryptocurrency, blockchain technology and new developments in the scientific areas, especially within medicine and pharmaceuticals.

Though the interest in settling in Switzerland remains high, the country continues to see itself balancing the freedom of movement of persons from EU/EFTA countries with a more restrictive stance on immigration from further afield. The focus at the admission stage thus remains on highly qualified and specialised professionals as well as entrepreneurs, scientists and applicants involved in cultural affairs, as well as employees of international corporations. Despite recent additional measures on requirements of proof of local language skills to prove integration, Switzerland still intends to remain a country where an international workforce thrives.

Endnotes

1. *See, e.g.* Laura D. Francis, *Administration's H-1B Denials Again Subject to Litigation*, Bloomberg Law, 8 April 2019, available at: https://news.bloomberglaw.com/daily-labor-report/administrations-h-1b-denials-again-subject-to-litigation-1; Melissa Manna, *USCIS Data Confirms Increase in RFEs and Denials, Especially for H-1Bs*, The National Law Review, 28 February 2019, available at: https://www.natlawreview.com/article/uscis-data-confirms-increase-rfes-and-denials-especially-h-1bs; George Tzamaras and Belle Woods, *AILA; H-1B Numbers Show America is Losing Out on Talent*, AILA Doc. No. 18041332, 13 April 2018, available at: https://www.aila.org/advo-media/press-releases/2018/aila-h-1b-numbers-show-america-is-losing-out.
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Global Migration Section
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

The American Immigration Lawyers Association's (AILA) Global Migration Section (GMS) includes over 800 leading immigration attorneys from approximately 45 different countries throughout North America, South America, Europe, the Middle East, Africa and Asia. The Annual GMS Immigration Forum brings together GMS members and other lawyers, paralegals, and corporate human resources representatives interested in the field of global migration for networking sessions, workshops, consular tours and a dual-track multi-day conference covering the latest topics in global migration.

The mission of GMS is to educate AILA members and International Associates on matters of non-U.S. immigration law, and to connect immigration lawyers around the world. We focus primarily on corporate global mobility issues and the laws, policies and procedures applicable to the international movement of employees around the world. GMS works to advance the quality of global migration practice and to enhance the professional development of its members.

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Armenia

Sedrak Asatryan

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The major sources of immigration law are the Law of the Republic of Armenia On Foreigners, the Labour Code of the Republic of Armenia, the Constitution of the Republic of Armenia, the international treaties of the Republic of Armenia, and other RA laws regulating immigration relations, as well as Decrees of Government regulating different technical issues, including work terms and the immigration regulations.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

In Armenia the Ministry of Foreign Affairs administers the corporate immigration system, the Passport and Visa Department of the Police of the Republic of Armenia and the Authorized Body of Ministry of Labour and Social Affairs.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, our jurisdiction is not part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR).

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

There are only four types of Armenian Visas: the Visitor Visa; the Official Visa; the Diplomatic Visa; and the Transit Visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Armenian visas are issued for maximum 120 days with possibility to extend for another 60 days if no other term is defined by the international agreements of the Republic of Armenia. For working in Armenia or providing services in Armenia foreigners have to receive a work permit.

2.3 What activities are business visitors able to undertake?

According to Armenian legislation and regulations, business visitors are able to: register their business in Armenia and carry out business activities; work within the territory of Armenia under a labour contract; or provide services under a service providing contract.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

According to Armenian legislation, there are some special visitor categories that have exceptions with regard to obtaining a work permit, and they can work in Armenia or provide services without having a work permit.

2.5 Can business visitors receive short-term training?

Yes, they can.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

According to Armenian legislation, the national authorities operate a system of compliance inspections, but the regulation of work permits is new and there is no widespread practice of compliance inspections.

3.2 What are the rules on the prevention of illegal working?

Employers of the Republic of Armenia shall have the right to conclude a labour contract with a foreign worker (service contract) in the event that a work permit has been issued by the authorised body to a foreign worker.

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3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The hiring of foreigners by employers without a residence permit or work permit imposes a fine of 100,000 to 150,000 AMD (equivalent to 210 to 310 USD).

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, there is no such system.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, employers who have hired foreign nationals have ongoing duties which are defined by RA legislation.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, they are not. For the purpose of assessing the needs of the labour market of the Republic of Armenia, the Government of the Republic of Armenia gives the employer a period during which he is obliged to replenish the existing vacancy from the citizens of the Republic of Armenia. In the absence of the nomination of a candidate nominated by the authorised body within the prescribed time limit, as well as the rejection by the employer of the nominated candidate, the employer may find a foreigner meeting these requirements and apply to the authorised body for a specific work permit for a particular foreign worker, with the necessary documents.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Armenian legislation does not define any government charges and fees which contribute towards the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

No, this is not a widespread practice.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, according to Armenian legislation there are certain professions and positions which can be filled by foreigners without a work permit.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No, they are not.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, there are not.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are not.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, it is not required.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

To receive the residence permit, which is necessary to get work in Armenia, foreigners are required to undergo medical examinations.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

No they are not; medical insurance is not required for Armenian employees and employers.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, the work permit system allows employees who hold work permits to be seconded to a client site.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, there is.

This category covers the following:

- Specialists or other persons arriving on the basis of the international treaties of the Republic of Armenia.
- Lecturers of foreign education institutions invited to deliver lectures at educational institutions of the Republic of Armenia.
- Accredited representatives of foreign media organisations.

Foreigners that fall into these categories do not need a work permit.

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6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes, there is. Foreigners can work in the following positions without needing a work permit:

- Founders, directors, or authorised representatives of commercial organisations with foreign capital.
- Employees of commercial organisations of a foreign State, for the purpose of working in representative offices of those organisations located in the Republic of Armenia.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, there is. Temporary workers can be hired without the need of a work permit in the following circumstances:

- Foreign specialists arriving for a term not exceeding six months, to train employees for: installing, repairing, and exploiting machines, equipment, and to deliver machine tools to the branch or representative office of a foreign commercial organisation, or purchased from foreign commercial organisations.
- Students performing work in the framework of work exchange programmes during the holidays, based on relevant international treaties.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Please see question 7.1.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, there is not.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable in Armenia.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable in Armenia.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable in Armenia.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable in Armenia.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable in Armenia.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

This is not applicable in Armenia.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

This is not applicable in Armenia.

8.9 What are the main government fees associated with this type of visa?

This is not applicable in Armenia.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main category can be the Investment or Establishment with representatives of commercial organisations with foreign capital.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, for the purpose of assessing the needs of the labour market of the Republic of Armenia, the Government of the Republic of Armenia decides on the employer a period during which he is obliged to replenish the existing vacancy from the citizens of the Republic of Armenia. In the absence of the nomination of a candidate nominated by the authorised body within the prescribed time limit, as well as the

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rejection by the employer of the nominated candidate, the employer may find a foreigner meeting these requirements and apply to the authorised body for a specific work permit for a particular foreign worker, with the necessary documents.

9.3 Are there any exemptions to carrying out a resident labour market test?

No, there are no exemptions to carrying out a resident labour market test.

9.4 What is the process for employers obtaining a work permit for a new hire?

To fill the vacancy the employer must either in person or by mail apply to the Republic of Armenia Ministry of Labour and Social Affairs with the vacancy description. The Ministry must, within five working days after receipt of the information provided by the employer, in the manner prescribed by the legislation of the Republic of Armenia:

1) Enter the information into the employment database.
2) Compile data and, as a result, give data on job-seekers (with their consent) to the employer, that corresponds to that vacancy.

In case of absence of an Armenian citizen candidate nomination in accordance with the employer's requirements, as well as refusal of the job-seekers by the employer, the employer personally or by post shall, within five business days after the expiration, submit to the Ministry the documents for a foreign worker to obtain a work permit for a specific term.

9.5 What is the process for the employee to obtain a visa as a new hire?

There is no procedure for getting a visa for a new hire.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The process of obtaining the work permit can lasts about 30-40 working days from the date of application. The process of obtaining a resident permit lasts 30 working days from the date of application.

9.7 How long are initial visas for new hires granted for and can they be extended?

There are three types of residence permits:

- temporary residence status – an authorisation by the authorised public administration body of the Government of the Republic of Armenia, which entitles a foreigner to reside in the territory of the Republic of Armenia for one year;
- permanent residence status – an authorisation by the authorised public administration body of the Government of the Republic of Armenia, which entitles a foreigner to permanently reside in the territory of the Republic of Armenia for five years; and
- special residence status – an authorisation by the President of the Republic of Armenia, which entitles a foreigner to reside in the territory of the Republic of Armenia for 10 years.

All residence permits can be extended.

9.8 Is labour market testing required when the employee extends their residence?

No, it is not required.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, they can if they have grounds for permanent residence which is defined by legislation.

9.10 What are the main government fees associated with this type of visa?

For the temporary residence status the state fee is 105,000 AMD (about 220 USD).

For the permanent residence status the state fee is 140,000 AMD (about 290 USD).

For the special residence status the state fee is 150,000 AMD (about 310 USD).

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

After obtaining the work permit and residence permit, foreigners stay in Armenia under the same conditions as the citizens of Armenia.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, after obtaining the residence permit, foreigners are required to register in the Passport and Visas department of the Police of the Republic of Armenia.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

According to legislation, a dependant can be: a wife; a husband; children under 18 years old; the parents of the worker and any another persons who are dependent on this person.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No, civil/unmarried or same-sex partners do not qualify as family members.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

No, they do not.

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11.4 Do children have access to the labour market?

No, they do not.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Permanent residence status shall be granted to a foreigner, if he or she:

(a) proves the existence of close relatives (parent, spouse, brother, sister, child, grandmother, grandfather, grandchild) in the Republic of Armenia;

(b) has accommodation and means of subsistence in the Republic of Armenia; or

(c) has resided in the Republic of Armenia as prescribed by law for at least three years prior to filing an application for obtaining permanent residence status.

Permanent residence status may be granted also to a foreigner of Armenian origin or to a foreigner carrying out entrepreneurial activities in the Republic of Armenia.

The conditions referred to in point (b) of this question shall be considered sufficient, where the foreigner has means sufficient to cover his or her subsistence expenses and the subsistence expenses of his or her family members under his or her care, or has a family member or members who are able and have undertaken to provide means for his or her living.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

As it was mentioned before there is no temporary work visa in Armenia.

13 Bars to Admission

13.1 What are the main bars to admission for work?

A work permit can be denied if:

- Based on analysis of the state of the labour market, the Republic of Armenia does not allow the work to be carried out.
- The laws of the Republic of Armenia require the applicant to be a citizen of the Republic of Armenia for the performance of the work.
- The requested information or documents are falsified.
- The employer for whom the foreigner must work has previously violated the requirements for hiring foreigners.
- There are reasons to deny the work permit for the state security of the Republic of Armenia.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

They can be, if this criminal conviction means the person has no right to work in a certain position.

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CONCERN-DIALOG CJSC was established in 1998 as a company for the provision of litigation and representation services mostly for individual clients. Starting in 2002–2003, the company developed services for corporate clients. Although it is a formal corporation, it is perhaps the first company in Armenia that has implemented partnership principles (non-formal) of decision-making. In addition, the company is completely employee-owned.

At present, the company provides services of both litigation/representation and legal advice. At the same time, we believe that specialisation is crucial for providing high-level services, and therefore we limit our major practice areas.

As we work with different corporate clients, along with one time-order-based services we provide monthly subscription services up to complete outsourcing of legal support of the business.

Parallel to general business (trade) legal advice, our specialists specialise in the provision of services to Telecommunication and Energetics sector companies, and we are planning to develop Mining in the near future.

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Australia

BDO Migration Services

Maria Debra Jockel

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Migration Act 1958 (Cth) (**the Act**) and the Migration Regulations 1994 (Cth) (**the Regulations**) provide the legal and regulatory framework for the entry into, and presence in Australia of persons who are non-citizens.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

On 20 December 2017, the Home Affairs Portfolio was established. It supports a 'federation' of Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs and immigration and border-related functions.

It includes the Department of Home Affairs (**the Department**) and the Australian Border Force, its operational enforcement arm.

A number of other Agencies assist the Department, including the Australian Taxation Office, in ensuring compliance for individuals and companies, including temporary skilled visa holders and their sponsors.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Australia is a signatory to the World Trade Organization General Agreement on Trade in Services 1994 (**WTO GATS**), which allows for the movement of persons seeking access to the employment market on a temporary basis.

Australia is a signatory to a number of bilateral and regional Free Trade Agreements (**FTAs**) that allow for the movement of persons supplying services without the need for Labour Market testing (**LMT**).

Australia's FTAs are complex. Australia currently has the following FTAs in force:

1. Australia-New Zealand (**ANZCERTA** or **CER**).
2. Singapore-Australia (**SAFTA**).
3. Australia-United States (**AUSFTA**).
4. Thailand-Australia (**TAFTA**).
5. Australia-Chile (**ACI-FTA**).
6. ASEAN-Australia-New Zealand (**AANZFTA**) – Australia, New Zealand, Brunei, Burma, Malaysia, the Philippines, Singapore, Vietnam, Thailand, Laos, Cambodia and Indonesia.
7. Malaysia-Australia (**MAFTA**).
8. Korea-Australia (**KAFTA**).
9. Japan-Australia (**JAEPA**).
10. China-Australia (**ChAFTA**).
11. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**).

As all FTAs are different; each FTA needs to be looked at separately and in the context of determining whether in a given instance there is a need for LMT.

The aim of LMT of the Australian labour market is to demonstrate whether a suitably qualified and experienced Australian citizen or permanent resident is readily available to fill the prescribed position.

At the time of the lodgement of a Subclass 482 Temporary Skills Shortage (**TSS**) nomination application, evidence of LMT must be provided unless an International Trade Obligation (**ITO**) or specified exemption applies.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Business visitor visas allow holders to enter Australia to engage in business activities. Eligible passport holders may apply online or through an approved travel agent for:

- an Electronic Travel Authority (**ETA**) (Subclass 601) visa; or
- an eVisitor (Subclass 651) visa.

Otherwise, a paper-based or online (for eligible passport holders only) application can be made for:

- a Visitor (Business Visitor or Frequent traveller stream) (Subclass 600) visa; or
- a Temporary Work (Short Stay Specialist) (Subclass 400) visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Subclass 601, 651 and 600 visas can be granted to travel to and enter Australia on multiple occasions for up to three months during the validity period of the visa grant.

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Subclass 400 visas are generally granted with the right to remain in Australia for three months after first entry, but up to six months in limited circumstances if supported by a strong business case.

2.3 What activities are business visitors able to undertake?

The Subclass 651 and Subclass 600 visas are granted subject to Condition 8115, which allows limited work. For example, it relates to the making of a general business enquiry or negotiating a business contract.

The Subclass 400 visa allows for:

- short-term, highly specialised, non-ongoing work; or
- in limited circumstances, participation in an activity or work relating to Australia's interests.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

The Highly Specialised Work stream of the Subclass 400 visa allows for short-term, highly specialised, non-ongoing work.

The Australia's Interest stream of the Subclass 400 visa allows applicants to participate in an event, or engage in an activity or work that relates directly to compelling circumstances that affect Australia's interests, and require the applicant's entry into and stay in Australia.

2.5 Can business visitors receive short-term training?

Some business visitor visas allow for attendance at specialised 'one-off' training courses. Subclass 600 visas are granted subject to the mandatory Condition 8201, 'no study for more than three months'.

If the primary purpose for the visa is to obtain an approved degree or qualification, a student visa may be appropriate.

The Subclass 407 Training visa allows persons to take part in workplace-based training to enhance their skills in their occupation, area of tertiary study and field of expertise and to participate in a professional development training programme in Australia.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The Department, together with Fair Work Australia, have significant powers to monitor employers to ensure compliance with Australia's immigration and employment laws. This is to ensure that foreign nationals are lawfully permitted to work in Australia, undertake work in accordance with the basis upon which their visa is granted, including any work restrictions or work prohibitions, and that all employees, be they foreign nationals or Australians, are provided with the minimum terms and conditions of employment under the *Fair Work Act 2009* and the National Employment standards.

3.2 What are the rules on the prevention of illegal working?

The *Migration Amendment (Reform of Employer Sanctions) Act 2013* contains civil and criminal liability provisions for allowing unlawful non-citizens to work or allowing lawful non-citizens to work in breach of work-related conditions. This imposes an obligation for employers to take reasonable steps at reasonable times to verify the visa status and work rights of foreign nationals, for example by checking the Department's records prior to allowing a person to work and thereafter, to see if the person is still allowed to work.

'Work' is defined in Regulation 1.03 of the Regulations and is taken to mean any work, be it paid work, voluntary work or work done in return for accommodation, food or any other benefit.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The *Migration Amendment (Reform of Employer Sanctions) Act 2013* has a three-tiered sanctions framework, namely: infringement notices, civil penalty orders and criminal offence provisions. There are four types of civil liability offences:

- Allowing an unlawful non-citizen to work (90 penalty units).
- Allowing a lawful non-citizen to work in breach of a work-related condition (90 penalty units).
- Referring an unlawful non-citizen for work (90 penalty units).
- Referring a lawful non-citizen for work in breach of a work-related condition (90 penalty units).

The maximum civil penalties are:

- For an individual: $50,400.
- For executives of bodies corporate: $252,000.

There are four types of criminal liability offences:

- Allowing an unlawful non-citizen to work.
- Allowing a lawful non-citizen to work in breach of a work-related condition.
- Referring an unlawful non-citizen for work.
- Referring a lawful non-citizen for work in breach of a work-related condition.

The penalty of two years' imprisonment applies where the elements of knowledge or recklessness can be proved. If the worker is subject to or will be subject to exploitation and the person knows of, or is reckless to that circumstance, then they may be liable to the aggravated criminal offence in which event the penalty is five years' imprisonment.

In addition to imprisonment the maximum criminal penalties are:

- For an individual: $75,600.
- For executives of bodies corporate: $378,000.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

On 18 March 2018, the Subclass 482 Temporary Skill Shortage (**TSS**) visa replaced the subclass 457 visa programme and enables Australian and overseas businesses to be approved as standard business sponsors, to sponsor skilled overseas workers to fill prescribed positions on a temporary basis. There are three new streams:

- a Short-term stream for occupations on the Short-term Skilled Occupation List (**STSOL**) for a maximum of up to two years (or up to four years if an international trade obligation applies);

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- Medium-term stream – for occupations on the Medium and Long-term Strategic Skills List (**MLTSSL**) for up to four years; and
- Labour Agreement stream – in accordance with a Labour Agreement, where there is a demonstrated need that cannot be met in the Australian labour market under the TSS.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers who hire foreign nationals under the TSS visa programme must comply with the sponsorship obligations and the *Fair Work Act 2009* which provides for a safety net of minimum terms and conditions of employment.

Sponsorship obligations apply to all approved sponsors and former approved sponsors and must include, but are not limited to, the following:

- To ensure non-discriminatory recruitment practices.
- To cooperate with inspectors.
- To ensure equivalent terms and conditions of employment (namely to pay the market salary rate, however described) to the primary TSS visa holder.
- To pay prescribed costs of the departure of the visa holder (or a former visa holder) from Australia.
- To pay prescribed costs to the Commonwealth in relation to locating the former visa holder, and removing the former visa holder from Australia.
- To keep records.
- To provide records and information to the Department.
- To notify the Department of prescribed changes in the circumstances of an approved sponsor, a former approved sponsor, a visa holder or a former visa holder.
- To ensure that a visa holder works or participates in an occupation, programme or activity nominated by an approved sponsor (including by preventing the on-hire of a visa holder).
- To require an approved sponsor or former approved sponsor not to recover, transfer or take actions that would result in another person paying for certain prescribed costs.
- To require an approved sponsor or former approved sponsor to meet prescribed training requirements (prior to 12 August 2018).

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

An approved sponsor or former approved sponsor must meet prescribed training requirements.

The Migration Amendment (Skilling Australians Fund) Act 2018 came into effect on 12 August 2018.

The Skilling Australians Fund (**SAF**) levy must be paid in full at the time the employer nominates an overseas worker under the TSS visa programme and the subclass 186 Employer Nomination Scheme (**ENS**) / subclass 187 Regional Sponsored Migration Scheme (**RSMS**) visa programs. The amount of the levy depends on the turnover of the business. The levy does not apply to dependent visa applicants or existing 457 visa holders.

Business size	TSS visa	ENS / RSMS visas
Small (annual turnover less than $10 million)	$1,200 per year or part thereof	$3,000 one-off
Other businesses	$1,800 per year or part thereof	$5,000 one-off

Businesses are prohibited from passing on the costs of the SAF levy to overseas skilled workers.

Since the SAF came into effect, an approved sponsor or former approved sponsor is no longer required to meet the prescribed training requirements.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

See question 4.3 above.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Employers, including approved sponsors under the TSS visa programme, are monitored by the Department to ensure that they comply with the obligations in relation to the foreign worker (and any accompanying family member(s)).

See the answer to question 4.2 on sponsorship obligations.

Sponsors are monitored by the Department and Australian Border Force through interviews and site visits, desk auditing through monitoring forms, referral to other agencies and/or other sections of the Department, as well as education and awareness-raising activities.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

From 1 July 2017 foreign workers must be nominated by an Australian employer to fill a position in an occupation that appears in the MLTSSL or the STSOL or the Regional Occupation List (**ROL**). These Occupation Lists apply to the following visa programmes:

- the Temporary Skill Shortage (Subclass 482) (TSS) visa;
- the Training (Subclass 407) visa;
- the Temporary Graduate (Subclass 485) (Graduate Work stream) visa;
- the Skilled Regional (Provisional) visa (Subclass 489);
- the Employer Nomination Scheme visa (Subclass 186);
- Regional Sponsored Migration Scheme visa (Subclass 187);
- independent points-based Skilled Migration who are not nominated by a state or territory government agency (Subclass 189); and
- points-based Skilled Migration who are nominated by a state or territory government agency under a State Migration Plan (Subclass 190).

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The Occupations Lists specify occupations on the basis that these occupations are in short supply. The MLTSSL provides for occupations that require foreign workers for four years and are considered occupations which the Australian labour market requires for 'medium to long-term' periods.

The STSOL provides for occupations that require foreign workers for two years and are considered occupations which the Australian labour market requires for 'short-term' periods.

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The ROL specifies occupations which are in short supply in designated regional areas of Australia.

All occupations are subject to LMT unless an ITO or specified exemption applies.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

The TSS visa programme is demand-driven and is not subject to a quota.

The ENS and RSMS is subject to an annual quota as determined by the Minister of Home Affairs.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions as such on the number of foreign workers an employer may be able to sponsor provided that the sponsor is able to meet specified criteria including that the employer has a strong record of, or commitment to, employing local labour and non-discriminatory employment practices.

However, employers seeking accreditation as Standard Business Sponsors must meet specified requirements.

For example:

- Category 3 is for employers who have Australian workers who comprise at least 85% of their workforce in Australia.
- Category 4 is for employers who have Australian workers who comprise at least 75% of their workforce in Australia.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

The English language requirements depend on the visa category applied for.

Employees who are sponsored to work in Australia under the TSS visa programme are required to demonstrate language proficiency, unless exempted because:

- the person holds a valid passport issued by the United Kingdom, the United States of America, Canada, New Zealand or the Republic of Ireland; or
- the person has completed at least five years of full-time study in a secondary and/or higher education institution where the teaching instruction was delivered in English; or
- the person is an employee of an overseas business who is coming to Australia to work for that company or their associated entity and they have a nominated base rate of pay of at least $96,400 per annum (in addition to superannuation).

Unless exempted, the person must undertake a prescribed English language test and demonstrate that their level of English proficiency meets the necessary requirements.

Otherwise, applications for ENS and RSMS under the Temporary Residence Transition (**TRT**) stream require an IELTS (or equivalent) score of six in each component (Competent English).

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Employees who are sponsored to work are required to undergo medical examinations if the health, physical or mental condition of the person is relevant to the granting of the visa.

The health assessment process depends on the visa applied for, the age of the person, the proposed length of stay, the person's medical history, the types of activities they intend to engage in while in Australia, and the relevant Public Interest Criteria (**PIC**) which must be met in regard to health. This can include medical and x-ray examinations and in certain cases, an HIV test, hepatitis B or C test or other specific test.

All applicants and their migrating dependants (and in some instances, dependants who may not be migrating with the main applicant) must meet the health criteria.

If an applicant or a member of their family cannot satisfy the health requirements, then the application must be refused, unless the visa applied for allows for a health undertaking or a health waiver.

A health waiver may be available for applicants for some visa subclasses if a Medical Officer of the Commonwealth (MOC) finds the applicant does not meet the health requirement.

The applicant must first meet all other eligibility criteria for the visa. The Department must then be satisfied that granting the visa is unlikely to:

- result in a significant cost to the community; and/or
- prevent Australian citizens from accessing health care or community services in short supply.

The Department will not exercise a health waiver if the applicant fails to meet the health requirement because:

- the person has active tuberculosis; and/or
- the person's condition might pose a danger to the community or is a threat to public health.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Unless exempted, all employees who are sponsored to work under the TSS visa programme must have private working health insurance.

Employees from countries that have a Reciprocal Health Care Agreement (**RCHA**) with Australia may be eligible for limited Medicare benefits. The nature of the free public medical services depends on the terms of the RCHA with the relevant country.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Under the TSS programme, the employee is engaged generally only as an employee of the sponsoring company or an employee of an associated entity of that company. As such, an approved Standard Business Sponsor must demonstrate that a direct employer-employee relationship is available including in circumstances where the employee who holds a TSS visa is seconded to a client site.

Certain occupations are exempt from the direct employer requirement and specified TSS visa holders may work as independent contractors (for example, general managers sitting on the board of directors of several unrelated businesses, medical professionals working as locums at various hospital clinics).

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Otherwise, employees can only be seconded to a client site pursuant to the On-Hire Labour Agreement requirements.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

The TSS visa programme and the ENS/RSMS cover highly skilled individuals.

The Distinguished Talent (Subclass 124/858) visa is a visa for individuals with an internationally recognised record of exceptional and outstanding achievement in:

- a profession;
- a sport;
- the arts; or
- academia and research.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

The Business Innovation and Investment Program (**BIIP**) is designed to attract high-quality investors and entrepreneurs to invest in Australia. The Business Innovation and Investment Program is made up of three visa subclasses:

- Business Talent (Permanent) (Subclass 132).
- Business Innovation and Investment (Provisional) (Subclass 188).
- Business Innovation and Investment (Permanent) (Subclass 888).

The Business Talent (Permanent) (Subclass 132) visa is the only Business Skills visa which allows for direct entry permanent residency.

The Business Talent (Permanent) (Subclass 132) has two streams namely:

- Significant business history stream.
- Venture capital entrepreneur stream.

The Business Innovation and Investment (Provisional) (Subclass 188) visa and the Business Innovation and Investment (Permanent) (Subclass 888) visa streams are:

- Business innovation stream.
- Investor stream.

In the case of the Business Talent (Permanent) (Subclass 132) and the Business Innovation and Investment (Permanent) (Subclass 888) the intending migrant must be invited to apply for a visa by a state or territory government, based on their Expression of Interest. On that basis, these two visa subclasses are not subject to a points test.

The required investments vary depending on the subclass, for example:

- The Subclass 188 Significant Investor visa stream requires the applicant to make a complying investment of at least A$5 million and for the applicant to maintain the complying investment for at least four years.
- The Premium Investor stream visa requires an investment of A$15 million and provides access to permanent residence after 12 months.

In addition, the TSS visa programme permits employees to work in Australia to set up a subsidiary or corporate presence in Australia.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Please see the answer to question 2.5 as to the Subclass 407 visa stream which relates to work-based training and participating in a professional development training programme in Australia.

The Temporary Activity visa (Subclass 408) allows a person to come to Australia on a temporary basis to:

- Participate in activities at the invitation of an Australian organisation.
- Participate or observe in an Australian research project.
- Work in a skilled position under a staff exchange arrangement.
- Participate in high-level sports competitions or sports training programmes.
- Participate in a special programme approved by the Department that provides for opportunities for youth exchange, cultural or community benefits.
- Participate in a government endorsed event.

The Subclass 600 (Tourist stream) visa allows for internships where the applicant is a student of an overseas university undertaking research as part of their course, and the internship is purely on an observational basis.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The Temporary Activity visa (Subclass 408) allows persons to come to Australia on a temporary basis to:

- Work in the entertainment industry.
- Participate in high-level sports competitions or sports training programmes.
- Do full-time religious work.
- Be employed as a superyacht crew member.
- Do full-time domestic work in the household of certain senior foreign executives.

The Temporary Work (Short Stay Activity) (Subclass 400 visa) (please see the answer to question 2.3).

The Labour Agreement stream of the TSS allow for sector-specific temporary work categories.

There are five types of labour agreements:

1. Company specific labour agreements.
2. Designated area migration agreements.
3. Project agreements.
4. Global Talent Scheme (**GTS**) agreements.
5. Industry labour agreements.

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8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

The TSS visa allows for intra-company transfers within international corporations establishing Australian operations based on investment.

There are three main steps in the approval process under the TSS visa programme:

- Sponsorship application which is lodged by the company and which evidences that:
  - the company is actively and lawfully operating the business;
  - the employment of the employee will benefit Australia;
  - it is able to comply with sponsorship obligations;
  - it will be the direct employer or 'related to' the direct employer of the employee;
  - there is no adverse information regarding the sponsor; and
  - it has a strong record of, or commitment to, employing local labour and non-discriminatory employment practices.
- Nomination application, which is lodged by the company, relates to the nominated occupation and meets the following requirements:
  - the position is on the MLTSSL or STSOL and the position meets the minimum skills threshold for that occupation;
  - the base salary meets or exceeds the Temporary Skilled Migration Income Threshold (**TSMIT**) (currently $53,900 gross per annum) in addition to superannuation for a 38-hour week;
  - the terms and conditions of employment are no less favourable than those provided to Australian staff in the same position in the workplace's regional locality ('the market salary rate');
  - the details of the employee are provided; and
  - unless exempted, it meets the LMT requirements.
- Visa application, which is lodged by the employee nominated to fill the position, who must:
  - demonstrate they have the requisite skills and experience for that position;
  - be offered employment at the relevant market salary rate (which cannot be below the TSMIT);
  - if necessary, provide evidence they meet the English language requirements;
  - if necessary, provide a skill assessment;
  - provide a police check/s; and
  - if necessary, undertake a health check.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

In order for a company or organisation to qualify as part of a group of companies, the requirements of section 50AAA of the *Corporations Act 2001* (as to the term 'associated entity') must be met. An associated entity is a party that is either controlled by, or operates wholly (or to a significant extent) for the benefit of, one or more parties. Those parties are considered to be associated.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The TSS visa programme enables intra-company group employees to obtain a work permit to work for the associated entity in Australia for up to four years.

All TSS visa holders have the condition 8607 which provides that they must:

- only work in the occupation for which the TSS visa was granted;
- work for the approved Sponsor;
- commence work within 90 days;
- not cease employment for more than 60 consecutive days; and
- must hold mandatory licence, registration or membership.

Please see question 8.1 for details as to the process to obtain a work permit for an intra-company group employee.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Please see the answer to question 8.1 above.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Please see the answer to question 8.1 above.

8.6 How long does the process of obtaining the work permit and initial visa take?

The processing times vary depending on a range of factors including whether the person holds a 'low risk' or 'high risk' passport.

The current indicative processing times in respect of applications under the TSS visa programme may range from 37 to 73 days for the Short-term stream and from 35 days to 61 days for the Medium-term stream.

The current indicative processing times for ENS applications range from 12 to 13 months for the Temporary Residence Transition stream and 11 to 16 months for the Direct Entry stream.

The current indicative processing times for RSMS applications range from 12 to 21 months for the Temporary Residence Transition stream and from 21 to 24 months for the Direct Entry stream.

The actual processing times are impacted each month by changes in application volumes, seasonal peaks, complex cases and incomplete applications.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Under the TSS Medium-term stream visa programme, occupations on the MLTSSL can be granted for a period of up to four years and can be extended for further periods of up to four years each.

Under the TSS Short-term stream visa programme, occupations on the STSOL are only eligible for a Subclass 482 visa permitting a stay for up to two years or up to four years if an ITO applies and can only be renewed once while the person is onshore. Further, there is no permanent residency pathway for occupations on the STSOL.

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8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

The ENS and the RSMS programs allow for employees coming under an intra-company transfer route to apply for permanent residence by being nominated by their employer.

The ENS/RSMS has three streams, namely:

- Temporary Residence Transition stream.
- Direct Entry stream.
- Labour Agreement Stream.

The Subclass ENS/RSMS Temporary Residence Transition stream is only available for holders of a Subclass 457 visa or a Subclass 482 Medium-term visa.

8.9 What are the main government fees associated with this type of visa?

The TSS visa programme fees and charges for visas are:

- Sponsorship Application: $420.
- Nomination Application: $330 per nominee.
- Visa Application:
  - Short-term stream: $1,175 for a primary applicant, $1,175 for additional applicant 18 years and over and $295 for additional child applicant under 18.
  - Medium-term stream: $2,455 for a primary applicant, $2,455 for additional applicant 18 years and over and $615 for additional child applicant under 18.

The ENS visa programme fees and charges for visas are:

- Nomination Application: $540.
- Visa application: $3,755 for a primary applicant, $1,875 for additional applicants 18 years and over and $940 for additional child applicants under 18 years.

The RSMS visa programme fees and charges for visas are:

- Nomination Application: nil.
- Visa application: $3,755 for a primary applicant, $1,875 for additional applicants 18 years and over and $940 for additional child applicants under 18 years.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The TSS visa programme and the ENS/RSMS visa programs are the main visa programs for new-hire work permits (with the latter being for permanent residency).

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

LMT is required unless exempted under Australia's ITO as referred to in questions 1.3 and 4.7.

TSS visa Short-term stream and Medium-term stream LMT requires Sponsors to provide a copy of the advertising material used to advertise the position.

For most nominations, advertising must be done:

- Within the four months immediately before lodging a nomination application.

Advertising of the nominated position must:

- be in Australia and in English, and include the following information:
  - the title, or a description, of the position;
  - the skills or experience required for the position;
  - the name of the approved sponsor or the name of the recruitment agency being used by the sponsor; and
  - the salary for the position – if the annual earnings for the position are lower than A$96,400. It is acceptable to publish a salary range; for example A$80,000 to A$90,000.
- At least two advertisements were published in any of the below:
  - on a prominent or professional recruitment website with national reach (for example jobactive.gov.au) that publishes advertisements for positions throughout Australia;
  - in national print media – that is, newspapers or magazines with national reach that are published at least monthly and marketed throughout Australia;
  - on national radio with national reach; or
  - on the business' website if the sponsor is an accredited sponsor.
- advertisements including on websites, are expected to have run for at least four weeks; and
- applications or expressions of interest for the advertised position must have been accepted for at least four weeks.

If there are no suitable Australian citizens or permanent resident workers for the position, then the LMT requirements are met.

9.3 Are there any exemptions to carrying out a resident labour market test?

Please see the answer to questions 1.3 and 4.7 above.

9.4 What is the process for employers obtaining a work permit for a new hire?

Please see the answer to question 8.1 as to the approval process under the TSS visa programme.

9.5 What is the process for the employee to obtain a visa as a new hire?

Please see the answer to question 8.1 above.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Please see the answer to question 8.6 above.

9.7 How long are initial visas for new hires granted for and can they be extended?

Please see the answer to question 8.7 above.

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9.8 Is labour market testing required when the employee extends their residence?

Under the TSS visa programme, all occupations are subject to LMT unless exempted.

For example, LMT would not be required for a new nomination lodged by the same sponsor or an associated entity of that sponsor if an ITO applies provided:

- the visa applicant/holder will be staying in the same nominated position; and
- either:
  - the new sponsor is still an associated entity of the original sponsor; or
  - the employer has stayed the same (that is, even if one company has ceased to exist).

Please see the answer to questions 4.7 and 8.1.

9.9 Can employees coming as new hires apply for permanent residence?

The ENS Direct Entry stream is for:

- people who have been nominated by their employer under the Direct Entry stream;
- people who have never, or only briefly, worked in Australia; or
- temporary residents who do not qualify for permanent residency under the Temporary Residence Transition stream.

9.10 What are the main government fees associated with this type of visa?

Please see the answer to question 8.9 above.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Persons who are approved under the ENS/RSMS are permanent residents of Australia and have work rights.

All primary TSS visa holders' visas are subject to condition 8607 which means that the holder must:

- only work in the occupation for which the TSS visa was granted;
- work for the approved Sponsor;
- commence work within 90 days;
- not cease employment for more than 60 consecutive days; and
- if required, hold the mandatory licence, registration or membership.

All secondary TSS visa holders have unrestricted work rights.

All TSS visa holders must comply with condition 8501, which means that unless exempted, they must have medical insurance.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not required to register with municipal authorities or with the police.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A 'dependant' must be a 'member of the family unit' (**MOFU**) of the person coming to work on a sponsored basis. MOFU is defined in Regulation 1.12 of the Regulations. Generally, a person is considered to be a MOFU of the 'family head' if the person is:

- a spouse or *de facto* partner of the family head;
- a child or step-child of the family head or of a spouse or *de facto* partner of the family head (who is not engaged, married or in a *de facto* relationship); or
- a dependant child.

'Spouse' is defined in section 5F(1) to mean two persons (whether of the same sex or a different sex) who are in a married relationship.

The concept of a '*de facto* partner and *de facto* relationship' is defined in section 5CB(1) of the Act to mean that a person is the *de facto* partner of another person (whether of the same sex or different sex) if the person is in a *de facto* relationship with the other person. For this purpose, a person is in a *de facto* relationship with the other if they are not married to one another, and:

- they have a mutual commitment to a shared life to the exclusion of all others;
- their relationship is genuine and continuing;
- they live together or do not live separately and apart on a permanent basis; and
- they are not related by family.

'Dependant child' is defined in Regulation 1.03 and means a single or unattached person who has not turned 18.

If they have turned 18, the 'adult dependant child' must be wholly or substantially reliant on the 'family head' or the 'family head's spouse' or *de facto* partner or interdependant partner for their basic needs, or are incapacitated for work.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes; civil, unmarried or same-sex partners can qualify as family members provided they are in a *de facto* relationship with the person coming to work on a sponsored basis. Under the TSS visa programme, the *de facto* relationship must have existed for at least six months immediately before the person applies for the visa.

Under the ENS/RSMS visa programme, the *de facto* relationship must have existed for at least 12 months immediately before the person applies for the visa.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, spouses and partners of primary Subclass 457 or TSS visa holders have unrestricted work rights.

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11.4 Do children have access to the labour market?

If a child's visa is granted on the basis that the child meets the requirements of 'dependant child' as defined in Regulation 1.03 of the Regulations, then the child would be expected to be a full time student and be wholly or substantially reliant on their parents for financial support. Therefore any access to the labour market is required to be consistent with the dependency requirements. Please see the answer to question 11.1 for further details.

Under the TSS visa programme, a dependent child applicant ceases to hold the TSS visa once they turn 23 years of age.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The conditions for obtaining permanent residency depend on the visa subclass applied for.

Under the ENS, the process has two steps:

Step 1 – nomination of an 'approved appointment' requires the employer to show that:

- the business is lawfully and actively operating in Australia and is of good standing;
- it meets the training benchmark as part of its commitment to the ongoing training of its Australian citizens and permanent resident staff (prior to 12 August 2018);
- it has the need to fill a full-time nominated position for at least two years (with the possibility of extending the employment);
- the position is on the MLTSSL; and
- the terms and conditions of employment must be at least equivalent to those that are, or would be, provided to an Australian permanent resident/citizen worker. The salary must also meet at least the salary specified in the Legislative Instrument and accord with the relevant market salary rate for that position.

The second step of the ENS depends on whether the applicant applies under the Temporary Residence Transition stream or the Direct Entry stream.

An applicant for an ENS under the Temporary Residence Transition stream must meet the following:

Step 2 – a visa application is made by the person to fill the position, who must:

- have the relevant skills;
- have worked in Australia for at least the past three years as a primary Subclass 457 or 482 visa holder in the nominated occupation with the nominating employer prior to the lodgement of the nomination application; and
- unless the person or nominated position, or both, fall within a specified exemption, the person must:
  - be under 45 years of age; and
  - have 'competent' English (at least 6.0 on each component of reading, writing, listening and speaking) under the International English Language Testing System (**IELTS**) or at least a score of 'B' on each component of reading, writing, listening and speaking under the Occupational English Test (**OET**) (or as otherwise prescribed).

An applicant for an ENS under the Direct Entry stream must meet the following:

Step 2 – a visa application is made by the person who is nominated to fill the position, who must:

- unless the person or the nominated position falls within a specified exemption or the transitional arrangements, the person must:
  - be under 45 years of age;
  - have three years of relevant work experience; and
  - provide evidence of a positive skills assessment from the relevant authority; and
- have 'competent' English (at least 6.0 on each component of reading, writing, listening and speaking) under the International English Language Testing System (IELTS) or at least a score of 'B' on each component of reading, writing, listening and speaking under the Occupational English Test (OET) (or as otherwise prescribed).

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Eligible temporary work visa holders may be eligible for nomination under the TSS visa programme.

STSOL TSS visa holders are not eligible to be nominated by the employer under ENS/RSMS, unless they are eligible under transitional provisions.

MLTSOL TSS visa holders are eligible to be nominated by the employer under the ENS/RSMS.

Eligible Visa Holders may be nominated by employers for permanent residence under the ENS.

See answers to questions 8.8 and 12.1.

13 Bars to Admission

13.1 What are the main bars to admission for work?

Australia's immigration laws and policies are arguably the most complex in the world. There are 99 operational visa subclasses with 9 bridging visas, with prescribed legal, policy and evidentiary criteria to be met, including in respect of permission to work.

Australia's immigration laws and policies change frequency in response to the priorities to the government of the day.

There are strict criteria to be met in regard to all visas including work visas and work rights.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

All visa applicants seeking to enter or stay in Australia must be assessed against Section 501 of the Act, which defines the character requirements.

The onus is on the person to show that they are of good character. The character test also introduces mandatory and discretionary powers to either refuse or cancel visas if the person does not pass the character test.

Whether a person meets the character test depends on the nature of the criminal record, their past and present criminal or general conduct and whether there is a significant risk posed by that person to the Australian community or a segment of the community.

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Under clause 482.217 of the Regulations, all applicants must be of good character and satisfy the PIC.

Where the person does not pass the character test, the departmental officer will decide whether to refuse the application or cancel a visa after consideration of a range of factors that are relevant to the exercise of this discretion.

Factors that may be considered include:

- a substantial criminal record;
- a member of a group or organisation, or had or have an association with a person, group or organisation that the Minister reasonably suspects of being involved in criminal conduct;
- the Minister reasonably suspects that the applicant has been involved in people smuggling, people trafficking, genocide, a war crime, a crime against humanity, a crime involving torture or slavery, or a crime that is of serious international concern, whether or not the applicant has been convicted of such an offence;
- past and present criminal or general conduct shows that the applicant is not of good character; or
  - if there is a risk that whilst the applicant is in Australia they would:
    - engage in criminal conduct;
    - harass, molest, intimidate or stalk another person;
    - vilify a segment of the Australian community;
    - incite discord in the Australian community or in a part of it; or
    - be a danger to the Australian community or a part of it.

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Maria Jockel is acknowledged as one of Australia's leading immigration lawyers. Maria has been listed in "*The International Who's Who of Corporate Immigration Lawyers*" (2010–2019) and has been recognised in the peer reviewed "Best Lawyers" in the areas of Immigration law (2008–2019).

Maria's book *457 visa law addressing Australia's skilled labour shortage* is considered to be the definitive resource providing an overview on this complex and dynamic area of law.

Maria has also contributed to the Australian chapters in *Immigration Law Client Strategies in the Asia-Pacific* (Aspatore, 2009), *Getting the Deal through: Corporate Immigration* (Law Business Research 2012–2017), *Global Mobility* (ILW, 2012-2016); *Corporate Immigration Annual Review* (Financier worldwide), and the *International Comparative Legal Guide to: Corporate Immigration* (2017–2019).

Maria's high standing is also reflected in her appointment by Federal and State Governments to advise on sensitive policy issues relating to immigration and related matters.

In her current and former roles Maria has contributed to shaping immigration law in Australia having advised on government policy and legal matters at State and Federal levels.

Maria, as an Accredited Immigration Law Specialist, heads BDO Migration Services' team of migration specialists dedicated to providing strategic, expert and practical advice and business solutions in all aspects of visa and migration related requirements.

BDO Migration Services is part of BDO's global footprint, serving clients across all borders.

BDO Migration Services is a dedicated incorporated immigration law firm led by Maria Jockel, offering pre-eminent expertise in all aspects of immigration and nationality law with particular emphasis on skilled temporary and permanent residency and business skills visas.

BDO's global approach includes 1,600 offices worldwide with 80,087 partners and staff, in 162 countries and territories, with global revenue of $9 billion (2018).

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Austria

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Petra Pardatscher

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

Immigration law in Austria is regulated by special laws. These are mainly the Alien Employment Act (*Ausländerbeschäftigungsgesetz*, AuslBG), the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz,* NAG) and the Alien Police Act (*Fremdenpolizeigesetz*, FPG). Further, various other laws are relevant for foreigners who want to work in Austria, e.g. the Austrian Staffing Act (*Arbeitskräfteüberlassungsgesetz*, AÜG) and the Salary and Social Dumping Prevention Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz*, LSD-BG).

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Immigration law in general is administered by the Public Employment Service Authority (*Arbeitsmarktservice*, AMS) and the municipal authorities (Magistrate or *Bezirkshauptmannschaften*), as well as the Austrian consular missions. Further, a special authority exists in the form of the financial police, who are responsible for checking the compliance of foreigners working in Austria.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Austria is part of the European Union (EU) and the European Economic Area (EEA). There are various regulations according to or based on EU law that facilitate the movement of people between countries for employment purposes. These exemptions apply to EU/EEA and Swiss nationals, as well as to third-country nationals employed by an employer that has its seat in the EU, EEA or Switzerland. However, under these exemption rules, certain notifications may also be required to be filed with the competent authorities in due time before the start of an assignment. Such requirements have to be evaluated on a case-by-case basis.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

"Business visitors", who are entitled to come to Austria only for a very short period (maximum one week), can enter Austria without applying for a work permit or any other declaration. Nationals who need a visa for entering Austria will have to apply for such a visa. For business visitors, a normal visa C will be appropriate, which enables the holder to stay in Austria for up to 90 days. Visa-free nationals do not need a visa.

However, it must be noted that the term "business visit" has its own meaning in Austrian immigration law and does not apply to all short-term activities (see question 2.2 below).

It is not considered a "short-term business visit" if an assignee periodically carries out activities for a few days within a period of weeks or months, or if the activities exceed the one-week period. In these cases, all third-country nationals need a work visa in combination with a work permit.

Therefore, if the scope of the stay exceeds the one-week period, the foreign employee does not qualify as a business visitor any longer, but qualifies as an assigned worker. In such a case, the employee needs a work visa C issued for a period of up to 90 days, or a work visa D issued for a period of not less than 91 days and not more than six months, even if the foreign employee is, in principle, a visa-free national.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors can only carry out very "short-term" activities, such as business meetings and visits to trade fairs and conferences. The interpretation of "short-term" is not legally defined. According to general guidelines a stay of up to three days can be considered as "short-term".

2.3 What activities are business visitors able to undertake?

The general business meeting exemption applies only to very short-term activities and is limited to activities that cannot be carried out by local employees in Austria. Hence, business visitors can only

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perform certain activities while in Austria without obtaining a work permit. Permissible activities as a business visitor (without obtaining a work permit) are: attending business meetings; interviews; conferences or trade fairs; conducting site visits; and other so-called urgent "task force" activities. The same applies to the demonstration of new technology in Austria by an assignee. However, the law does not provide an exhaustive list. It is of utmost importance to point out that if services of any kind are provided to a (direct or indirect) client in Austria, the business meeting exemption is not applicable.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No. "Business visitor" status only allows for a stay of a few days, if the requirements mentioned in questions 2.2 and 2.3 above are met. If the scope of the stay exceeds the one-week period, the foreign employee does not qualify as a business visitor any longer, but qualifies as an assigned worker. In such a case, the employee needs a work visa C issued for a period of up to 90 days, or a work visa D issued for a period of not less than 91 days and not more than six months.

2.5 Can business visitors receive short-term training?

EU, EEA and Swiss nationals do not need immigration permissions to receive short-term training. However, Croatian nationals need a training permit to receive training in Austria. Depending on the content of the training programme, the scope of the training and the duration of the training, declarations for EU, EEA and Swiss nationals may have to be submitted to the local immigration police before the start of the training (so-called ZKO 3 or ZKO 4 declarations).

Third-country nationals need special permissions in order to receive short-term training or to act as a trainer, namely a training permit and, depending on the duration of the training, a business/work visa. A training permit is issued in the form of a Confirmation of Notification for volunteers, internships, training programmes or joint ventures. It applies to: employees posted in the course of a joint venture cooperation for training purposes for no longer than six months; employees of an international group of companies posted to Austrian headquarters on the basis of a qualified intra-company education programme for no longer than 50 weeks; management trainees of international employers posted to an Austrian affiliated company for up to 24 months; foreign nationals seeking experience via an unpaid volunteering programme; and foreign nationals studying at Austrian universities and undertaking a compulsory internship pursuant to their degree programme.

The training or education may only commence after the Confirmation of Notification has been issued. The competent Austrian fiscal authority must also be notified of certain training programmes two weeks prior to the start of the training at the latest.

After the issuance of the training permit, the employee or trainee can apply for the respective work visa at the Austrian consular mission in his or her country of residence outside Austria. The visa will be issued based on the training permit as received from the local Labour Office.

Some training programmes of certain international universities are exempted from the above-mentioned notification requirements. Further, certain activities within international organisations may be exempted.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

In Austria, the financial police, a special authority that is responsible for checking compliance with the Austrian legal provisions regarding the employment of all foreigners, exists. The inspections are carried out irrespective of the duration or frequency of the employment of foreign nationals. In the course of such inspections, work permits, work visas and residence permits are reviewed, and compliance with the Austrian minimum salary and record-keeping requirements is monitored.

3.2 What are the rules on the prevention of illegal working?

Austrian immigration law foresees severe pecuniary and non-pecuniary fines in the case of non-compliance with the immigration rules and regulations (see question 3.3 below).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Employers (this term also covers Austrian companies which accept in their premises foreigners who are on secondment from other foreign employers) are responsible for giving access to their premises only to employees (whether locally hired or on assignment) holding valid work permits or required declarations. There are sanctions for work permit-related violations such as failure to keep certain documents on display, or failure to comply with the minimum salary requirements that range between EUR 1,000 and EUR 80,000 (per case) depending on the number of foreign nationals illegally employed and the recurrence of the illegal employment. Financial penalties may be imposed on each single managing director of the sending or receiving entity.

Further consequences of non-compliance with immigration rules are that certain violations will be registered in a central register, and may lead to prohibition from employing new foreign nationals for a certain period. In case of severe and repeated violations of Austrian immigration rules and regulations, the Austrian authorities can also apply criminal charges, revoke the trade licence of the Austrian entity violating immigration rules and regulations, or prohibit business activities in Austria for a certain period of time.

The severe penalties that can be imposed in Austria for violations of immigration law are currently being assessed by the European Court of Justice. In 2018, the European Court of Justice has ruled that the Austrian legislation under which a recipient of services can be ordered to suspend payments and to pay a security to guarantee payment of a possible fine, which might be imposed on the provider of services, established in another Member State, for an infringement of the labour law of the first Member State, is contrary to EU law (Judgment in Case C-33/17, Čepelnik).

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4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is no general registration system for employers who wish to hire foreign nationals. Depending on the respective case, a certain procedure has to be applied. However, foreign nationals and Austrian nationals can be registered on the Austrian unemployment list, to which interested employers have access.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

In general, the Austrian minimum salary requirements have to be met during the whole employment period, as do the record-keeping requirements. In particular, work permits or other declarations have to be kept on display, as well as German-language salary information and any other information which is needed to enable the authorities to verify compliance in case of an audit (e.g. time records, pay slips, bank transfer statements, and similar). Of particular interest is the obligation to keep evidence that the foreign national is covered either by a local social insurance or an accepted foreign social insurance (i.e. the A1 certificate issued by EU/EEA Member States and Switzerland, or the respective certificates issued under an applicable bilateral agreement between the states involved, e.g. USA/A1 waiver certificates).

In most cases of local hire or assignment of third-country nationals, the Austrian employer or the Austrian receiving entity (in case of assignments) has to inform the Labour Authority in due time of the start and end date of work.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No. There are no special rules for employers who hire foreign nationals that would require them to commit to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There are no special rules for employers who hire foreign nationals in Austria. However, the general social system in Austria requires Austrian employers to contribute to the social system by paying taxes, charges and social security contributions. These contributions are partly used for training or up-skilling local workers.

Further, penalty payments that arise from certain violations of immigration law are explicitly dedicated to be used by the labour authority. The labour authority is also responsible to train and up-skill unemployed workers in order to help them to find employment in Austria.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. Compliance checks can take place at any time and without previous announcement at the premises of employers that employ or receive foreign nationals.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Austrian authorities follow a criteria system under which salary elements, qualification skills, previous experience and the age of the applicant are taken into consideration. Such elements are reflected in a points system. If the employee reaches a certain number of credits in this evaluation process, he/she is eligible to apply for a permit to work and reside in Austria.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes. The Labour Ministry regularly publishes a list with certain occupations (e.g. roofers, welders, mechanical engineers, electricity engineers, qualified nurses, etc.) that are considered as scarce occupations in Austria and therefore require foreign nationals to fill vacancies. This list is published and adapted on an annual basis.

Foreign nationals who want to work in these industries can apply for a Red-White-Red Card, which is a combined work and residence permit.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

For visas, there is no quota system applicable. In very few cases of work/residence permits, such as a Settlement Permit without Employment, permits for dependants joining the principal during the stay in Austria, or permits to work as seasonal worker, a quota system is applicable.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there is no limitation on the number of foreign workers that an employer may sponsor. However, the immigration authority reserves the right to reject work permit applications for foreigners in case they are of the opinion that a local resource is equally qualified for a proposed job.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Proof of German language skills is only required for long-term employment in Austria (i.e., exceeding six months), which usually goes along with a residence/settlement permit.

In general, all individuals applying for settlement permits have to comply with the integration agreement. Within two years of the issuance of the first permit, immigrants have to present a German language certificate, proving they have attained level A2. Dependants of these applicants have to present a German language certificate at the time of the first application, proving they have attained level A1. This requirement is waived if the applicant has completed high school education, qualifying him or her to attend university, or if the applicant already holds a university degree.

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Dependants of individuals applying for an EU Blue Card do not need to present a German language certificate upon the first application.

After five years of residence in Austria, the integration agreement regarding German language skills has to be fulfilled in order to have access to a long-term residence permit issued for a period of five years. At this stage, B1-level German language skills are required.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Generally, the undertaking of medical examinations is not required, except for visa applicants from particular countries. However, the Austrian immigration authorities are allowed to require a medical check after granting a residence permit. It depends on the regional immigration authority as to whether it requests a medical examination after the arrival of the employee.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employees working in Austria must have suitable medical insurance cover. In the case of assignments, medical insurance covering the following risks is necessary: (i) medical care, including emergency medical treatment; (ii) hospital accommodation and specialist medical treatment of acute illness and injury; (iii) hospitalisation and repatriation; and (iv) emergency evacuation. The minimum coverage amount is EUR 30,000.

Locally hired employees have to be enrolled in the Austrian social and health insurance system (unless case-related exceptions apply).

Concerning long-term residence and settlement permits, it is required that private insurance policies provide full coverage and are therefore equivalent to Austrian state health insurance.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

It depends on the type of underlying permit. In the case of an assignment, the employee can work for the target entity mentioned on the permit and in the application forms. ICT permits entitle the holder to work at the premises of the respective affiliated Austrian entity and its Austrian clients. In the case of local hire, the employee can be seconded to a client site without additional permits. In the case of such a secondment, attention must be paid to the concrete circumstances in order to evaluate whether such secondment qualifies as the leasing of personnel. In that case, particular authorisations and licences are required for the Austrian employer.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is a special route for highly skilled individuals. They can apply for a job-seeker visa (with a validity of 180 days) in their country of residence. They have to submit all their diplomas and qualifications, which are scrutinised according to a points system. A job-seeker visa enables them to travel to Austria and to seek employment. As soon as they find a job, they can exchange the visa for a Red-White-Red Card, which is a combined work and residence permit. If the candidate reaches the required amount of credits (points), the authorities will grant the permit. Candidates who have already found a job while still residing in their home country can apply directly for a Red-White-Red Card.

Further, there is the EU Blue Card, which is also a combined work and residence permit and is granted to people who are highly educated and earn a certain amount of money that is above the average salary in Austria. The essential requirements for getting an EU Blue Card are a university diploma, a binding job offer according to the pre-qualifications, and fulfilling special minimum salary requirements (which are published once a year).

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Investors can apply for a Red-White-Red Card only as self-employed persons or Start-Up Founders but not as employees. The investor category is designed for high-net-worth individuals intending to make a substantial financial investment in Austria or a valuable contribution to the Austrian economy.

Individuals undertaking a notable investment may also receive Austrian citizenship (through the "citizenship by investment" programme). However, this route is entirely dependent on the discretion of the Ministry of Internal Affairs and is evaluated and only granted after a deep analysis of the effected – not only the planned – investment.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Foreign nationals who are working as volunteers (without payment) for a period of up to three months, or as trainees, do not need a work permit. However, the Austrian employer has to notify the responsible authority of the employment of these volunteers/trainees in advance and the authority will issue a special permit (the Confirmation of Notification).

Further, under the ICT regime, a work permit can be obtained for trainees who are employed with a company outside the EU and who are assigned to an Austrian group company for training purposes for up to one year.

Also, secondments within intra-company lease programmes are possible.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Notwithstanding the answer to question 7.1, the Austrian Labour Ministry can issue regulations, listing certain industries that require workers who are third-country nationals to meet the anticipated demand for workers. These are typically industries with a seasonal need for additional workers, such as the hotel or

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agriculture industries. Workers in these industries can apply for a short term temporary work permit.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Austria implemented the ICT Directive in 2017. The Austrian ICT system created two new residence and work permits for managers, specialists and trainees who are employed with a third country employer and are assigned to an Austrian group company:

The "ICT Card" is a combined residence and work permit and is issued by the Austrian authorities within eight weeks from the filing of the application. It can only be obtained by managers, specialists or trainees who have been employed with a third-country employer for at least six months (concerning trainees)/nine months (concerning managers and specialists), and are assigned to an Austrian group company for more than 90 days and up to one year (trainees)/three years (managers and specialists). The assigned candidate is allowed to work for client projects of the Austrian group company.

The "Mobile ICT Card" is also a combined residence and work permit that is issued by the Austrian authorities. It can only be obtained by managers, specialists or trainees who have been assigned by a third-country employer to a group company within the EU under the ICT regime and therefore already hold an ICT Card that was issued by another EU Member State. Holders of ICT Cards of another EU Member State who are subsequently assigned to an Austrian group company for more than 90 days, can obtain the Mobile ICT Card. As the candidate already went through the application process in another EU Member State, the process in Austria is accelerated: the assignee will receive the residence and work permit "Mobile ICT" within eight weeks as of filing the application according to the Austrian rules. However, he is allowed to start work in Austria only 20 days after the complete application has been filed. Like the ICT Card, the Mobile ICT Card also entitles the assignee to work for client projects of the Austrian group company.

Dependants of holders of an ICT Card or a Mobile ICT Card can apply for a residence permit for dependants.

Further, there is a separate process for holders of an ICT Card of another EU Member State who are assigned to Austria for a period of up to 90 days within a 180-day period: for these short-term assignments, a ZKO-declaration has to be filed with the Austrian authorities prior to the arrival of the candidate in Austria. The Labour Authority will issue an EU-Secondment Declaration afterwards, provided that all requirements for the assignment are fulfilled. In this case, no additional Austrian work visa is required.

Junior executives of international groups of companies can also be assigned to Austrian group companies for intra-group trainings for a period of up to 24 months. No work permit is required in this case, however, the authorities have to be informed of the intended assignment two weeks in advance and will issue a Confirmation of Notification.

If the requirements of the ICT regime are not fulfilled (e.g. if an employee does not qualify as a manager, specialist or trainee), there are two other employment authorisation regimes that may be applicable for cases of transfers within an international group of companies: Assignments pursuant to the Austrian Alien Employment Act or Personnel Leasing ("Staffing") pursuant to the Austrian Secondment Act.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

According to the Austrian Commercial Code, a group of companies (also referred to as affiliated enterprises) are companies which are included in the consolidated financial statements of the parent entity within the framework of full consolidation.

For the purposes of ICT permits, the definitions of the ICT-Directive are applicable. Under the ICT regime, a "group of undertakings" means two or more undertakings recognised as linked under national law when: an undertaking, in direct relation to another undertaking, holds a majority of that undertaking's subscribed capital; controls a majority of the votes attached to that undertaking's issued share capital; is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body; or the undertakings are managed on a unified basis by the parent undertaking.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

In order to obtain an ICT permit, the assignee must qualify as a manager or specialist who has been working with the foreign employer for at least nine months (uninterrupted) or must be a trainee with a university degree who has been working with the foreign employer for at least six months (uninterrupted) prior to the assignment to the Austrian group company. Further, the posting company or the Austrian group company must exercise real operational business activities. The receiving Austrian group company must not be established for the purpose to facilitate assignments under the ICT regime. In any case, the Austrian employment, salary and social insurance conditions must be met and the transfer to the EU group company must not exceed one year (in case of trainees) or three years (in case of managers and specialists).

Foreign nationals who do not qualify for ICT permits, e.g. employees who are not managers, specialists or trainees, must have a university degree or alternatively sufficient work experience, and their salary must meet the minimum amount as stated in the applicable Austrian collective bargaining agreement. If these requirements are met, a work permit and residence permit (or visa process, if the duration of the transfer is below six months) can be initiated.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Under the ICT regime, the processes are as follows:

For an ICT Card, the application and a written declaration, signed by the receiving Austrian group company, have to be filed with the responsible immigration authority either by the assignee in his home country or by the Austrian group company on behalf of the assignee in Austria. The documents are then forwarded to the Labour Authority that has to check within four weeks if all requirements are fulfilled. In case of a positive assessment, the application is forwarded again to the immigration authority that issues the ICT Card. The whole process must not exceed eight weeks.

For a mobile ICT Card, the rules are basically the same. However, as the candidate already holds an ICT Card of another EU Member State

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and therefore is already pre-approved, the process in Austria is accelerated: the application has to be filed with the Austrian immigration authority at least 20 days prior to the intended arrival of the candidate in Austria. The Labour Authority checks the fulfilment of the requirements and in the case of a positive assessment the immigration authority issues the Mobile ICT Card. The whole process must not exceed eight weeks. However, the candidate is allowed to start his work with the Austrian group company after 20 days from filing the complete application with the Austrian immigration authority.

For holders of an ICT Card of another EU Member State who are assigned to Austria for a period of less than 90 days in a 180-day period, a ZKO-declaration has to be filed with the Austrian authorities prior to the arrival of the candidate in Austria. The Labour Authority will issue an EU-Secondment Declaration within two weeks, provided that all requirements for the assignment are fulfilled.

For assignments to Austria that are not ICT cases, the employment authorisation process involves the processing of applications for three principal documents:

- To begin the employment authorisation process, the Austrian company must apply for a Guarantee Certificate with the local Labour Office which holds jurisdiction over the intended place of work.
- After the issuance of the Guarantee Certificate, the foreign national must apply for a visa (for a stay of less than six months) or a residence permit (for a stay of more than six months) at the Austrian consular post with jurisdiction over the applicant's place of legal residence. In case of an application for a residence permit, final approval has to be granted by the immigration authorities in Austria. In case of this approval, an application for a so-called "collection visa" must be filed by visa nationals with the relevant consular post to enter Austria, and the applicant must be able to "collect" the granted residence permit. Upon issuance of the visa and/or residence permit, the Austrian company may request the issuance of the final work permit.
- In the case of staffing, a staffing permit must be issued by the Austrian authorities before the process described above can begin. Staffing permits are only granted as an exception. Only after a staffing permit is granted, the application for the issuance of a Guarantee Certificate, the visa/residence permit and the final work permit can be submitted.
- For junior executives, a Confirmation of Notification and a work visa will be required.

If the employee is transferred to the local Austrian group company, the Austrian group company can also apply for a local hire work and residence permit in the form of a Red-White-Red Card or EU Blue Card.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

For assignments to Austria that are not ICT cases and do not exceed six months, a work visa is required. The visa applicant must apply at the Austrian consular post in person and must submit biometric data (fingerprints). The documentation requirements for visa applications are as follows: a passport valid for more than three months beyond the validity of the requested visa, with a blank visa page to affix the visa sticker; the assignment agreement and the Guarantee Certificate; booking confirmation for transport to Austria (round trip); proof of accommodation; and proof of comprehensive accident and medical insurance, valid for all Schengen countries and which must exceed the validity of the visa.

If the transfer exceeds six months, the candidate has to apply for a residence permit instead of a work visa. In order to obtain a residence permit, the following additional documents are required: a birth certificate; a fresh police clearance certificate; and a marriage certificate (all documents must be duly apostilled or diplomatically authenticated, if applicable). In certain cases, rent agreements covering the first year of stay are also requested.

If assignments to Austria in the scope of the ICT regime exceed 90 days, the candidate can apply for a residence permit (either an ICT Card or a Mobile ICT Card). The candidate has to file the application form and the declaration of the Austrian receiving group company, as well as the usual personal documents mentioned above.

Family reunion permits are available for dependants of ICT Card and Mobile ICT Card holders but are not available for any other type of intra-company assignment/transfer.

8.6 How long does the process of obtaining the work permit and initial visa take?

As for the filing of all necessary application documents, Austrian authorities have eight weeks of processing time to decide on the issuance of an ICT permit (ICT Card and Mobile ICT Card). Irrespective of the actual processing time, holders of ICT Cards of other EU Member States who have applied for a Mobile ICT Card are entitled to start to work in Austria 20 days after filing a complete application for the issuance of a Mobile ICT Card with the Austrian authorities.

Short-term permits of up to six months outside the scope of the ICT-Directive: the Labour Office, by law, has up to six weeks to decide on the application for a Guarantee Certificate. The processing times for visa applications can vary across Austrian consular posts; usually there is a minimum processing time of two weeks. The work permit should be issued within one week because the Labour Office has already reviewed it in the course of the issuance of the Guarantee Certificate. Nevertheless, by law the Labour Office again has up to six weeks to issue the final work permit.

Long-term permits exceeding six months outside the scope of the ICT-Directive: the application process for long-term permits is considerably longer and can take up to 16 weeks, or up to 20 weeks in cases where the transfer qualifies as the leasing of personnel.

The above timelines are applicable as of the day on which all relevant documents for the application process are available. The gathering of the documents, in particular for long-term permits, can take up to six weeks and these pre-filing requirements have to be considered for the planning of the start date on which the resource is needed in Austria.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

ICT permits (ICT Card and Mobile ICT Card): ICT permits for trainees can be issued for a period of 91 days up to one year, ICT permits for managers or specialists can be issued for a period of 91 days up to three years. The validity of Mobile ICT Cards is limited with the validity of the original ICT Card that was issued by the initial EU Member State. If the maximum period (one or three years) has been spent in the EU, the assignee has to leave the EU for at least four months (cool-off period) and can afterwards apply for a new ICT permit. To avoid this, the ICT permit can be replaced by another permit type (e.g. a local hire permit) prior to its expiry.

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Short-term permits outside the scope of the ICT-Directive: the visa for a short stay (type C) entitles a foreigner to enter the Schengen Area and to stay for a maximum period of 90 days within a six-month period. The type D visa entitles a foreigner to stay in Austria for more than 90 days and less than six months.

Long-term permits outside the scope of the ICT-Directive: in the case of long-term assignments, the initial permit is valid for a period of 12 months and can be extended afterwards for a further period of 12 months. Local hire permits can be issued for 12 or 24 months, depending on the type of application. In case of extension, the extended permits can have a duration of 12 to 36 months, depending on the type of initial permit. After an initial period of five years, permits can be issued with a duration of five years, if German language skills at level B1 have been achieved.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

ICT permits: as ICT permits are only issued for a limited period of time (up to one year for trainees and up to three years for managers and specialists), they do not entitle the holder to apply for a permanent residence permit.

Assignment transfers: assigned employees can apply for a permanent residence permit only after 10 years of continuous and lawful residence in Austria. A permanent residence card, serving also as a work permit, is issued for an initial period of five years and can be extended thereafter.

Local hire transfers: foreigners who are transferred to Austria and are employed with the Austrian company with a local hire permit can apply for a permanent residence permit after five years of continuous and lawful residence in Austria. A permanent residence card, serving also as a work permit, is issued for an initial period of five years and can be extended afterwards.

In general, it is possible to file an amendment application if circumstances have changed and a different permit is required. Depending on the new permit, a permanent residence permit can be obtained later.

8.9 What are the main government fees associated with this type of visa?

Government fees for the long-term ICT permits amount to approximately EUR 160 to EUR 250.

Government fees for short-term assignment permits (up to six months – outside the scope of the ICT-Directive) amount to approximately EUR 65 for the work permit and EUR 100 for the work visa (visa fees may vary).

Government fees for long-term assignment permits (exceeding six months – outside the scope of the ICT-Directive) amount to approximately EUR 65 for the work permit and EUR 165 for the residence permit.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Local hire work permits can be granted in different forms, depending on the nationality (EU/EEA/Swiss or third-country) and the individual qualifications of the applicant.

In Austria, a distinction must be made between EU, EEA, Swiss nationals and third-country nationals who are transferred to Austria in order to be hired locally (settlement permits), those who are transferred to Austria while remaining on a foreign payroll (residence permits – secondments), and those who are assigned to Austria based on a staffing agreement.

EU, EEA and Swiss nationals

Nationals of the following countries do not need a work and residence permit in the case of local hire: Austria; Belgium; Bulgaria; Cyprus; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; the Netherlands; Norway; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; Switzerland; and the United Kingdom. However, certain post-arrival registration requirements apply. Croatian nationals still need a work permit in order to be locally hired in Austria and such a work permit must be obtained before the start date of employment.

Third-country nationals

For third-country nationals who are to be locally hired in Austria, the following residence permits are available:

- settlement permit – Red-White-Red Card: this permit serves as a combined work and residence permit and is issued for an initial period of 24 months. The permit applies to the following four categories of workers: very highly qualified workers; skilled workers in scarce occupations; other key workers; and graduates of universities and colleges of higher education in Austria. The Red-White-Red Card is extendable and when extended, a settlement permit Red-White-Red Plus Card will be issued. Applicants for a Red-White-Red Card are allowed to bring their family members to Austria, if dependants meet certain German language skill requirements or if they have graduated from a high school and can be admitted to university or are university degree holders. The essential requirements for getting a Red-White-Red Card are qualifications, work experience, age, language skills, job offers according to the pre-qualifications, and meeting the minimum salary requirements (at least EUR 2,610 for employees aged up to 30 years and EUR 3,132 for employees aged 30 years and above; these salary requirements are updated on an annual basis; the above-stated figures are valid for 2019); or it must be considered that for most industries, employees are entitled to 14 monthly salary payments in a year; it is expected that the minimum salary threshold for Red-White-Red Cards will be reduced in summer 2019 as follows: at least EUR 2,088 for employees aged up to 30 years and EUR 2,610 for employees aged 30 years and above;
- settlement permit – EU Blue Card: this permit serves as a combined work and residence permit and is issued for an initial period of up to 24 months. The EU Blue Card is also extendable and in such case, a Red-White-Red Card Plus will be issued. Applicants for an EU Blue Card are allowed to bring their family members to Austria, who have to fulfil certain German language skill requirements only after an initial period of two years of stay in Austria. The essential requirements for getting an EU Blue Card are qualifications, a job offer according to the pre-qualifications, and meeting the minimum salary requirements (at least EUR 4,447; this salary requirement is updated on an annual basis; the above figure is valid for the year 2019); it must be considered that for most industries, employees are entitled to 14 monthly salary payments in a year;
- permit for special cases of employment, for example: special executives of internationally active companies whose

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monthly gross salary amounts to approximately EUR 6,264 (this figure applies to the year 2019); certain scientists; and other employees who do not need a work permit pursuant to the Alien Employment Act;

- permit for those who are self-employed, for example, freelancers;
- permit for researchers; and
- permit for artists.

Special rules apply to Turkish nationals under the EU Accession Treaty.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

In Austria, there is a labour market test carried out regarding the application of specific permits for locally hired people, such as the Red-White-Red Card for key employees or the EU Blue Card. Employers must demonstrate that they have been unable to fill the vacancy with a suitable settled worker.

9.3 Are there any exemptions to carrying out a resident labour market test?

For certain residence permits, there is no labour market test. This applies, for example, to Red-White-Red Cards for skilled workers in a scarce occupation (see question 4.7) and students who have completed their studies in Austria.

9.4 What is the process for employers obtaining a work permit for a new hire?

An individual who has received a binding job offer from an Austrian employer (local hire) has to apply for the suitable residence permit (settlement permit or residence permit), valid for more than six months, in the respective home country of the employee at the consular mission. Most consulates require an appointment that has to be booked via a service provider or the embassy prior to filing. Such an appointment for filing may not be immediately available. Applications for Red-White-Red Cards and EU Blue Cards can also be filed by the Austrian employer at the respective competent immigration authority in Austria. In addition, visa-free nationals are allowed to file their application directly in Austria.

The consular office forwards the documents to the competent Austrian immigration authority. Subsequently, the documents are forwarded to the local Labour Office so that a labour market test may be carried out. If there is a positive result, the Austrian immigration authority approves the permit and notifies the employee accordingly. Visa-exempted nationals are entitled to travel directly to Austria and will receive the combined work and residence permit after the fingerprints have been taken. Third-country nationals who are not visa-free nationals will be granted an entry and collection visa in order to enter Austria for the collection of the combined work and residence permit.

During the application process, the employee is not allowed to work, as long as no other work permit or work visa/residence permit has been issued for this period of time.

9.5 What is the process for the employee to obtain a visa as a new hire?

The application process is always the same, irrespective of the type of visa. Once the authority has approved the residence permit, visa nationals need an additional collection visa to enter Austria and to collect the residence permit.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The duration of the process depends on the respective work/residence permit, and can vary. The processing time also varies from one immigration office to another. The general issuance of a settlement permit or residence permit in combination with a work permit usually takes eight to 16 weeks as of the day of filing the application either with the Austrian immigration authority or with the respective consular mission office abroad. This timeline does not include the time required to prepare the application up to the point of submission. There is no priority service available.

9.7 How long are initial visas for new hires granted for and can they be extended?

For local hire scenarios, only residence permits are available. Initial residence permits are generally granted for a period of 24 months. Upon expiry, the permits can be extended accordingly.

9.8 Is labour market testing required when the employee extends their residence?

In case of extension, no further labour market test will take place.

9.9 Can employees coming as new hires apply for permanent residence?

Immigrants can apply for permanent residence only after five years of continuous and lawful residence in Austria, provided that the individuals can prove German language skills at a level of at least B1.

9.10 What are the main government fees associated with this type of visa?

Depending on the number of documents that have to be filed with the Austrian authorities to obtain a residence or settlement permit, government fees can range from EUR 160 to EUR 250, depending on whether the candidate is a visa national or a visa-free national. The government fees for a collection visa are approximately EUR 100 and can vary.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The conditions of stay are that the applicant has ongoing employment and insurance cover. In case of a significant change of the employment conditions after the approval of the permit, such significant changes have to be communicated to the authorities.

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Applications for extensions have to be submitted in due time before expiry – at the earliest, three months before the expiry date.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes. A town hall registration is necessary within three days of arrival in Austria. The authority has to be informed of the residence address of the employee in Austria. Also, de-registration is required within three days of the end of residence in Austria.

It should be noted that after the end of the stay in Austria, the Austrian residence card has to be returned to the immigration authority without delay following the return to the home country or the arrival in the new destination country.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Dependants are the spouse, the "registered partner" or any underage single child (children under the age of 18), including adopted and step-children.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The term "spouses" refers to those who are in opposite-sex or same-sex marriages. Moreover, the "registered partners", which could be same-sex or opposite-sex partners, qualify as family members. Spouses and registered partners only qualify as family members for immigration purposes if they are at least 21 years old.

In contrast to "registered partners", mere cohabitation partners do not qualify as dependants (exemptions apply to EU/EEA/Swiss nationals).

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

All dependants of principals holding a Red-White-Red Card or an EU Blue Card can apply for a family reunion permit, which will be granted in the form of a Red-White-Red Plus Card. Such permit allows the family member to work for any employer in the territory of Austria.

In the case of an assignee, family reunion is not possible.

Dependants of ICT permit holders can apply for a family permit. Based on a concrete job offer, dependants of ICT permit holders can receive the right to work in Austria, which is not automatically granted as in the case of dependants of principals holding a Red-White-Red Card or EU Blue Card.

11.4 Do children have access to the labour market?

Children (under the age of 18) of principals holding a Red-White-Red Card or an EU Blue Card can apply for a Red-White-Red Plus Card. This permit allows the family member to work for any employer in the territory of Austria. For the employment of children under the age of 18, certain legal requirements have to be fulfilled.

Children are obliged by law to attend school in Austria from the age of six years until the age of 15. Hence, children of this age must attend school while in Austria. Any school can be attended with a residence or a settlement permit. Children who are five years old are obliged to attend kindergarten according to the applicable state law.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Immigrants can apply for permanent residence only after five years of continuous and lawful residence in Austria, provided that the individuals have obtained German language skills at a level of at least B1. The respective residence permit will be issued for a period of five years and has to be extended upon its expiry.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Short-term visas cannot be converted into long-term authorisations. The application for the issuance of the long-term permit has to be started and carried out under the general rules for long-term residence/work permits.

The only exception to this rule is the job-seeker visa for highly qualified employees (see question 5.1).

Holders of long-term temporary residence permits and work permits, such as assigned employees, can apply for a permanent residence permit only after 10 years of continuous and lawful residence in Austria.

13 Bars to Admission

13.1 What are the main bars to admission for work?

In general, the processing times for obtaining the work and residence permit have to be considered. Depending on the respective permit, processes can take from a few weeks to several months. This has to be taken into consideration when planning assignments to Austria.

Another issue is proof of German language skills at the time of filing an application for a long-term residence and work permit, as this is required for some applications.

In certain cases, a person might not be able to apply for a Red-White-Red Card or an EU Blue Card because he or she earns less than the required minimum salary for these permits.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

For all long-term processes (all residence permits valid for more than six months), applicants have to submit a criminal clearance certificate of their home country and of the country in which they have stayed for more than six months prior to their intended stay in Austria. The criminal clearance certificates must not be older than three months at the day of the filing of the application for the Austrian permit. In case of registered criminal convictions, the Austrian immigration authorities may refuse to issue permits.

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Oberhammer Rechtsanwälte GmbH is specialised in all legal matters related to the processes through which international companies second employees to Austria and Austrian companies employ foreign experts. This encompasses advising clients in labour law issues, answering questions regarding immigration law, drafting project agreements and applying for visas. Our clients trust in our expertise in the area of corporate migration.

As a supplement to our legal corporate migration advice, we also offer ancillary services such as personal accompaniment to appointments with the relevant authorities, and supporting clients with choosing kindergarten or school places or applying for subsidies and co-insurances. Our clients thus have the advantage of being serviced by a legal one-stop shop.

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Belgium

Immigration Law Associates

Tanel Feldman

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

"Belgium is a federal state, comprising the communities and the regions" (Belgian Constitution).

Due to the complex institutional context, numerous sources must be addressed. Merely an enumeration will not bring any added value.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The federal state is responsible for matters relating to the entry, stay, settlement and removal of foreign nationals, as well for the access to the labour market of third-country nationals authorised to stay for purposes other than work.

The regions (and the German speaking community) are responsible for the economic migrants' right to work.

With certain exceptions, social security remains a federal responsibility.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Belgium is an active player regarding international cooperation, with the aim to strengthen legal migration.

It is a member of the European Union, the European Economic Area and the Schengen Agreement.

Belgium has concluded bilateral social security agreements and conventions for the avoidance of double taxation with different countries around the world.

Belgium is a member of the International Commission on Civil Status and has ratified nine conventions facilitating international cooperation in civil status matters and the exchange of information between civil registrars.

Belgium has also ratified the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Without prejudice to certain bilateral agreements still in force, the relevant visa waiver programme is the Community Code on Visas (Visa Code).

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Twenty consecutive calendar days and a maximum of 60 days per calendar year is the maximum period for business visitors to carry out genuine business activity. Short-stay visa validity/right of stay under the 90 days rule and the right of stay for business purposes must be distinguished.

The CETA Agreement, concluded by the EU Member States with Canada, provides for more favourable conditions (i.e. 90 days in any six-month period) and for a new category: "business visitors for investment purposes" (maximum period of 90 days in any six-month period).

2.3 What activities are business visitors able to undertake?

Business visitors may attend conferences, specialised seminars and business meetings.

Annex 10D CETA Agreement provides for short-term business visitors' activities permitted under the said Agreement.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

The business visitor category must be distinguished from other special visitor categories. Business visitors may only undertake activities that reasonably fail under the definition provided for by the national legislation. The references above to the CETA Agreement concluded with Canada should be noted.

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2.5 Can business visitors receive short-term training?

No, business visitors cannot receive short-term training.

Under the CETA Agreement, training seminars qualify as business activities.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The competence for compliance inspections is shared between the federal state and the regions.

As laid down by Article 18 of the Social Criminal Code, social inspectors are empowered to monitor compliance with the provisions of such code and other related acts and decrees.

Article 11 Cooperation Agreement of 2 February 2018 (concluded between the Federal State, the Regions and the German-speaking Community), provides for interoperability of the compliance inspections. Federal and regional inspectors may ascertain infringements to both federal and regional legislation.

3.2 What are the rules on the prevention of illegal working?

The national legislation (federal and regional) provides for the conditions of employment of foreign nationals, and states the sanctions for breaching these provisions.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The Social Criminal Code provides for administrative fines, criminal fines and even imprisonment, depending on the seriousness of the breach.

Other criminal sanctions, such as prohibition of exploitation, professional prohibition and closure of establishment, may also be applicable in certain exceptional cases.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

With certain exceptions, such as entities hosting researchers in Belgium, there is no system for the registration of employers who wish to hire foreign nationals.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Before hiring third-country nationals present in Belgium, and during their employment, the following obligations must be met:

- The obligation to check whether: they are authorised to work if they are not residing in Belgium; to stay for the purpose of work for a duration that does not exceed 90 days in any 180 day period; or, to work as a consequence of their situation of lawful residence. Residence permits contain reference to the access to the labour market.
- The obligation to keep available for inspection, at least during the term of the employment, a copy (or details) of the valid residence document.
- The obligation to notify the commencement and end of the employment (DIMONA declaration).

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No; employers who hire foreign nationals are not required to show a commitment to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, they are not required to pay such charges.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. Social inspectors may undertake routine controls considering the principle of proportionality laid down by Article 19 of the Social Criminal Code.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The "public service proviso", provided for by Article 45(4) TFEU, applies to positions that cannot be filled by foreign nationals regardless of their nationality (i.e. employment in the public service).

Pursuant to Article 10 of the Constitution, only Belgian nationals are eligible for public employment. However, exceptions can be provided by law.

Federal and regional legislation provides for the relevant exceptions, taking into account the criteria set by the European Court of Justice.

Employees of public enterprises are subject to general labour law, which provides no limitations on the grounds of nationality.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Lists of shortages are set by the regions. In Flanders occupations in short supply determine exemption from the labour market test.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, quotas do not apply.

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4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no such restrictions.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No. The legislation does not provide for such a requirement.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, the majority of third-country nationals must undergo a medical examination in order to be authorised to work for a duration that does not exceed 90 days in any 180-day period or, authorised to stay for work purposes for a duration that exceeds 90 days in any 180-day period.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Third-country nationals employed in Belgium, and their family members, are subject to the local social security system, and as a consequence are entitled to local public health insurance.

Third-country nationals posted to Belgium are required to have health insurance to cover health needs and repatriation in case of emergency. Where the posting country has entered into a bilateral agreement with Belgium in regard to health insurance, or a social security agreement covers health insurance, the third-country nationals and family members are, for the entire period of posting, entitled to healthcare in Belgium at the expense of the posting country.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, if they are seconded to the customer site by an employer located outside of the Community.

In Flanders, third-country nationals can be seconded to work simultaneously on different customer sites.

Third-country nationals employed by an undertaking established in one of the Member States and seconded to an undertaking established in Belgium (which can be a customer site), are exempt from work authorisation (under Article 56 TFEU, freedom to provide services – Vander Elst exemption).

Third-country nationals employed in Belgium can be sent to work on a customer site if the national law provisions are strictly complied with. In principle, only licensed employment agencies may hire out workers to their customers.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, highly qualified individuals are covered by different immigration categories, national schemes and the EU scheme (EU Blue Card).

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Investment is not *per se* a ground to gain the right to work in Belgium. Setting up a subsidiary or corporate presence does not in itself determine right of work.

The CETA Agreement concluded with Canada provides for such immigration category. Pursuant to the CETA, investors are natural persons who establish, develop or administer the operation of an investment in a capacity that is supervisory or executive, and to which those persons or the enterprise employing those persons has committed, or is in the process of committing, a substantial amount of capital. Temporary employment of investors will be allowed for a duration of one year, with possible extensions.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The relevant acts provide for different categories, such as internships and traineeships, in different contexts.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

To date, Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, is yet to be fully transposed in Belgium.

Beyond seasonal work, the concept of "temporary work" must be addressed in the relevant context (the *temporary nature* of the activity performed represents an intrinsic characteristic of the concept of posting).

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Belgium is yet to transpose the ICT Directive (Directive 2014/66/EU).

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In principle, intra-corporate transfers are bound by the legislation concerning the posting of workers in the framework of the provision of services.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

Under the national legislation, all related and/or associated companies, established in at least three different countries, qualify as a part of a group of companies. The concepts of related and associated companies are provided by Articles 11 and 12 of the Companies Code. In regard to intra-corporate transfers in the sense of Directive 2014/66/EU, the definition provided for by Article 3(l) of the said directive should prevail.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Prior to the transposition of the Directive 2014/66/EU, the matter is regulated by regional legislations concerning the posting of workers in the general framework of the provision of services.

The CETA Agreement concluded with Canada provides for a parallel scheme.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Intra-corporate transferees will be issued a single permit. The process is addressed in the response to question 9.4 below.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The application will be lodged with the Belgian diplomatic mission in the country of registered residence or home country.

8.6 How long does the process of obtaining the work permit and initial visa take?

The decision on the application for an ICT permit will be made within 90 days of the date of receivability.

It must be observed that the authorities will be held to adopt a decision on applications for ICT permits or their renewal, and notify the applicant in writing of such decision, upon lapse of the period mentioned above.

Specific periods will apply for intra-EU mobility notifications.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Long stay visas are valid for up to one year and cannot be extended.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

The secondment is deemed to constitute a ground of a temporary nature and cannot determine the right to permanent residence.

There are no permanent stay visas.

8.9 What are the main government fees associated with this type of visa?

The current government fees (where applicable) are the long stay visa fee and the administrative fee charged by the Immigration Office.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

In the context of corporate immigration, the main category is highly qualified workers.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, as a matter of principle, the labour market test is applicable.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, such as, but not limited to, highly qualified workers (national scheme), and highly qualified workers eligible for the EU Blue Card. In Flanders occupations in short supply determine exemption from the labour market test.

9.4 What is the process for employers obtaining a work permit for a new hire?

The process involves a single application but not a single procedure.

The single permit procedure is initiated by the employer on behalf of the employee. Documents to support the application must be lodged with the competent regional authority.

The latter shall ascertain first whether the application is receivable (i.e. all the documents required are submitted).

Applications are processed subsequently or in parallel by the regional labour authority and Immigration Office.

The labour authority notifies its decision, however the latter positive decision determines right of work only in case of renewal procedures, provided that the residence permit previously issued is still valid.

A positive decision on both work and stay aspects, is materialised by the issuance of a document called Annex 46. The Annex 46 is issued by the Immigration Office.

9.5 What is the process for the employee to obtain a visa as a new hire?

See the response to question 8.5 above.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The decision on the application will be made within 120 days of the

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date of receivability. Such delay can be extended in exceptional circumstances if the demand is complex. In the latter case, the applicant must be informed.

Upon failure to make a decision within 120 days of the date of receivability (eventually extended), the authorisation of stay for work purposes will be deemed granted, under suspending condition of positive decision made by the labour authority.

It must finally be noted that, if at any time in the course of the procedure, there is a failure to provide any document and/or complementary information within 15 days of the date of the request to provide such documents and/or information, the application will be rejected.

9.7 How long are initial visas for new hires granted for and can they be extended?

See the response to question 8.7 above.

9.8 Is labour market testing required when the employee extends their residence?

Practically the labour market test is deemed to be satisfied, unless the authorisation of work previously issued provides differently.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, they can apply for permanent residence after five years of lawful and uninterrupted stay, provided that the other eligibility criteria are met.

9.10 What are the main government fees associated with this type of visa?

See the response to question 8.9 above.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Rights of stay and work are mutually dependent on each other.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Regardless of the purpose of stay, foreign nationals intending to stay in Belgium for a period exceeding 90 days in any 180-day period must register with the municipal authorities.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

With regard to family members of third-country nationals, the following categories qualify as dependants for immigration purposes:

- a spouse or partner joining a third-country national coming to work in Belgium with whom he or she has entered into a registered partnership equivalent to marriage in Belgium;
- any descendants and those of a spouse or partner who are under the age of 18, who are unmarried and are joining a third-country national in Belgium; where the descendants of a spouse or partner are concerned, the latter must have custody of the children and where shared custody is concerned, the other parent's consent is required;
- a partner with whom a third-country national coming to work in Belgium has entered into a partnership recognised by law, as well as the descendants of that partner who join the third-country national in Belgium before turning 18 years old, provided that they are not married. The partner must have custody of the children, and where shared custody is concerned, the other parent's consent is required. However, the partners must provide evidence of a durable and stable relationship. Unless they have a common child, they must submit proof of legal cohabitation in Belgium or in any other country, for an uninterrupted period of at least one year preceding the demand or proof that they:
  - have known each other for a minimum of two years, during which they have maintained regular contact (by phone, courier or email); and
  - have met three times in the two years preceding the demand, spending a minimum of 45 days in aggregate together.

Two other categories are also provided by the national legislation.

More favourable conditions are provided for EU nationals and third-country nationals that are family members (or "other family members") of EU nationals.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, considering the criteria mentioned above in question 11.1.

Unmarried partners of third-country nationals who have concluded a legal partnership recognised by the national legislation as *equivalent to marriage in Belgium* (i.e. concluded in Denmark, Germany, Finland, Ireland, Norway, Sweden, or in the UK) qualify as family members.

With regard to unmarried partners of third-country nationals that have concluded a legal partnership recognised by "*any law*", to qualify in the capacity of family members, the eligibility criteria referred to above must be met (see the response to question 11.1).

Provided that under the national legislation in the home country, the partners cannot conclude a legal partnership, but, however, the other eligibility criteria have been met, such partners will be given the possibility to conclude a legal cohabitation in Belgium (such legal cohabitation is not equivalent to marriage in Belgium).

Unmarried partners of EU citizens may enjoy particular rights provided for by the national legislation, pursuant to Article 3.2 Directive 2004/38/EC and settled case law of the European Court of Justice.

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Unmarried partners who have registered a legal partnership recognised by the national legislation as equivalent to marriage in Belgium, qualify as family members.

In regard to unmarried partners who have not concluded a legal partnership recognised by the national legislation as equivalent to marriage, although an automatic right cannot be invoked, Belgium must facilitate the entry and residence of such partners. The *facilitation regime* is provided for by Article 3.2 Directive 2004/38/EC and clarified by ECJ case law (see, *inter alia*, Rahman and Others (C 83/11)).

Pursuant to Article 47/1 to 47/4 Law of 15 December 1980, such partners must bring proof of a *durable and stable relationship*, by any means of evidence. Provided that the criteria mentioned above (i.e. case of partnership recognised by "any law") are met, the relationship is deemed to be durable and stable. In case of the contrary, the application will be assessed on its merits, taking into consideration the duration, intensity and stability of the relationship.

Pursuant to the ECJ ruling in *Secretary of State for the Home Department v Rozanne Banger* (C-89/17), Article 3.2(b) Directive 2004/38/EC applies "by analogy" to unmarried partners of "returning" EU citizens.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, spouses and recognised partners of third-country nationals admitted to stay for work purposes have access to the labour market, with the exception of students' spouses and registered partners.

11.4 Do children have access to the labour market?

The general principle is that is it prohibited to employ or allow children to work who are under the age of 15 or those who are still bound by full-time school attendance.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The main conditions a third-country national must satisfy are as follows:

- Lawful and uninterrupted stay in Belgium for a period of five years immediately preceding the application.
- Stable, regular and sufficient means of subsistence to meet his own needs and those of his dependants to avoid becoming a burden on the public welfare system.
- Health insurance valid in Belgium.

It should also be noted that certain categories, such as posted workers, are not eligible for permanent residence status.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

This is possible where a work visa (D visa) is converted to a residence permit under a status giving rise to the right of permanent residence.

13 Bars to Admission

13.1 What are the main bars to admission for work?

It is hard to invoke genuine bars to admission for work. It must be noted that the Flanders Region has adopted a particularly modern and pragmatic approach in regard to third-country nationals' admission for work.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal convictions can be a bar where it is justified on grounds of public policy or public security. The grounds are subject to proportionality. The rejection must be based on personal conduct. The personal conduct must be a genuine, present and sufficiently serious threat to one of the fundamental rights of society. The grounds cannot be used to serve economic ends.

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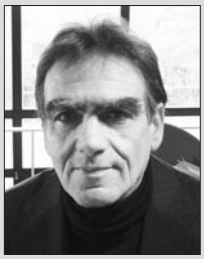

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Co-founder and senior partner of Immigration Law Associates, Tanel Feldman is specialised in European immigration matters.

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Tanel is continuously improving his expertise in European Law through ongoing courses organised by the Academy of European Law.

Immigration Law Associates

Immigration Law Associates is a firm specialising in corporate immigration, employment and social security law and European-related law. Immigration Law Associates provides legal advice to private clients, for matters related but not limited to citizenship law, unmarried partners rights of residence and derived right of residence for third-country nationals who are dependants of EU nationals.

Immigration Law Associates is directly active in Belgium and Luxembourg.

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Canada

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in Canada are:

- the Immigration and Refugee Protection Act, S.C. 2001, c.27 ("IRPA");
- the Immigration and Refugee Protection Regulations, SOR/2002-227 ("IRPR"); and
- the Citizenship Act, R.S.C. 1985, c. C-29.

Canada is also a signatory to a number of United Nations conventions, including the Convention Relating to the Status of Refugees, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, creating an obligation to grant protection to Convention refugees and persons in need of protection. These conventions inform the interpretation of the IRPA and the IRPR.

Finally, case law from the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada is utilised to interpret the application of the IRPA and the IRPR.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Immigration, Refugees and Citizenship Canada ("IRCC") is the administrative body responsible for immigration in Canada. IRCC has the overall responsibility for immigration and refugee matters, including the selection of immigrants, issuance of visitors' visas, granting of citizenship and the determination of eligible refugee claims.

Employment and Social Development Canada ("ESDC") and Service Canada ("SC") are also responsible for the administration of immigration policy. ESDC and SC assess applications from employers requesting to hire temporary foreign workers and determine the likely impact these temporary foreign workers would have on the Canadian job market.

The Canada Border Services Agency ("CBSA") is the body responsible for the administration of immigration legislation and policy at Canada's borders. CBSA processes applications made at a Canadian port of entry, and administers the IRPA, the IRPR, and various international agreements that govern the admissibility of people into and out of Canada.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Canada is part of the North America Free Trade Agreement ("NAFTA"), the Canada-European Union Comprehensive Economic and Trade Agreement ("CETA"), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"), the Canada-Chile Free Trade Agreement, the Canada-Peru Free Trade Agreement, the Canada-Colombia Free Trade Agreement, the Canada-Korea Free Trade Agreement, the Canada-Panama Free Trade Agreement, and the General Agreement on Trade in Services ("GATS").

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Those who are exempt from the requirement to obtain a visa to travel to Canada may enter Canada as business visitors.

Section 187 of the IRPR outlines the criteria for entry as a business visitor. Section 187(3) provides the general criteria that must be met, and Section 187(2) includes illustrative examples.

In order to qualify as a business visitor, the foreign worker must not intend to enter the labour market in Canada and the activity of the foreign worker must be international in scope. In addition, the primary source of the worker's remuneration, the principal place of the worker's employer, and the accrual of profits of the worker's employer must also be outside Canada.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors may remain in Canada for six months. If a foreign national plans to stay longer than six months, he or she may be considered a temporary worker and have to obtain a work permit.

2.3 What activities are business visitors able to undertake?

Business visitors are able to engage in the following activities:

- receiving from, or providing training to Canadian staff at the employer office, provided there is no goods production or services delivered;

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- meetings to standardise processes with Canadian staff;
- sales calls to Canadian customers;
- non-working meetings with Canadian customers;
- attending staff meetings;
- attending board meetings; and
- presentations and public speaking events.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Business visitors are permitted to enter Canada to provide after-sales services. After-sales services include:

- repairing and servicing, supervising installers, and setting up and testing commercial or industrial equipment (including computer software);
- repairing or servicing specialised equipment purchased or leased outside Canada (provided the service is being performed as part of the original or extended sales agreement, lease agreement, warranty or service contract);
- providing familiarisation or training services to prospective users or to maintenance staff of the establishment after the installation of specialised equipment purchased or leased outside Canada; and
- situations in which companies purchase computer-controlled specialised equipment or machinery, and the equipment manufacturer subsequently upgrades the software to enhance the hardware previously sold and then sells this upgraded software to the customer.

Hands-on building and construction work are prohibited activities under this exemption.

There is currently a public policy exemption from the requirement to obtain a work permit for certain foreign nationals engaging in high-skilled work for a short duration (either 15 or 30 consecutive calendar days) in an occupation that is listed in skill type 0 (management occupations) or skill level A in the matrix of Canada's National Occupational Classification. A foreign national can only obtain an 15-day exemption pursuant to this policy every six months, or a 30-day exemption every 12 months.

There are also a number of foreign nationals who do not require a work permit to work in Canada, including:

- foreign representatives;
- family members of foreign representatives;
- military personnel;
- foreign government officers;
- performing artists;
- athletes and team members;
- news reporters and media crew;
- public speakers;
- convention organisers;
- clergy;
- judges, referees and similar officials;
- examiners and evaluators;
- expert witnesses or investigators;
- healthcare students;
- civil aviation inspectors;
- aviation accident or incident inspectors;
- crew; and
- emergency service providers.

2.5 Can business visitors receive short-term training?

Under IRPR 187(2)(a) and (b), the definition of business visitors includes those receiving training or familiarisation with Canadian goods or services purchased for a foreign business or government, as well as those receiving training within a Canadian parent or subsidiary of the corporation that employs them outside Canada.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

There are provisions for compliance inspections of those employers who have employed foreign nationals under an employer-specific work permit. Under IRPR 209.5, ESDC may exercise various powers to ensure employer compliance in the following circumstances:

- an officer or the Minister of ESDC has a reason to suspect that the employer is not complying, or has not complied, with employer conditions;
- the employer has not complied with employer conditions in the past; or
- the employer is chosen as part of a random verification of compliance.

IRPR 209.6 to 209.9 outlines the powers of the ESDC in verifying employer compliance, including interviewing any employee, photocopying and reviewing all documents, reviewing time sheets and foreign worker activities, and engaging in warrantless searches of employer premises.

3.2 What are the rules on the prevention of illegal working?

Under IRPA 124, every person commits an offence who employs a foreign national in a capacity in which the foreign national is not authorised under the IRPA to be employed. In addition, a person who fails to exercise due diligence to determine whether employment is authorised under the IRPA is deemed to know that it is not authorised.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

A person who commits an offence under IPRA 124 is liable to a fine of up to CAD $50,000 or to imprisonment for a term of up to two years, or both.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Employers who wish to hire a foreign national in a capacity that requires a labour market impact assessment must apply to ESDC. Employers hiring temporary foreign workers under exemptions to the labour market impact assessment process must file details of the foreign workers' employment with IRCC through an online portal.

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4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers must, at all times, be prepared to demonstrate the following:

- they have provided accurate information in the context of either a labour market impact assessment or an online employer compliance filing made at the time of the foreign worker's application for a work permit;
- the job offer made to the foreign worker is genuine, based on the following four factors:
  - employers are actively engaged in the business for which the offer of employment was made;
  - employers are in compliance with federal and provincial/territorial laws that regulate employment and recruitment in the province/territory in which the foreign worker is employed;
  - the job offer is consistent with the needs of the employers; and
  - the employers are reasonably able to fulfil the terms of the job offer;
- they have provided each foreign worker with employment in the same occupation as stated in the offer of employment and with wages and working conditions that are substantially the same as – but not less favourable than – those in the offer of employment;
- in the context of a labour market impact assessment, they have met the specific agreed-to commitments made at the time the labour market impact assessment was issued in relation to job creation, job retention, hiring, training, development or transfer of skills and knowledge for the benefit of Canadians or permanent residents; and
- they have made reasonable efforts to provide a workplace that is free of abuse which includes physical, sexual, psychological or financial abuse.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

An employer who requires a labour market impact assessment in order to hire a foreign national must provide a transition plan detailing how the employer intends to transition to a Canadian workforce. This may include the training or up-skilling of local workers. Employers who include such training in their transition plan must be able to demonstrate compliance with this commitment within the time frame set out in the transition plan.

An employer who obtains a labour market impact assessment through the Global Talent Stream will be required to provide a labour market benefits plan that helps employers identify and track their overall job creation, skills and training investments that will benefit the Canadian economy through the employment of highly-skilled global talent. In some cases, a commitment to increasing skills and training investments for Canadian and permanent residents are mandatory for a labour market benefits plan.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No. Employers are only required to cover the costs of any training or up-skilling provided by the employer directly.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Immigration authorities will undertake inspections of employers who sponsor foreign nationals to verify immigration compliance in the following circumstances:

- an officer or the Minister of ESDC has a reason to suspect that the employer is not complying, or has not complied, with employer conditions;
- the employer has not complied with employer conditions in the past; or
- the employer is chosen as part of a random verification of compliance.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Certain types of immigration programmes have a list of skilled occupations which may be filled by foreign nationals. For example, many provinces have a list of skilled occupations for which foreign nationals can apply for immigration under a provincial nominee programme. There is also a list of occupations for which an employer is exempt from the requirement to advertise the position in Canada prior to applying for a labour market impact assessment for a foreign worker.

If a labour market impact assessment is required, each application is determined based on the effect that the employment of the foreign national will have on the labour market in the specific geographical area where the foreign national will be working. Potential employers of foreign nationals in certain high-skilled occupations may also be eligible to obtain a labour market impact assessment through the Global Talent Stream.

In addition, the federal government may place a moratorium on the issuance of labour market impact assessments in certain sectors. Currently, ESDC has determined that it will not process certain labour market impact assessment applications related to low-wage positions in Accommodation and Food Services and Retail Trade Sectors, certain in-home caregiver positions where there is a live-in requirement, as well as certain listed occupations in the province of Alberta.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

There are no exemptions from the requirement to obtain a labour market impact assessment based on the need for a particular occupation. However, in certain instances, an employer may be exempt from the requirement to advertise a position in Canada prior to applying for a labour market impact assessment. These occupations include: certain occupations in the entertainment sector; occupations with international organisations or missions of a foreign government that do not qualify for an exemption from the labour market impact assessment process; owner/operators; certain positions for a short duration; specialised service technicians and specialised service providers; and positions providing warranty work.

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4.8 Are there annual quotas for different types of employment-related work permits or visas?

In general, there is not an annual quota for employment-related work permits. However, some specific programmes, such as the International Experience Canada programme, limit the number of foreign nationals from each country that may participate in the programme each year.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Employers seeking to hire temporary foreign workers under the labour market impact assessment process that are offering a wage that is below the provincial or territorial median hourly wage are subject to a cap on the proportion of temporary foreign workers that can be hired at a specific work location. If an employer hired a temporary foreign worker in a low-wage position prior to June 20, 2014, there is a cap of 20%. If the employer did not employ a temporary foreign worker in a low-wage position prior to June 20, 2014, the cap is 10%.

There are exemptions to this cap on low-wage positions, including: on-farm primary agricultural positions; caregiving positions; positions for which an application to support a temporary foreign worker's permanent residence application; low-wage positions with employers that have fewer than 10 employees nationally, including the vacant positions to be staffed by the temporary foreign workers; highly mobile or truly temporary positions of less than 120 days; and low-wage seasonal positions that do not extend beyond 180 days.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Some employees may be required to demonstrate a level of language proficiency, depending on the nature of the occupation in which they will be employed in Canada.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Only certain foreign nationals who are sponsored to work in Canada are required to undergo medical examinations before being admitted to Canada. The prescribed classes of foreign workers that are required to undergo a medical examination prior to entering and/or engaging in employment-related duties in Canada are:

- applicants who will be in Canada for more than six months and have resided in a designated country for more than six months within the year preceding their arrival in Canada;
- occupations in which the protection of public health is essential (i.e., workers in healthcare services, teachers of small children or primary or secondary school, domestic workers or live-in caregivers, workers who give in-home care to children, the elderly, the ill or the disabled and day-care employees); and
- agricultural workers from the above list of designated countries.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Temporary foreign workers who relocate to Canada are eligible for provincial health coverage. Most provinces require temporary foreign workers to meet minimum physical presence requirements before they will be eligible to apply for coverage. Although it is not mandatory for employees who are sponsored to work, medical insurance is recommended to cover any medical costs that may arise until the employees are eligible for provincial health coverage.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Work at a client site should be disclosed as part of the foreign national's responsibilities in Canada when the work permit is obtained.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no specific category for highly skilled individuals to obtain a work permit. Any foreign worker who is not eligible for a labour market impact assessment exemption (such as entry under an international agreement, intra-company transferees, or entry under a reciprocal employment agreement) must obtain a labour market impact assessment as a highly-skilled worker.

Employers seeking to hire certain highly-skilled workers with unique and specialised talents that have been referred by a designated partner, or who will be employed in certain high-skilled occupations, may qualify for the Global Talent Stream of the labour market impact assessment process. Employers seeking to hire skilled foreign nationals under the Global Talent Stream must include a Labour Market Benefits Plan with their application for a labour market impact assessment, in which employers commit to creating jobs, increasing skills and training investments, transferring knowledge to Canadians and permanent residents, enhanced company performance, and/or implementing best practices or policies as an employer. An employer's efforts to meet these commitments can form part of a subsequent compliance review.

Regarding immigration to Canada as a permanent resident, highly skilled foreign nationals in certain occupations may qualify for immigration to Canada under the Federal Skilled Workers Programme, the Federal Skilled Trades Programme, or under provincial nomination programmes.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Investors seeking to enter Canada temporarily may qualify under the terms of an international agreement, such as NAFTA, CETA, the Canada-Chile Free Trade Agreement, the Canada-Colombia Free Trade Agreement or the Canada-Korea Free Trade Agreement.

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Most free trade agreements facilitate the entrance of investors in a manner similar to NAFTA. Under NAFTA, an investor applicant must meet the following criteria:

- the enterprise has American or Mexican nationality;
- a substantial investment has been or is being made;
- the applicant seeks entry solely to develop and direct the enterprise;
- if the applicant is an employee, the position is executive or supervisory or involves essential skills; and
- compliance with existing immigration measures applicable to temporary entry.

Investors and their employees may also qualify for a work permit as a Provincial Nominee. Work permits may be issued, based on provincial support, to foreign workers who invest, participate in a joint venture, and/or establish a business requiring their involvement. In various provinces, the provincial support of work permits is not subject to specific criteria but is determined by the province based on the perceived benefits of the foreign worker to that province.

In addition, the Start-Up visa programme for the permanent immigration of entrepreneurs who have secured investment commitments from designated Canadian angel investor groups, venture capital funds or business incubators to support their business ideas.

Foreign nationals setting up a subsidiary of an entity outside of Canada may qualify for a work permit as an intra-company transferee if the Canadian entity has a qualifying relationship with a foreign company. In addition, the foreign national must be working in Canada in an executive, senior management, or specialised knowledge position. When transferring executives or senior managers, the Canadian company must demonstrate that it will be large enough to support an executive or management function. When transferring specialised knowledge workers, the company must demonstrate that it is expecting to be doing business, and must ensure that the work of the foreign national is guided and directed by management at the Canadian operation.

Entrepreneurs applying to work for themselves or operate their own business may qualify for a work permit if they can demonstrate that their business would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents. Entrepreneurs must also control at least 50% of the business in question in order to qualify.

Alternatively, business owner/operators, including sole proprietors, majority shareholders, or those with a controlling interest in the business, can apply for a labour market impact assessment from ESDC to obtain a work permit in Canada. Owner/operators are exempt from the requirement to conduct recruitment activities in order to apply for a labour market impact assessment.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Under IRPR 205(b), a foreign national can be exempt from the requirement to obtain a labour market impact assessment when Canadians have similar reciprocal opportunities abroad. One such reciprocal programme is the International Experience Canada category for foreign nationals between the ages of 18 and 35 who fall under one of the following overarching categories:

- Working Holiday – for applicants whose intention is to travel in Canada and work in order to supplement their financial resources.
- International Co-op – for applicants who are registered post-secondary students in their home country and whose intention is to fulfil part of their academic curriculum in Canada by completing a pre-arranged work placement that is related to their field of study.
- Young Professionals – for applicants whose intention is to gain work experience in Canada under a pre-arranged contract of employment in support of their career development.

Also included under this section are academic exchanges (such as guest lecturers, certain elementary and secondary teachers, and visiting professors).

Under IRPR 205(c), foreign students whose employment forms an essential and integral part of their course of study in Canada are also eligible for a work permit.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The Seasonal Agricultural Worker Programme allows employers to apply for a labour market impact assessment to hire temporary foreign workers from certain countries, including Mexico and participating Caribbean countries, for a maximum duration of eight months between January 1 and December 15, provided they are able to offer the workers a minimum of 240 hours of work within a period of six weeks or less. There are also agricultural streams for immigration under the provincial nominee programmes.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

The entry of intra-company transferees is facilitated under IRPR 205(a), which allows for the entry of foreign nationals who intend to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

Intra-company transfers can also be facilitated under various free trade agreements, including CETA and NAFTA.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The Canadian employer must be a parent, subsidiary, branch or affiliate of the foreign national's foreign employer.

A parent means a firm, corporation, or other legal entity which has subsidiaries.

A subsidiary refers to a firm, corporation, or other legal entity of which a parent owns:

- directly or indirectly, half or more than half of the entity and controls the entity;

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- directly or indirectly, 50% of a 50-50 joint venture and has equal control and veto power over the entity; or
- directly or indirectly, less than half of the entity, but in fact controls the entity.

A branch is an operating division or office of the same organisation housed in a different location.

Finally, an affiliate means:

- one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
- one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The Canadian employer must be employing the foreign national in either an executive, senior manager, or specialised-knowledge capacity.

Also, the foreign employer must have employed the foreign national in a similar position for a continuous period of at least one year (full-time) in the previous three-year period from the date of the initial application, and be employing the foreign national at the time of the application.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

For those who require a visa in order to enter Canada, the foreign national must submit an application for a work permit at a local Canadian embassy. This application must include all documentation required by the particular visa office, including documentary evidence confirming the foreign national's employment in a related company abroad.

For those who do not require a visa in order to enter Canada, an application for a work permit as an intra-company transferee may be made at a Canadian port of entry.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

If a visa is required, one will be issued with a work permit approval once the application is processed by the local Canadian embassy.

8.6 How long does the process of obtaining the work permit and initial visa take?

For those who require a visa in order to enter Canada, processing times will vary according to the Embassy at which the application was submitted.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Initial work permits are valid for up to three years, except for foreign nationals who will be employed by a new Canadian entity, where initial work permits are valid for up to one year. Renewals may be obtained for a period of two years at a time, to a maximum of five years for specialised-knowledge employees and seven years for executives and senior managers.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Employees who enter Canada as intra-company transferees can apply for permanent residence, provided they meet the criteria of the specific programme under which they apply. There is no permanent stay visa available in Canada.

8.9 What are the main government fees associated with this type of visa?

Employees entering Canada as an intra-company transferee must pay a government processing fee of CAD $155 for the issuance of the work permit. Employees from all countries other than the United States must also submit their biometrics (photograph and fingerprints) and pay a biometrics processing fee of CAD $85. Employers must also submit details regarding the intra-company transferee's work in Canada prior to the submission of a work permit application at a Canadian embassy or port of entry, which includes a processing fee of CAD $230.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main category used for employers who wish to obtain work permits for new hires is the labour market impact assessment application process.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

A labour market impact assessment must be obtained before the new hire submits an application for a work permit. A labour market impact assessment application requires the employer to test the labour market through extensive advertising of the position. Unless there is an exemption to the advertising requirements, employers must advertise the position using at least three recruitment methods, one of which must be the national Service Canada Job Bank. Advertisements must also target appropriate audiences with the necessary levels of education, professional experience or skill level and be consistent with methods of recruitment common with the occupation. These advertisements must be posted for a minimum of four weeks within the three months prior to submitting the application for a labour market impact assessment, and at least one of the three recruitment activities must remain posted to actively seek qualified Canadians or permanent residents until the date a labour market impact assessment is issued.

9.3 Are there any exemptions to carrying out a resident labour market test?

There are over 500 exemptions to the requirement to obtain a labour market impact assessment. The main exemptions from the

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requirement to obtain a labour market impact assessment include entry under an international agreement, intra-company transferees, or entry under a reciprocal employment agreement.

In addition, there are approximately 19 different variations and exemptions to the minimum advertising requirements for obtaining a labour market impact assessment for certain occupations, including academics, camp counsellors, certain occupations in the entertainment sector, owners/operators, and specialised service technicians and specialised service providers.

9.4 What is the process for employers obtaining a work permit for a new hire?

Before a new hire can obtain a work permit, the employer must apply for a labour market impact assessment. The labour market impact assessment application process includes extensive advertising of the position prior to the submission of the application.

If the new hire is exempt from the labour market impact assessment process, the employer must file details of the foreign worker's employment with IRCC through an online portal before the application for a work permit is submitted.

9.5 What is the process for the employee to obtain a visa as a new hire?

If a visa is required, one will be issued with a work permit approval once the application is processed by the local Canadian embassy.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

At this time, processing times for applications for labour market impact assessments are approximately 13 to 15 weeks from the date of submission, unless the position qualifies for expedited processing. Once the labour market impact assessment is obtained, the new hire must then obtain a work permit.

If the new hire is eligible to apply for a work permit at a Canadian port of entry, he or she may do so immediately upon receipt of the labour market impact assessment. Should the new hire require a visa to enter Canada, processing times for a work permit application will vary based on the Canadian embassy processing the application.

9.7 How long are initial visas for new hires granted for and can they be extended?

Initial work permits are granted for the duration approved on the labour market impact assessment, typically one to two years. Work permits may be extended, provided employers can continue to demonstrate the need for the temporary foreign worker in Canada despite efforts to transition to a Canadian workforce, and provided the temporary foreign worker continues to satisfy immigration officers of the temporary nature of their entry to Canada.

9.8 Is labour market testing required when the employee extends their residence?

If the employee initially required a labour market impact assessment to obtain a work permit, a new test of the labour market and a new labour market impact assessment application will typically be required.

9.9 Can employees coming as new hires apply for permanent residence?

Employees coming as new hires can qualify for permanent residence only if they are working in high-skilled occupations at a Skill Level of 0, A or B under the National Occupation Classification, or under specific skilled-trade occupations. They may also qualify for permanent residence under various provincial nomination programmes.

9.10 What are the main government fees associated with this type of visa?

Employers are required to pay a government processing fee of CAD $1,000 per position requested on a labour market impact assessment application. Temporary foreign workers must then pay a government processing fee of CAD $155 to obtain a work permit based on the labour market impact assessment. In addition, temporary foreign workers from all countries other than the United States must provide their biometrics (photograph and fingerprints) and pay the biometric processing fee of CAD $85.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Conditions of stay for work permit holders vary based on the manner in which the work permit was issued. Any conditions will be written directly on the permit itself. IRPR 185 outlines the specific conditions that may be placed on work permit holders, including:

- the period authorised for their stay;
- the work that they are permitted to engage in, or are prohibited from engaging in, in Canada, including:
  - the type of work;
  - the employer;
  - the location of the work;
  - the times and periods of the work; and
  - in the case of a member of a crew, the period within which they must join the means of transportation;
- the area within which they are permitted to travel or are prohibited from travelling in Canada; and
- the times and places at which they must report for:
  - medical examination, surveillance or treatment; or
  - the presentation of evidence of compliance with applicable conditions.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Work-permit holders are not required to register with municipal authorities or the police unless the work permit is conditional upon certification, medical examinations, or other compliance requirements.

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11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A spouse/common-law partner or dependent child (under 22 years of age, without a spouse or common-law partner) of a foreign worker may apply to enter Canada as dependants of the foreign worker.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, provided they have been cohabiting in a conjugal relationship for at least one year.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Under IRPR 205(c)(ii), spouses or common-law partners of foreign workers are eligible for open work permits if:

- the principal foreign worker is engaged in work at a level that falls within the National Occupational Classification skills levels 0, A or B (high-skilled workers);
- the principal foreign worker holds a work permit that is valid for a period of at least six months; and
- both the spouse/common-law partner and the principal foreign worker physically reside in Canada.

11.4 Do children have access to the labour market?

In general, dependent children of foreign workers do not automatically have access to the labour market. Normally, they must apply for a work permit for a specific job and meet the requirements to be issued a work permit, including obtaining a labour market impact assessment.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The conditions for obtaining permanent residence vary depending on the type of application for permanent residence and the province of destination. However, in general, to qualify for permanent residence, a foreign national must meet minimum language requirements and have either one year of skilled work experience in Canada or significant skilled work experience abroad in an eligible occupation or trade. In certain cases, a foreign national must also have a significant level of education, an offer of full-time permanent employment in Canada, or their occupation must be included on the list of designated occupations.

The various programmes for permanent residence include:

- the Canada Experience Class, for those with at least one year of work experience in Canada in a Skill Level 0, A or B occupation;
- the Federal Skilled Worker programme, for those with at least one year of continuous and paid full-time work experience in the past 10 years in a Skill Level 0, A or B occupation, who meet minimum language ability requirements and can demonstrate sufficient settlement funds;
- the Federal Skilled Trades programme, for those with at least two years of full-time work experience in a listed skilled trade within the previous five years who meet minimum language ability requirements and have either an offer of employment or certificate of qualification in that skilled trade issued by a provincial or territorial body;
- the Start-Up Visa programme, for entrepreneurs who have secured investment commitments from designated Canadian angel investor groups, venture capital funds or business incubators to support their business ideas; and
- Provincial Nomination programmes, for those who have received a nomination certificate from their province of destination.

The Express Entry application system is utilised to manage applications for permanent residence from the Canadian Experience Class, Federal Skilled Worker Programme, and Federal Skilled Trades Programmes, as well as certain provincial nominee programmes. Under the Express Entry system, applicants must first create a profile outlining their skills, education, language ability, work experience, and other relevant details. The information in the applicant's profile will determine whether an applicant is eligible for an immigration programme managed by Express Entry. If the criteria for a programme is met, the applicant is accepted into the pool of candidates.

Applicants will then be assigned a score based on the information included in their Express Entry profiles. At regular intervals, IRCC will issue invitations to apply for permanent residence to the highest-ranking applicants in the Express Entry pool of candidates. The invitation to apply for permanent residence will specify the programme under which the applicant is invited to apply for permanent residence.

Express Entry profiles will remain in the pool of candidates for a period of 12 months. If an applicant has not received an invitation to apply within 12 months, a new profile can be submitted.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

There is no work visa that specifically leads to permanent residence. Many types of full-time work in Canada, whether it is work permit-exempt employment or work under any type of work permit, will aid in a foreign national's application for permanent residence.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The IRPA lists a number of classes or categories of persons who are inadmissible to Canada. These inadmissible classes are listed in IRPA 33–42 and include the following: persons likely to cause excessive demands on health and social services; persons who cannot or are unwilling to support themselves; persons convicted of offences which are punishable by a maximum of 10 years in prison or more (whether the offence was committed inside or outside Canada); persons who are members of an organisation engaged in criminal activities; persons who have committed an act that is an offence in the country where it was committed and would constitute an indictable offence in Canada (such as a DUI); and persons whom there are reasonable grounds to believe will commit an offence punishable by indictment, or will engage in espionage, subversion, terrorism or activities which would endanger the lives and safety of persons in Canada.

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Other than criminal admissibility, which is discussed further below, one of the most common bars to admission to work in Canada is medical inadmissibility. A foreign national will be inadmissible to Canada for medical reasons if the foreign national or a family member is likely to cause a danger to public health or public safety, or if the health condition might reasonably cause excessive demand on health and/or social services. An assessment of dangers to public health includes a consideration of the communicability of the disease and the impact the disease could have on other persons in Canada, and includes conditions such as Active Pulmonary Tuberculosis and untreated Syphilis. Conditions that are likely to be a danger to public safety include serious uncontrolled and/or uncontrollable mental health problems that pose a risk of sudden incapacity or of unpredictable or violent behaviour that could endanger Canadians.

In addition to specific grounds of inadmissibility, a foreign national may be denied entry to Canada if an officer determines that the foreign national will not leave Canada at the end of their authorised stay. However, a foreign national cannot be refused temporary entry simply because he or she also has an intention to apply for permanent residence. Under Section 22 of the IPRA, an intention of a foreign national to become a permanent resident does not preclude him or her from becoming a temporary resident if the officer is satisfied that he or she will leave Canada by the end of the period authorised for his or her stay in Canada. This is known as the "dual intent" provision, which recognises that individuals who wish to immigrate to Canada can still apply to stay temporarily and will not be assumed to overstay the length, or violate the conditions of, their temporary stay, simply because they are going to apply for permanent residence.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

In most cases, yes. A criminal conviction renders a foreign national inadmissible to Canada on the grounds of serious criminality in the following circumstances:

- he or she was *convicted in Canada* of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence; or
- he or she was *convicted outside of Canada* of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament.

A criminal conviction renders a foreign national inadmissible to Canada on the grounds of criminality in the following circumstances:

- he or she has been *convicted in Canada* of an offence under any Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; or
- he or she has been *convicted outside of Canada* of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment for at least 10 years.

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CANADIAN IMMIGRATION

BARTLAW Canadian Immigration, Barristers and Solicitors is a prestigious award winning full-service immigration law firm, specialising in Canadian immigration and citizenship law. We are consistently ranked top tier both nationally and internationally in legal directories. Our legal team of highly trained, exceptionally educated and specialised lawyers provide expertise in every area of Canadian citizenship and immigration law. We are regularly published in news, books and articles and interviewed for television and radio.

The firm provides expert advice on all aspects of immigration to Canada and assists SMEs and corporate clients including, but not limited to, consulting, finance, arts, IT, hospitality, retail, fashion, pharmaceutical, chemical, manufacturing, education, entertainment industries, in addition to assisting individuals and families.

Members of the firm are involved in many organisations including the Canadian Bar Association (CBA), the Ontario Bar Association (OBA), American Bar Association (ABA), American Immigration Lawyers Association (AILA), International Bar Association (IBA), Union Internationale des Avocats (UIA) and Inter-Pacific Bar Association (IPBA).

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China

Kelvin Ma

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

There is no formal immigration law in China, but a series of laws and regulations contain certain regulations on immigration. China will enact such laws in the near future.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The National Immigration Administration administers the corporate immigration system in China.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, currently our jurisdiction is not part of any agreement of this nature.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

No, there is no such visa waiver programme currently and they are required to apply for a visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

A business visa is valid for 90 days. A business visa can be extended many times, but the cumulative time in China cannot exceed one year.

2.3 What activities are business visitors able to undertake?

Visitors are able to undertake business and trade activities, such as attending business meetings, pay a visit to the government and to corporations for business purposes, etc.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, there are no such categories in China.

2.5 Can business visitors receive short-term training?

No, they cannot receive short-term training in China.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, the national authorities do perform checks on employers of foreign nationals.

3.2 What are the rules on the prevention of illegal working?

Foreigners who engage in illegal employment shall be fined no less than 5,000 yuan but not more than 20,000 yuan; if the circumstances are serious, he shall be detained for no less than five days but not more than 15 days and shall also be fined no less than 5,000 yuan but not more than 20,000 yuan.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Organisations shall be fined 10,000 yuan for each person illegally employed and the total amount shall not exceed 100,000 yuan; if there are any, illegal gains resulting from the employment shall be confiscated.

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4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Yes, there is such a system in place in China, and employers can use the website to fill in certain information and then submit, which will be reviewed by government officials.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, employers do have on-going duties to ensure they comply with immigration laws, or otherwise, they may be required to pay fines for non-compliance activities.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, they are not required to do so.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, this is not the case in China.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, the authorities do carry out inspections on employers who hire foreign nationals.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, they do not, but normally certain occupations which closely relate to national security cannot be occupied by foreign nationals.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No, there is no such recognition so far.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, there are no such quotas in China so far.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are no such restrictions in China.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, there is no special requirement for employees to demonstrate their language proficiency.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, they are required to go through a medical examination to show that they are healthy with no infectious disease or contagion.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employees are required to have medical insurance, and normally such medical insurance would be supported by their employer.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, employees can be seconded to a client site.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, there is such a category called 'talented individuals'.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes, there is such a category, for example, if a foreign national invests in a company, the company may apply for a work permit for him so that this foreign national can finally work in China.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, there is such a category.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

No, there is no such category.

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8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, there is no such category and normally foreign nationals who wish to obtain a work visa in China firstly shall enter into a working intention with a company legally set up under the laws of China, and then the company shall submit contracts and information of such foreign nationals to the government and then apply for Work Permits, and then foreign nationals can apply for the work visa in China.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

According to the laws of China, the company must either have actual control, or shareholding control, or its shares to be held by the foreign company to qualify as intra company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

There are no special conditions on the qualifications of companies to employ foreigners.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable, foreigners working in China shall have a work permit and relevant visa.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable in the jurisdiction of China.

8.6 How long does the process of obtaining the work permit and initial visa take?

It takes about 20 workdays.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Normally an initial work visa will be valid for one to two years and can be extended on a case-by-case basis.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, currently we have not witnessed such cases.

8.9 What are the main government fees associated with this type of visa?

As mentioned before, the government fees are the application for work visa, and generally it will be less than 1,000 yuan.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The People's Republic of China Foreigner's Work Permit Card.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

No, there is no such requirement in China.

9.3 Are there any exemptions to carrying out a resident labour market test?

No, please refer to question 9.2.

9.4 What is the process for employers obtaining a work permit for a new hire?

When employing a foreigner, employers shall fill in the application form for employment of a foreigner (hereinafter referred to as the application form) and submit the application to the competent trade department at the same level as the competent labour administrative department (hereinafter referred to as the competent trade department) and provide the following valid documents:

(1) resume certificate of the foreigner to be employed;
(2) letter of intent;
(3) a report on the reasons for employing a foreigner;
(4) the qualification certificate of the foreigner to be employed for the job;
(5) health certificate of the foreigner to be employed; and
(6) other documents as stipulated by the laws and regulations.

After being approved by the competent department of the trade, the employers shall go through the examination and approval formalities with the labour administrative department of the province, autonomous region or municipality where the unit is located or the municipal labour administrative department authorised by it. The labour administrative departments of provinces, autonomous regions and municipalities directly under the central government or the labour administrative departments of prefectures and municipalities authorised by them shall designate special agencies (hereinafter referred to as licence-issuing organs) to be specifically responsible for issuing and issuing licence certificates. The licence-issuing authority shall approve and issue a licence certificate to the employing unit after the approval, according to the opinions of the competent authorities of the industry and the demand conditions of the labour market.

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9.5 What is the process for the employee to obtain a visa as a new hire?

Foreigners who have been granted employment in China shall apply for occupational visas at the Chinese embassies and consulates abroad on the strength of the certificate of approval issued by the labour department, the letter of notification and visa of the authorized entity and the valid passport of their own country or a certificate that can replace the passport.

The employers shall apply for the foreigner's employment permit at the labour and social security bureau on the strength of the relevant materials within 15 days after the entry of the foreigner who has obtained the occupational visa.

Foreigners who have already obtained employment permits shall apply to the public security authorities for residence permits on the strength of their employment permits within 30 days after entering China.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

About 50 workdays.

9.7 How long are initial visas for new hires granted for and can they be extended?

They are granted for one – two years, and can be extended accordingly through the relevant application procedures.

9.8 Is labour market testing required when the employee extends their residence?

No, please refer to question 9.2.

9.9 Can employees coming as new hires apply for permanent residence?

No, this is not possible in China.

9.10 What are the main government fees associated with this type of visa?

The fees associated with this type of visa range from 2,000 to 3,000 yuan.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The employment permit for foreigners and residence permit for foreigners shall be obtained upon approval before employment in the mainland of China.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, work permit holders must register upon arriving in China.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A spouse and children can qualify as dependants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No, they do not qualify as family members in China.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

No, they do not.

11.4 Do children have access to the labour market?

No. Article 15 of the Labour Law provisions: it is forbidden for employers to employ persons under the age of 16. Units of literature and art, physical culture and sports, and special arts and crafts that need to recruit minors under the age of 16 must go through the formalities of examination and approval in accordance with the relevant provisions of the state and guarantee their right to compulsory education.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Aliens who apply for permanent residence in China in accordance with the administrative measures on the examination and approval of permanent residence in China shall abide by Chinese laws, be in good health, have no criminal record and meet one of the following conditions:

(1) direct investment in China, stable investment situation for three consecutive years and good tax payment record;

(2) those, who hold the post of deputy general manager, deputy factory director or other posts in China or hold the deputy senior title of associate professor or associate researcher or enjoy the same treatment, have held the post for at least four consecutive years and have accumulated residence in China for at least three years within four years and have a good tax record;

(3) having made significant or outstanding contributions to China or to the special needs of the state;

(4) spouses of the persons referred to in subparagraphs 1, 2 and 3 of this paragraph and unmarried children under the age of 18;

(5) the spouse of a Chinese citizen or of an alien who has obtained permanent residence in China, who has lived in China for at least five years, who has lived in China for at least nine months each year and who has stable living security and residence;

(6) unmarried children under the age of 18 who take refuge with their parents; or

(7) those who have no immediate family members abroad, then seek refuge with their immediate family members in China and have reached the age of 60, have resided in China for at least five consecutive years, and have resided in China for at least nine months each year and have stable living security and domicile.

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The years referred to in this article refer to the consecutive years prior to the date of application.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, it is possible.

13 Bars to Admission

13.1 What are the main bars to admission for work?

1. They shall be at least 18 years old, in good health, have no criminal record, and have a certain employer in China with necessary professional skills or appropriate knowledge level for their work.
2. The work they are engaged in is in line with the needs of China's economic and social development, and they are urgently needed professionals in China.
3. As otherwise provided by laws and regulations on foreigners working in China, those provisions shall be followed.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, they are.

Acknowledgment

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PKF LEGAL

PKF Legal (Shanghai Demei Law Firm) is a RPC law firm and the member of PKF International. In 2017, Demei officially became PKF China's legal department. PKF Legal has a team of experienced international lawyers offering a multilingual legal service. We offer a wide range of services in China and abroad: Inbound and Outbound Immigration, Taxation, Litigation, Offshore Trusts, Corporate Law, Accounting, Real Estate, Financial Services, Investments, Due Diligence Services and Compliance. With a global and professional perspective, PKF Legal offers a wide range of legal services, including legal advice and litigation, for complex cases and projects.

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Cyprus

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The immigration sector in Cyprus is regulated by a series of legislative instruments, the most prominent of which are: the Law on the Aliens and Immigration (Cap.105); the Aliens and Immigration Regulations of 1972; the Aliens and Immigration (Visas) Regulations of 2004 (R.D.A.498/2004); the Law on the Immovable Property Acquisition (Aliens) (Cap.109); the Immovable Property Acquisition (Aliens) Regulations of 1972; the Immovable Property Acquisition by Aliens (Conditions, Limitations, Prerequisites and Criteria for the Granting of Permit) Regulations of 1990; the Law on Aliens and Immigration (Prerequisites for entrance and residence of third-country nationals for the purpose of research, studies, training, voluntary work, exchange of pupils or education programme) (L.7(I)/2019); the Law on the Immovable Property Acquisition (Aliens) (Cap.109); and the Law on the Right of Union citizens and their family members to move and reside freely within the territory of Cyprus (L.7(I)/2007).

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Issues relating to the employment of European and third-country nationals are mainly administrated by the Migration Sector of the Civil Registry and Migration Department (CRMD) and the district Immigration Units, belonging to the Ministry of Interiors, in cooperation with the Labour Department (LD) belonging to the Ministry of Labour, Welfare and Social Insurance.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Cyprus is a Member State of the EU since May 1, 2004. On that basis, the principle of the freedom of movement of employees and/or workers was adapted and regulated by virtue of Article 45 of TFEU and the Act N.7(I)/2007, which the Parliament of Cyprus adopted for purposes of harmonisation with EU Directive 2004/38/EC.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Generally, it is necessary for a citizen of a third-country to acquire a business visa for entering Cyprus. However, since Cyprus is a Member State of the EU since 2004, it is worth mentioning that whilst Cyprus is still not included in the Schengen area, it is currently in the process of complying with the terms that have already been specified. Cyprus has accepted and adopted the provisions of Decision No 565/2014/EU of the European Parliament and of the Council of May 15, 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Cyprus of certain documents (issued by Contracting States belonging in the Schengen area) as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period. Cyprus offers free visa entry to all national citizens of EU Member States, as well as: citizens of Switzerland, Iceland, Liechtenstein, and Norway, as well as holders of UN and European Council *laissez-passer*, and also citizens of 89 countries outside the EU. Holders of multiple-entry Schengen Visa, as well as holders of any residence permits issued by Schengen Member States (26 Countries, plus Bulgaria, Croatia and Romania), may travel to Cyprus without having a visa, upon presentation of a valid passport or identity card.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The total duration of stay in Cyprus for business visitors may not exceed 90 days during any 180-day time period.

2.3 What activities are business visitors able to undertake?

Business visitors are able to engage and undertake several kinds of activities, that may qualify as business. In case a business visitor from a non-EU Member State may wish to apply for and obtain a business visa, they have to submit (within reasonable time prior to proposed date of travelling), to a local Cyprus Embassy, an application to that end, accompanied by, depending on the circumstances of each particular case, an invitation letter, an assumption of responsibility commitment, and a bank guarantee.

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2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Under the laws of Cyprus, there are a series of special categories granting their holders the right to undertake work or provide services for a temporary period, which, however, require as a prerequisite the acquisition of a work permit for a particular field of employment.

2.5 Can business visitors receive short-term training?

In the absence of an express provision explicitly addressing the issue of whether business visitors can receive short-term training, it is worth noting that L.7(I)/2019 provides for the admission of third-country nationals as trainees, provided that the applicant complies with the requirements stipulated therein.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

According to s.18Σ, for the purposes of monitoring compliance with regards to the provisions of the Law concerning the illegal employment of third-country nationals residing in the Republic, the Minister of the Interior may authorise any police officer, other competent officer or inspector to enter freely and without warning, into any place of employment (other than households) at any time and carry out any inspections, searches, interrogations, or examinations as he may consider necessary.

3.2 What are the rules on the prevention of illegal working?

Employers are expected to demand any third-country national they intend to employ to provide a valid permit that is in force, allowing them to reside and work in Cyprus and to inform the CRMD of the commencement of employment within seven days. Cap.105 provides for criminal and administrative sanctions in respect of persons falling afoul of the legislative provisions, including employers who illegally employ third-country nationals and aliens illegally working in Cyprus. The Director of the CRMD has the authority to impose on an employer administrative fines and restrict the employers' right to employ third-country nationals for a specific period of time. In addition, the employment of a third-country national illegally residing in Cyprus constitutes an offence, while penalties may vary depending on the nature and severity of the offence.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The employment of any alien without the requisite permit, or the employment of any alien in breach of the terms of any work permit or the employment in breach of any other law, constitutes an offence punishable by a term of imprisonment of up to three years and/or a monetary fine. Additionally, the Court has discretion to make an order requiring the convicted employer to make any contributions payable to the various funds as would be the case if the employment had been legal. The Court may furthermore issue an order prohibiting the employment of any alien for such time period as it deems appropriate.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is no general system for registration of employers desiring to hire foreign nationals. With the exception of the Companies/Businesses of Foreign Interests (as the term is defined in the relevant circular of the Ministry of Interiors), each time an employer wishes to employ a foreign national, an application must be submitted to the competent district LD. Nonetheless, an eligible Company/Business of Foreign Interests has the right to employ a certain number of foreign nationals in official or key positions, such as directors, managers, middle management executives and other key personnel. Those companies enjoy the prerogative of sidestepping the cumbersome procedures of the Labour Office as they get registered in the records of the CRMD as eligible companies and they employ foreign nationals falling into the aforesaid categories by submitting individual applications to the CRMD.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers who hire foreign nationals of course have an ongoing duty to comply with the immigration law and policies.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Under Cyprus law, there is no such legal or other obligation or commitment from the part of the employers to train or up-skill local workers as a prerequisite to hire foreign nationals or otherwise.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Under Cyprus law, no obligation is imposed on the employers who hire foreign nationals to pay government charges and/or fees as a contribution towards the training or up-skill of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, the immigration authorities do undertake routine and regular inspections of employers who employ foreign nationals to verify due conformity with the immigration law. Many cases have been brought before the District Courts for illegal employment of foreign nationals and in many instances, the Courts have imposed imprisonment penalties.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

There is no standard list of such skilled occupations. The LD monitors and evaluates the labour market constantly and adopts and

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implements policies according to the circumstances and the needs of the market. Generally, each application for employment of foreign national, is examined on its own merits.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Currently, the LD recognises a labour shortage pertaining to agriculture and livestock farming. Whilst the right to employ foreign nationals is enjoyed only by organised businesses, when it comes to agricultural and livestock farming, this right is enjoyed by any farmer or stock-farmer, irrespective of the organisation level of its business.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no annual quotas for different types of employment-related work permits or visas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There is a general quota for organised businesses, according to which the number of foreign nationals employed by any business cannot exceed 30% of its total workforce (the sectors of agriculture and live-stock farming are excluded).

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No requirement for language proficiency is imposed.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, there is a requirement for medical examination.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Since June 1, 2019, the General Healthcare System (GHS) was put into force and covers any legal resident of Cyprus, including foreign employees. Each employer and employee working in Cyprus is liable to contribute to the GHS and, therefore, enjoys free or almost free medical services. Nonetheless, due to that the GHS has only recently put in force, the LD and the CRMD require the submission of medical insurance as a prerequisite for the issuance of residence and work permits.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Employees are granted a permission to work for a specified employee at a specified place, only. Therefore, permission must be sought by the LD if the employee will be seconded to a client site and provided that the site is not already included on the original permission.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

According to Cap.105, by virtue of which the Council Directive 2009/50/EC (Blue Card) is implemented, high-skilled third-country nationals may be entitled to apply for an EU blue card granting the right to enter (multiple entries), reside and work in Cyprus. It is up to each EU Member State to examine the situation of its labour market and apply its national procedures regarding the requirements for filling vacancies and to determine the volume of admission of third-country nationals entering for the purposes of highly qualified employment. On that basis, it is up to the Council of Ministers of Cyprus, to determine from time to time the volumes of admission of highly skilled employees, considering and/or relying on the proposal of the Minister of Labour, Welfare and Social Insurance. In this respect, owing to the fact that the Council of Ministers has currently set a zero quota for admission of third-country nationals for the aforesaid purposes, the use of the national procedure through the LD is the only available way for admission of high-skilled employees.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There are two ways in which third-country nationals may be authorised for employment in Cyprus. Firstly, under the scheme of an "International Business Company" (IBC), a third-country employee may apply for a Temporary Residence and Employment Permit for one or two years. Furthermore, there is an opportunity provided under the scheme of "Cyprus Start-Up Visa", which started on February 2017 for two years and get an extension for another two years; this scheme allows entrepreneurs from third countries to work in Cyprus in innovating enterprises or establish an innovating company. If the enterprise succeeds, they have the opportunity to apply for residency in Cyprus without any maximum time restrictions.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The regulatory framework with regards to the hiring of third-country nationals for exchanges, career development, internships or other non-economic purposes, has only recently been re-formed by the adoption of the L.7(I)/2019 which was adopted to align with Directive 2016/801/EU. According to the aforesaid legislation, entrance and residence permits are granted to third-country nationals purporting to enter Cyprus and temporarily reside thereat for the purpose of research, studies, training, voluntary work, educational projects or in the course of exchange of pupils programmes. It is up to the Council of Ministers of Cyprus, to determine the volumes of admission of third-country nationals (except insofar as students are concerned), considering and/or relying on the proposal of the Minister of Labour.

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7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Cyprus legislation makes provision for sector-specific categories which enable third-country nationals to be temporarily employed in Cyprus for the purpose of performing short-term work; such categories include general employees (admitted in sectors where there is need for support in the absence of local or European personnel), domestic workers, food handlers, athletes, coaches, livestock labourers, agriculture workers, priests, nurses, bartenders, creative artists, performing artists, creative supportive staff and the supporting staff of a performing artist. The rules, terms, conditions, as well as the volume of admission of third-country nationals to any such specific categories, are determined by the Council of Ministers considering and/or relying on the proposal of the Minister of Labour.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Cap.105 has recently been amended for the purpose of accommodating the provisions of Directive 2014/66/EU relating to the intra-corporate transferee permit (ICP) that can be granted to third-country nationals employed by an employer entity or undertaking established in a third country to an employer undertaking of the same group of companies established in Cyprus.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

In order for the involved undertakings to be qualified as part of a group of companies, the said entities or undertakings must be considered as linked in any of the following ways: (a) one of the undertakings holds, directly or indirectly, the majority of the subscribed capital of the other; (b) one of the undertakings controls the majority of the votes attached to the issued share capital of the other; (c) one of the undertakings is entitled to appoint more than half of the members of the administrative, management or supervisory body of the other; and (d) the undertakings are in fact managed on a unified basis by a common parent undertaking/owner.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

In order for an employer to be eligible to obtain a work permit for an intra-company transferred employee, it is a prerequisite that the said employer forms part of a group of companies within which the transfer shall take place, while such an employer must prove its good standing and clean criminal record, as well as its compliance with all its legal obligations, including the settlement of taxes and the payment of contributions for employees.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Upon issue of the entry permit (question 8.5), the third-country national shall be entitled to enter Cyprus while, at a subsequent stage, the said employee must attend the competent district Immigration Unit in order to provide additional documentation, supplementary to those provided in the course of the issue of the entry permit as well as biometrical data.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

At first, in order for a third-country national employee to receive an entry visa, the employer undertaking in Cyprus must submit for the purposes of review and certification, to the LD a series of documents, relating to the same, the foreign employer, their connection as well as the employee and its employment relationship with the company. Once certified, these must be submitted to the CRMD along with the application, in order for the latter to assess its merits and decide on whether an entry visa shall be granted to the third-country national.

8.6 How long does the process of obtaining the work permit and initial visa take?

In practice, depending on the workload of the involved governmental authorities, the complexity of each particular case and in the absence of any irregularities, the procedure for the issue of the entry visa may take from about one-and-a-half months, while the process for the issue of the main intra-company transfer permit may take about three months.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The minimum period of validity of intra-company transfer permits is 90 days and may, subject to the relevant provisions of the law, be renewed and/or extended, provided that the total duration of the intra-company transfer does not exceed the period of one year for trainee employees or that of three years for managers and specialists.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Under Cap.105 and provided that a third-country national satisfies the criteria for applying for any category of permanent residence, such a third-country national may be eligible to apply for a long-term permit. Nevertheless, the limitation on the duration of the intra-company transfer along with the provision of assurances that upon completion of the intra-company transfer, the third-country employee shall be transferred to another company of the same group of companies outside Cyprus, may serve as a bar to permanent residence.

8.9 What are the main government fees associated with this type of visa?

The main applicable government fees associated with the submission of the application for the intra-company transfer of third-country

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nationals are those related to the submission of an application for registration (in case the third-country national does not own an Alien Registration Certificate) and issue of the entry permit, as well as those related to the renewal of the intra-company transfer permit (if applicable). Ancillary costs with regards to certification, legalisation and translation of documents may also apply.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Usually, and unless the proposed employment falls under a particular regulatory framework requiring particular treatment, employers use the path of general employment for new hires.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The standard procedure with regards to the hire of third-country employees is twofold in that its first part is conducted before the LD and, provided that approval is granted by the LD, the second part is conducted before the Department of CRMD. In particular, before applying for the registration and the issuance of an entry permit, it is a prerequisite that the employer must communicate the vacancy to the competent district LD office, in order for an examination of the national and European labour market to be concluded. In case no-one is interested or no-one of those interested fulfils the requirements of the vacancy introduced by the employer, the latter may proceed to apply for the employment of a third-country national.

9.3 Are there any exemptions to carrying out a resident labour market test?

Depending on the specific work permit category and employment sector for which the employer may apply, exceptions may be provided (e.g. International Business Companies). However, there is a general exception to carrying out a labour market search that applies for certain professions, including livestock, agriculture and specialised chefs, as well as for third-country nationals who have high professional skills and qualifications and a total annual income of at least €35,000, in which case the fast-track national procedure is followed. In these cases, no examination of the national or European labour market is required to take place.

9.4 What is the process for employers obtaining a work permit for a new hire?

At the very first stage, the employer interested in employing a third-country national must apply to the competent district LD to that end, in order to be granted an official written approval.

9.5 What is the process for the employee to obtain a visa as a new hire?

Once the employer is granted the approval of the LD for the employment of third-country nationals, the same shall proceed to all necessary arrangements for the purpose of obtaining an entry permit, which then shall be used by the third-country national, in order to enter Cyprus. Upon its entrance, the third-country national must attend the competent district Immigration Unit in order to provide additional documentation, supplementary to those provided in the course of the issue of the entry permit, and biometrical data.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

In practice, depending on the workload of the involved governmental authorities and the complexity of each particular case and in the absence of any irregularities, the procedure for the issue of the entry visa may take from around three weeks, while the procedure for the issue of the main intra-company transfer permit may take around one-and-a-half months.

9.7 How long are initial visas for new hires granted for and can they be extended?

Although usually initial work permits are issued for a year or so, depending on the duration of the employment contract, granting a right to renew and/or an extension up to the maximum period provided for in the respective regulatory framework, the duration of the initial work permits, the maximum duration of residence in Cyprus as well as the right to renew and/or an extension depends on the specific work permit category for which the application is made.

9.8 Is labour market testing required when the employee extends their residence?

Subject to any exceptions provided for in the Law or with regards to which there is a well-established practice of the LD, the examination of the national or European labour market is obligatory, even for the renewal and/or extension of such a work permit.

9.9 Can employees coming as new hires apply for permanent residence?

Under Cap.105 and provided that a third-country national satisfies the criteria for applying for a permanent residence under any of the relevant categories, such a third-country national may be eligible to apply for a long-term permit.

9.10 What are the main government fees associated with this type of visa?

The main applicable government fees associated with the submission of the application for a work permit are those related to the submission of an application for registration (in case the third country national does not own an Alien Registration Certificate) and issue of the entry permit in the name of the third-country national as well as those related to the renewal of the intra-company transfer permit (if applicable). Ancillary costs with regards to, among others, the certification, legalisation and translation of documents may also apply.

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10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

As a general rule, the conditions of stay of a permit-holder residing in the Republic for work-related purposes are determined by reference to the terms of the permit. The permit-holder shall be entitled to access, enter and reside in the territories controlled by the Cypriot government and to carry out any work activity in accordance with the terms of the permit. The terms of issue of a permit, afford the right to the permit-holder to be employed in a specific field, for a specific period of time and under a specific employer, and in case the permit-holder is employed in a different field or by a different employer, the work permit shall cease to be valid and shall be deemed as cancelled.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Pursuant to applicable Regulations, third country-nationals entering Cyprus on the basis of an entry permit must apply both for their registration to the Aliens Register and their temporary residence permit at the competent district Immigration Unit within seven days from their arrival.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Subject to the satisfaction of the criteria and/or exceptions set out in Cap.105, a third-country national legally residing in Cyprus for a period of at least two years, who holds a residence permit and has reasonable prospects of obtaining the right for a permanent residence, may submit an application for family reunification, in order for their family members (irrespective of whether the family relations have been established prior to or after the date the third-country national entered Cyprus) to enter and reside in Cyprus. Particularly, the notion of 'family members' includes the applicant's spouse, provided that the spouse has reached the age of 21 and that the marriage took place at least a year prior to the submission of such an application, minors up to the age of 18, unmarried and financially dependent children of the applicant and his/her spouse or that of the applicant and his/her ex-spouse for whom the applicant has the exclusive custody as well as that of the applicant's spouse, in case the latter has their exclusive custody.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

In order for the partner of a third-country national, legally residing in Cyprus, to be qualified as a family member of the latter, he/she must be married to the applicant either by religious marriage or by way of a civil marriage or civil union. Although the religious and civil marriage are only available to heterosexual couples, the civil union arrangement is also available for same-sex couples as well; in so far as same-sex couples are concerned, the notion of "family members" is construed narrowly.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Under Cap.105, family members of a third-country national residing in Cyprus, including spouses, have the same rights in relation to education and employment while, at the same time, they are subject to the respective national conditions, policies and procedures of Cyprus. That notwithstanding, the access of a family member, in his/her capacity as a dependant of a third-country national, to the labour market is restricted for the first 12 months of his/her residence in Cyprus under such status.

11.4 Do children have access to the labour market?

Under Cap.105, the family members of a third-country national residing in Cyprus, have the same rights in relation to education and employment while, at the same time, they are subject to the respective national conditions, policies and procedures of Cyprus. That notwithstanding, the access of a family member, in his/her capacity as a dependant of a third-country national, to the labour market is restricted for the first 12 months of his/her residence in Cyprus under such status. In any event, according to Cyprus laws, the employment of children under the age of 15 is prohibited while the employment of teens between the age of 15–18 may be permitted subject to the terms and conditions set forth in the Cyprus legislation.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Non-EU citizens can obtain a permanent residence either via 'investing' in a property in Cyprus, using the fast-track (Reg.6 (2)) or standard (Category F) procedure, on the condition such applicants must provide a declaration undertaking not to pursue employment in Cyprus.

Under the investors' scheme (Reg.6 (2)): (a) the applicant must acquire a property valued at €300,000 plus VAT at least, of which the amount of €200,000 plus VAT must have been paid as at the time of the submission of the relevant application; (b) the contract of sale must be deposited with the district Land Registry Office; (c) the applicant must prove a secure annual income of at least €30,000, which amount increases by €5,000 for each dependent person; (d) the applicant must present a bank letter issued by a Cypriot bank confirming the deposit of the amount of €30,000, which amount will remain blocked for a period of three years; and (e) the aforesaid amounts must have been transferred from abroad.

Under the Category F scheme, the Applicant is required (a) to either purchase or rent a property in Cyprus, and (b) to provide evidence that he/she has secured annual income from abroad of a least €10,000, which amount increases by €5,000 for each dependent person.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

The CRMD has the power to switch a temporary work visa to a long-term residence permit if the applicant residing in Cyprus legally and uninterruptedly in the five years immediately preceding the submission of such an application and provided that he/she satisfies the eligibility criteria and requirements under Cap.105.

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13 Bars to Admission

13.1 What are the main bars to admission for work?

L.7(I)/2019 stipulates that the CRMD may refuse an application for a visa or a work permit by a third-country national, where the applicant is deemed to pose a threat to public order, public security or public health. In this respect, a duly certified copy of the applicant's and his/her family members' criminal record and medical analysis proving that the applicant is not a carrier of any contagious parasitic illness are required to be submitted.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Depending on the severity of the offence, criminal convictions may adversely affect the granting of any application concerning residency or employment in Cyprus; to this end, a certified copy of the applicant's criminal record issued by the competent authorities of the country of origin is required to be submitted to enable the CRMD to ascertain whether the applicant would pose a threat to public order or public security.

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A. KARITZIS & ASSOCIATES L.L.C is a full service, innovative and forward-thinking boutique Law Firm based in Limassol, staffed with a dedicated team of dynamic professional lawyers, providing integrity, efficiency and trust to all clients, offering a comprehensive range of legal and administrative services; our firm offers all major practice area disciplines and boasts a diverse portfolio of clients ranging from global businesses and non-profit organisations, to small-to-medium-size entities and private individuals. At A. KARITZIS & ASSOCIATES L.L.C we pride ourselves in being committed to achieving the most desirable outcome for our clients in a cost-effective, time-efficient and highly-qualitative manner, offering precise and pragmatic advice at all times.

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Denmark

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main source of legislation governing foreign employees, who are performing work in Denmark is the Danish Aliens Act (in Danish: *udlændingeloven*) and the Danish Act on Posted Workers (in Danish: *udstationeringsloven*).

The regulation varies depending on nationality (e.g. EU citizen or non-EU citizen) and depending on the purpose of the character and length of the work performed in Denmark. A foreign employee can apply for a short-term visa or a residence and work permit, including, but not limited to, through a fast-track application, positive list application and a pay-limit application. This is explained further in the questions below.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

There are two immigration authorities in Denmark.

Citizens within the EU/EEA: The State Administration (in Danish: *Statsforvaltningen*) is responsible for issuing EU registration certificates. However, a foreign employee from a Nordic country, who lives, studies and/or works in Denmark, is not obligated to apply for an EU registration certificate.

Citizens outside the EU/EEA: The Danish Agency for International Recruitment and Integration (in Danish: *Styrelsen for International Rekruttering og Integration*) and the Danish Immigration Service (in Danish: *Udlændingestyrelsen*) are responsible for permanent residence and visa applications.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Denmark is a part of the European Union ("EU"). There is a right of free movement for employees within the EU/EEA.

Further, Denmark is part of the Schengen Agreement, according to which 26 European nations recognise the dissolution of their internal borders and the right of free movement of capital, goods, employees and services.

Denmark is also part of a multilateral agreement with Finland, Iceland, Norway and Sweden, under which citizens from these countries can reside in Denmark without a visa or work permit.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Business visitors can enter Denmark without applying for a visa or a work permit, provided the business visitor is a citizen from the EU/EEA, a Schengen country, or a citizen of a country from which Denmark does not require a visa or work permit.

Further, business visitors from a country outside the EU/EEA can enter Denmark, provided the business visitor applies for a Short-Term Visa ("Short-Term Visa").

A Short-Term Visa entails that a business visitor can enter Denmark for a period of 90 days, provided there is an actual commercial relationship between the business visitor and the company or the organisation in Denmark, which the business visitor visits during the stay in Denmark. A Short-Term Visa will, normally, be processed faster than a normal visa application.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

A Short-Term Visa can be issued for a maximum period of 90 days in any 180-day period.

2.3 What activities are business visitors able to undertake?

A business visitor is only allowed to perform work-related activities in connection to the commercial relationship between the business visitor and the company or organisation to which the Short-Term Visa is approved.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Provided a foreign business visitor is to perform work in Denmark that is not covered by a Short-Term Visa, the business visitor must apply for a work permit. However, some foreign business visitors

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(non-EU/EEA or Nordic citizens) are exempted from this (the "Rules of Exemption"). The categories are:

- foreign diplomats and staff on board Danish commercial ships sailing in international traffic;
- professional athletes or coaches;
- scientists and speakers, who are invited to perform a speech or if the business visitor is a scientist and possesses individual qualifications that are closely linked to his/her work;
- members of a board are exempt for a maximum of 40 days per year;
- special work assignments, including researchers, lecturers, artists, musicians and individuals employed in the household of foreign employees are exempt for a maximum of 90 days; and
- guest teachers are exempt for up to five days.

2.5 Can business visitors receive short-term training?

A business visitor can receive training for the purpose of internal training within a company, including, but not limited to, teaching, participating in meetings, negotiations and/or briefings.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The Danish Agency for International Recruitment and Integration and the Danish Immigration Service conduct various types of spot checks and verification procedures to ensure that the Danish immigration legislation is being complied with. These spot checks and verifications occur in collaboration with other authorities, including the Danish Customs and Tax Administration, the Danish Working Environment Authority and the Danish police.

Further, the Danish labour unions also conduct checks in relation to employers, who are covered by a collective bargaining agreement. Provided that an employer does not comply with a collective bargaining agreement, the labour union can bring the matter in front of the Danish Labour Court (in Danish: *Arbejdsretten*). If the Labour Court finds that the employer was in non-compliance with a collective bargaining agreement, the Labour Court can issue a penalty.

3.2 What are the rules on the prevention of illegal working?

Please see question 3.1.

The spot checks and verifications reveal, whether the foreign employer complies with Danish legislation concerning foreign employees working in Denmark, and whether the employees have obtained the mandatory legal documents.

Further, a foreign employer performing commercial activities in Denmark must notify the Register of Foreign Service Providers ("RUT") about the company and its service.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The penalty for an employee without a work permit or valid visa is a fine and/or imprisonment. Further, the employee might be deported from Denmark and prohibited from entering the EU and all Schengen countries for a period of at least two years, provided the employee is from a country outside the EU/EEA.

The penalty for an employer to employ a foreign employee without a work permit or a valid visa is a fine.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

RUT is an official register to which foreign employers must report foreign employees performing work in Denmark. The employer must ensure that the report occurs before or at the same time as the commercial activities in Denmark commence.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

An employer is responsible for ensuring that the details in RUT are correct. The employer is responsible for informing RUT of:

- the workplace;
- the period; and
- the employee(s) performing the work.

Provided the employer does not report the above-mentioned information in time, or if any of the information is incorrect or inadequate, the employer might be penalised with a fine.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

This is not applicable in Denmark.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

This is not applicable in Denmark.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

See question 3.1. Further, the immigration authorities can also conduct continuous visits, if the immigration authorities have a suspicion of social dumping, or if the employer previously has been in non-compliance with the Danish immigration legislation.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The immigration authorities maintain a list of professions which are in demand on the Danish labour market (the "Positive List"). An employee with a profession on the Positive List can apply for a visa, which entails a faster and easier process compared to the normal visa application process. The Positive List is updated twice a year – 1 January and 1 July. The Positive List is available on the official Danish version of the International Standard Classification of Occupations.

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4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes. Employees with a profession on the Positive List have faster and easier access to the Danish labour market. There are no certain sectors or occupations relating to the Positive List.

For further information regarding professions and educational requirements, please visit www.dst.dk/eng.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

This is not applicable in Denmark.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions to the number of foreign employees, who can perform work for employers in Denmark.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

There are no language requirements for an employee performing work for an employer in Denmark. However, foreign citizens, who obtain a residence permit, have to pass a Danish language test.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No. However, some employers might require employees to undergo a medical examination before the employment commences and/or during the employment.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

No. Foreign employees, who perform work in Denmark, are not obligated to have medical insurance. However, business visitors, who apply for a Short-Term Visa, are obligated to have a travel insurance policy that covers possible expenses in connection with health issues or medical treatment. The medical insurance policy must cover all Schengen countries.

EU/EEA citizens with an EU-residence document issued by the State Administration (in Danish: *Statsforvaltningen*) are entitled to the same free public medical services as Danish citizens, and are, thus, not obligated to have medical insurance. Therefore, EU/EEA employees are not obligated to have medical insurance.

Foreign employees from outside the EU/EEA are not entitled to free public medical services without being registered in the National Register of Persons (in Danish: *Folkeregistret*). However, they are entitled to free emergency hospital services in case of an accident or sudden illness.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Before an employee is seconded to a client site, the employer must obtain an approval from the Danish Agency for International Recruitment and Integration as a work permit is approved based on employment at a specific employer.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Employees with certain professions as mentioned in questions 4.6 and 4.7 are considered highly skilled individuals and can apply for residence and a work permit in Denmark through the Positive List.

Employees with a certain income are also considered as highly skilled and can, thus, apply for a residence and work permit via the Pay-limit Scheme. The income requirement is DKK 426,985.06 (2019 level) or more.

Further, employees with certain special individual qualifications are also considered as highly skilled individuals. This entails performers, artists, professional athletes, coaches or specialised chefs. Provided an employee fulfils the required special individual qualifications, the employee can apply for a residence and work permit through the ordinary process or through the above-mentioned tracks.

If the employer is certified by the Danish Agency for International Recruitment and Integration, the employee can apply for a work permit through a fast-track scheme (the "Fast-Track Scheme") with the assistance of the employer. The Fast-Track Scheme entails a fast and easy process for employees, who will perform work for an employer in Denmark, to obtain a work permit.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

No, there is no such category in Denmark.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Temporary agency employees, who are posted temporarily to perform work in Denmark, are subject to the Danish Temporary Workers Right Act during the period when the employee is performing work in Denmark. However, the temporary agency employee must apply for a work permit before commencing work in Denmark. Exchange students, au pairs, internships and any other person with non-economic purposes are not subject to this act.

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7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Please see questions 2.4 and 5.1.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No. There is no specific immigration legislation regarding inter-company transfers within international groups of companies in Denmark.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable in Denmark.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable in Denmark.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable in Denmark.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable in Denmark.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable in Denmark.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

This is not applicable in Denmark.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

This is not applicable in Denmark.

8.9 What are the main government fees associated with this type of visa?

This is not applicable in Denmark.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

An employee from the EU/EEA or a Nordic country can reside in Denmark under the right of free movement of persons and services, but must apply for a registration certificate from the State Administration. Citizens from outside the EU/EEA must apply for a work permit before commencing work in Denmark.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There is no legislation regarding labour market testing in Denmark.

9.3 Are there any exemptions to carrying out a resident labour market test?

There are no applicable exemptions.

9.4 What is the process for employers obtaining a work permit for a new hire?

The process for obtaining a work permit is to:

- have a written employment agreement with an employer;
- apply for a residence and work permit in Denmark;
- register with the Civil Registration System to receive a health insurance card from the authorities; and
- register at the tax authority and open a bank account.

9.5 What is the process for the employee to obtain a visa as a new hire?

Please see questions 2.1, 2.3 and 2.4.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The processing time can last between 15–90 days once all documents have been submitted. However, the processing time may differ depending on how busy the authorities are.

9.7 How long are initial visas for new hires granted for and can they be extended?

A Short-Term Visa is given for a period of 90 days and a residence and work permit is given for the period of the employment. If the employment is longer than four years, the employee must, however, apply for an extension of the work permit.

9.8 Is labour market testing required when the employee extends their residence?

The employee needs to meet the same conditions as those when applying in the first place.

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9.9 Can employees coming as new hires apply for permanent residence?

Employees within the EU/EEA are subject to the EU regulations on the right of free movement and have the right to reside in Denmark under the EU Executive Order on Residence. The employees have to contact the State Administration, if the employees want to obtain a residence permit under the EU regulations. For an employee outside the EU/EEA, the employee can apply for a residence permit, if the employee can demonstrate strong ties to Denmark, including, but not limited to, if the employee is a former Danish citizen or the employee's parents are natural-born Danish citizens.

9.10 What are the main government fees associated with this type of visa?

The Executive Order on Payment for Services provided by the Danish Foreign Service is revised annually by the 1 January. The fee is DKK 3,025 (2019 level) for the residence and work permit under the Positive List.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreign employees are usually granted a residence and work permit for four years. If the employment agreement is extended or if the duration of the employment agreement is longer than four years, the employee must apply for an extension of residence and work permit before the permit expires. A residence and work permit expires 14 days after the employment agreement expires.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Employees from within the EU/EEA may enter Denmark freely and remain in Denmark without registering. However, if the employee expects to stay in Denmark for more than three months, the employee must apply for an EU-residence document.

Employees from outside the EU/EEA must apply for a residence and work permit before commencing work in Denmark and have to register with municipal authorities after the application for a residence and work permit has been approved.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

EU/EEA citizens staying in Denmark for the purpose of obtaining employment in Denmark can bring family members (spouse or cohabitant) for a period of six months, or for as long as the employee can document that he/she is applying for employment in Denmark and has a genuine opportunity of obtaining an employment. Further, the EU/EEA citizen must also be capable of supporting the family member(s).

Generally, EU/EEA citizens applying for family reunification are required to genuinely exercise the right of free movement in Denmark as either:

- an employee;
- a self-employed person;
- a retired employee;
- a student; or
- a self-supporting person.

The EU rules on the right of free movement does not apply to citizens outside the EU/EEA after which family members must apply for the residence and work permit through the Danish Immigration Service.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, unmarried and same-sex partners qualify as family members.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Family members, who are admitted as dependants, have access to the labour market, if they obtain a residence permit.

11.4 Do children have access to the labour market?

Children under the age of 15 years old do not have access to the labour market. For children between 15–18 years old, certain legal requirements have to be fulfilled before they have access to the Danish labour market.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The basic conditions for an employee to obtain permanent residence are:

- that the person must be 18 years or older;
- that the person must have had legal residence in Denmark for eight years or more;
- that the person has not been convicted of certain crimes;
- that the person has no overdue public debts;
- that the person has not received certain forms of social benefits;
- that the person has an accept of declaration of integration into Danish society;
- that the person has passed the Danish language test 2 or a Danish exam of an equivalent or higher level;
- that the person has been employed for at least three years and six months;
- that the person is currently employed at the time the Danish Immigration Service decides about the application for a permanent residence permit; and
- that the person has not worked deliberately against the establishment of identifying himself/herself.

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Furthermore, in order to qualify for a permanent residence permit, two of the following four supplementary requirements also need to be fulfilled. The supplementary requirements are:

- that the person has passed Danish language test 3;
- that the person has been employed for at least four years;
- that the person has passed the active citizen exam or has displayed active citizenship; and/or
- that the person has an annual average income above DKK 286,526.16 (2019 level).

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Provided the employee meets the requirements in question 12.1, the employee can transfer a Short-Term Visa to a work permit.

13 Bars to Admission

13.1 What are the main bars to admission for work?

A convicted employee is considered as "unsuitable" by the Danish Immigration Services and cannot qualify for a permanent residence and work permit.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

If the sentence is less than six months' incarceration, or if the sentence was suspended, the employee will temporarily be ineligible for a permanent residence permit. However, if the employee has a conviction of more than six months' incarceration, the employee will be permanently ineligible for a permanent residence permit.

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Finland

Borenius Attorneys Ltd

Jani Syrjänen

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Aliens Act (301/2004) is the main source of legislation that regulates immigration in Finland. In addition, the Act on the Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer (908/2017) regulates third-country nationals' intra-company transfers. The Act on the Conditions of Entry and Residence of Third-Country Nationals in the Framework of Seasonal Work (907/2017) regulates conditions for third-country nationals coming to Finland to do seasonal work.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Residence permits are processed by the Finnish Immigration Service in Finland, which operates under the Ministry of Interior. The consideration of the workforce that is related to the granting of residence permits for employed persons is performed by the Finnish Employment and Economic Development Offices (the "TE-Offices"). The TE-Offices make a positive or negative partial decision and submits it to the Finnish Immigration Service. The Ministry of Foreign Affairs is in charge of visas.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Finland is a member of the European Union where the free movement of workers and services as well as the freedom of establishment are fundamental principles as stated in the Treaty on the Functioning of the European Union.

In addition, Finland is a part of the Schengen area. Schengen member states have jointly agreed the rules concerning the movement of third-country nationals in their territories and decided which countries' citizens are required to present a visa.

Lastly, the Nordic Countries have agreed that their citizens can travel and stay freely in the Nordic countries without passports or other travel documents.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

In principle, a residence permit is always required for people coming to perform work or work-related training in Finland. Exceptions are EU citizens and nationals of Norway, Iceland, Liechtenstein, and Switzerland who do not need a residence permit for an employed person to work in Finland. In addition, short business trips to Finland may be made without a residence permit. However, a visa may be required, depending on the country the business visitor is from.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

According to standard practice, a short business trip usually refers to a stay for business purposes of no longer than a couple of weeks. However, the definition of a short business trip is not defined by any law or authority and it is determined on a case-by-case basis.

2.3 What activities are business visitors able to undertake?

There are no specific activities that business visitors are allowed to undertake clarified by any law. Business visitors may, for example, attend business meetings, conferences or conventions, tour a company facility or receive and provide technical training. Other activities may qualify as business as well.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Foreign nationals have the right to gainful employment without a residence permit for a maximum of three months, if they:

- arrive in Finland on the basis of an invitation or agreement to work as interpreters, teachers, experts or umpires;
- arrive in Finland on the basis of an invitation or agreement to work as professional artists or athletes; or
- enter Finland as researchers on the basis of a hosting agreement under the Directive on researchers.

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In addition, a work permit is not required if a person arrives in Finland as a permanent employee of a company operating in another Member State of the EU/EEA to perform temporary contracting or subcontracting under the freedom to provide services, if he or she holds a permit entitling them to reside and work in that other State, and if the permit remains in force once the work is completed in Finland.

2.5 Can business visitors receive short-term training?

Short-term training might fall into the category of short business trips. However, this is determined on a case-by-case basis and depends on the nature of the short-term training.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The occupational health and safety authorities supervise that foreign nationals have the required work permits and that employers apply required labour legislation to foreign employees as well. The occupational health and safety authorities are required to report to the police without discretion if there is probable cause to suspect that an employer is guilty of unauthorised use of foreign labour or a violation of the Aliens Act.

3.2 What are the rules on the prevention of illegal working?

Both the Aliens Act and the Criminal Code of Finland include provisions that prevent illegal working.

Under the Aliens Act, if an employer deliberately or through negligence employs a foreigner who does not have the right to gainful employment or deliberately or through gross negligence gives false or misleading information to the authorities on the foreigner's terms of employment or duties and the requirements of these duties, he or she shall be sentenced and fined for employer's violation of the Aliens Act.

In addition, under the Criminal Code of Finland, if an employer hires or employs a foreigner not in possession of the residence work permit or otherwise a permit to work in Finland, he or she shall be sentenced for unauthorised use of foreign labour.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The financial sanction imposed by the Finnish Immigration Service for the violation of the Aliens Act is from EUR 1,000 to EUR 30,000. In addition, an employer on whom a financial sanction is imposed may be liable to compensate for the costs of returning employees, particularly if the employer has through his own actions influenced the employees' entry or residence.

The sanction imposed on an employer for unauthorised use of foreign labour under the Criminal Code of Finland is either a fine or imprisonment for, at most, one year.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

The TE-Office provides lists of all currently vacant job positions. English job advertisements can be found by using the word search field. In addition, the European Job Mobility Portal EURES maintained by the European Commission provides concentrated information on vacancies and the labour market situation in Finland.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Firstly, the employer must ensure that a foreign national entering into an employer's service and working under the employer's employment has the required residence permit or that the foreign national does not need a residence permit.

In addition, if the employer employs a person other than an EU citizen, the employer shall submit without delay a statement of the conditions of the foreigner's employment to the TE-Office. The employer must submit to the TE-Office a copy of the worker's passport or residence permit card and a statement, in which the employer ensures that the foreign national's principal terms of work are in accordance with the applicable laws, and inform the employee representative at the workplace of the foreign national's name and the possible applicable collective agreement.

Lastly, the employer must keep all the information of the foreign nationals, whom the employer employs and the grounds for their right to work, easily available in the workplace for possible inspections of the occupational health and safety authorities, if necessary. The information must be stored for four years on the termination of the foreign national's employment.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Employers do not have such requirements.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No such obligation exists.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Finnish occupational and safety authorities may do surprise inspections on employers who employ a large number of foreign nationals. In addition, if the authorities have received information that any of these work permit issues are not in order, they may conduct inspections.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No such lists exist at the moment.

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4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Finland in general needs business immigration because Finnish labour markets suffer from labour shortage. The Finnish population is aging and the birth rate does not suffice in increasing the population. One solution for the labour shortage is business immigration. IT specialists, doctors and supervisors in the construction field are especially needed in Finland.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no such quotas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no such restrictions.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

There is no general requirement regarding employees' language proficiency.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Such employees are not required to undergo medical examinations before being admitted.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employers are required to insure all employees in case of occupational accidents, including foreign nationals who work in their employment. In addition, Finnish employers are obligated to offer occupational healthcare for employees at the employer's costs. Thus, foreign nationals are also entitled to use occupational health care services.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

The work permit may only give the right to work for a certain employer or in a certain field of work. If the work permit was granted for a certain field of work, foreign nationals are usually permitted to change jobs freely if the work permit has not expired and the new job is in the same field. If the work permit was granted for a specific task, foreign nationals are free to perform this task in the service of another employer. Thus, if the work permit was granted for a certain field of work and the client works in that field, secondment is possible with the same work permit. However, if the work permit only allows foreign nationals to work for a certain employer and the employee wishes to change the employer, a new work permit needs to be applied for.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

In addition to a residence permit, foreign nationals may be entitled to get a specialist work permit. A specialist work permit can be applied if the applicant's monthly salary is at least approximately EUR 3,000, the applicant holds a university degree and the applicant is working demanding tasks as an expert.

A residence permit for an entrepreneur can also be applied based on self-employment.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There is no special category that would entail easier access to the Finnish labour market based on investing in Finland.

However, residence permits may be applied if the applicant intends to come to Finland to become an entrepreneur. Before a permit can be issued, entrepreneurs usually need to enter their business in the Trade Register maintained by the Finnish Patent and Registration Office. A residence permit may be granted if the entrepreneur works in the company in Finland. Only owning a company is not enough for obtaining a residence permit.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Residence permits can be applied based on internships if the internship is included in an intergovernmental agreement or in an exchange programme run by non-governmental organisations or is voluntary work. In addition, a residence permit based on an internship can be applied if a person is studying the Finnish or Swedish language at a university abroad, or is studying at a university abroad and the internship is in a field matching the studies or the qualifications of the applicant. A residence permit for an internship is issued as a temporary residence permit for a maximum period of 18 months.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

From the beginning of 2018, people coming to Finland to do seasonal work **must** apply for the appropriate permit. Seasonal work refers to work in agriculture and tourism that is done at certain times of the year. The types of seasonal work for which a permit is required include forestry, crop farming and festival work. The length of seasonal work can be nine months at most.

Forest berry pickers do not need to apply for a permit if they will work for less than three months.

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8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

The European Intra Corporate Transfer Directive (the "ICT Directive") outlines the conditions of entry and residence for third-country nationals transferring to the EU under an intra-company transfer. Finland has implemented the ICT Directive with a national act, which entered into force on 1 January 2018. Thus, managers, specialists and trainee employees can apply for an ICT residence permit that can be obtained for the duration of the transfer. The ICT residence permit is granted as soon as possible but no later than 90 days from the date on which the complete application was submitted.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

Evidence must be provided that the receiving company is part of the group of companies. The employer must apply Finnish labour law regulations to intra-company transfer employees.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Either the employer or the foreign national must provide the evidence that the receiving company and the foreign company belong in the same group of companies and that the foreign national has been employed by the same company or group of companies for at least three months without interruption.

In addition, application-specific attachments must be provided, such as the employment contract and the assignment letter which include the information regarding the length of the transfer, information on salary and principal terms of work, evidence that the foreign national may return to the posting company after the transfer, evidence that the work is intended for an executive, a specialist or a trainee employee.

Information must be provided to the Finnish Immigration Service.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

An intra-company group employee must apply for the residence permit with an application through the Finnish Immigration Services. Firstly, the employee must make sure that he or she fills all the requirements, has the required attachments (such as a valid passport, colour copies of a passport), some of which need to be translated into Finnish and pay an application fee. The employee needs to have a document showing that he or she is legally staying in the country where the application is submitted. If the employee is abroad, he or she must visit a Finnish embassy or consulate. If the employee is already in Finland, he or she must book an appointment at a service point of the Finnish Immigration Service.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

If a visa is required, the visa must be applied for from the nearest Finnish mission or the visa centre in the applicant's home country. The person must submit a visa application at a mission or visa centre in person.

8.6 How long does the process of obtaining the work permit and initial visa take?

The processing time of obtaining a ICT residence permit is 90 days. The visa application must be submitted no later than 15 days before travel. The processing time depends on the destination country as in some cases, further clarifications might be needed.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The ICT residence permit is granted as a continuous residence permit and for the duration of the transfer. The maximum duration of the transfer is, however, three years (one year in case of employee trainees).

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

The intra-company transfer employees may apply for a permanent residence if the required conditions are fulfilled. However, such employees are usually required to apply for an extended permit, after which a permanent residence permit may come into question.

8.9 What are the main government fees associated with this type of visa?

The paper application fee is EUR 550 and the electronic application fee is EUR 350.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Generally, a residence permit based on employment is required when a non-EU/EEA citizen wishes to reside and work in Finland. If the foreigner fulfils certain conditions as described in question 5.1, a specialist residence permit may be applied for.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The TE-Office assess whether a suitable work force for the open position could be found in EU/EEA within a reasonable time. If the authorities assess that there are other qualified persons in EU/EEA, there is no basis to grant the work permit.

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9.3 Are there any exemptions to carrying out a resident labour market test?

As of 1 June 2019, labour market tests will no longer apply to holders of a residence permit for an employed person who has worked in Finland for at least one year and who is transferring to another sector.

9.4 What is the process for employers obtaining a work permit for a new hire?

Employers have only certain obligations in the application process as employees are responsible for applying for residence permits. Employers must attach to an application for a residence permit the following information: written information on the principal terms of work; an assurance that the terms comply with the relevant collective agreement, or, if no collective agreement is applicable, that the terms correspond to those applied to employees doing similar work; and upon request by the TE-Office, a statement confirming that the employer has met and will meet the obligations as an employer.

9.5 What is the process for the employee to obtain a visa as a new hire?

A visa must be applied for from the nearest Finnish mission or the visa centre in the applicant's home country. The person must submit a visa application at a mission or visa centre in person.

A visa is the entry permit for a short, temporary visit of a maximum of 90 days and the residence permit is the entry permit for more permanent residence in Finland. However, when determining whether a person should apply for a visa or a residence permit, it is not only the duration of the stay which is decisive but also the purpose of the visit which must be taken into consideration. Generally, a visa allows short-term business travel whereas a non-EU/EEA citizen needs a residence permit to perform any actual work in Finland.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The application process may take up to four months. The visa application must be submitted no later than 15 days before travel and is processed relatively faster than work permits.

9.7 How long are initial visas for new hires granted for and can they be extended?

Visas are granted for a short, temporary visit of a maximum of 90 days.

Local police authorities can extend the visa's period of validity in Finland based on a *force majeure* or humanitarian reason. Examples of such reasons include last-minute cancellation of the flight or an acute illness. Extending the visa's period of validity may also be possible for serious personal reasons, such as the severe sudden illness of an immediate family member who has a permanent residence in Finland.

In addition, after the first work permit has expired or is about to expire, an extended permit can be applied for. This is clarified in question 10.1.

9.8 Is labour market testing required when the employee extends their residence?

The TE-Offices make the assessment as described in question 9.2.

9.9 Can employees coming as new hires apply for permanent residence?

Employees coming as new hires may apply for permanent residence. First, an extended permit must be applied which is granted for up to four years. After this, a permanent residence permit can be granted if the person has lived in Finland continuously for four years with a continuous residence permit and the requirements for granting a continuous residence permit still exist.

9.10 What are the main government fees associated with this type of visa?

The fee for the work permit is EUR 600 (paper application) or EUR 400 (electronic application). Residence permit applications for persons employed as specialists costs EUR 550 (paper application) or EUR 350 (electronic application). The visa fee is EUR 60.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The first residence permit is normally granted for one year. After the first work permit has expired or is about to expire, an extended permit can be applied for. If the same requirements are still met when the previous residence permit was granted, the Finnish Immigration Service will grant an extended permit. Considering that the extension application is applied before the validity of the current permit has expired, the employee may continue to work while the extension application is being processed. An extended permit is granted for up to four years.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Nordic citizens are required to register their residence at a Local Register Office. Citizens of the EU/EEA must register their residence at the Finnish Immigration Service if their stay in Finland lasts for longer than three months. Because citizens of other countries are required to apply for work permits, no registration is required after their arrival. However, if the stay in Finland lasts for at least a year, a notification of move at the Local Register Office is required.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Family members of a person who has been granted a work permit may apply for a residence permit. Family members are spouses, registered partners, cohabiting partners and guardians of a child under 18 years old. In addition, children are qualified as dependants.

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11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, cohabiting partners and same-sex partners qualify as family members.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

If a residence permit has been granted on the basis of family ties, the family member's right to work and study in Finland is not limited in any way.

11.4 Do children have access to the labour market?

Yes. In principle, children who are 15 years old or older have access to the labour market. However, there are some exemptions concerning, for example, short-term working during the holiday season. In addition, the Young Workers' Act sets some requirements on working conditions and regulations, which shall be applied to children under 18 years old.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

A person may get a permanent residence permit if they have lived in Finland continuously for four years with a continuous residence permit. The person must also fulfil general requirements (such as they are not a danger to public health, etc.).

In addition, an EU citizen has the right of permanent residence in Finland after he or she has legally resided in Finland for an uninterrupted period of five years.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Switching is not possible. Permanent residence must always be applied for individually.

13 Bars to Admission

13.1 What are the main bars to admission for work?

If a person has been prescribed a prohibition of entry, he or she is a danger to public health or public order and security, or he or she is a danger to Finland's international relations, such matters are usually a hindrance to work permits.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

A permanent residence permit can be refused if a person has been found guilty of or if he or she is suspected of a crime which carries a sentence of imprisonment, if he or she has been found guilty of or is suspected of two or more crimes. However, such convictions might be a bar for obtaining work permits as well.

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BORENIUS

Borenius is one of the largest and most experienced law firms in Finland. Borenius provides services in all areas of law for corporate clients. Borenius' main office is located in Helsinki, in addition to other offices in Tampere (Finland), St. Petersburg and New York.

Borenius has one of the largest and most experienced employment law teams in Finland, with resources and recognised experience in handling the most complex domestic and international cases in all areas of employment law. Borenius' employment law team is known for its top class talents. Borenius' employment law team's expertise, long-term commitment and ability to find creative solutions is acknowledged by leading ranking institutions, such as *Chambers Europe*, as one of the best in Finland.

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France

Petrel & Associes

Pascal Petrel

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The most relevant sources are:

- The Code of Entry and Stay of Foreigners and Rights of Refuge (CESEDA): it integrates the main legislative and regulatory provisions relating to foreigners in France, namely: entry into the territory (entry requirements and holding area) – residence (residence permit, residence conditions, voluntary return assistance) – family reunification – expulsion measures (administrative detention, deportation, expulsion) – right to asylum.
- The Labour Code: it provides the legislative and regulatory texts that are applicable in the employment law field and mostly applies to employees under private and public law contracts. The main provisions relate to individual working relations, collective relations, health of employees, work safety, employment and vocational training.
- The Civil Code: it integrates texts relating to the status of persons, property and relations between private parties. It integrates in particular rules that govern matters of nationality.

The laws integrated in these codes are supplemented by various circulars notes.

It should also be noted that France is a member state of the European Union (EU) and a signatory to the various regulations usually incorporated in the above-mentioned laws.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The authorities that administer the immigration system are:

- the Ministry of Foreign Affairs; and
- the Ministry of Interior,

which oversee visa issuance through their consulates. Additionally:

- The local labour authorities (DIRECCTE) administer work permit applications and carry out the verification of labour and immigration compliance.
- The French Office of Immigration and Integration (OFII): administers various steps of the immigration process. It works in liaison with DIRECCTE.
- The Prefecture: administers the applications for residence permits, renewal, change of status, etc.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

France is a Member State of the European Union (EU) and the European Economic Area (EEA). This affiliation grants immigration and employment benefits solely to Nationals of the Member States and their relatives. In application of the freedom of movement of workers and services, EU nationals do not need a permit or visa to work in France. Only a valid document justifying the citizenship status of one of the EU, EEA, Switzerland, Monaco, Andorra or Saint Martin states is required.

France is also part of the Schengen Agreement, creating a common area with a single external border and a common visa policy.

Finally, outside the EU, France has signed 13 specific agreements with emigration countries in order to conduct, within the framework of a partnership, a coherent management of migratory flows adapted to the needs of the two signatory countries, and to the migration profiles of the partner country. For instance, there is the agreement with Russia of November 27, 2009 on professional migration, the agreement with Cape Verde of November 24, 2008 on the concerted management of migratory flows, and the agreement with Serbia of December 2, 2009 on the mobility of young people and professionals.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Nationals of European countries belonging to the Schengen Area are visa-exempt.

Nationals of other countries should obtain a "short stay" visa, unless they are exempted on bilateral agreements between France or any other European country and their country of origin.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period of stay is 90 days in any 180-day reference period. This implies that, over a period of 180 days, it is possible to obtain a single entry of maximum 90 days or multiple entry of a total period of maximum 90 days.

This maximum period includes any short stay in any Schengen country and the day of entry and exit from the area.

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2.3 What activities are business visitors able to undertake?

The activities of business visitors are limited to a range of activities which do not produce immediate economic value and are not billable activities, nor part of a product or service purchased by a client.

This may include the following activities:

- attending business meetings, discussions and negotiations;
- making sales calls to potential clients as long as the business visitor acts on behalf of a commercial entity located outside of France; and
- attending seminars and conferences.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

The general rule is that any gainful productive work or provision of services is not allowed for business visitors.

However, a short-term permit exemption system applies for a stay in France of less than or equal to three months to Nationals of countries outside the Schengen area, for specific listed salaried activities in the following occupational fields:

- sporting, cultural, artistic and scientific events;
- film, audiovisual, entertainment and photographic production and distribution when the employee is an entertainer, artist, or technical personnel directly attached to the production/making;
- modelling and artistic posing;
- domestic workers during their employer's stay in France; and
- educational activities performed on an occasional basis by invited professors.

This work permit exemption applies to employees posted to France as auditors and experts in the following professional fields:

- information technology (IT);
- management;
- finance;
- insurance;
- architecture; and
- engineering.

The work permit exemption applies when the employee is posted in France for a short-stay period in the following scenarios:

- within the framework of a service contract drawn up between a foreign employer and the beneficiary of the service established or operating in France;
- for the posting of employees between establishments belonging to the same company group or to companies of the same group; or
- on behalf of an employer without any contractor beneficiary in France.

Employees in these categories who do not qualify for a visa waiver will need to apply for a short-stay visa accompanied by documents evidencing their eligibility to the work permit exemption.

2.5 Can business visitors receive short-term training?

Business visitors may be granted short-term training. They have to hold a training agreement approved by the French authorities, either by a notification to the DIRECCTE for the Nationals under a waiver visa, or by the French consulate to which the short-stay visa application was made.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The DIRECCTE and the local authorities (judicial police, tax agents, URSSAF, etc.) carry out inspections to verify labour and immigration compliance with regulations, including regulations prohibiting illegal work and the employment of unauthorized foreign workers.

3.2 What are the rules on the prevention of illegal working?

Various authorities regularly share the information they have. Moreover, the number of unannounced inspections carried out earnestly call on employers to comply with the regulations, considering the hefty financial penalties they face for non-compliance.

Although they are not immigration control authorities as such, the agencies responsible for collecting social security contributions (URSSAF) can also carry out unannounced inspections to verify the absence of concealed working. They have the authority to inspect immigration documents in the presence of foreign workers.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

There are various penalties that are covered by the Criminal Code.

1. Criminal sanctions applicable to management of corporate entities:
   - imprisonment of up to five years (or up to 10 years if the offence is committed by an organised group of persons); and
   - a fine of up to EUR 15,000 per illegally employed worker (or up to EUR 100,000 if the offence is committed by an organised group of persons).
2. Criminal sanctions applicable to the corporate entity itself:
   - a fine of up to EUR 75,000 per worker illegally employed;
   - closure, either permanent or for a maximum duration of five years, of one or more entities used to commit the offence;
   - closing down several or all of the company's branches, or offices used to commit the offence;
   - prohibition from pursuing the line of business that gave rise to the violations;
   - prohibition, either permanent or for a maximum duration of five years, from exercising one or more professional or social activities;
   - placement under judicial surveillance for a duration of up to five years;
   - exclusion from government contracts for up to five years;
   - confiscation of assets used in or resulting from commission of the offence;

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- publication of the conviction in the press or on the internet; or
- prohibition, for a period of five years, from receiving public funding.

3. Administrative sanctions:
   - contribution of an amount 5,000 times the French gross hourly reference rate for each illegal employee (increased to 15,000 times of this same minimum in the case of a second offence). This contribution may be reduced to 1,000 times if the employer seeks to redress it; or
   - if either the Third-Country Employer or the host entity or the Third-Country Employee has been non-compliant with the rules on employment or social security, the application for a work permit can be rejected.
4. Then, the civil sanctions:
   - cancellation of exemptions from social contributions; or
   - special contributions.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

An employer who wishes to hire foreign nationals has two options, depending on the worker's place of residence.

If the foreign national resides in France, then the employer must check, at least two days prior to the hiring date, the existence and the validity of the work permit with the competent authorities (except for EU, EEA and Switzerland nationals).

If the foreign national does not reside in France, then the employer must first submit a job offer to a national body. Then, only in the absence of a satisfactory candidate at the local level (French), he can then submit a request to the DIRECCTE to hire a foreign worker.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

French employers have to comply with the same duties as with the hiring of national workers. They also have an ongoing duty to ensure that the foreign national has valid work and stay authorisations.

Even when foreign nationals are working on assignment (no local contract), there is a requirement to comply with the provisions.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

French provisions include a commitment to train employees through several schemes, to ensure adaptation to their workplace. However, this is a general commitment that is not specifically related to justifying the hiring of foreign nationals.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Insofar as mentioned above, the general commitment to the training of employees is not specifically related to the employment of foreign nationals, the governmental taxes they must pay to participate in the financing of vocational training is contributed for all their employees, whether foreign nationals or nationals.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, French authorities do indeed undertake such routine inspections and checks. These may also include checks on the company documents, as well as on the employees who are present. The DIRECCTE and the bodies responsible for collecting social security contributions (URSSAF) operate in the form of routine or unannounced checks and may interview employers and workers. These two authorities usually work together in this area.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, there is no specific list for skilled occupations.

On the other hand, there are regulated occupations that cannot be exercised by foreign nationals. Indeed, their exercise is conditioned by the possession of the French nationality or a French diploma: pharmacist, lawyer (except by agreement of reciprocity), tobacconist/bar owner, some civil service jobs, as well as some medical professions. Some flexible measures are however applied. There are also exemptions for EU or EEA nationals.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, the French authorities draw up a list of scarce jobs and which can, in fact, be directly offered to foreign nationals (without having to publish a job offer on the local labour market in advance).

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, there are no immigration quotas in France. That being the case, this is an issue that is starting to be discussed and debated by French political parties. Currently, the only quotas applied have been prescribed at EU level and they target refugee migrants.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, the French provisions do not set any specific restriction relating to the maximum percentage of foreign workers that an employer can recruit.

However, French authorities will remain attentive to the high and increasing proportion of foreign workers: they see to the strict compliance of the provisions applicable in French labour law.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Citizens from countries outside the EU, the EEA and Switzerland who wish to settle in France for a long period of time have to sign an integration contract (CIR) with French authorities, whereby they

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agree to respect the principles and values of French society and to learn the French language (with the help of training).

There are specific exemptions related to status and/or length of stay (visitors, students, trainees, etc.).

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Foreign workers are required to undergo a medical examination with OFII before being admitted to stay in France, except if eligible to an exemption applicable to specific categories.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign employees placed on a French contract are registered with the public social security scheme and thus benefit from national medical coverage.

On the other hand, employees who are seconded to France are covered by:

- the social security scheme of their home country if they are European nationals;
- the French social security scheme or the home country scheme if there is an agreement between France and the home country relating to social security; or
- the social security scheme of the home country in the absence of an agreement.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

In order to second a foreign employee to a client site, the foreign home employer must ensure that the employee gets an appropriate work permit corresponding to the category of international service agreements.

Foreign nationals regularly hired in France are subject to French labour law rules. Thus, they can be exempted.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

The French immigration provisions include specific immigration status for highly skilled workers, such as the Talent Passport marked "highly skilled profiles" and visas and residence permits for these categories. They are often accompanied by a work permit waiver and a facilitated immigration process.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

French law provides for specific immigration schemes dedicated to jobs based on investment, new business or innovation in France, to attract and help investors expand their business in France.

1. **The talent passport marked "business investor"** for foreign nationals making an economic investment in France, as follows:
   - investing at least EUR 300,000 in fixed tangible or intangible assets;
   - investing either directly or via a company in which the applicant holds at least 30% shareholding, or personally owns at least 10% of the company in which the applicant from which the investment is being made; or
   - creating or protecting jobs within four years of the investment in France.
2. **The Talent Passport marked "new business"** for foreign nationals planning to set up a new business in France, and who meet the following conditions:
   - qualifications corresponding to a Master's degree or equivalent, or at least five years professional experience of a comparable level;
   - proof of a real and serious plan to form an economically viable business in France;
   - invest at least EUR 30,000 in the planned business; and
   - proof of sufficient financial resources during the stay, of at least the statutory national minimum wage (EUR 18,306 annually in 2019).
3. **The Talent Passport marked "innovative business project"** for foreign nationals with an innovative business project, which they want to develop in France and which has been recognised by French authorities and meets the following conditions:
   - proof of a document establishing the innovative nature of the project;
   - proof of recognition of the project by a French government body; and
   - proof of sufficient financial resources during the stay, of at least the statutory national minimum wage (EUR 18,254.60 annually in 2019).

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There is a specific immigration category for business visitors staying in France for training or internships (see question 2.5).

There is also a specific category of residence permit marked "ICT trainee" for foreign nationals allowing them to attend, in France, a professional training programme or to do an internship in a company or in a public hospital. Conditions of resources are prescribed and it is necessary to be in possession of a long-stay visa equivalent to a residence permit (VLTS), marked "trainee".

Moreover, France has signed with other countries work-holiday or youth mobility agreements (see question 1.3).

Third-Country Nationals who hold a student residence permit in France are, except for Algerian nationals, allowed to work part-time (up to 964 hours per year) without a prior work permit approval. For the record, foreign students can study in France only if they have sufficient resources (EUR 615 per month in 2019).

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7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

As a general rule, there are no sector-specific temporary work permit categories.

However, a short-term work permit exemption system may apply for a stay of less than or equal to three months for Third-Country Nationals who are sent to France in specific occupational fields (see question 2.4).

In other cases, a prior work permit approval as well as a long-stay visa equivalent to a residence permit (VLTS) may be required of a foreign national wishing to work in France under a short-term work contract.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

In France, an inter-company transfer system is implemented pursuant to Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The French host company must be a parent, sister or a controlled subsidiary of the home company. The company should have the capacity to provide an official document evidencing this condition.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

There are two possible options for intra-company mobility, each one having its own requirements.

1. **The Talent Passport marked "*salarié on mission*"**, subject to the following conditions:
   - have an employment contract with the company wishing to transfer its employee to France as part of an intra-corporate transfer;
   - employee seniority within the Group for at least three months; and
   - proof of sufficient financial resources of at least 1.8 times more than the French minimum salary (EUR 32,858.28 per year in 2019).
2. **The "ICT seconded employee permit"** is subject to the following conditions:
   - have an employment contract with the company wishing to transfer its employee to France as part of an intra-corporate transfer;
   - employee seniority within the Group for at least three months;
   - secondment of employee for a senior management position or contribution of specific expertise;
   - proof of sufficient financial resources at least equivalent to the national minimum wage (EUR 1,522 per month in 2019); and
   - proof that the assignment must be for up to three years maximum.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Foreign nationals who come to work in France under the conditions previously presented are not subject to obtaining a prior work permit authorisation. They must simply obtain the valid residence permit and will remain compliant with the required conditions.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Whether in the context of the Talent Passport "*salarié en mission*" or under the "ICT second employee" permit, the foreign employee must file a visa application at the French consulate of his home country of origin with all the required documentation.

If a residence permit is required, the foreign employee must, upon his arrival in France, report to the local authority and present his visa to obtain his card.

8.6 How long does the process of obtaining the work permit and initial visa take?

Whether in the context of the Talent Passport "*salarié en mission*" or under the "ICT second employee" permit, the visa will be processed within four months, maximum.

If the request is accepted, it shall be addressed in an official letter within four months.

However, the refusal can either be addressed by means of an official letter or be implicit (i.e. no reply given within the four-month period).

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

1. **In the context of the Talent Passport "*salarié on mission*":**
   - if the duration of the stay is between three months and one year, the employee can carry a long-stay visa equivalent to a residence permit (VLTS) marked "talent passport";
   - if the length of stay exceeds one year, a residence permit must be obtained (see question 8.5); and
   - the permit is valid for a maximum of four years and may be renewed.
2. **In the context of the "ICT seconded employee" permit:**
   - if the duration of the stay is between three months and a year, the employee can carry a long-stay visa equivalent to a residence permit (VLTS) marked "ICT seconded employee";
   - if the length of stay exceeds one year, a residence permit must be obtained (see question 8.5); and
   - the permit is valid for a maximum of three years and not renewable (since March 1, 2019).

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8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, foreign workers who come to France under these two categories of visa cannot apply for long-term residence or permanent resident status. Their stay is necessarily temporary.

8.9 What are the main government fees associated with this type of visa?

Whether in the context of the Talent Passport "*salarié en mission*" or under the "ICT seconded employee", visa fees, prefecture and OFII are applied: in 2019, the foreign national shall pay a fee of EUR 269 in taxes (EUR 250) and stamp duties (EUR 19).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category for employers intending to hire a Third-Country National is the salaried permit through to the standard introduction process.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The French labour market is assessed to verify that there is a "shortage" of workers among residents, except for the category "Passport Talent". As explained in question 4.1, this involves publishing a job offer at the national level. Only in the absence of a satisfactory national candidate shall the hiring of a foreign national be authorised.

9.3 Are there any exemptions to carrying out a resident labour market test?

French authorities have a regularly updated list of highly skilled "scarce" jobs based on sector of activity and geographical area. For any job on this list, the hiring of Third-Country Nationals does not require a labour market study.

9.4 What is the process for employers obtaining a work permit for a new hire?

The employer will first conduct a market study proving that no resident applicants are available for the position. Then, he will submit to the DIRECCTE the application of the employee of a Third-Country Nation, accompanied by the study previously made (see questions 4.1 and 9.2).

9.5 What is the process for the employee to obtain a visa as a new hire?

It is the employer who submits the prior authorisation to work with the DIRECCTE. If the latter approves it, it transmits it to the OFII which will itself transmit this approved application to the French consulate of the home country of the foreign worker. This process can take up to two months.

If the application is approved, the foreign national must then file a visa application at the French consulate of his home country of origin with all the required documentation. Upon arrival in France, he is to appear in person:

- either at the OFII if a long-stay visa equivalent to a residence permit (VLTS) is required; or
- at the prefecture (local authority) of his place of residence if a residence permit is required.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

There is a difference between obtaining a visa (short or long) and obtaining a work permit.

For a short-stay visa, it takes about 15 days.

For a long-stay visa, the waiting period varies according to the nationality, the documents in the file and the reasons for the application.

The time for obtaining a work permit authorisation is two months. If no answer is given after this period, the application is considered rejected.

9.7 How long are initial visas for new hires granted for and can they be extended?

The initial visa has a validity period of 90 days from its issuance. In addition, the employee must apply to the prefecture for a residence permit.

Renewal is subject to the discretion of the authorities. To renew the residence permit, the foreign national must submit an application within two months prior to the expiry date. His application must be accompanied by the same documents he filed on his first application, as well as his expiring permit.

If the application is approved, the residence permit will be renewed for four years.

9.8 Is labour market testing required when the employee extends their residence?

A new study of the labour market is not necessary in the event that the foreign worker extends their residence. A study is carried out only in cases where the foreign worker changes employer/assignment.

9.9 Can employees coming as new hires apply for permanent residence?

The permanent residence permit is issued with renewal of a residence permit or a long-term EU residence permit of 10 years.

This permit is systematically offered if the foreign worker has already held two residence permits consecutively.

9.10 What are the main government fees associated with this type of visa?

Visa, prefecture and OFII fees apply: in 2019, the foreign national shall pay a fee of EUR 269 in taxes (EUR 250) and stamp duties (EUR 19).

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When submitting a renewal application, the foreign national will have to pay a fee of EUR 269 for taxes (EUR 250) and stamp duty (EUR 19). He shall also pay a fee of EUR 16 if the expired residence permit is not presented.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The nature of stay must not be diverted and must comply with the laws and regulations of the host country.

The nature and period of stay must comply with the conditions that allowed the granting of the permit originally.

Any change of status must be authorised by French authorities.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, the holders of a work permit must apply for a residence permit to the OFII or the prefecture for validation of their visa and/or the obtaining of their residence permit, depending on their category (see questions 8.5, 9.5 and 9.7).

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A foreign national working regularly in France can bring his family to France for the purposes of family reunification. In this context, the "accompanying family" is made up of minor children and the spouse. These persons qualify as dependents of the foreign national.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The partners must be married to qualify as family members. Moreover, sex does not matter since same-sex marriage is recognised and permitted in France.

On the other hand, family reunion is not open to people united by a civil partnership PACS.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

The spouse does not necessarily have access to the French labour market. If they wish to work in France, they must be holders of a work permit authorisation. Nevertheless, since they will already reside in France, the employer shall not have to carry out a study of the labour market (see question 4.1).

11.4 Do children have access to the labour market?

Children do not have access to the labour market unless they are of age and, just like the spouses, they are required to obtain prior authorisation for a work permit.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The status of permanent resident is only granted under specific conditions.

The status of permanent resident is granted to the holder of a 10-year residence permit upon expiry and for which renewal is requested.

Exceptionally, permanent resident status may be granted to an individual who turns 60, or a holder of two consecutive resident permits.

For permanent residence, you must meet the requirements to hold a residence permit (*) and not pose a threat to public order.

(*) To be integrated into French society, which is assessed particularly by the compliance with principles of the French Republic and knowledge of the French language.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

It is quite possible to switch from a temporary work visa to a permanent work visa. Nevertheless, such a decision is at the discretion of the French authorities who are free to oppose it.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The two main bars to the hiring of foreign workers lie in the assessment of the labour market, indicating the absence of satisfactory national candidates and in the lists of professions reserved for French nationals. Also, various limitations reside in the conditions that foreign nationals must meet to obtain a work permit and/or a residence permit.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Also in response to the first question, criminal convictions can lead to the rejection of a work permit or a visa and constitute a bar to the labour market. The file is reviewed and such a decision will be taken if the file reflects a behaviour that presents a threat to national security or public order.

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Pascal Petrel began his professional activities in September 1986 after completing his post-graduate studies at the University of LYON III (Master in Corporate Law and Tax, Diploma in Corporate Legal Counsel).

He began his career as a Legal Adviser at Barthélémy & Associés, a law firm specialised in Social Law, and six years later he became one of the Associates as the youngest Partner in the law firm.

He is now registered as a lawyer at both the Paris Bar and the Israeli Bar.

Thanks to his expertise in the professional branches, he has also been advising various branches and employers' organisations for many years in order to put his expertise in collective bargaining at their service.

Pascal Petrel has published numerous articles in legal reviews and in the professional economic press and regularly leads training sessions, in particular regarding corporate developments, both legislative and jurisprudential.

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Petrel and Associates is a law firm specialising in Labour Security Law in Lyon, Paris and Tel Aviv and currently employs 10 people.

Petrel and Associates assists companies of all sizes and from all sectors in order to solve the various problems relating to the social management of companies in a safe and pragmatic manner.

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Germany

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Dr. Gunther Mävers

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The key immigration law in Germany is the German Residence Act (*Aufenthaltsgesetz*), which regulates the granting of residence titles to foreign nationals and the German Citizenship Act (*Staatsangehörigkeitsgesetz*). Furthermore, the Employment Regulation (*Beschäftigungsverordnung*) sets out the conditions for the granting of residence titles for the purpose of employment (see below for further details). Finally, both the Federal Ministry of Internal Affairs (*Bundesministerium des Inneren*) and the Federal Labour Office (*Bundesagentur für Arbeit*) have issued detailed instructions on how to apply the aforementioned laws and regulations.

Moreover, since Germany is a Member State of the European Union (EU), the EU has the authority to create some laws that affect all member nations directly (e.g., the visa waiver programme that waives the need for a visa for citizens of most industrialised countries for a maximum stay of 90 days within any 180 days in any EU Member State), or the EU Visa Code (dealing with the conditions and procedures for issuing visas for short stays for a maximum of 90 days during any 180-day period, and transit through the Member States of the EU and the associated states applying the Schengen *acquis* in full). Furthermore, there are some (sort of "grey") areas where it cannot be said anymore whether its source is European or national law. This is due to the fact that only the EU Treaties and EU Regulations apply with immediate effect in the Member States, whereas EU directives have to be transposed into national law in order to implement a certain framework set by the EU directives. Therefore, for instance, the conditions for the grant of an EU Blue Card differ in detail from Member State to Member State.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

With regard to corporate immigration matters, the following authorities are involved: the main immigration authorities concerned with applications for visas and residence permits are the German Embassies (*Deutsche Botschaft*) and/or Consulate Generals (*Generalkonsulat*) abroad, as well as the local Foreigners Offices (*Ausländerbehörde*) and the local labour authorities (*Agenturen für Arbeit*), respectively the Centre for the Recruitment of Foreign and Expert Staff (*Zentralstelle Auslands- und Fachvermittlung* – ZAV) in Germany. The process is as follows: except for nationals of some privileged states, a residence title is to be obtained in the form of a visa prior to entering Germany. When filing the application, the responsible diplomatic representation abroad, e.g. the German Embassy or Consulate General, is solely responsible for the applicant, which nevertheless reconciles internally with the local Foreigners Office and the latter with the Federal Employment Office (*Bundesagentur für Arbeit*) and the Centre for the Recruitment of Foreign and Expert Staff (ZAV) in case their consent is required. Nevertheless, in order to facilitate proceedings further, a pre-approval application has been implemented effective 1 July 2013 and since then it is possible to file an application upfront with the labour authorities in order to find out whether consent is needed and – if so – will be granted, if that would help to expedite matters.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Germany is a member of the European Union (EU) and the European Economic Area (EEA), both of which facilitate the movement of their citizens between countries for employment purposes.

As far as entry and residence are concerned, there are in principle no limitations: according to Art. 18 of the EU Treaty, any EU national is entitled to enter any Member State and to remain there at will. In particular, they do not require visas. EU nationals, i.e. nationals of 28 Member States at present (Austria, Belgium, Denmark, Germany, Finland, France, Greece, Great Britain, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden plus the following accession states: Estonia; Latvia; Lithuania; Malta; Poland; Slovenia; the Czech Republic; Slovakia; Hungary; and the Republic of Cyprus (since 1 May 2004); Bulgaria and Romania (since 1 January 2007); and Croatia (since 1 July 2013)) – like the members of their family – therefore only have to keep their passports or any accepted alternative documents with them and produce such document on request to the responsible public officials. Further, they will have to keep their passport with them when crossing the border and show it to public officials if requested, *cf.* also the Freedom of Movement Act for EU Nationals (*Freizügigkeitsgesetz-EU*) for further details.

Like any German national, an EU national taking residence in Germany also has to comply with the obligation to register with the registry office (*Meldebehörde*) at the place of residence of the foreigner within the registration periods that are stipulated by the Federal Registration Act (*Bundesmeldegesetz*), e.g. two weeks after taking residency, by presenting a certificate from the landlord (*Wohnungsgeberbestätigung*). The registry office will submit any

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information and supporting documents to the responsible Foreigners Office. The latter may also request that the preconditions for the right to free movement of workers are proven as probable within an appropriate period of time. The information required to establish the probability can be submitted to the responsible registry office when registration is made and – if required – the original document besides a certified translation shall be presented.

EU citizens have the right of residence for longer than three months if they:

- are employees or self-employed persons working in the host Member State without any time limitations;
- are employees or self-employed persons that are seeking employment for, in principle, no more than six months or longer if they can prove to be seriously looking for a position and to have prospects of success of finding a job (these limitations are based on and approved by EU case law);
- are not in employment or are students or trainees and have sufficient resources and comprehensive health insurance cover without any limitation; or
- have the right to permanent residence (following legal residence of five years) without any limitation.

Family members, regardless of their citizenship, accompanying or joining an EU citizen who satisfies these conditions also have the right of residence for more than three months.

On a par with EU nationals are the nationals of the states of the European Economic Area (Iceland, Liechtenstein, and Norway); they also enjoy freedom of movement and are solely obligated to register.

Finally, Swiss nationals are also entitled to move freely throughout the European Union and are also on a par with EU nationals (Freedom of Movement Act of June 21, 1999).

Citizens of the EU Member States are – as a result of the provisions of community law (free movement of labour, Art. 45 TFEU) – exempted from the obligation to apply for and obtain a "residence permit for the purpose of employment". A certificate of residency right, respectively an EU residence permit, is issued for them and the members of their family if requested. There are no administrative fees charged.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

The granting of a business visa is regulated in the provisions of Regulation (EC) No 810/2009 dated 13 July 2009 establishing a Community Code on Visas (Visa Code) as well as by the regulations of the Schengen Implementation Convention and the regulations issued under these Conventions. The 26 Member States of this convention are Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland. For the time being, the provisions of the Schengen Convention are not partially or solely applicable for some of the new Member States that have joined the European Union effective 1 May 2004 (Cyprus), effective 1 January 2007 (Bulgaria, Romania) and effective 1 July 2013 (Croatia). Finally, the UK, Ireland and Denmark have opted out and are not applying the Schengen regime at all.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Under certain circumstances, a foreigner can, on the basis of these regulations, be granted a Schengen Transit Visa or a Schengen Visa permitting short-term stays in the signatory states of the convention for no more than 90 days within a floating reference period of 180 days (single entry visa for one short-term stay). The visa for short-term stays can also be granted for several stays for a period of validity of up to five years, provided that the duration of stay does not exceed a period of 90 days within a floating 180-day period (multiple entry visa for several short-term stays).

2.3 What activities are business visitors able to undertake?

Any activities implying dependent employment are not permitted. This particularly applies for, but is not limited to, the following activities:

- participation in training (except for intra-company trainings);
- organisation of training courses for the transfer of knowledge;
- participation in the operational business or production; and
- performance of services.

However, under certain conditions, it is possible for the Foreigners Office to grant a residence permit with regard to the training of foreign specialists being employed by a group company in Germany without the consent of the labour office.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Since § 30 Employment Regulation stipulates that some limited activities are not considered to be employment, there may be no need for those employees benefitting from the EU visa waiver programme to obtain a residence title for the purpose of employment, and they can therefore enter the country for stays of up to 90 days within a reference period of 12 months without a visa and without the need for a residence permit for the purpose of employment, for stays within the aforementioned time limit. In the case where the stay is going to last longer than the aforementioned period (of 90 days within a reference period of 12 months), it is not clear whether the non-visa nationals can benefit from the privilege of not having to secure a work permit in case they have entered the country with the intention to stay longer. Whereas some say that this shall not be permitted since the conditions for the benefit would not apply for stays lasting longer than 90 days, others (rightly) argue that these nationals have the privilege not only to enter visa-free, but also to file the application from Germany within 90 days upon arrival and in that case to stay on until the final decision will be rendered – *cf.* § 41 Ordinance Governing Residence (*Aufenthaltsverordnung*) – and therefore to exclude them from entering visa and work permit-free would be in contrast to that privilege. Against the aforementioned background, it is recommended to at least inform the authorities to respectively seek clearance upfront.

2.5 Can business visitors receive short-term training?

According to § 17 Employment Regulation, a residence permit can be granted for up to 90 days within a referencing period of 12 months to specialists being employed abroad if these employees are

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assigned to Germany for the purpose of internal training within the company. Whereas the wording of the stipulation seems to suggest that only the participation in training is covered, the official instructions on how to apply the law as published by the labour administration clarify that participation as a trainer or teacher shall also be covered. Nevertheless, engaging in any other kind of employment that is going beyond the intra-company training shall not be permitted. *Cf.* also below the § "Group or Intra-Company Transfer Work Permits" for longer stays of intra-company trainees.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Whereas there is no specific system of compliance that is designed for inspections of employers who regularly employ foreign nationals, each foreigner and each company employing a foreigner has to comply with the immigration laws and regulations. Depending on the provision in question, there are different authorities in charge of enforcement of the German immigration laws, including, for instance, the Foreigners Office, the public prosecutor, or the customs authorities.

3.2 What are the rules on the prevention of illegal working?

There are no rules on the prevention of illegal working as such, but all of the German immigration laws and regulations aim to permit illegal employment and do set out the conditions for employment of foreigners that are third-country nationals (non-EU/EEA nationals).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Within the last few years, sanctions against such commencement of work without a residence permit for the purpose of employment have been tightened. If no attention is paid to these sanctions, an administrative fine of up to €500,000 can be imposed. In particular, according to § 404 Social Security Code III, fines up to the following amounts may be imposed:

- €500 to employers that let other companies assign a significant amount of staff to let them work on their premises whilst knowing or whilst they could have known that these companies do employ foreigners without having a legal residence permit for the purpose of employment (§ 404 par. 1 no. 1, par. 3 Social Security Code III);
- €30 to employers that employ foreigners that do not have a legal residence permit for the purpose of employment or provide false information with regard to salary, working time or other conditions of employment (§ 404 par. 2 no. 3, par. 3 Social Security Code III); and
- €5,000 to foreigners engaging in employment without having a legal residence permit for the purpose of employment (§ 404 par. 2 no. 4, par. 3 Social Security Code III).

Moreover, as foreseen by § 18 par. 6 Employment Regulation, the authorities may deny the granting or the extension of a residence permit for the purpose of employment in case either the applicant or the company have infringed the aforementioned stipulations and have been condemned accordingly. Furthermore, the company may be subject to exclusion from subsidies (§ 98b German Residence Act) or exclusion from the award of public contracts (§ 98b German Residence Act) under certain conditions.

In individual cases, the person concerned can also be expelled from the country and a re-entry ban can be imposed (even though that seldom happens, in practice).

Furthermore, the employer may be subject to civil sanctions. In accordance with § 98a German Residence Act, an employer is obliged to pay the agreed remuneration to a foreigner whom he or she has employed who lacks a residence title for the purpose of gainful employment required pursuant to § 4 par. 3 German Residence Act. For the purpose of remuneration, it shall be assumed that the foreigner has been employed by the employer for three months. Moreover, it is foreseen that the agreed remuneration shall be considered to be the usual remuneration unless the employer agreed a lower or higher remuneration with the foreigner on a permissible basis. The foreigner may institute legal proceedings for the fulfilment of payment obligations before a German court for labour matters.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, there is no such system for a general registration of employers who wish to hire foreign nationals, and companies who wish to hire third-country nationals do not have to register upfront. They may, however, have to register with the local tax and social security authorities upon employing foreign nationals in Germany.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Once sponsoring an application, the sponsoring company is obligated to provide all of the information as requested by the authorities in a due and diligent manner by using a specific form; the so-called job description form ("*Formular Stellenbeschreibung*") that has to be signed and stamped. Moreover, the sponsoring company is obligated to inform the authorities of any change of the facts that might have an impact on the decision of the authorities, such as change of employer, change of job title, change of job location, decrease of salary, termination of employment, etc.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, there is no such requirement in Germany.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, there is no such obligation in Germany.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

There are audits that might be carried out by either the tax, social security or financial authorities on a regular or irregular basis as seems fit.

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4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Generally, the immigration authorities do not maintain a list of skilled occupations which may be filled by foreign nationals. Nevertheless, the authorities may carry out a job market test if prescribed by the requirements for the category in question and for the purpose of such a test, will check if the requirements for the grant of the residence title for the purpose of employment are given on a case-by-case basis. However, there are certain privileges under the EU Blue Card category. According to the provisions of § 19 a German Residence Act and §§ 2 par. 1 no. 2, par. 3, par. 4 of the German Employment Regulation, an EU Blue Card ("*Blaue Karte EU*") may be granted if the applicant:

- holds a German university degree or a foreign university degree that is recognised or comparable to a German university degree, or has a comparable qualification that is proven by professional experience of at least five years; and
- earns a salary of at least ⅔ of the social security contribution ceiling for the statutory pension scheme (e.g. €53,600) or 52% of said ceiling (e.g. €41,808) for certain job categories, e.g. natural scientists, mathematicians, engineers, doctors, or IT consultants.

The regular EU Blue Card category, as well as the one for shortage occupations, shall attract the talent needed. In Germany, like in most industrialised countries, it is not only the research sector that struggles to attract first-rate recruits. Industry, too, is finding it increasingly hard to secure graduates with so-called STEM (science, technology, engineering, and mathematics) qualifications since, in addition to engineers, there is also a substantial demand for scientists, mathematicians, and IT experts.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Cf. above.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Unlike many other countries, Germany has no such quotas and, hence, it does not make any difference if one files for a visa at the beginning, during or end of the year. Subject to meeting the conditions for the grant of the permit under the category in question, the likelihood of receiving a visa are the same for each applicant.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are such restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

In principle, there is an obligation to demonstrate language proficiency for employees who are sponsored to work in Germany on a temporary basis. However, the foreigner may have a claim to participate in and pass an integration course; such course also implying a language test. Moreover, the authorities can order to participate and to pass such an integration course under certain circumstances.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

There is in principle no obligation for employees who are sponsored to work in Germany to undergo medical examinations. However, that may be different in cases where such medical examination is mandatory for every applicant to the job.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Applicants must prove to have sufficient health insurance coverage during the period of stay.

Proof of having sufficient travel health insurance and health insurance for the stay in Germany that is at least equivalent to German standards needs to be filed (otherwise the residence permit will not be granted). Against this legal background, there are two options:

- asking the insurance company to ideally fill-in the sample certificate provided by the Foreigners Office of the city of Berlin or to issue a certificate that explicitly states that there is sufficient coverage as to the aforementioned standard (level of coverage that is at least equivalent to German standards); or
- sign up as a new contract with a company that provides such coverage for Germany.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Whereas the grant of residence permits to a company commercially leasing out personnel is forbidden by law companies sponsoring the application of third-country nationals may also assign their employees to work on-site their client's premises. However, the company has to bear in mind the risks of such an assignment being considered in non-compliance with the laws and regulations dealing with the commercial lease out of personnel. The details depend on the category in question and the facts and circumstances of each case.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

If the conditions for the highly-skilled category are met, the Foreigners Office does not require consent from the labour authorities and can grant a settlement permit (*Niederlassungserlaubnis*) without the need for a job market test on the basis of § 2 par. 1 no. 1 Employment Regulation in connection with § 19 Residence Act. This is intended to enable highly-qualified persons to be able to plan reliably, and to give them an incentive for establishment in Germany.

According to the legal definition of § 19 par. 2 Residence Act, highly qualified individuals are especially:

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1. scientists with special theoretical knowledge; or
2. teachers or professors of high standards or scientific assistants of high standard.

Against the background that Germany has a special economic and social interest in staffing the top positions in the fields of economics and science, the employment of highly qualified persons is possible without prior permission of the labour authorities. However, the requirements of the law concerning foreigners must be complied with, especially with respect to integration into the standards of living in the Federal Republic of Germany and meeting living expenses without state subsidy. The Foreigners Office may grant a permanent residence permit but is not obligated to do so; the foreigner is only entitled to a decision without abuse of discretion.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Given the lack of any investor category, investors and freelancers from third countries must comply with the immigration laws related to self-employment. Any third-country national must file an application for a residence permit to take up an economic activity (including employment and self-employment) in Germany. Based on the provision of § 21 Residence Act, this includes certain restrictions for the grant of residence permits where self-employment residence permits may only be granted if:

- there is an economic interest or a local requirement;
- the activity is expected to have positive effects on the economy; and
- the financing of the implementation is assured by equity or promised credit.

Until 31 July 2012, the first two preconditions were regarded as met if at least €250,000 was invested and five jobs had been created. However, since 1 August 2012, these thresholds no longer exist in order to attract more entrepreneurs to invest in Germany and to facilitate the investment in Germany. Moreover, and differing from the previous stipulation, since 1 August 2012, an economic interest as opposed to a higher economic interest and a local requirement as opposed to a particular local requirement, does suffice. However, the following criteria still applies to the assessment of the preconditions: carrying capacity of the business idea; entrepreneurial experiences of the foreigner; and amount of the capital investment. To be able to make an accurate assessment, the Foreigners Office ordinarily asks for an expert's statement from a competent authority, e.g., the local Chamber of Industry and Commerce. Foreigners aged over 45 should be issued with a residence permit only if they possess adequate provision for old age.

A residence permit for the purpose of self-employment may also be granted if special privileges apply according to agreements under international law on the basis of reciprocity, *cf.* § 21 par. 2 German Residence Act.

Moreover, according to § 21 par. 2a of the German Residence Act, a residence permit for the purpose of self-employment may also be granted to a foreigner having a degree from a German university or a comparable German educational institution without meeting the aforementioned conditions. The same applies for the holder of a residence permit for research or scientific purposes (§§ 18 and 20 of the German Residence Act) if the envisaged activity is connected to the educational background.

In principle, the period of validity of the residence permit is limited to a maximum of three years according to § 21 par. 4 Residence Act. However, after three years, a settlement permit (*Niederlassungserlaubnis*) may be issued where the foreigner has successfully performed the planned activity and the subsistence of the foreigner and the dependants living with him or her as a family unit of whom he or she is required to support are supported by adequate income.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There are various categories dealing with the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes in Germany, such as:

- the religious activity or charity category;
- the au-pair category; or
- the internship category, etc.

Each of which have different requirements that cannot be outlined in detail here.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

There are various categories dealing with temporary work permit categories in Germany, such as:

- the management and executive category;
- the academic category;
- the company specialist category;
- the EU Blue Card category; and
- "any employment" category for some privileged nationals,

each of which have different requirements that cannot be outlined in detail here.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

If the conditions for the German intra-company transfer category are met, the Foreigners Office does not require consent from the labour authorities and can grant the residence title for the purpose of employment without the need for a job market test.

In addition to the German intra-company transfer category, in implementation of the EU Directive on the intra-company transfer ("Directive 2014/66/EU of the European Parliament and the European Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intracorporate transfer"), the so-called ICT card ("*ICT-Karte*") has

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recently been introduced effective 1 August 2017, § 19b–19d German Residence Act. There are several options available:

- ICT card for stays of more than 90 days (§ 19b German Residence Act).
- Notification for short-term stays of no more than 90 days (§ 19c German Residence Act).
- Mobile ICT card for stays of more than 90 days for applicants holding an ICT card issued by another EU Member State (§ 19d German Residence Act).

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

Within the scope of the German intra-company transfer category (§ 10 Residence Act), according to the implementing provisions of the Foreigners Office, a worldwide-acting company is a company whose foreign business (holding company or subsidiary) holds a capital share of at least 50%. An intra-company transfer is an issue only when foreign employees are transferred to Germany and when there is a transfer of German employees abroad to (roughly) the same extent. With a view to the contractual implementation, an employment contract of a foreign employee is normally either supplemented by a secondment agreement or suspended for the period of transfer. In any case, the return of the employee must have been previously determined, although no specific date for the return needs to be given.

Within the scope of application of the ICT card category (§ 19b German Residence Act), the branch in Germany must belong to the same company or group of companies as the branch office in the EU country where the applicant is employed.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The conditions for an intra-company transfer under the German intra-company transfer category are laid down by § 10 Employment Regulation that stipulates as follows:

> "§ 10 International intra-company transfer, projects abroad[:]
>
> [f]or an employment for a period of up to three years[,] the consent for the grant of a residence permit can be given without a priority check as laid down in § 39 par. 2 sentence 1 no. 1 and 2 AufenthG [Residence Act][;]
>
> 1. if, within an intra-company transfer inside a worldwide-acting company or group company, skilled labour is concerned who provides university degree or higher education or similar qualifications [; or]
> 2. if an employee of a worldwide-acting company or group company who is working abroad must necessarily be transferred to the inland establishment of the company or group company in order to ensure the preparation of a project abroad, if the employee is responsible for the realisation of the project abroad and provides a qualification which is comparable to the qualification of skilled German workers and he/she, moreover, provides a specific and, above all, a company-related knowledge.
>
> In the cases specified in Sentence 1 no. 2, the consent for the grant of a residence permit can also be given for the skilled labour of the initiator of the project abroad if such skilled staff is temporarily entrusted with the preparation works by the contractor, if the project assignment involves a respective obligation for the contractor and such employment is required with view to a future engagement within the finalised project. Sentence 2 is also applicable if the contractor has no branches or establishments abroad."

The idea of an intra-company transfer is that no examination of the labour market must be carried out in the event of a transfer of personnel from abroad to Germany and from Germany abroad that takes place between the companies of the employer or the group it belongs to. The exchange of personnel needs to be roughly the same in terms of the number of employees involved so there is no impact on the German labour market – "10 in/10 out".

The intra-corporate transferee permit or ICT card is a new residence title for third-country nationals who are active as executives, specialists or trainees in a company in another EU country and are sent to a branch of the same group for stays of more than 90 days, *cf.* (§ 19b German Residence Act). It can be granted if the following conditions are met:

- the branch in Germany belongs to the same company or group of companies as the branch office in the EU country where the applicant is employed;
- the applicant will be employed as management, a specialist or a trainee in the receiving branch office in Germany if these professional qualifications are to be proven;
- the applicant has been previously employed by the company or the group of companies for a continuous period of at least six months;
- the company's internal transfer takes more than 90 days;
- the Federal Agency for Employment pursuant to § 39 Residence Act consents to the grant of the ICT card or such consent is not required because of the corresponding activity being exempt from the requirement for authorisation; and
- the applicant has an employment contract valid for the duration of the envisaged intra-company transfer and, if necessary, a letter of assignment reflecting in particular the conditions of employment (e.g. job location; job title; and salary) and the possibility to return after the assignment.

The terms "manager", "specialist" and "trainee employee" are defined as follows by the directive:

- "manager" means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent; that position shall include: directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;
- "specialist" means a person working within the group of undertakings possessing specialised knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; and
- "trainee employee" means a person with a university degree who is transferred to a host entity for career development.

The ICT card may be granted for up to one year to trainee employees and for up to three years to managers or specialists including periods of extension. The ICT card shall not be issued if:

- the host entity was established mainly for the purpose of facilitating the entry of intra-company workers;
- in the context of the transfer, the foreigner will be resident in another EU Member State within the framework of the transfer provided for in Directive 2014/66/EU for longer than in Germany or in another EU Member State; or

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- if the application is submitted before the expiry of a six-month period from the end of the last stay of the foreigner for the purpose of an intra-company transfer to Germany.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

In practice, it is not always easy to prove that the conditions for an intra-company transfer under the German intra-company transfer category are met when the application is filed for the first time and therefore such applications should be prepared carefully. In particular, the following documents are required:

- *curriculum vitae* (both in English and German if possible);
- photographs;
- copy of the identification card/passport;
- job description form;
- offer of employment/employment contract/assignment letter;
- health insurance coverage equivalent to German standards;
- excerpt from the commercial registry;
- annual report of the company; and
- report on the personnel exchange.

In addition, the annual report of the company and the report on the personnel exchange between the companies involved must be filed on an annual basis.

For the ICT card the application must be filed abroad (outside the EU) in the country of residence of the third country national. Hence, even those third nationals benefitting from the so-called EU visa waiver programme, have to file the application at their place of habitual residence. The decisive factor is that the place of residence of the foreigner is in the third country; a mere presence in the third country to submit an application is not sufficient. However, to file for an extension form within Germany is possible, *cf.* § 39 no. 8 Residence Act.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Cf. above.

8.6 How long does the process of obtaining the work permit and initial visa take?

The intra-company transfer application process is likely to take six to 10 weeks after all documentation has been compiled and the application has been completely filed. However, this is an estimate only and the proceedings can take even longer but also be much shorter depending on the circumstances of the case and the persons in charge at the authorities involved.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The residence permit will be granted for a period of up to three years for both the German intra-company transfer category and the ICT card, and one year for trainees under the ICT card category and there is generally no extension possible.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, they cannot since they have *i.a.* not contributed to the German social security system, this being one of the requirements for grant of a settlement permit.

8.9 What are the main government fees associated with this type of visa?

The fee for a so-called national visa (residence permit for long-term stays of more than three months – e.g. intended studies) amounts to €100, respectively, and €110 if the visa shall cover a period of more than a year; in the case of filing for an extension, the fee amounts to €96 for a period of less than three months, €93 for a period of more than three months, and €98 in case the permit needs to be altered because of the purpose of the stay changes including its extension, *cf.* § 45 Ordinance Governing Residence (*Aufenthaltsverordnung*). In the case of the grant of a fictional permit, an additional fee of €13 (§ 47 par. 1 no. 8 Ordinance Governing Residence) applies.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Based on official statistics, the EU Blue Card is the main immigration category used for employers who wish to obtain work permits for new hires.

Effective 1 August 2012 – hence with a significant delay after expiry of the deadline foreseen by the directive – Germany has finally implemented the EU "Blue Card" directive, which had been put up for discussion in 2007 and had been adopted in May 2009 (Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment of 25 May 2009). With this Directive, the EU Commission, with a particular work and residence permit for highly-qualified employees from third countries (non-EU), intends to increase the competitiveness of the European economy with the "Blue Card". The "Blue Card" shall attract the attention of experts to Europe instead of the USA, Australia or Canada which, according to the analysis of the EU, have been the preferred work countries up to now.

If the conditions for the EU Blue Card category are met, the foreigners office does not require consent from the labour authorities (except for shortage occupations) and can grant the residence title for the purpose of employment without the need for a job market test. According to the provisions of § 19 a German Residence Act and §§ 2 par. 1 no. 2, par. 3, par. 4 German Employment Regulation, a EU Blue Card ("*Blaue Karte EU*") may be granted if the applicant:

- holds a German university degree, or a foreign university degree that is recognised or comparable to a German university degree, or has a comparable qualification that is proven by professional experience of at least five years; and
- shall earn a salary of at least ⅔ of the social security contribution ceiling for the statutory pension scheme (e.g. €53,600), or 52% of said ceiling (e.g. €41,808) for certain job categories, e.g. such as natural scientists, mathematicians, engineers, doctors, or IT consultants.

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The regular EU Blue category as well as the one for shortage occupations shall attract the talent needed. In Germany, like in most of the industrialised countries, it is not only the research sector that struggles to attract first-rate recruits. Industry, too, is finding it increasingly hard to secure graduates with a so-called STEM (this acronym refers to the fields of knowledge – science, technology, engineering, and mathematics) degree, since in addition to engineers, there is also a substantial demand for scientists, mathematicians, and IT experts.

Based on the instructions on how to apply the regulation, a localised employment contract with a company duly established in Germany is required.

The foreigners office can grant the EU Blue Card without requesting consent from the labour authorities; however, according to § 72 German Residence Act they may nevertheless involve the labour authorities in order to check whether the conditions for the grant are given.

When applying for the first time the permit that is limited in time shall be granted for a maximum duration of four years. If the duration of employment is less than four years then the permit shall be granted for the duration of the fixed term employment plus three months after expiry of the term. In case of a job change during the first two years, the holder of a EU Blue Card shall have to seek the permission of the foreigners office that can be given if the requirements for a EU Blue Card are not met any more (subject to meeting the requirements of another category, of course).

Holders of a EU Blue Card wishing to change jobs within the first two years of employment shall require permission by the foreigners office. After that period, no consent will be required, however, the authorities would still check whether all the other requirements for the EU Blue Card category are still met.

The EU Blue Card may be granted as a settlement permit after a certain period of time, if the employee has duly contributed to the German pension scheme for at least 33 months respectively, 21 months if the applicant proves to have sufficient knowledge of the German language.

All that is clearly an advantage for the holder of the permit but not necessarily for the sponsoring company, for the reason that after expiry of the inital two years the permit is not linked to employment with a specific company any more. Nevertheless, the EU Blue Card category is a very interesting option available to companies assigning personnel to Germany, since it is considered quite attractive by the employees, and time spent in employment under the EU Blue Card category can be taken in to consideration when moving to another EU member state.

The processing time is no longer than usual, i.e. eight to 12 weeks; it may even be shorter since there is no need for a job market test.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

In certain cases, the foreigners office can only issue the desired residence permit for the purpose of employment after the Federal Employment Agency has given its approval, which can also be applied for in advance (pre-approval application) if filing from abroad.

According to § 18 Residence Act, a foreigner may be granted consent to employment if: "it is determined by a statutory order according to § 42 (...) that the exercise of employment is permissible without the consent of the Federal Employment Agency". A comparable provision can also be found in § 19a par. 2 AufenthG for the EU Blue Card. Whether the approval of the Federal Employment Agency is required depends ultimately on the provision of the Residence Act or the Employment Ordinance regulating the respective employment category. This results in the following overview (without any claim to completeness).

In the following cases, the foreigners office may issue a residence permit for employment without first having to obtain the approval of the Federal Employment Agency:

- Highly qualified (§ 2 par. 1 No. 1 Employment Regulation).
- EU Blue Card with standard salary (§ 2 Abs. 1 Nr. 2 Employment Regulation).
- Graduates of German universities (§ 2 Abs. 1 Nr. 3 Employment Regulation).
- EU Blue Card in the shortage occupation with a domestic university degree (§ 2 Abs. 2 Employment Regulation).
- Executives (§ 3 Employment Regulation).
- Science Research and development (§ 5 Employment Regulation).
- Graduates of German schools abroad (§ 7 Employment Regulation).
- Employment according to pre-employment period (§ 9 Employment Regulation).
- Charitable and religious activities (§ 14 Employment Regulation).
- Internships for further training purposes (§ 15 Employment Regulation).
- Business trips (§ 16 Employment Regulation).
- Continuing vocational training (§ 17 Employment Regulation).
- Journalists (§ 18 Employment Regulation).
- Short-term contracts for work and materials (§ 19 par. 1 Employment Regulation) – however, notification is required.
- International road and rail transport (§ 20 Employment Regulation).
- Provision of services within the EU (§ 21 Employment Regulation).
- Special occupational groups (§ 22 Employment Regulation).
- International sporting events (§ 23 Employment Regulation).
- Shipping and air traffic (§ 24 Employment Regulation).

In all other cases, before the residence permit can be issued for the purpose of employment, the approval of the Employment Agency must be obtained and the original must be submitted to the competent immigration authority.

9.3 Are there any exemptions to carrying out a resident labour market test?

In all other cases, before the residence permit can be issued for the purpose of employment, the approval of the Employment Agency must be obtained and the original must be submitted to the competent immigration authority:

- EU Blue Card in the shortage occupation with a foreign university degree (§ 2 Abs. 2 Employment Regulation).
- Graduates of foreign universities (§ 2 Abs. 3 Employment Regulation).
- Senior executives and specialists (§ 4 Employment Regulation).
- Apprenticeships (§ 6 Employment Regulation).
- In-company initial and continuing vocational training; recognition of foreign professional qualifications (§ 8 Employment Regulation).

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- International personnel exchange, foreign projects (§ 10 Employment Regulation).
- Employees transferred within the company: ICT card / mobile ICT card (§ 10a Employment Regulation).
- Language teachers and speciality chefs (§ 11 Employment Regulation).
- Au-pair employment (§ 12 Employment Regulation).
- Domestic workers of delegates (§ 13 Employment Regulation).
- Domestic help (§ 13 Employment Regulation).
- Long-term contracts for work and materials (§ 19 par. 2 Employment Regulation).
- Employment of certain nationals (§ 26 Employment Regulation).
- International agreements (§ 29 Employment Regulation).

9.4 What is the process for employers obtaining a work permit for a new hire?

Unless nationals of privileged states that do benefit from the EU visa waiver programme are concerned (entitling these nationals to visa-free entry and stays up to 90 days within a floating period of six months), the residence permit is to be obtained by means of a visa before entering Germany. The responsible diplomatic representation abroad, respectively the local foreigners office, is solely responsible for the applicant, which nevertheless reconciles internally with the Federal Employment Office (*Bundesagentur für Arbeit*), respectively the local labour office (until 30 April 2011) and the Centre for the Recruitment of Foreign and Expert Staff (ZAV) (since May 2011). Moreover, effective 5 March 2013, there is no need for the Embassy or Consulate to seek consent from the local foreigners office in case of an application with regard to a residence permit for the purpose of (dependant) employment – in this case, the file will be directly transferred to the local labour authorities via the Federal Administration Office (*Bundesverwaltungsamt*) when the decision has been made. The latter does not, however, apply in case the applicant has previously been staying in Germany or is entitled to file the application in Germany under the EU visa waiver programme (the latter does, however, only apply to nationals from some countries including, for instance, the USA and Australia).

Since the last major reform of the German immigration law system that came into effect on 1 January 2005, residence and work permits are granted in the form of one single permit in the name of a residence permit for the purpose of employment (*Aufenthaltstitel zur Ausübung einer Beschäftigung*), which is granted by the foreigners office, after the Federal Employment Office, respectively the regional labour office, has given its consent to the grant if so required. Hence, unlike the previous proceeding, there is no need for the applicant to deal with two different authorities or to file two separate applications ("one-stop government").

Until 30 April 2011, the decision on the approval to engage in employment was made by the labour office, where the place of employment of the person concerned is located. The place of employment is the place where the company's domicile is situated or where the head office of an employer is situated. Concerning employments at various work places, the company's domicile is the place where the correspondent running the payroll for the employer is located. Since 1 May 2011, the Centre for the Recruitment of Foreign and Expert Staff is competent for the decision on the consent; it will nevertheless touch base with the local labour office located in the place of the intended employment and ask them to carry out the job market test if needed. However, in practice, what has been meant to facilitate proceedings actually sometimes complicates matters further, especially when there is no feedback given by the authority officially in charge with regard to the status quo of the matter or the reason for a decision of such information is pending with the labour authorities. On the other hand, to deal with a centralised agency having detailed and special knowledge is surely not a disadvantage and helps a lot to professionalise and expedite proceedings. In addition, in order to facilitate proceedings further, a pre-approval application has been implemented effective 1 July 2013, and since then it is possible to file an application upfront with the labour authorities in order to find out whether consent is needed and, if so, will be granted.

Consent may be given for the duration of the employment up to a period of three years, *cf.* § 34 par. 2 Employment Regulation. However, it is common practice to grant such consent initially for a period of one year only, regardless of the intended duration of the employment relationship. Nevertheless, filing for an extension is possible of course, and any applicant having applied for such extension with a valid permit will be given a fictional permit (*Fiktionsbescheinigung*) that allows its holder to stay on until the decision with regard to the extension will be rendered.

The approval to engage in employment may be limited with regard to:

- the job-related occupation;
- the employer;
- the district of the labour office; and
- the situation and the allocation of the working hours.

In order to expedite proceedings, effective 1 July 2013, the following is stipulated by § 36 Employment Regulation: if the labour authorities do not reply to the query within two weeks by requesting additional information or by complaining that the employer has not sufficiently or not timely given the information requested by the authorities, the consent shall be deemed to be given. Moreover, the labour authorities shall check upfront if the conditions for the consent are given if the employer has provided the information requested (in particular with regard to salary, working time and other conditions of employment) and if proceedings can hereby be expedited.

9.5 What is the process for the employee to obtain a visa as a new hire?

It is mandatory to apply personally at the German diplomatic agency or foreigners office in order – if necessary – to be able to explain the submitted documents and to find out in advance which documents are requested. Usually the following documents should be submitted for insertion in the files:

- *curriculum vitae*;
- copy of the identification card / passport;
- two biometrical photographs;
- professional credentials e.g. copies of university diploma(s);
- information on the proposed employment, especially a job description;
- information on the spouse and children, if necessary; and
- proof of sufficient health insurance coverage during the period of stay.

With regard to the latter a proof of having sufficient travel insurance (covering the trip to Germany) and health insurance (covering the stay) that is at least equivalent to German standards needs to be filed (otherwise the permit will not be granted). Against this legal background, there are basically two options:

- ask the insurance company to ideally fill-in the sample certificate provided by the foreigners office of the city of Berlin or to issue a certificate that explicitly states that there

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is sufficient coverage as to the aforementioned standard (level of coverage that is at least equivalent to German standards); or

- sign a new contract with a company that provides such coverage for Germany.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The process usually lasts between eight to 12 weeks once all documents have been submitted, but can be shorter or even much longer depending on how busy the authorities of the city where the application is filed are. For those nationals having the privilege to file from within Germany, filing abroad might therefore be an option to consider if the local authorities are too busy (the latter generally being the case for the big international cities such as Frankfurt and Berlin).

9.7 How long are initial visas for new hires granted for and can they be extended?

Consent may be given for the duration of the employment up to a period of three years, *cf.* § 34 par. 2 Employment Regulation. However, it is common practice to grant such consent initially for a period of one year only, regardless of the intended duration of the employment relationship. Nevertheless, filing for an extension is possible of course and any applicant having applied for such extension with a valid permit will be given a fictional permit (*Fiktionsbescheinigung*) that allows its holder to stay on until the decision with regard to the extension will be rendered.

9.8 Is labour market testing required when the employee extends their residence?

Generally not, but this depends on the category in question and the facts of the case.

9.9 Can employees coming as new hires apply for permanent residence?

Employees coming as new hires cannot immediately apply for permanent residence. The settlement permit as regulated in § 9 German Residence Act (*Niederlassungserlaubnis*) is a permanent residence permit that shall be granted to foreigners in order to enable them to stay in Germany and to keep their centre of life in Germany both for commercial and family-related reasons.

9.10 What are the main government fees associated with this type of visa?

The fee for a so-called national visa (residence permit for long-term stays of more than three months – e.g. studies – is intended) amounts to €100–€110, respectively, if the visa shall cover a period of more than a year; in the case of filing for an extension, the fee amounts to €96 for a period of less than three months, €93 for a period of more than three months and €98 in case the permit needs to be altered because of the purpose of the stay changes including its extension, *cf.* § 45 Ordinance Governing Residence (*Aufenthaltsverordnung*). In case of the grant of a fictional permit, an additional fee to the amount of €13 (§ 47 par. 1 no. 8 Ordinance Governing Residence) applies.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Once a residence permit for the purpose of employment is granted the employee can stay in the country as long as the requirements for the grant of the permit are continuously met. Moreover, the individual respectively, or the company, should inform the authorities of any change of the facts that may have an impact on the validity of the permit (even though there is no legal obligation to do so) to assure compliance.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Like any German national, a foreign national taking residence in Germany also has to comply with the obligation to register with the responsible registry office (*Meldebehörde*) at the place of residence of the foreigner within the registration periods that are stipulated by the Federal Registration Act (*Bundesmeldegesetz*), e.g. two weeks after taking residency, by presenting a certificate from the landlord (*Wohnungsgeberbestätigung*).

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

As a matter of principle, family reunification shall be limited to the spouse and children of the holder of a residence title whereas the grant of a residence title to other family members (such as, in particular, parents) shall be limited to some very exceptional cases, the requirements of which are seldom met in practice. For instance, the authorities may consider the grant of a residence title to a parent if otherwise there would be no one abroad being able to take care of the family member and if the family member would not be able to live on his or her own without assistance or (nursing) care.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Generally not, unless the same-sex partnership is registered in accordance with the German laws.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Traditionally, the right to spousal employment had been linked to the right of employment of the applicant or holder of the (main) permit. Hence, it had been permitted for the spouse to engage in employment to the same extent as the applicant or holder of the permit. Whenever the applicant or holder needs the consent of the labour authorities or has been restricted to a certain region, the same is applied to the spouse. Whenever the applicant or the holder of the residence permit does not need any such consent to engage in employment will be fully permitted to the spouse as well. However, where marital cohabitation has lawfully existed in Germany for at least two years and the residence permit of the foreigner whom the

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subsequently immigrating dependants are joining had not been subject to a subsidiary provision or extension of his or her residence is not excluded by law or by an ordinance, the spouse is entitled to also engage in employment.

Over the last few years, some exceptions to this principle have been introduced in several steps to make it more attractive for namely researchers and highly-skilled migrants to migrate to Germany. In a first step, effective 1 January 2009, the spouses of holders of a highly skilled permit for researchers and scientists have also been given the right to engage in employment without any limitation whatsoever. Effective 1 August 2013, at the same time of the implementation of the EU Blue Card category and some other facilitations as described above, the right to spousal employment has been extended to spouses of the holder of either a residence permit for highly-skilled migrants or an EU Blue Card, whereas for all other spouses the aforementioned conditions still apply.

Since 6 September 2013, the right to spousal employment is fully granted to all family members of a foreigner regardless of the reason the holder of the main permit is entitled to reside in and engage in employment in Germany, *cf.* § 27 par. 5 German Residence Act. However, this generally only applies in the case that the holder of the main permit has a permit entitling him to stay in Germany for more than one year or holds a EU Blue Card. This shall allow all family members in the same way to contribute through their own employment to secure the livelihood in Germany and sets another incentive to foreigners and their spouses to migrate to Germany. However, the grant of the unlimited right to the spouse might result in the spouse – traditionally referred to as the dependant in this context – having more rights than the holder of the main permit in a case where the latter has been granted the permit under a category that comes with limitations as to the employer, activity or region in Germany.

With regard to the right of employment, the same conditions for spouses goes for other dependants, such as the children and/or parents of the permit holder. Dependants in the meaning of the German Residence Act are the parents and their children regardless of whether the parents are married or living in a same-sex registered civil union partnership. Even though the partners of an extra-marital cohabitation and their children do consequently not qualify as dependants, they are considered a *de facto* family as a matter of case law.

11.4 Do children have access to the labour market?

Cf. above.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The settlement permit allows the holder to take up employment (without the need for the Foreigners Office to require consent from the labour office prior to the grant) and may only be supplemented with a subsidiary provision in those cases that are expressly permitted by law. According to § 9 German Residence Act, a foreigner shall be granted the settlement permit provided that:

1. he or she has held a residence permit for five years;
2. his or her livelihood is secure;
3. he or she has paid compulsory or voluntary contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of childcare or nursing at home shall be duly taken into account;
4. the granting of such residence permit is not precluded by reason of public safety or order, giving full consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory;
5. he or she is permitted to be in employment, insofar as he or she is in employment;
6. he or she is in possession of the other permits that are required for the purpose of the permanent pursuit of his or her economic activity;
7. he or she has an adequate knowledge of the German language;
8. he or she possesses a basic knowledge of the legal and social system and the way of life in the federal territory; and
9. he or she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household.

Furthermore, the grant of a settlement permit is foreseen by law in the following cases:

- For highly qualified foreigners, there are justifiable grounds to assume that integration into the way of life which prevails in the Federal Republic of Germany and the foreigner's subsistence without state assistance are assured; this applies in particular for: researchers with special technical knowledge; teaching personnel in prominent positions; or scientific personnel in prominent positions (§ 19 German Residence Act).
- For holders of an EU Blue Card, if they have held a position of employment with a EU Blue Card for at least 33 months and have made mandatory or voluntary contributions to the statutory pension insurance scheme for that period and if they have basic German language skills, such period being reduced to 21 months if the foreigner has a sufficient command of the German language (§ 19a par. 6 German Residence Act).
- For certain foreign family members (e.g. a German national spouse, minor, unmarried child of a German, parent of a minor, unmarried German for the purpose of care and custody), if he or she has been in possession of a residence permit for three years, the family unit with the German continues to exist in the federal territory. There are no grounds for expulsion if the foreigner has a sufficient command of the German language (§ 28 par. 2 German Residence Act).
- If the Federal Ministry of the Interior or the body designated to uphold the political interests of the Federal Republic of Germany has declared that the foreigner is to be admitted (§ 22 sentence 3 German Residence Act).

Since 1 August 2012, there are facilitations with regard to the grant of a settlement permit to holders of a German degree. According to § 18b of the German Residence Act, a settlement permit shall also be granted to a foreigner with a German university degree or a German degree from a comparable institution if the applicant:

1. is in possession of a residence permit for the purpose of employment;
2. is adequately employed given his academic background;
3. has contributed to the German pension scheme for at least 24 months; and
4. has complied with the other general conditions for the grant of a settlement permit.

If an employee meets the conditions for the grant of a settlement permit, he/she may remain in the country indefinitely and apply for

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permanent status. Differing from a residence permit for the purpose of employment, the settlement permit can be granted by the Foreigners Office without having to request the consent from the labour office and is not limited, neither in time nor with regard to the activity or the employer. Whereas the latter is of course an advantage for the holder of the permit, it may be disadvantageous for the employer since it obviously facilitates changing employers.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, this is possible if the aforementioned requirements can be met.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bar to admission for work is the processing time, in particular the slowness of the authorities involved abroad (Embassies and Consulates) or locally (local foreigners offices) – except for the labour authorities that are generally very quick and responsive. Moreover, the unwillingness of many authorities, respectively their staff, to accept soft copies rather than original documents and to accept English documents rather than to require (sometimes even legalised and apostilled) translations, slows down and complicates the process further.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Generally not, but this depends on the circumstances of each case and should be checked with counsel.

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Indonesia

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SANDIVA Legal Network

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main source is Law No. 6 of 2011 regarding Immigration ("**Immigration Law**").

1.2 What authorities administer the corporate immigration system in your jurisdiction?

It is under the Directorate General of Immigration of the Ministry of Law and Human Rights.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, Indonesia is not part of the above-mentioned agreements. Indonesia is a member of the APEC agreement that facilitates the movement of nationals from certain jurisdictions: Australia; Brunei Darussalam; Chile; China; Hong Kong (China); Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Philippines; Russia; Singapore; Chinese Taipei; Thailand and Vietnam.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Every foreigner entering Indonesia shall hold a valid and applicable visa. Foreign visitors may obtain a Visit Visa Pass/Limited Stay Visa, which may be used for business purposes. There is a visa waiver programme for foreign visitors to enter Indonesian jurisdiction by obtaining a Visit Visa Pass, as long the visitor's nationality is listed in President Regulation No. 21 of 2016 on Visit Visa Waiver.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum is 60 (sixty) days.

2.3 What activities are business visitors able to undertake?

Under Visit Visa Pass (Not for Employment Purposes), the following activities are permitted:

(i) Tourism.
(ii) Family visit.
(iii) Social matters.
(iv) Art and culture.
(v) Government tasks.
(vi) Non-commercial sports.
(vii) A comparative study, short course/short training.
(viii) Assisting/counselling for quality control for International marketing.
(ix) Emergency job.
(x) Journalistic (for the individual that holds the permit).
(xi) Non-commercial film making (for the individual that holds the permit).
(xii) Business discussion.
(xiii) Purchase of goods.
(xiv) Lecturing/attending a seminar.
(xv) Attending an International exhibition.
(xvi) Meeting in a representative office.
(xvii) To audit/quality control/inspect the representative office.
(xviii) Transiting.

Under Limited Stay Visa (Employment/Non-Employment Purposes), the following are the permitted activities and/or vocations that may enter Indonesia under this visa:

(i) Experts.
(ii) To join in Marine works.
(iii) Clergymen.
(iv) Activities related to a profession that receive payment.
(v) Commercial film making activities (for the individual that holds the permit).
(vi) Quality control and production supervision.
(vii) To inspect/audit the representative office.
(viii) After-sales services.
(ix) Non-permanent work in construction.
(x) Holds an Art, music and sports event.
(xi) Health treatment.
(xii) Expertise trials (for Foreign Worker Candidate).
(xiii) Foreign investing activities.

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(xiv) To attend training/scientific research.
(xv) Scholarship.
(xvi) Family unification.
(xvii) Repatriation.
(xviii) Elderly tourists.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Under a Limited Stay Visa, a foreign visitor can undertake work if the work/services are related to their expertise.

2.5 Can business visitors receive short-term training?

Yes, a business visitor can have short-term training.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

No, they do not have a system of compliance. However, the Directorate General of Immigration under the Ministry of Law and Human Rights Republic of Indonesia and the Ministry of Manpower may occasionally, or due to a tip-off, conduct an inspection.

3.2 What are the rules on the prevention of illegal working?

Every employer that employs a foreigner must have the Foreign Manpower Utilization Plan (RPTKA).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Under the Manpower Law, an employer who employs a foreign worker without the minister's permission/work permit, is subjected to imprisonment for at least 1 (one) year but not more than 4 (four) years, and/or, to be fined for at least IDR 100,000,000 but not more than IDR 400,000,000.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is a register of foreign national workers that can be accessed through the Online System for Foreign Workers Services as provided by the Ministry of Manpower. The processes of registration is as mentioned below:

1. register and sign up for an account at www.tka-online.kemnaker.go.id;
2. upload the Foreign Manpower Utilization Plan documents;
3. verification phase by the officials;
4. online interview of the applicant; and
5. then approval of the Foreign Manpower Utilization Plan (RPTKA) shall be issued.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, the employers must ensure that their foreign workers are in possession of a valid working permit and their Immigration permission.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Employers who hire foreign workers must appoint a companion worker (local worker) for each foreign worker to be trained by or learn a skill from the foreign worker.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Employers are required to pay USD 100 for each foreign worker/job.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Inspection by the Immigration Authorities is not a routine activity, usually it is conducted because they receive a report/tip-off.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, the Ministry of Manpower maintains a list of skilled occupations that can be filled by foreign workers in certain sectors.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

There is no such recognition.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no limitations/annual quotas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There is a maximum of 50 foreign workers.

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4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not. But the foreign workers must attend Indonesia's language training programme provided by the employers.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No, they are not.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employers must provide medical insurance for Foreign Workers with local insurance companies and enrol them in the public social insurance programme.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, it does, if the location of the client site is stated in the work permit. A foreign worker can work at a maximum of five different locations.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no such category in immigration. However, the categories are regulated by the Ministry of Manpower which lists highly skilled positions such as experts, specialists, etc., in certain sectors that may be filled by foreign workers.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes, for foreign visitors to set up a subsidiary/representative's office in Indonesia, they must apply for the Non-Employment Purposes Limited Stay Visa.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There is no specific category, but it will fall under Limited Visa Stay with Employment Purpose.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

No, there is not. Foreign workers are limited to the occupations that are open in certain industrial sectors.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, it does not exist within the jurisdiction of Indonesia.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable in Indonesia.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable in Indonesia.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable in Indonesia.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable in Indonesia.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable in Indonesia.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

This is not applicable in Indonesia.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

This is not applicable in Indonesia.

8.9 What are the main government fees associated with this type of visa?

This is not applicable in Indonesia.

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9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The newly hired foreign workers may enter Indonesia's jurisdiction under the Limited Stay Visa for Employment Purpose which must be applied for by the employer before the worker enters Indonesia.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There is no labour market testing required.

9.3 Are there any exemptions to carrying out a resident labour market test?

No, there is not, as labour market testing is not required.

9.4 What is the process for employers obtaining a work permit for a new hire?

The work permit is obtained by the employer by applying for the Utilization Plan of Foreign Workers (RPTKA), which will be issued within two days, as of completing the relevant documents. The Employer will be required to pay a compensation fund for the utilization of a foreign worker (DKP-TKA). Within two days after payment, a Notification for Utilization of the Foreign Workers will be issued to the Employer.

9.5 What is the process for the employee to obtain a visa as a new hire?

The Limited Stay Visa for Employment Purpose is applied for and managed by the employer.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Please refer to question 9.4 above. The Initial Visa is not applicable, based on the Notification, the Limited Stay Visa will be issued.

9.7 How long are initial visas for new hires granted for and can they be extended?

Initial visas are not applicable in Indonesia.

9.8 Is labour market testing required when the employee extends their residence?

Labour market testing is not applicable in Indonesia.

9.9 Can employees coming as new hires apply for permanent residence?

No, a permanent residence permit may be given only to foreign workers that hold Limited Stay Permits and have stayed in Indonesia for over three consecutive years.

9.10 What are the main government fees associated with this type of visa?

The government fees for the Limited Stay Visa are the following:

1) six months: USD 55 / person;
2) one year: USD 105 / person;
3) two years: USD 180 / person;
4) a maximum of five years in the special economic zone: USD 250 / person;
5) on arrival (30 days of stay): IDR 700,000; and
6) wired visas approval from the Indonesia Embassy (at the Applicant's/foreigner's point of origin): IDR 100,000.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreign workers who obtained work permits and that hold a Limited Stay Visa may obtain a Limited Stay Permit. Once the foreign workers obtain the Limited Stay Permit, the stay permission may be transferred to a Permanent Stay Permit, by request, for a foreign worker who holds a high ranking position in the company and/or chief of a foreign representative office operating in Indonesia, who has stayed in Indonesia for three consecutive years.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The immigration law does not define who qualifies as a dependant of a foreign worker. However, a spouse, and children under the age 18 who have not been married, may be given a Limited Stay Permit to conjoin the foreign worker.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No, they do not.

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11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

No, they do not. The spouses may only work if they hold a different work permit. The dependants shall have to convert their visas and stay permit from a dependant to a foreign worker.

11.4 Do children have access to the labour market?

No, they do not.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

A foreigner who can be granted a permanent stay permit are: a newborn child whose parents hold a limited stay permit, and foreigner who holds a limited stay permit, which are limited to:

1. Clergymen (who have stayed in Indonesia for three consecutive years).
2. Foreign workers (limited to foreign workers who hold a high ranking position in the company and/or chief of a foreign representative office operating in Indonesia, who has stayed in Indonesia for three consecutive years).
3. Investors:
   a. if the foreigner holds a position in the company, the minimum investment is IDR 1,000,000,000 or its equivalent in foreign currency (and has stayed in Indonesia for three consecutive years); or
   b. if the foreigner does not hold a position in the company, the minimum investment is IDR 10,000,000,000 or its equivalent in foreign currency (and has stayed in Indonesia for three consecutive years).
4. Foreign tourists over 55 years old (and has stayed in Indonesia for three consecutive years).
5. A spouse who conjoins with his/her spouse who holds a permanent stay permit (with a minimum of two years of marriage).
6. Unmarried children under 18 years old who conjoin their father and/or mother who hold a permanent stay permit.
7. A former Indonesian citizen.
8. A spouse who conjoins with his/her spouse who is an Indonesian citizen.
9. Children who have a father and/or mother who is an Indonesian citizen.
10. A child that formerly possessed dual citizenship.
11. Unmarried children under 18 years old who conjoin their father and/or mother who married an Indonesian citizen.

The following limited stay permit holder cannot be given a permanent stay permit:

1. Foreign worker in the maritime field.
2. An individual that holds a 90 days limited stay permit.
3. An individual that holds a limited stay permit upon arrival for 30 days.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

A temporary work visa / limited stay permit can be switched to a permanent residence / permanent stay permit. Please refer to question 12.1 above for the qualifications needed for a permanent residence/permanent stay permit.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The Ministry of Manpower shall have the full discretion to accept or reject a foreigner working in Indonesia.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

No, it does not. A foreigner is not required to declare past convictions.

Acknowledgment

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Italy

De Luca & Partners

Vittorio De Luca

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration in the Italian jurisdiction are the following:

(i) Law 91 of 5 February 1992 (Citizenship Law);

(ii) Legislative Decree 286 of 25 July 1998 (Consolidated Code on Immigration and on Dispositions Applicable to Foreign Citizens, or hereinafter **"Immigration Act"**); and

(iii) Presidential Decree 394 of 31 August 1999 (Implementation and enforcement of rules set forth by Legislative Decree 286/98).

Note: From 4 December 2018, Law Decree No. 113 of 4 October 2018 is in force, converted into law with Law No. 132 of 1 December 2018 (so-called **"Security Decree"**), which has amended in some parts the above-mentioned Immigration Act.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system in the Italian jurisdiction is administered and enforced by several authorities, *inter alia:*

(i) Ministry of Internal Affairs and, in particular, the Department for Civil Liberties and Immigration (*Dipartimento per le Libertà Civili e per l'Immigrazione*);

(ii) Ministry of Labour;

(iii) National Labour Inspectorate (*INL – Ispettorato Nazionale del Lavoro*); and

(iv) Province Commissioner (*Questore della Provincia / Prefetto*).

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Italy is a signatory party of both international treaties and bilateral agreements.

Specifically, Italy is a Member State of the EU, and this guarantees a certain mobility of people (and workers) within the European Union.

The "Schengen Convention", applicable to Italy since 1997, is one of the most relevant acts at EU-level.

Non-EU citizens who go to Italy for business must apply for a Uniform Schengen Visa (VSU) to travel for business in the European countries that have joined the Schengen Convention. Once the visa has been obtained from one of these countries, it is also possible to visit the other countries of the Schengen area with the same visa, within the limits and validity of the visa itself.

The business visa must be requested by presenting an invitation from a company, an institution or an association located in a Schengen country, such as Italy. It is possible to apply for a visa in case of going to the Schengen area for business or commercial reasons, to sign contracts or conduct negotiations, for field training or for the verification of instruments subject to commercial exchanges.

It is also worth mentioning that the European Economic Area (EEA) – created on 1 January 1994 – has several other bilateral agreements, signed by Italy with some specific countries (such as Switzerland).

For instance, Italy has signed bilateral agreements on work holiday visas with New Zealand, Australia, Canada and South Korea.

The work holiday visa is a special type of visa, issued for 12 months, that allows the holder travelling to Italy to work there for up to six months.

Each bilateral agreement sets the conditions for participation and the maximum number of visas that can be issued in a year.

The procedure is in two stages:

(a) Filing the visa application at the Italian Consulate that has jurisdiction over the place of residency abroad.

(b) Once in Italy, filing the residence permit application within eight days of arrival.

If and when the applicant finds an employer willing to hire him/her, he/she can be hired without applying for a work permit: the work holiday residence permit allows the holder to work for up to six months in total and up to three months with the same employer.

Moreover, some specific bilateral agreements concern "social security" matters (e.g.: between Italy and Canada).

Currently, close to this point, it is worth enumerating all bilateral agreements in force between Italy and other countries: Argentina; Australia; Bosnia; Brazil; Canada and Quebec; Channel Islands; Isle of Man; Israel; Kosovo; Macedonia; Mexico; Montenegro; Principality of Monaco; Republic of Cabo Verde; Republic of Korea; Republic of San Marino; Santa Sede; Serbia; Tunisia; Turkey; Uruguay; USA; Venezuela; and Vojvodina.

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2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Citizens of the following countries are exempt from the entry visa requirement for stays of up to 90 days, for tourism, mission, business, invitation, sports competition and study: Albania; Andorra; Antigua and Barbuda; Argentina; Australia; Bahamas; Barbados; Bosnia and Herzegovina; Brazil; Brunei; Canada; Chile; Colombia; Costa Rica; Croatia; Dominica; East Timor; El Salvador; Former Yugoslav Republic of Macedonia ("Fyrom"); Georgia; Grenada; Guatemala; Honduras; Hong Kong; Israel; Japan; Kiribati; Macao; Malaysia; Marshall; Mauritius; Mexico; Micronesia; Monaco; Montenegro; New Zealand; Nicaragua; Northern Marianne; Palau; Panama; Paraguay; Peru; Saint Kitts and Nevis; Saint Lucia; Samoa; Serbia; Seychelles; Singapore; Solomon Islands; South Korea; St. Vincent and the Grenadines; Taiwan; Tobago; Tonga; Trinidad; Tuvalu; Ukraine; United Arab Emirates; United States; Uruguay; Vanuatu; and Venezuela. For citizens of Taiwan, the visa waiver applies only to holders of passports including an identity card number.

For citizens of Albania, Bosnia-Herzegovina, Fyrom, Moldova, Montenegro and Serbia the visa exemption applies only to holders of biometric passports.

Serbian citizens holding passports issued by the Serbian Coordination Directorate are excluded from the benefit of visa exemption.

The citizens of San Marino, Santa Sede and Switzerland are exempt from the visa requirement in any case.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period cannot exceed 90 days per semester.

2.3 What activities are business visitors able to undertake?

The business visa allows entry into Italy, for the purpose of a short-term stay, to the foreigner who intends to travel for economic-commercial purposes, for contracts or negotiations, for learning or checking the use and operation of capital goods purchased or sold under commercial and industrial cooperation contracts.

If the foreign citizen travels for business having been invited to Italy by a company operating in the national territory – for contracts, economic or commercial negotiations, for learning or checking the use and operation of machinery purchased or sold under commercial and industrial contracts in cooperation with Italian companies or for their professional updating, for visiting the structures of the Italian company, or for participation in exhibitions or trade fairs in Italy – the application for the entry visa must be accompanied by a "declaration of invitation" signed by the organisation or by the Italian company itself, indicating the period and the reason for the requested stay, as well as the activity that will be carried out by the invited foreigner.

The business visa, in the presence of similar requirements, may also be issued to persons accompanying, for documented work reasons, the applicant.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

There are special categories of visas, such as the "visa for self-employment" or the "visa for subordinate employment" to be authorised to perform professional activities as "regularly hired employees" or as service providers.

2.5 Can business visitors receive short-term training?

As previously mentioned in question 2.3 above, one of the reasons for entry with a business visa is – also and precisely – learning or verifying the use and operation of machinery purchased, or sold under commercial contracts and industrial cooperation with Italian companies, as well as carrying out professional updating activities.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The Italian National Labour Inspectorate (*INL*) is appointed, *inter alia*, for doing inspections concerning employment relationships, and health and safety issues, including compliance with immigration law.

The INL's functions includes:

(a) A labour inspection service (*servizio ispettivo del lavoro*), and so:
- an Operative Office for Ordinary Monitoring; and
- an Operative Office for Technical Monitoring. This unit includes technical labour inspectors specialised in safety and prevention in the workplace. They usually hold a technical degree.

(b) A policy labour service *(servizio politiche del lavoro*), which has two functions:
- a function of Conciliation: it is a mandatory step before referral to the court for litigation related to the employment contract; and
- a function of Authorisation: it is responsible for issuing administrative authorisations, such as those relating to changed status of pregnant working women, maternity leave authorisations, and changes in demand of working time.

3.2 What are the rules on the prevention of illegal working?

In various sections of the above-mentioned Immigration Act there are provisions disciplining some specific cases of "illegal working".

Specifically, Directive 2009/52/EC – implementing the principles identified by the Council – firstly establishes the "general prohibition of illegal recruitment" (Article 3), providing that Member States introduce into national legislation provisions prohibiting the recruitment of third-country nationals whose stay is irregular, and which provide for the violation of this prohibition the penalties provided for by the Directive.

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The sanctions could be issued at labour law level, or contributory and tax levels.

Moreover, with the Law of 30 November 2017, No. 179, special protection for the worker who reports offences committed by a colleague was introduced: this is so-called "whistleblowing", which refers to any abuse or irregularity that the worker has come to know for work reasons.

Lastly, the Law No. 145 of 30 December 2018 (so-called "Budget Law 2019") has provided the increase of the sanctioning amounts of the violations that affect the protection of the interests and dignity of workers. The INL, with the Circular letter No. 2 of 14 January 2019, has implemented the legislation and announced the start of the procedures for the establishment of a special tax code (for paying sanctions).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Penalties and consequences are different depending on the case.

Under Italian Law, criminal liability is personal (Article 27, Constitution) meaning only individuals are subject to criminal sanctions.

Companies, on the other hand, are liable for the payment of pecuniary fines imposed on their legal representatives, officers and managers.

The criminal sanctions indicated below, therefore, would be applied not to the company but to the individual officers and managers who act in their name and on their behalf.

An exception to this rule is Legislative Decree 231/2001, which introduced an administrative responsibility requirement. This provides that organisations can be held liable for certain crimes of fraud that have been committed or attempted by either of the following:

(1) Members of senior management.

(2) Members working under the direction or supervision of members of the senior management.

Civil penalties

It is a civil, administrative and criminal offence to hire foreign workers:

(1) Without a permit of stay.

(2) With expired permits.

(3) With permits that have been revoked or annulled.

Employers can incur civil liability if they engage in illegal employment practices.

An irregular worker can sue the company before the Civil Tribunal (Work Section) for:

(1) The difference between the salary received and the higher salary possibly due under the Collective National Employment Contract.

(2) Unpaid overtime and unpaid allowances (for work on weekends, nights or holidays).

(3) Severance indemnity (TFR) if the employment has been terminated.

(4) Health, pensions and other contributions.

(5) Possible compensation for unlawful dismissal.

An employer who is employing workers without complying with the mandatory notifications to labour authorities is subject to an administrative fine of (in virtue of Article 22, Legislative Decree no. 151/2015):

(1) EUR 1,500 to EUR 9,000 for each worker who has been employed irregularly for less than 30 days.

(2) EUR 3,000 to EUR 18,000 for each worker who has been employed irregularly for 31 to 60 days.

(3) EUR 6,000 to EUR 36,000 for each worker who has been employed irregularly for more than 60 days.

There will also be a 20% increase of the fine if any of the employed are either of the following:

(1) Foreign nationals.

(2) Minors.

Additional administrative sanctions will also apply to the employer for employing irregular migrant workers and related infringements of labour law, depending on the gravity of the circumstances, including:

(1) An accessory administrative fine equal to the average cost of deporting illegally employed workers.

(2) Suspension from business activity.

A ban on employing foreign nationals if in the past five years the employer has been charged with:

(1) Procuring illegal immigration or illicit brokering.

(2) Labour exploitation.

Any such immigration applications will be denied by the Prefecture.

Criminal penalties

An employer that irregularly employs foreign workers commits violations of the legislation on dealing with illegal labour and with illegal immigration.

Therefore, sanctions for the employer may overlap and different criminal penalties may be imposed jointly or severally, on a case-by-case basis, as follows:

Penalties against irregular work:

(1) a prison sentence of six months to three years and a fine of EUR 5,000 for each employee can be imposed on companies employing foreign workers who are either without a permit of stay, whose permits have expired and a renewal has not been requested, or whose permits have been revoked or annulled (Article 22, paragraph 12, Decree Law 286/1998); and

(2) in aggravated cases, for example, if there are more than three irregular workers, the penalties may be increased by up to half (Article 22, paragraph 12*bis*, Decree Law 286/1998).

Penalties against clandestine immigration:

In the most extreme cases, the employment of a foreign worker without a regular permit of stay may be considered as clandestine immigration and, therefore, punished under Article 12 of Decree Law 286/1998:

(1) actions aimed at procuring, aiding and organising the illegal entry of foreigners into the Italian territory will be punished by a prison sentence of one to five years and a fine of up to EUR 15,000 for each illegal immigrant; and

(2) where the facts constitute the more serious offence of assisting with the entrance of illegal immigrants to gain a profit, penalties will be increased to up to 15 years' imprisonment plus a fine of up to EUR 25,000 for each illegal immigrant where five or more people have been aided to enter the country illegally, or the illegal act is committed by three or more individuals acting together, or by using international transport services, or counterfeited/altered/illicitly obtained documents.

Lastly, the above-mentioned (see question 3.2) "Budget Law 2019", has provided for the increase of 20% of the amounts established by the Article 3 of the Legislative Decree No. 12/2002 (converted by Law No. 73/2002), which governs the so-called "maxi sanction for

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undeclared work" (*maxi sanzione per lavoro nero*), and also provided that the aforementioned increases are doubled if, in the three previous years, the employer has been subjected to administrative or criminal penalties for the same offences.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

According to the above-mentioned Immigration Act, in case an Italian or foreign employer, established in Italy, wishes to hire foreign nationals, they must submit a "Work Permits" application to the Immigration Office.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

According to Italian law, the criminal sanctions provided may apply during the entire duration of the work relationship. Therefore, it is not sufficient to comply with the law only during the hiring period.

The employers must ensure the regularity and validity of all foreign workers' residence permission.

According to criminal Italian law, there would be a risk of a criminal liability for the employer just in case of a wilful misconduct act and not simply for negligence.

Finally, it is important to consider that every amendment or change (e.g. dismissal, resignation) must be communicated by the employer to the Immigration Office.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

In general, the employers are not required to show any commitment to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

In general, employers are obliged to contribute to funds specialising in the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Compliance with Immigration law is supervised by the National Labour Inspectorate (INL), as well as every national work-relationship.

Therefore, the role of the typical immigration authorities expires once the work permit is issued.

In general, the authorities merely verify that the requirements provided by law are met and no "routine" inspections are undertaken.

See also question 3.1 above.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

According to the Immigration Act, with some category of employees or occupation, the quotas established (see question 4.8 below) could be disrespected.

In case of highly-skilled workers, foreign workers could be employed without limits.

For example, managers, university lecturers and professors, translators, domestic helpers, trainee employees and maritime workers are not subject to limits.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

As mentioned in questions 4.6 and 4.8, there are several exemptions, according to the types of jobs, which apply to the quotas.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

A programmatic document, adopted by the Government, defines the immigration policy. Based on that document, every year the Cabinet issues a decree (in Italian parlance: *Decreto-Flussi*), providing the maximum number of permits or visas that can be released to third-country nationals.

Quotas established by *Decreto-Flussi* depend on several relevant factors (e.g. bilateral treaties and market conditions, and for this reason quotas are different for every third country, conversion of study permits into work permits, etc.).

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

The law does not provide a threshold to the maximum percentage of foreign workers in the employer's workforce.

Therefore, there are no further limitations than the cap related to supply work and fixed-term contracts.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

According to the Article 4-*bis* of the Immigration Act, all applicants for residence permits shall sign an "integration agreement" (called *accordo di integrazione* in Italian).

The *ratio legis* is to facilitate their integration into Italian society.

The above-mentioned agreement requires that they achieve knowledge of several Italian items, including the Italian language.

Specifically, concerning the language, they must acquire an A2 level in Italian language.

In case of failure to achieve the minimum of the "integration agreement", they cannot renew their permit which could result in an expulsion act of the worker.

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Employees that are not able to achieve the minimum required result/score, and thus are not able to accomplish the "integration agreement", cannot renew their permit and they can be subject to an expulsion act.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

In certain sectors, preliminary medical examination is required and the employees must accomplish some mandatory health checks on their own.

That obligation is not entailed by the fact that they are foreign workers, but it is required for all workers; local and foreign.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign workers are entitled to enjoy the public medical services, but they should enrol in the national healthcare system.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

According to the law, foreign workers (no matter if they have been hired by foreign or Italian employers) can perform their work activity which is the object of the work relationship at a client's site (for the time strictly necessary), as set out in the framework, of a work contract or of a business mission.

In both cases, the employer cannot definitively assign the foreign worker to the client.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

The joint circular of the Ministry of Interior and the Ministry of Labour and Social Policies of 5 May 2015, made operational the provisions of Article 27 quarter, paragraph 8, of the above-mentioned Immigration Act, the Article that regulates the entry into Italy of highly qualified workers (i.e. holders of the so-called EU Blue Card).

The EU Blue Card is a special residence permit issued to highly qualified foreign workers, provided that they have a job contract or a binding job offer and are the holders of a residence permit for work reasons.

Foreigners are considered to be highly qualified if they are in possession of:

(a) A higher education qualification awarded by the competent authority in the country where it was obtained attesting to the completion of a post-secondary higher education programme of at least three years' duration.

(b) A higher professional qualification included in "levels 1, 2 and 3 of the ISTAT classification of CP 2011 professions", a national classification which included, *inter alia*, top managers, scientists, technicians, etc.

A further condition for such entry is that foreign workers are employed on a contract of at least one year to perform work for or under the direction or coordination of a natural person or legal entity.

Rather than workers who are eligible for an EU Blue Card, highly qualified workers are also special categories of workers such as managers or highly specialised personnel, university professors, translators and interpreters.

Highly qualified foreigners can enter Italy with a simplified procedure, outside the quotas, or without any numerical limit.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Pursuant to Article 26, par. 12 of the above-mentioned Immigration Act, any foreigner who intends to carry out an industrial, professional, artisan or commercial activity in Italy or to set up a company must demonstrate that he/she:

- has adequate resources to carry on the activity he/she intends to carry out in Italy;
- possesses the requirements provided for by Italian law to exercise such activity; and
- possesses a certificate from the competent authority dated no earlier than three months previously, stating that there are no reasons preventing the issue of the authorisation or licence required to exercise the activity that the foreigner intends to carry out.

In any case, entry into Italy of foreign workers not belonging to the European Union who intend to exercise a non-occasional activity of self-employment in the territory of the State may be permitted on condition that the exercise of such activity is not limited by law to Italian citizens, or to citizens of one of the Member States of the European Union.

Furthermore, Law No. 232 of 11 December 2016, known as the "2017 Budget Law", has introduced a new permit of stay specifically for investors. This new permit, known as "entry visa for investors" (in Italian parlance: *permesso di soggiorno per investitori*), is a new type of entry visa for foreign nationals who intend to make an investment or donation in strategic assets for Italy's economy and society, as intended pursuant to Article 26-*bis*, paragraph 1 of the above-mentioned Immigration Act.

Specifically, "entry visa for investors" will entitle foreign investors to advantageous treatment, provided that they carry out a durable investment in Italy or a large donation involving benefits for Italian culture and research.

Pursuant to Article 26-*bis*, par. 1 of the Immigration Act, to be qualified as an immigrant investor, a foreign national must invest the following minimum amounts:

(a) at least EUR 2 million in bonds – funds issued by the Italian Government to be held for a period of at least two years; or

(b) at least EUR 1 million in equity instruments of a company based and operating in Italy and maintained for at least two years or at least EUR 500,000 in a start-up company; or

(c) at least EUR 1 million of a philanthropic donation to support a project of public interest in the fields of culture, education, migration management, scientific research and the restoration of cultural and landscape heritage.

Visa holders seeking to conduct their business activity in Italy shall be issued with an "investor residence permit", a two-year residence permit renewable for further three-year periods following a positive evaluation, by the administrative authority, of the documentation

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proving that the sums listed under letters (a), (b) and (c) above have been fully used within three months from the date of entry into Italy (Immigration Act, Article 26 *bis*, paragraphs 5–6).

Lastly, as per Article 27 *quinquies* of the Immigration Act, foreigners who request admission to the national territory as (i) executives, or (ii) skilled workers (i.e. workers with specialist knowledge indispensable for the employer's industry) are allowed entry and stay in Italy to perform work services as employed staff, in the context of intra-corporate transfers, for periods of more than three months, also outside and beyond the above-mentioned quotas.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Specific types of visas exist for any foreigner who intends to enter Italy for study or internship purposes: student visas; or internship visas.

The visa for study or internship is provided for foreigners who want to attend university courses in Italy, courses of upper secondary education, professional training courses or training courses in general.

A student visa or internship visa may be issued to specific categories such as:

- students over 18 years of age to follow university courses;
- students aged 18 and over who may attend courses of higher secondary education or courses of higher technical education and training;
- students aged between 14 and 18 participating in exchange programmes or cultural initiatives who have received authorisation from the Ministry of Foreign Affairs and the Ministry of Education;
- citizens aged 18 and over wishing to attend training courses; and
- students over the age of 18 who want to attend professional training courses or training courses.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Generally speaking, all work permits are temporary. In Italy, there are no specific temporary work permit categories. The type of temporary work permit is determined on a case-by-case basis, depending on the length of stay in Italy and the type of activity which will be performed. In this respect, work permits may be issued for employment, self-employment, internship, training, etc.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

With Legislative Decree No. 253 of 29 December 2016, has implemented Directive 2014/66 EU, regarding the conditions of entry and stay of managers, specialist employees and graduate trainees of third countries in the field of intra-corporate transferrers.

In this sense, Legislative Decree No. 253/2016, which amends the above-mentioned Immigration Act, specified who these particular employees are. In fact, Article 1 provides that entry and residence in Italy for work and for employees in the field of intra-corporate transfers for a period exceeding three months is allowed to non-EU nationals but they are required to be admitted in a EU State as executives, specialist employees or graduate trainees. In particular, Article 1 Law Decree No. 253/2016 expressly qualify the aforementioned professional figures as follows, as also anticipated in question 6.1 above.

Specialist employees, who are employees with specialised knowledge for the host entity's areas of activity, also to the technical operations or management of the latter. In particular, the specialised knowledge must be valued taking into account whether the person has a high qualification level related to a type of work or trade requiring specific technical knowledge, including the membership of an accredited profession.

Graduate trainees, who are employees holding university decrees transferred to a host entity for career development purposes or in order to obtain methods and techniques and are paid during the transfer.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

To qualify as part of a group of companies the host entity and the transferring entity must belong to the same undertaking of a holding company. In this sense, in case of intercompany transferring for the Italian perspective, the hosting company has to be registered in Italy or it has to have a branch or a representative office in Italy. And, in any case, it must be subjected to a form of control; for example, because one of the companies has a majority of the subscribed capital of the other company or when one of the companies exercises management and coordination of its subsidiary undertaking.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

First of all, the host entity must give (i) evidence that the two entities belong to the same group, (ii) that the employee, as specified above in question 8.1, is at an executive level, a specialist or a graduate trainee, (iii) the duration of the transfer, (iv) the place of work, and (v) the terms and conditions of employment. Furthermore, the host entity has to give evidence that the employee has a length of service of at least three months immediately preceding the intra-corporate transfer, according to Article 1, par. 2 Legislative Decree No. 253 of 29 December 2016.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

According to Article 1, par. 5 Legislative Decree No. 253 of 29 December 2016, the host entity has to file a request for permission for an intra-company group employee to the territorial competent immigration office. The request must contain the information mentioned above in question 8.3. A background check is performed by the immigration office, and the latter might request the host entity to provide additional data and documentation. At the same time, additional checks are performed by the National Employment Inspector and by the Police.

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8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The employee receives the work permit from the Consular office of the place of residence of the employee. Within the following six months, the employee shall thereafter apply for a visa and must submit the application form, passport, etc.

8.6 How long does the process of obtaining the work permit and initial visa take?

According to Article 1, par. 8 Legislative Decree No. 253 of 29 December 2016, the Immigration Office must grant the visa within 45 days from application. Anyway, the duration of the process depends on the backlog of the processing Immigration Office. In any case, the visa must be issued within 30 days of the application.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

According to Article 1, par. 12 Legislative Decree No. 253 of 29 December 2016, intra-corporate transfers have a maximum duration of three years for managers and specialists and one year for graduate trainees.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

See answer to question 12.2 below.

8.9 What are the main government fees associated with this type of visa?

See answer to question 9.10 below.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Subordinate workers, including seasonal workers, is the main immigration category used for employers who wish to obtain work permits for new hires. The issuance of a visa for *lavoro subordinato* is limited by an annual quota system established by the Government, as mentioned above. In order to be authorised to hire a foreign worker, an Italian employer can only apply for and obtain a work permit if quotas are available.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Before the application process for a new hire a labour market test must be carried out.

In particular, according to Article 22 of the Consolidated Immigration Act, the employer must verify with the Employment Agency (*Centro per l'Impiego*) whether there are available candidates in Italy before making an application to hire a foreign worker. Suitable candidates are Italian or foreign individuals who have communicated their availability to work for the Employment Agency.

Furthermore, according to Article 30 *quinquies* of President Decree No. 394/1999, the Immigration Office, upon receipt of the application for a work permit, forwards it to the Employment Agency, who within 20 days of receipt of the same, indicates a list of suitable employees, if any.

In any case, the law does not provide an obligation to hire available candidates as indicated by the Employment Agency. Indeed, an employer may choose to go ahead with the application procedures especially if the application is on behalf of a specific candidate.

9.3 Are there any exemptions to carrying out a resident labour market test?

According to Article 23 par. 3 of the above-mentioned Immigration Act, foreign workers who have obtained qualifications approved by the Italian authorities (such as the Ministry of Labour and the Ministry of Education) in their home country can be given priority by Italian employers and are exempted from the labour market test.

9.4 What is the process for employers obtaining a work permit for a new hire?

The employer begins the process (so-called *nulla osta*) which can be carried out entirely on the website of the Interior Ministry, by applying for a work permit from the Italian immigration office in the province where the foreign employee will perform his or her activity or where the Italian entity has its legal office.

The application for obtaining a work permit must contain:

- the employer's details – the name of the company and its legal representative;
- personal details of the foreign worker including residence abroad; or in case of a nonspecific request the number of workers to be hired;
- remuneration and insurance coverage, in compliance with applicable current laws and national labour contracts, also reported in the residence contract proposal;
- proposed residence contract including details relating to the payment of the return journey for the foreign national to return to his/her country of origin; and
- declaration of commitment to communicate any variation in the working relationship (termination of contract, change of work office address).

The Immigration Office carries out initial checks on the application and seeks consent from other authorities, specifically clearance concerning quotas (where applicable) and the relative qualifications of the employer from the Labour Office, permission from the Police Office concerning the foreign worker and the employer.

According to Article 30 *quinquies* pars. 2 and 3 of the President Decree No. 394/1999 the Immigration Office, upon receipt of the application for a work permit, it must be sent to the Employment Agency which then has to verify whether there are suitable candidates in Italy. Within 20 days of sending this, the Employment Agency informs both the Immigration Office and the employer regarding suitable candidates in Italy. In the case where there are suitable candidates, the employer may decide in any case to proceed with the application process related to the foreign employee chosen.

The Immigration Office, having verified that all requirements are met, proceeds to issue the work permit (*nulla osta*) to the employer.

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9.5 What is the process for the employee to obtain a visa as a new hire?

In case of a request by an employee, the Immigration Office sends the issued work permit to the Italian Consular Office in the place of residence of the foreign worker by electronic post.

Furthermore, the employer informs the foreign employee, who can apply for an entry visa at the Consular Office within six months of the end of the application process for a work permit (Article 31, par. 7 of the Presidential Decree No. 394/1999).

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

According to Article 22 par. 5 of the Immigration Act, the application for hiring a foreign worker must be issued within 60 days of the initial request.

Instead, a work visa is issued within 30 days of the application for the same (Article 31 of the Presidential Decree No. 394/1999).

9.7 How long are initial visas for new hires granted for and can they be extended?

The work permit shall be valid for six months from the date of issue (Article 22 par. 5 of the above-mentioned Immigration Act).

The foreign worker, during the above period, must obtain a work visa and go to the Immigration Office to sign a residence contract.

After obtaining his/her initial visa the foreign worker can enter Italy and, within eight days of arriving in Italy, he/she must go to the Immigration Office that issued the work authorisation to sign the residence contract, submit an application for a staying permit and obtain a certificate assigning a tax identification code, otherwise the work permit will be revoked and the worker considered to be in the national territory illegally.

Furthermore, according to Article 5, par. 3 *bis* of the Consolidated Immigration Act the residence permit for working purposes has the same duration as the employment contract with a maximum duration of two years, and, according to par. 4 of the same Article, the foreign worker must apply for its renewal six months before the expiry date for a period not exceeding the duration of the expired residence permit.

9.8 Is labour market testing required when the employee extends their residence?

In general there is no labour market testing required when the employee extends their residence.

9.9 Can employees coming as new hires apply for permanent residence?

See answer to question 12.1 below.

9.10 What are the main government fees associated with this type of visa?

According to the Ministerial Decree of 5 May 2017 the contribution for a residence permit is between EUR 40 and EUR 100, depending on the length and the nature of the work residence permit. Furthermore, there are fees related to the issuance and renewal of the residence permit.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

According to Article 2 of the above-mentioned Immigration Act, the foreign worker must be recognised with the same civil rights and equal working conditions with respect to Italian citizens as underlined also by the Ministry of Labour in circular No. 4571/2006.

Indeed, as indicated in question 9.4, during the application for a work permit the proposed employment contract must indicate the remuneration and insurance coverage in compliance with applicable current laws and national labour contracts.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Once the staying permit has been obtained, work permit holders and family members, if any, must also register at the General Registry Office (*Anagrafe*).

Furthermore, foreign workers must also renew the declaration of habitual residence within 60 days of renewal of their staying permit at the General Registry Office (Article 7 of Presidential Decree No. 223/1989).

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Workers who come to Italy to work on a sponsored basis could ask the competent authorities for the possibility of having family members come to Italy as dependants (so-called "family reunification"), if they have been working in Italy for at least one year.

The family reunification can be implemented only for the family members indicated by the law, and they are:

- a legally married spouse, aged at least 18, not legally separated;
- children – including those of the spouse or born outside marriage, those adopted and those of whom one member of the couple has custody, not over 18 years of age and not married, provided the other spouse agrees upon the application for reunification in Italy;
- children of age if they are dependent on their parent, i.e. if they are unable to care for their essential life needs because of poor health conditions entailing total invalidity; and
- parents who are dependent because they do not have other children in their home country, or if they are aged over 65 and their children in the home country cannot support them because of serious and documented health problems.

In this respect, it is not possible to ask for the family reunification for a brother or sister, for grandparents or grandchildren.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

All the civil unions, even if with a same-sex partner, qualify the partner as a family member and therefore allow family reunification.

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Instead, the unmarried *de facto* partners, homosexual or not, are not considered as family members, regardless of whether they are bound by a counselling contract for family economic relationships.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Once family reunification has taken place for spouses or partners (and in general, for all the family members) they can have access to the labour market and perform their working activity without restrictions.

11.4 Do children have access to the labour market?

Children aged 16 years and over who have completed the mandatory school could have access to the labour market.

However, even children under the age of 16 years can work. This is required by law only for specific business activities, such us entertainment, advertising or sports. Those who want to carry out those activities must ask for two authorisations: one from the territorial division of the Labour Office; and one from their parents.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

A foreign worker can ask for EU permanent residence after having legally and continuously lived in Italy for at least five years. The relevant request to obtain the permit must be supported by different documentation including: a valid registration certificate; bank statements; and payment slips, which prove that you have worked, studied, or carried out a professional activity, are self-sufficient or are looking for a job. Furthermore, the foreign worker shall give evidence of having a suitable accommodation compliant with the minimum standards applicable to public housing and shall pass a test showing knowledge of the Italian language.

Absence from the host country for more than two consecutive years may result in the loss of the right of permanent residence.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

A temporary work visa may lead to a permanent EU residence permit only if the foreigner worker has been in possession of the minimum requirements described in the answer to question 12.1 above.

13 Bars to Admission

13.1 What are the main bars to admission for work?

See the answer to question 13.2 below.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, criminal convictions are a bar to obtaining work permission or a visa. Foreigners who are considered a threat to the public order or the security of the State or one of the countries with which Italy has signed agreements for the elimination of controls at internal borders and the free movement of persons are not allowed in Italy, neither are people who have been sentenced for crimes related to drugs, sexual freedom, abetting illegal immigration to Italy and illegal emigration from Italy to other States or for crimes aimed at recruiting people to be used for prostitution or exploitation of prostitution or minors to be used in illegal activities.

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Japan

Nakai Immigration Services LPC

Masahito Nakai

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Immigration Control and Refugee Recognition Act is the main source of immigration law in Japan. It consists of the entry procedure, the residence management system, the deportation procedure, and others. Ministerial ordinances by the Ministry of Justice and Orders by the Minister regulate details.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Immigration Services Agency under the Ministry of Justice control entries, departures, and other permissions to stay for foreign workers in Japan. The Agency can also issue a certificate of eligibility to the sponsoring company in Japan as a kind of pre-examined recommendation document to issue a working visa. Working visas themselves are issued by an embassy or consulate office overseas upon submission of the certificate. Those overseas missions are under the Ministry of Foreign Affairs.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, Japan does not have a multilateral agreement with the countries of EU/NAFTA/MERCOSUR to exempt visas, while business persons from 19 countries in APEC can enter Japan without any visa for short-term business purposes when they are issued an ABTC (APEC Business Travel Card). APEC member economies fully participating in the scheme include Australia, Brunei Darussalam, Chile, China, Hong Kong (China), Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, and Vietnam. Canada and the United States are transitional members, and are still working towards exempting visa by ABTCs.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes, they can. Business visitors of the countries which have the bilateral visa exemption agreement with Japan can enter Japan without a visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

At a port of entry, a maximum of 90 days' stay can be granted for business visitors. An extension of the duration is not permitted unless the business person is from a country which has a six-month visa exemption agreement with Japan. Citizens from the UK, Ireland, Germany, Austria, Switzerland, Liechtenstein and Mexico can stay up to 180 days.

The list of the countries and regions with agreements can be found on the home page of the Ministry of Foreign Affairs at http://www.mofa.go.jp/j_info/visit/visa/short/novisa.html.

2.3 What activities are business visitors able to undertake?

Business visitors are able to engage in attending meetings or lectures, negotiating and exchanging a contract, marketing research or other similar activities, but are not allowed to undertake work in Japan.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, there are no visitor categories enabling business visitors to undertake work. They are not allowed to provide services during their stay with temporary visitor status when they receive remuneration in return, either in Japan or overseas. In the meantime, there are Working Holiday programmes to allow a visitor to work up to one year. The details are available at http://www.mofa.go.jp/j_info/visit/w_holiday/index.html.

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2.5 Can business visitors receive short-term training?

Yes, they can receive short-term training. If, in the course of training, a business visitor would help to produce value or profit at the recipient organisation as a "Technical Intern", visa status should be obtained rather than a temporary visitor visa or trainee visa.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, the immigration authorities within the Ministry of Justice of Japan operate a system of inspections of employers who are going to employ or have employed foreign nationals.

The inspectors may inquire into the facts, if necessary, in order to conduct dispositions relating to revocation of status of residence, application for extension of period of stay, application for change of status, application for certificate of eligibility and so on. If there is any change in the employment, both employer and employees are required to report to the Immigration Services Agency. Employment conditions should be inspected by the labour standards management authorities within the Ministry of Health, Labour and Welfare.

3.2 What are the rules on the prevention of illegal working?

Penalties on both employers and employees including fines, imprisonment and deportation may prevent foreign workers from working illegally.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Organisations found to be employing foreign nationals without proper status of residence shall be punished with an imprisonment of no longer than three years, a fine not exceeding three million yen, or shall be subject to the cumulative imposition of imprisonment and a fine.

The abovementioned employer is also subject to a deportation order if he or she is a foreign national.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

The employers are required to register as a member of the sectoral association with competent authorities when they hire foreign blue-collar workers with a Specified Skilled Worker status.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, employers who hire foreign nationals are required to report the employment status of foreign nationals to the labour authorities and such information shall be transferred to the immigration authorities.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, employers hiring foreigners are not required to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, there are no regulations that require employers who hire foreign nationals to pay government charges or fees for any purposes.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

No, the immigration authorities do not undertake routine inspections of employers who sponsor foreign nationals, though they may investigate an employer upon application for extension of the employee's period of stay, change of status, certificate of eligibility, among other things, as well as revocation of the employee's status of residence. They may require the foreign, national and other persons concerned to appear, may ask questions or request the presentation of documents, and may make inquiries to public offices or to public or private organisations and request the submission of reports on necessary facts in relation to the inquiry. Only employers who hire Specified skilled workers may receive inspections by the Immigration Services Agency to verify immigration compliance, when the Agency finds it necessary.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, the Japanese immigration laws do not have a regulation to maintain a list of skilled occupations which may be filled by foreign nationals, while the law designates the 14 labour shortage industry fields for Specified Skilled Workers status.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, the 14 industrial fields including nursing care, building cleaning, some types of manufacture, construction, automobile repair, aviation, agriculture, fishery, food service and accommodation.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Yes, there are annual quotas for the above 14 industrial fields, respectively.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Yes, there are restrictions for Technical Interns and some job types of Specified Skilled Workers.

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4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Yes, Specified Skilled Workers and caregivers with Technical Intern status are required to demonstrate Japanese language proficiency.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No, employees are not required to undergo any medical examinations before being admitted to Japan, except those who apply for Specified Skilled Worker status.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

In principle, all employees with any nationality are required to be enrolled in a health insurance system. Most municipalities offer a free medical service to children of any nationality.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Japan does not have a work permit system. Work visa statuses with Resident Cards allow a foreign national to engage in activities permitted within their status of residence. Most work-type statuses of residence will allow employees to work at a client site or to be seconded to another organisation when salaries are paid by the visa sponsor recipient company or the dispatching company, directly to the employees who are still working under its supervision.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, there is a highly skilled workers category in Japanese immigration law. In fact, most work-type statuses of residence require individuals to have a Bachelor's degree or 10 years' job experience in a relevant field, and they are only permitted to take up positions which require such high skills. In addition to the above statuses, in 2012, Japan started a points-based evaluation system – a promotion to receive a larger number of further highly skilled foreign professionals by giving preferential immigration treatment. This new HSP (Highly Skilled Professional) visa also requires a contract of employment with an organisation in Japan.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes, there is a "Business Manager" category which permits employees to work in Japan that were both locally hired and dispatched by a company which has invested in Japan and is setting up a subsidiary. This status requires a real business office and business plan in addition to the investment, and the employees should engage in the operation or management of the company in Japan.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, there are "Trainee" and "Cultural Activities" categories covering foreign nationals who are to study in a private organisation on the job. If he or she is an employee of an organisation outside of Japan, a trainee visa is applicable. If he or she is a student belonging to an overseas university and they are working for a certain organisation in Japan to help them to acquire academic credits from the university, the Cultural Activities visa is applicable.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

No, there are no specific temporary work categories. However, the period of stay granted by the immigration authorities varies from three months to five years. A work visa with a three-month duration enables foreign workers to perform temporary work within the permitted activities in each category.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes, an "Intra-Company Transferee" status exists in the work status categories, serving transfers within international groups of companies.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

A company or organisation which will accept an employee with Intra-Company Transferee status must have a certain capital tie with the dispatching company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The employer has to pay the transferee a salary no less in total than that of a Japanese employee engaging in similar activities. The employee must have been employed at the dispatching organisation or other related office outside of Japan for at least one year immediately prior to the transfer to Japan, during which time he or she was engaged in duties which fall under the categories of "Engineer/Specialist in Humanities/International Services".

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8.4 What is the process for obtaining a work permit for an intra-company group employee?

First of all, the recipient organisation in Japan needs to proceed with an application for a Certificate of Eligibility that has to be filed at a regional Immigration Services Agency office in Japan.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The employee should apply for a working visa with an issued Certificate of Eligibility at a Japanese embassy or consulate located in either the country where they reside or that of their nationality.

8.6 How long does the process of obtaining the work permit and initial visa take?

It would take one to three months for an immigration office in Japan to issue a Certificate of Eligibility, and then it would take two to seven days to issue a work visa at a Japanese overseas mission with the Certificate of Eligibility.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The validity of visas should be three months to one year or longer, which cannot be extended. The visa is used for a landing application at a port of entry to Japan only. At the airport, a landing permission and a Resident Card will be issued by the work visa with a duration of stay of three months, one year, three years or five years. There is no maximum period since the card can be renewed.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, employees with Intra-Company Transferee status can apply for permanent residence after 10 years' consecutive stay in Japan. When he or she has 80 points or more in HSP score, permanent residence can be applied for only after one year's stay.

8.9 What are the main government fees associated with this type of visa?

No fee is required for a Certificate of Eligibility application, while 4,000 yen should be paid when the status and resident card is renewed within Japan.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main work visa status categories are "Engineer/Specialist in Humanities/International Services", and "Business Manager". Unlike some European countries, there is no work permit system in Japan, as a work visa itself will lead to a Resident Card which allows the employee to work without obtaining any additional permission. In the following sections a "Resident Card" is called a "work permit", since the card with work status certifies eligibility to work in Japan.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

No, there is no requirement for labour market testing.

9.3 Are there any exemptions to carrying out a resident labour market test?

A resident labour market testing is not required in any case.

9.4 What is the process for employers obtaining a work permit for a new hire?

Although there is no work permit needed in addition to work visa status, the process starts with the employer filing an application for the Certificate of Eligibility at a regional Immigration Services Agency, by submitting documents showing employment conditions, the employee's background, employer's career and others.

9.5 What is the process for the employee to obtain a visa as a new hire?

The employee should send a diploma or a certificate of graduation with a major in the subject regarding the activity of the person concerned, and documents certifying his or her professional career to the employer to apply for the Certificate of Eligibility. The work visa should be applied with the Certificate at a Japanese overseas consulate office by the employee. After the issuance of the visa, the employee should apply for a landing permission at the airport of entry. A residence card will be issued together with the landing permission. The card itself can be a "work permit", allowing the employee to work for the employer in Japan.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

It would take two to four months, or longer in total, from the Certificate of Eligibility process to the granting of a Resident Card, i.e. a work permit for a new hire, as it would take one to three months to receive a Certificate of Eligibility, a week or so for a work visa, and a few days for the work permit, i.e. the Resident Card.

9.7 How long are initial visas for new hires granted for and can they be extended?

The duration of the "initial" status, which includes an initial visa, as well as a Resident Card, is three months, four months, six months, one year, three years or five years. It can be extended in Japan as the Resident Card can be renewed by an application for extension of the period of stay. The application is allowed to be filed from the date of three months prior to the expiry date.

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9.8 Is labour market testing required when the employee extends their residence?

No, market testing is not required when the employee extends their residence.

9.9 Can employees coming as new hires apply for permanent residence?

No, a new hire to Japan is not able to apply for permanent residence. The PR application can be filed at the earliest after a one-year stay.

9.10 What are the main government fees associated with this type of visa?

No fee is required for a Certificate of Eligibility application, while 4,000 yen should be paid when the status and resident card is renewed within Japan.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreign nationals who obtain a work permit, i.e. a Resident Card, can only engage in the activities allowed within the status of residence for a limited period stated on the card, which is renewable. If they have changed their place of residence, they are asked to bring their Resident Cards to the municipal office and notify the new residence. If they leave an organisation and move to another organisation, notification of their change of employer to a local immigration office is required. If duties in the new organisation are not within the permitted status of residence, an application for change of status should be filed at the local immigration services agency.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, work permit holders, i.e. Resident Card holders, are required to register their residential address at the local municipal office within two weeks of settlement, though they are not required to go to the police.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A spouse and unmarried children supported by a work status holder are qualified as "dependants" when they are living with the employee.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Civil/unmarried partners have a chance to be qualified to stay with the partner by a case-by-case examination when the Minister of Justice finds some humanitarian ground, but their status will never be that of a "dependant" as it would be with a family member. A same-sex partner with an official marriage certificate may have the same treatment.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Spouses and partners are not admitted to work in Japan. When they receive permission to take a part-time job, upon application for "permission to engage in activity other than that permitted by the status of residence previously granted", they can work up to 28 hours a week in general. Meanwhile, a spouse of a HSP (Highly Skilled Professional) status holder is allowed to engage in full-time work without the above permission.

11.4 Do children have access to the labour market?

No, children of a work visa status holder do not have labour market access. They can work up to 28 hours per week upon additional permission by the immigration authorities.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The conditions for obtaining permanent residence, as published in a Guideline by the Minister of Justice, are as follows:

1. Legal requirements

(1) The person is of good conduct.

The person observes Japanese laws and his/her daily living as a resident does not invite any social criticism.

(2) The person has sufficient assets or ability to make an independent living.

The person does not financially depend on someone in society in his daily life, and his/her assets or ability, etc. are assumed to continue to provide him/her with a stable base of livelihood into the future.

(3) The person's permanent residence is regarded to be in accord with the interests of Japan, as follows:

(a) In principle, the person has stayed in Japan for more than 10 years consecutively. It is also required that during his/her stay in Japan the person has had a status of residence, except the status of Technical Intern and Specified Skilled Worker type-1. The work status of residence has to have been for more than five years consecutively.

(b) The person has never been sentenced to a fine or imprisonment. The person fulfils public duties including payment of tax, social insurance/pension, and duties of notification to the immigration authorities.

(c) The maximum period of stay allowed for the person with his/her current status of residence under Annexed Table 2 of the Immigration Control and Refugee Recognition Act is to be fully utilised.

(d) There is no possibility that the person could do harm from the viewpoint of the protection of public health.

N.B. Requirements (1) and (2) above do not apply to spouses and children of Japanese nationals, special permanent residents or permanent residents, and requirement (2) does not apply to those who have been recognised as refugees.

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2. Special requirements for a 10-year residence, in principle

(1) The person is a spouse of a Japanese national, special permanent resident or permanent resident, has been in a real marital relationship for more than three years consecutively, and has stayed in Japan for more than one year consecutively. Or the person is a true child of a Japanese national, special permanent resident or permanent resident, and has stayed in Japan for more than one year consecutively.

(2) The person has stayed in Japan for more than five years consecutively with the status of long-term resident.

(3) The person has been recognised as a refugee, and has stayed in Japan for more than five years consecutively after recognition.

(4) The person has been recognised to have made a contribution to Japan in diplomatic, social, economic, cultural or other fields, and has stayed in Japan for more than five years.

(5) The person has stayed in Japan for more than three years consecutively with the HSP points over 70.

(6) The person has stayed in Japan for more than one year consecutively with the HSP points over 80.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

No. there is no temporary work visa in Japan. It is common practice to obtain permanent residence from a work visa.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bar to admission for work in Japan is the fact that foreign nationals can engage only in the jobs which require high or middle-level skills. Other bars include criminal convictions, certain infections, an illegal stay record and deportation from Japan.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, criminal convictions are a bar to obtaining work permission and a visa. The immigration law of Japan says a person who has been convicted of a violation of any law or regulation of Japan, or of any other country, and has been sentenced to imprisonment for one year or more, or to an equivalent penalty, shall be denied permission to land in Japan.

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Masahito Nakai started practising in March 1992 and is widely recognised as one of the leading immigration lawyers in Japan. Masahito, the managing partner of Nakai Immigration Services LPC, has been a lecturer on immigration and nationality topics on numerous occasions; including at the International Bar Association (IBA), an American Law School, Nagoya University, Tsukuba University, and foreign Chambers of Commerce in Tokyo. He was a chair of JILPA or the Japan Immigration Practitioners Association since its foundation by him in 2011 until July 2018. Masahito is a co-author of the Guidebook for International Marriage, which is a go-to book for most Japanese immigration lawyers. He is a member of the Tokyo Gyoseishoshi Lawyers Association and has been handling not only corporate applications but also difficult individual cases.

Nakai Immigration Services LPC is one of the longest established and largest immigration law firms in Japan which has been providing extensive quality services to thousands of corporate clients; including some 500 listed companies around the world. The firm is filing applications every day from their Tokyo and Osaka offices to the local immigration service offices. About 20 staff members and lawyers from eight countries are capable of communicating in English, German, Spanish, Portuguese, Chinese, Korean, Filipino, Vietnamese and other languages. Moreover; it has a New York state-registered attorney and has appointed a former Director General of Tokyo Immigration Services Agency as our regular adviser, who was also a Director of Consular Division at Consulate General of Japan in USA.

Nakai Immigration Services LPC uses their rich experience to work with overseas law firms to assist their corporate clients, in a joint and speedy effort.

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Luxembourg

REAL Avocats à la Cour

Maria Ana Real Geraldo Dias

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main immigration law in Luxembourg is the Law of 29 August 2008 on freedom of movement and immigration (Immigration Law). Other sources include the Labour Code, several grand-ducal regulations fixing the conditions for immigration-related procedures and European Law.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Immigration Directorate is the main authority administering the corporate immigration system in Luxembourg. It is part of the Ministry of Foreign and European Affairs (MAEE).

However, other authorities are involved in the process. As such, the Agency for Development and Employment (ADEM) is responsible for issuing a certificate allowing companies to recruit third-country nationals. In relation to posting employees in Luxembourg, the General Directorate for Small and Medium-Sized Enterprises at the Ministry of the Economy issues business permits for businesses established outside the EU. Equally, the Inspectorate of Labour and Mines has jurisdiction over the working conditions and the protection of workers in their working environment. It acts as a supervising authority to ensure compliance with immigration rules and the legal framework on working conditions.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Yes. Luxembourg is a Member State of the European Union. As such, it applies the "*acquis communautaire*" encompassing the four economic freedoms, one of which is the free movement of labour. Article 45 TFEU states that the "freedom of movement for workers shall be secured".

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

No. Third-country nationals who are subject to a visa obligation and wish to remain in Luxembourg for a period of maximum 90 days over a 180 days period as part of a business trip or a professional event, must apply for a short-term visa with Luxembourgish authorities or be in possession of a Schengen visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period for which business visitors can enter Luxembourg is 90 days over a 180-day period.

2.3 What activities are business visitors able to undertake?

According to Article 35(2) e) of the Immigration Law, business visitors may undertake the following activities:

- visit business and professional partners;
- carry out research and develop professional contacts;
- negotiate and conclude contracts;
- participate in fairs and exhibition; and
- attend board meetings and general corporate meetings.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

For EU citizens, it is possible to work and provide services temporarily if the duration of their stay does not extend over more than a period of three months. No formalities need to be completed in this regard.

For third-country nationals, it is necessary to obtain a prior authorisation by the Ministry of Foreign affairs in order to carry out any salaried or independent activity, regardless of the duration of the stay, if that activity does not fall under those listed in question 2.3.

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2.5 Can business visitors receive short-term training?

No. As the list of activities presented under question 2.3 is exhaustive, any other activity carried out by a business visitor will require prior authorisation.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes. In Luxembourg, it is the mission of the Inspectorate of Labour and Mines (ITM) to monitor working cooperation and labour conditions as well as safety and health at work. It operates under the authority of the Ministry of Labour, Employment, and the Social and Solidarity Economy. It may carry out controls of any company employing foreign nationals. This authority is shared with the Ministry of Foreign Affairs.

3.2 What are the rules on the prevention of illegal working?

Following the dispositions of Article 571-1 of the Labour Code, clandestine labour is prohibited and punished by law in Luxembourg. The responsibility of preventing such activity is born by both the employer and the employee.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Without distinction of whether a foreign or a national individual is employed illegally, the employer and the employee can be subject to civil and criminal sanctions. These sanctions can be pecuniary or result in incarceration for a period of up to six months.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No such system exists in Luxembourg.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes. There is an ongoing duty for employers to ensure immigration compliance, for regular, transferred, seconded or posted employees alike. This translates, for instance, into the obligation of registering the employee at the Joint Social Security Centre (CSSF). Other obligations can be to make a declaration to the Inspectorate of Labour and Mines and respect labour law and income tax. The compliance with immigration rules by the employers and the employees is under regular scrutiny by the Inspectorate of Labour and Mines.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No. Employers are not required to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No. Employers are not required to pay government charges or fees which contribute towards the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. The Inspectorate of Labour and Mines and the Ministry of Foreign Affairs carry out regular labour law and immigration compliance checks.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No such list exists in Luxembourg.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No. In Luxembourg, no special exemptions apply to sectors or occupations. However, a difference is made between regular workers and highly-skilled professionals. Highly-skilled professionals, of any sector and occupation, may receive and accept a job offer without the latter having to pass the labour test.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No annual quotas are applied in Luxembourg.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No restrictions on the sponsoring of foreign workers exist.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No. The granting of a work permit is not subject to any mandatory language requirements.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes. Any person that is not an EU Citizen or a citizen of Norway, Switzerland, Iceland and Liechtenstein, who wishes to apply for a

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residence permit must undergo a medical examination organised by the Migrant Health Service. This medical examination is carried out by accredited doctors in Luxembourg and includes a tuberculosis screening test.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Yes. Any person residing and working in Luxembourg must have health insurance and be affiliated to the Joint Social Security Centre. Temporary employees, seconded employees or self-employed workers can benefit from an exception under specific conditions as listed in the European Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes. Secondment to a client site is allowed under Luxembourgish law. The working relationship will be subject to Luxembourgish law and any applicable legal dispositions of the law of the client site. The European harmonised legal framework applies.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

No. Highly skilled individuals fall under the category of Article 42 of the Immigration Law. However, highly skilled non-EU nationals may apply for a work permit under the EU Blue Card scheme.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes. Third-country nationals may apply for a residence permit as an investor, provided they plan to invest:

- at least EUR 500,000 in an existing company with its registered office in Luxembourg;
- at least EUR 500,000 in a new business still to be created;
- at least EUR 3 million in a management and investment structure, either existing or still to be created; or
- at least EUR 20 million in the form of a deposit of funds with a financial institution established in Luxembourg.

The specific conditions and procedures to obtain the permit vary in each case.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes. Special immigration regimes exist for temporary "transferred" workers, including interns (refer to question 8.2), sportsmen, au-pairs, students and researchers.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes. A distinction must be made between EU nationals and third-country nationals.

For short-term temporary work, EU citizens do not have to comply with any formalities. The only requirement is that they hold a valid national ID card or passport.

For third-country nationals, specific work permits for short-term work exist. They are subject to a number of conditions and can be divided into the following categories:

- Third-country nationals on short business-trips for less than three months per year.
- Third-country nationals that are employees under Article 42 of the Immigration Law or that pursue an independent profession.
- Holders of the intra-corporate transfer permit.
- Seconded employees.
- Seasonal workers.
- Sportspersons.
- Students, pupils, trainees, volunteers or au pairs.
- Researchers.
- Family members.
- Investors.

Third-country nationals wishing to remain for other private or particular reasons.

For the purpose of this question, short-term temporary work is considered to be undertaken for a period of less than three months.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Luxembourgish legislation provides for the possibility of inter-company transfers of employees for companies registered in the EU as well as for companies registered in a third-country. A distinction is made between the nationality of the transferred employee in terms of the conditions that apply to obtain group or intra-company transfer work permits. In any case, a transferred worker must have concluded a contract with the company carrying out the transfer ("home company") and conclude a new employment contract or a transfer agreement with the company the worker is being transferred to in Luxembourg ("host company").

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8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

There are no listed criteria in Luxembourgish legislation defining a group of companies. However, it is generally accepted that a company belongs to a group of companies if it belongs to a broader economic entity who exercises significant control or influence on the company and maintains a certain dependence with said economic entity.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

If the transferred employee is an EU national, the host company is exempted from all formalities.

If the transferred employee is a third-country national, the host company must apply for a temporary authorisation to stay before the salaried worker comes to Luxembourg.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The formalities to be carried out as a transferred employee in order to stay and work in Luxembourg differ according to the transferred worker's nationality (EU citizen or third-country national) and the duration of the transfer (more or less than three months).

In order to enable the transfer of an EU national, or a national from Norway, Switzerland, Iceland or Liechtenstein for less than three months, no formalities need to be carried out by the employee.

In order to enable the transfer of an EU national for more than three months, the transferred worker must make a declaration of arrival in the new commune of residence and complete a registration certificate.

In order to enable the transfer of a third-country national for less than three months, the transferred employee must hold a valid passport, and where applicable, apply for a type D visa before entering the country.

In order to enable the transfer of a third-country national for more than three months, the transferred worker must, before entering the country, have the temporary authorisation to stay as issued by the Immigration Directorate to the host company, hold a valid passport and request a type D visa after having obtained the temporary authorisation to stay, if applicable. Upon arrival, the transferred worker must submit an application for a residence permit as a third-country transferred worker.

In addition, further conditions are applicable to all third-country nationals, regardless of the length of their transfer. The third-country national must have been bound by an employment contract with the home company for a certain period of time and can be transferred only as a specialist, manager or trainee employee.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

If the third-country national does require a visa, an application must be made for a type D visa before entering Luxembourgish territory and from their country of origin. The application must be submitted to the Luxembourg diplomatic or consular body in their country of origin, or, failing that, the Belgian embassy or consulate. This visa will be valid for three months. Upon arrival in Luxembourg, the third-country national must then take steps to obtain a residence permit for intra-corporate transferees (ICT residence permit).

These conditions are not applicable if the third-country national has a valid residence permit for family members of an EU citizen, or a valid residence permit issued by another EU Member State. However, such a residence permit does not exempt the third-country national from the requirement of obtaining a temporary authorisation to stay.

8.6 How long does the process of obtaining the work permit and initial visa take?

In general, visa applications should be lodged from the country of origin between three months and 15 calendar days before the intended visit. The administration may take up to three months to respond to the initial request.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Yes. There is a maximum period of validity for an initial ICT residence permit and a maximum period of stay.

The ICT residence permit as delivered to a third-country national is valid for a minimum of one year for transferred managers or specialists, or for the duration of the transfer if it is shorter. In the case of trainees, the residence permit is valid for the duration of the transfer.

Such a permit is renewable, for a maximum of three years for a specialist or a manager and for a maximum of one year for trainee employees.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No. A residence and work permit allocated under the intra-company scheme may only be renewed for a maximum of three years. While only EU nationals or their family members may apply for a *permanent residence permit*, third-country nationals may obtain *long-term resident status* only after five years of a continuous, thus uninterrupted lawful stay. This requirement is incompatible with the maximum period of stay for the transferred employee.

8.9 What are the main government fees associated with this type of visa?

A long stay visa, previously referred to as a type D visa costs EUR 50. However, reductions and exemptions are granted to a limited list of States and certain categories of individuals.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

All EU nationals benefit from the free movement of workers and may be hired in Luxembourg. The delivery of a work permit to

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third-country nationals is subject to specific conditions that depend on the length of the employment contract offered to them, their activity and any potential family links. All steps to obtain a work permit must be carried out by the third-country nationals personally, but they may delegate this task to the employer.

Before hiring a third-country national, the employer must declare the vacancy to the Agency for Development and Employment and it must pass the labour market test. Vacancies issued for highly qualified workers are not subject to pass this test, in accordance with the rules applicable to the EU Blue Card scheme. Only then can the employer openly hire and sign a contract with a third-country national for the above-mentioned vacancy.

Further or different requirements apply to seasonal workers, third-country nationals that have family members in Luxembourg, employees and interns who are hired for a period of less than three months and so on.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes. When an employer wishes to hire a third-country national, hereby excluding highly-qualified third country-nationals, the vacancy must pass a labour market test. The vacancy notice must be communicated to the Agency for Development and Employment. If the post cannot be filled by any European or Luxembourgish national within a period of three weeks and under certain conditions, the employer may then proceed to hire a third-country national.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes. Vacancies issued for highly qualified workers are not subject to pass this test.

9.4 What is the process for employers obtaining a work permit for a new hire?

After passing the labour market test, the Director of the Agency for Development and Employment issues a certificate to the employer authorising the latter to hire a third-country national.

9.5 What is the process for the employee to obtain a visa as a new hire?

A third-country national aiming to work in Luxembourg must apply for a temporary authorisation to stay before entering the territory. If the person is subject to visa requirements, a type D visa must also be requested at the Immigration Directorate of the Ministry of Foreign and European Affairs. Upon entering the country, the individual must submit an application for a residence permit for third-country national salaried workers.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 8.6.

9.7 How long are initial visas for new hires granted for and can they be extended?

An initial visa granted to a third-country national salaried worker is valid for a period of three months. The individual must then apply for a residence permit on that basis.

9.8 Is labour market testing required when the employee extends their residence?

No. The labour market test only applies to initial vacancies.

9.9 Can employees coming as new hires apply for permanent residence?

No. For the criteria to obtain permanent residence, see question 12.1.

9.10 What are the main government fees associated with this type of visa?

See question 8.9.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

No specific conditions of stay exist for those who obtain work permits and reside in Luxembourg on that basis.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes. Salaried workers must make a declaration of arrival in their new municipality of residence in Luxembourg. This is an obligation incumbent on EU and third-country nationals.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The Immigration Law lists the individuals qualifying as family members of a person coming to work on a sponsored basis. The notion of "family members" that are considered dependants differs for EU citizens and third-country nationals.

The following are considered to be dependants/family members of EU citizens or nationals of Norway, Iceland, Switzerland and Liechtenstein:

- The spouse or the registered partner.
- The direct descendants and the direct ascendants.
- Any other family member if in their country of origin, they were under the care or were a member of the household of the EU citizen with the right to reside, or if the EU citizen is obliged to personally take care of the family member due to serious health problems.

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- The non-registered partner with whom the EU citizen can duly demonstrate a long-term relationship, assessed according to links such a legal cohabitation or common children.

The following are considered dependants/family members of third-country nationals:

- The spouse or registered partner.
- The unmarried children, that are under 18, of the employee and/or the spouse or partner for whom they have custody and if the children are dependent on them, or, in the case of shared custody, if the other party sharing custody has given his/her consent.

The Minister may widen the possibilities for family reunification provided the third-country national applicant has lawfully resided in Luxembourg for at least 12 months.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes. For civil/unmarried partners of EU citizens, it is possible to qualify as family members. The partners will need to demonstrate a long-term relationship and cannot be linked to another person by marriage, declared partnership or a long-term relationship. The long-term aspect of their own relationship is assessed according to how strong, long-lasting and stable the links between the partners are, including, in concrete terms, uninterrupted legal cohabitation lasting at least a year before the request, or a common child for whom they share parental responsibility.

However, for civil/unmarried partners of third-country nationals family reunification is not possible.

Luxembourgish law makes no distinction based on the sex of the partner.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes. Spouses and partners have access to the labour market when they are admitted as dependants.

11.4 Do children have access to the labour market?

Yes. Children may access the labour market following labour code regulations.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

For EU citizens as well as for citizens from Norway, Switzerland, Iceland or Liechtenstein, permanent residence can be obtained after having resided for an uninterrupted period of five years in Luxembourg. This is equally valid for members of their family who are also nationals of an EU Member State or of the above-listed countries.

For third-country nationals, it is possible to either receive a long-term resident status or to acquire Luxembourgish nationality by naturalisation. A long-term resident status can be obtained by any third-country national who is lawfully residing in Luxembourg for an uninterrupted period of at least five years and if he/she satisfies a number of conditions relating to the validity of identity documents, sufficient resources, suitable housing and health insurance. The application for long-term resident status must be submitted immediately at the end of the five-year residence period.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes. The necessary procedures must be completed. For a list of the criteria to be fulfilled in the case of an application for permanent residence or long-term resident status, see question 12.1.

13 Bars to Admission

13.1 What are the main bars to admission for work?

Other than the distinction drawn between EU nationals and third-country nationals, there are no bars to admission for work that would not be applicable to Luxembourg residents. Specific criteria may apply to certain professions due to their nature (lawyers, doctors, policemen).

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, they can potentially constitute a bar to obtain a work permission or a visa. In the context of an application for a long resident status for instance, a recent copy of the criminal record is requested. Such convictions may, but do not necessarily, prevent the issuing of a work permission or a visa.

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The independent law firm REAL Avocats à la Cour was created in 2015 by Maître Maria Ana Real Geraldo Dias, Avocat à la Cour. Located at the heart of Luxembourg City, the firm offers a wide range of legal services, focusing on legal counselling and litigation support. The interdisciplinary approach adopted within the firm serves an international client base in fields such as immigration law, labour law, family law, commercial law, criminal law, and European Union law. Through the active maintenance of links with international lawyers and different legal systems, REAL Avocats à la Cour is devoted to deliver high-quality assistance specifically tailored to each client. Its transnational team is able to assist clients in English, French, German, Spanish, Italian, Luxembourgish and Portuguese.

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Malta

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in Malta are:

1. The Constitution of Malta.
2. The Immigration Act – Cap 217.
3. The Maltese Citizenship Act – Cap 188.
4. The Refugees Act – Cap 420.
5. The European Union Act – Cap 460.
6. Continuation of Companies Regulations – S.L. 386.05.
7. EU Regulations and Directives.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Identity Malta Agency, acting through the Central Visa Unit and the Department of Citizenship and Expatriate Affairs, deal with the immigration of natural persons into the country. Employment licences are then handled by the Jobsplus Corporation, whilst posted workers and other employment-related issues are dealt with by the Department for Industrial & Employment Relations ("DIER"). The re-domiciliation of companies falls within the remit of the Registry of Companies Agency.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

As a member of the European Union ("EU") Malta is subject to the provisions of the Treaty on the Function of the EU ("TFEU"). Furthermore, as an EU Member State ("MS"), Malta gives effect to the rights of EU citizens as established under Directive 2004/28 (the Citizenship Directive), as well as the decisions of the European Court of Justice ("ECJ").

In accordance with Article 45 of the TFEU, every EU citizen has the right to live and work in another MS. This right ensures that EU citizens are not discriminated against when working in a MS other than their home state.

As a result of the Raymond Van der Elst ruling, an employee being posted to Malta from an EU/EEA country is not required to apply for a working licence in Malta. In the case of a Third Country National ("TCN") employee who is employed by a posting undertaking that is established in an EU/EEA country, there is no need to apply for a working licence in Malta, provided that such a posted worker already holds a working licence issued in the country where the posting undertaking is established. Although no employment licence is necessary, the firm in Malta to which the employee will be posted must notify the DIER.

In the case of a foreign national who is posted in Malta by an undertaking which is not established in an EU/EEA country, a working licence is required.

Under the EEA agreement, all these rights are also broadly extended to citizens of Iceland, Norway, Switzerland and Liechtenstein.

Employment Licences are not issued in the case of foreign nationals who are non-resident and non-executive directors.

Malta is part of the Schengen area, which is a visa-free area with no internal border controls, made up of 22 EU Member States and four additional European countries which are also EFTA Member States: Iceland; Norway; Switzerland; and Liechtenstein.

Visa facilitation agreements allow for both EU and non-EU citizens to benefit from facilitated procedures in the issuance of visas. A number of these agreements have been signed between the EU and certain third countries and therefore automatically apply to Malta. These agreements have been signed with Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, FYROM, Georgia, Moldova, Montenegro, Serbia, Russia and Ukraine. These agreements focus on facilitating procedures for the obtainment of visas, reducing visa fees, the issuance of multiple-entry visas for specific categories of applicants, and shorter processing times.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

As a general rule, TCNs travelling to Malta for business purposes still require a visa to enter Malta.

Malta is part of the US visa waiver programme and therefore no visa is required for business visitors from the US.

Apart from this, Annex II of Regulation (EU) 2018/1806 lists a number of countries the nationals of which do not require a visa to enter Malta for stays of no more than 90 days in any 180-day period.

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2.2 What is the maximum period for which business visitors can enter your jurisdiction?

TCNs on a business visit who are nationals of a visa-exempt country can remain in the Schengen area for a maximum of 90 days within any 180-day period.

2.3 What activities are business visitors able to undertake?

Business visitors visiting Malta using a visa are free to undertake all activities for which the visa was issued. The following activities can be carried out whilst visiting Malta on a business visa:

1. Conference Attendance.
2. Business Meetings.
3. Market research or studies.

Persons making use of a visa waiver programme or those in possession of a Schengen visa are not permitted to work in Malta. In order to be able to work in Malta one would need an employment licence.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Posted workers do not need an employment licence. Posted workers refers to those workers who are usually based in another EEA country or Switzerland and have had an employment relationship with an employer established in that country but who are being posted to Malta for a stipulated period. Whilst no employment licence is necessary the DIER must be notified within 24 hours of commencement of work by the firm in Malta to which the Employee will be posted.

In the case of TCNs being posted to Malta they must hold an employment licence issued in the country where the posting undertaking is established. If a TCN worker already holds a Schengen residence permit he can enter Malta without a visa, otherwise the worker must apply for the relevant visa.

Employment licences are not issued in respect of workers who will not normally or habitually carry out work in Malta; therefore employers seeking to employ a worker to carry out work primarily in another country need not apply for an employment licence in Malta.

2.5 Can business visitors receive short-term training?

Yes, provided that their stay in Malta is legal. It is advisable to disclose this in the visa application.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Jobsplus is established by virtue of the Employment and Training Services Act, Chapter 343 of the Laws of Malta ("ETSA"). The ETSA empowers Jobsplus inspectors to deal with cases of illegal work and gives them the authority to enter freely without notice any premises or place of work, to carry out examinations, tests, investigations and to interrogate the employer or the employees on any alleged illegalities. This power is not limited to employers who regularly employ foreign nationals, and is enforceable upon any premises or place where, in the opinion of the inspector, the provisions of the ETSA apply.

In 2017 the government enacted the Coordination of Government Inspections Act, Chapter 568 of the Laws of Malta. The aim of this Act is to establish a central office to coordinate inspections by government bodies and to regulate the conduct of inspections with a view to reducing the burden on private businesses, other private entities and individuals, and making inspections more transparent and effective. Jobsplus is one of the bodies included in the schedule to the Act.

3.2 What are the rules on the prevention of illegal working?

The employer is obliged to make sure that TCNs employed with him all have a valid employment licence in place and that this is renewed as required.

Regardless of whether employees are TCNs or EU/EEA/Swiss, all employees are subject to the general provisions affording protection against exploitation including laws on health and safety, maternity leave, minimum leave and special leave, minimum working age, etc.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

In accordance with the Manpower Records (Commencement or Termination of Employment) Regulation, an employer found guilty of employing a TCN without an employment licence shall be liable to a fine of not less than €1,164.69 and not more than €2,329.73 and the Court shall, at the request of the prosecution and in addition to such punishment, order the suspension or cancellation of any licence held by the offender and relating to trade or business, or relating to any business premises where such person is employed.

Such instances would also constitute a violation of the provisions of the Immigration Act, Chapter 217 of the Laws of Malta, and the employer would be subject to prosecution and penalties while the foreign national concerned may be extradited from Malta.

Employers found guilty by the Courts of Law of illegally employing TCNs may also be liable for:

i. any outstanding compensation due to the illegally employed TCN. The agreed compensation shall be presumed to have been at least equivalent to the national minimum wage, unless either the employer or the employee can prove otherwise;

ii. an amount equal to any taxes and social security contributions that the employer would have paid had the TCN been legally employed, including penalty payments for delays and relevant administrative fines;

iii. where appropriate, any cost arising from sending back payments to the country to which the TCN has returned or has been returned; and

iv. the costs of returning the illegally employed TCNs to their country of origin, in those cases where return procedures are carried out.

Employers found guilty by the Courts of Law of illegally employing TCNs will be barred from applying for any new or renewed licence for a period of 12 months.

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4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Prior to hiring any employees of any nationality or origin an employer needs to obtain a PE Number and register with the Department of Inland Revenue as an employer. This is the first step to enable the employer to withhold, remit and report the income tax and national insurance contributions of employees according to the final settlement system (FSS).

Every employer in Malta needs to register through the Private Employer Registration Form within 15 days from when the first emoluments to be paid by him to his employees fall due. A separate registration to be able to hire foreign nationals is not required.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

The employer is obliged to make sure that third-country nationals employed with him all have a valid employment licence in place and that this is renewed as required (normally on an annual basis).

An employment licence is issued in respect of a TCN working with a specific employer to perform a specific job. An employer cannot use an employment licence issued in respect of one TCN employee, for another employee, even if the latter is performing the same work as previously done by the former. Similarly, a TCN cannot use the licence to take up a different job with a different employer, or change his working conditions.

An employment licence between an employer and a TCN is deemed to constitute a commitment between both parties. The employer is also obliged to inform the authorities of any changes in the status or personal details of any employee, apart from ensuring that they remain in compliance with payments due, including National Insurance and tax through the Final Settlement System (FSS).

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

When submitting a work permit application for a TCN, unless the application is made in terms of KEI (as described herein), the employer is to provide proof of efforts made to recruit Maltese or EU/EEA nationals. The application must also provide details on how staff will be trained to meet requirements in certain circumstances.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There are no fees levied on employers who hire foreign nationals to contribute to the training or up-skilling of local workers. However, the government provides a number of tax incentives to cover up to 70% of the costs of certain approved training courses.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

JobsPlus has established a Law Compliance Unit which plays an important role in identifying abuses by taking action against foreigners working without the required employment licences and against employers who fail to notify the employment corporation on employing a new employee.

The Law Compliance Unit collaborates with the Department of Industrial and Employment Relations, the Department of Social Security, Benefit Fraud, and the VAT Department, as well as the Police Force in order to ensure better law enforcement.

The Law Compliance Unit has established a freephone number and an online form where members of the general public can lodge a report on illegal work. Jobsplus Inspectors conduct their inspections by following up anonymous hotline reports received either from calls or through the Jobsplus website's Law Compliance link, or during routine inspections conducted either by business sector or by area.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The authorities do not maintain a list of skilled occupations in order to encourage foreign nationals to apply for such occupations. However, certain occupations, such as C-level and management level employees, within certain sectors are able to benefit from favourable income tax rates on the income from such occupation. These incentives aim to attract talent and high calibre individuals to Malta. Please refer to question 5.1.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The authorities do maintain a list known as the Vacancy Exemption List which exempts employers recruiting for the occupations prescribed therein from having to open vacancies locally before submitting an application for a TCN. This list is updated from time to time according to exigencies of the local labour market.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Currently, there are no annual quotas or known plans to introduce such quotas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions on the number of foreign workers an employer may sponsor. Every application submitted by an employer in respect of an employee is evaluated on its individual merit.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

TCNs sponsored to work in Malta would be required to show English language proficiency if it is also a requisite of the relevant area of employment.

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4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

In the case of TCNs coming from countries with a high occurrence of tuberculosis, employees are required to undergo medical examinations. An email must be sent by the employer to the Health Promotion and Disease Prevention Directorate for the appropriate form stating the job and nationality of the employee requesting a work permit. Details on the form should include necessary information on the documents and medical tests required. Employees cannot apply themselves.

The whole process from initial email up until approval can take 10 to 20 working days.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

TCNs are required to have in place a comprehensive health-insurance policy, showing all aspects being covered, which supports the applicant in the eventuality of requiring any type of medical assistance or hospitalisation during the whole period of stay in Malta. It is not obligatory that this is paid for by the employer.

EU citizens employed in Malta are not required to have such insurance in place.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Employees holding a work permit in Malta can be seconded to a client site, provided that they are still directly employed by their original employer. The work permit in Malta is strictly tied to the specific employer, and a new work permit should be applied for whenever the employee is employed by a new company.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

In the case of applications for highly qualified employment, applications will generally be considered favourably, albeit in line with the labour market situation. Malta has introduced the Key Employee Initiative. This scheme is applicable to Managerial or highly technical posts which require the relevant qualifications or adequate experience related to the job being offered and is also extended to innovators involved in start-up projects which are specifically endorsed by the Malta Enterprise.

The Inland Revenue Department in Malta also offers tax incentives under the Highly Qualified Persons Rules, such as a flat rate of taxation on employment income. This attracts highly qualified persons in particular sectors, and therefore when the application for an employment licence is made by a TCN for these occupations, the authorities will consider the application favourably. The Highly Qualified Persons Rules currently apply to the following industries: Financial Services; Gaming; and Aviation. There is the possibility that such incentives are extended to the Blockchain, AI and Cannabis sectors in the near future.

There are also tax incentives for R&D projects which can benefit from favourable tax rates.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

In respect of TCNs who wish to apply to be self-employed in Malta, an employment licence is required and is only granted in exceptional cases. In order to qualify for self-employed status, a TCN must meet one or more of the following criteria:

i. Invest in Malta capital expenditure of €500,000, within six months from the date on which the Jobsplus licence is issued. Capital expenditure shall solely consist of fixed assets used for business purposes (rental contracts do not qualify).

ii. Highly skilled innovators with a sound business plan (to be submitted with the application) who commit to recruiting at least three EEA/Swiss/Maltese nationals within 18 months of establishment.

iii. A person leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to Jobsplus.

Applications containing a firm commitment regarding the engagement of EEA/Swiss/Maltese nationals as part of the staff compliment will assist in the favourable consideration of an application.

Long-term residents, Asylum Seekers, persons enjoying Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status require an employment licence to work as self-employed in Malta. However, they are exempt from meeting the above criteria.

Where a Malta-resident company is applying for an employment licence to employ its shareholder or ultimate beneficial owner, the applicant must meet one or more of the following criteria:

- every TCN shareholder must have a fully paid-up share capital of at least €500,000 which may not be redeemed, reduced or transferred to a third party during the first two years following the issuing of the employment licence (this share capital must be through a cash/stock injection in Malta);
- the company must have made a capital expenditure of at least €500,000 that is to be used by the company. Capital expenditure shall solely consist of fixed assets (such as immovable property, plant and machinery) used for business purposes as reflected in the business plan submitted with the application. Rental contracts do not qualify. Furthermore, such expenditure needs to be supported by receipts in the company's name; or
- the company is leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to Jobsplus.

Applications containing a firm commitment re the engagement of EEA/Swiss/Maltese nationals as part of the staff complement of the company will assist in the favourable consideration of an application.

Executive Directors – in cases where a director is not a shareholder, the application does not need to meet the above criteria, and it will be processed from a labour market consideration.

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7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

All Maltese work permits are temporary, issued for a maximum of one year by Jobsplus, and therefore there is no specific immigration category catering for these classes. However, citizens of Australia and New Zealand citizens (18–30 years old) can apply for a working holiday multiple entry visa, valid for a period of one year from date of issue, under reciprocal arrangements agreed upon by the government of Malta and that of Australia and New Zealand.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Employment licences are only issued in respect of workers who will normally or habitually be carrying out work in Malta.

An undertaking which is established in an EU Member State other than Malta may send a posted employee (who does not normally work in Malta but who for a limited period of time is sent by the foreign undertaking to work in Malta):

1. on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or
2. being temporary employment undertakings or placement agencies, hiring out a worker to a user undertaking established or operating in Malta.

Furthermore, foreign nationals who are non-resident in Malta, and non-executive directors of Malta-resident companies, do not require an employment licence if:

- they do not ordinarily reside in Malta;
- they do not have an employment relationship with the company; and
- they are in receipt of a director's remuneration but not in receipt of a salary.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

There is no specific immigration category for inter-company transfers within international groups; however, a foreign undertaking may send posted employees to an establishment or to an undertaking in Malta which is owned by the foreign undertaking. This would fall under the posted worker rules which cater for all posted worker scenarios and not just where the undertakings are concerned.

Posting of workers in Malta is regulated by S.L. 452.82 – Posting of Workers in Malta Regulations.

These regulations apply to foreign undertakings which:

- send posted employees to Malta on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;
- send posted employees to an establishment or to an undertaking in Malta which is owned by the foreign undertaking, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or
- being temporary employment undertakings or placement agencies, hire out a worker to a user undertaking established or operating in Malta, provided there is an employment relationship between the temporary employment undertaking, or placement agency, and the worker during the period of posting.

In these cases, the employee who is posted from an EU/EEA country is not required to apply for an employment licence in Malta.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The undertaking in Malta must be at least 50% owned by the foreign company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

An employee posted from an EU/EEA country is not required to apply for an employment licence in Malta.

In the case of a TCN employee who is employed by a posting undertaking that is established in an EU/EEA country, there is no need to go through an employment licence procedure in Malta if such posted worker already holds a licence issued in the country where the posting undertaking is established.

For any foreign national who is posted in Malta by an undertaking established outside an EU/EEA country, an employment licence is required to be issued by Jobsplus.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

For an employee posted to Malta, the undertaking posting the worker is obliged to notify the DIER of its intention to post a worker on the island. The Notification Form, accompanied by a copy of the posted worker's employment contract (with the posting undertaking) and also, in the case of a TCN posted employee from an EU/EEA country, by a copy of his/her existing working licence, should reach the DIER prior to the commencement of the posting.

The undertaking making use of the services of the posted worker is obliged to keep a copy of such Notification Form at the place of work for monitoring purposes by the DIER inspectors.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

If the worker already holds a Schengen residence permit, he can enter Malta without applying for a visa. If, on the other hand, the worker holds a residence permit issued by a non-Schengen country, he must apply for the relevant visa at the Maltese Embassy or Consulate in the country of residence.

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8.6 How long does the process of obtaining the work permit and initial visa take?

The initial visa process normally takes from seven to 10 days, subject to further checks conducted by the relevant authorities.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Directive (2014/66EU) crystallises the conditions of entry and residence for third country nationals moving to the EU under an intra-company transfer. Where the intra corporate transfer is for a duration of more than 90 days the Directive does not permit member states to have their own national intra-company transfer work permit scheme.

The Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer Regulations ("Regulations") transpose EU Directive 2014/66/EU into Maltese law.

The scope of these Regulations is to determine the conditions of entry and residence:

- for more than 90 days in Malta, for third country nationals and their family members; and
- when Malta is not the Member State which first grants the third country national an intra-corporate transferee permit.

The maximum duration of the intra-corporate transfer shall be three years for managers and specialists and one year for trainee employees after which they shall leave Malta unless they obtain a residence permit on another basis.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, subject to the conditions explained in question 8.7, they can apply for long-term residence once they satisfy the criteria.

8.9 What are the main government fees associated with this type of visa?

There are no government fees associated with this type of visa.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Malta has successfully implemented Directive 2011/98/EU "on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State".

The "single permit" application is the most common path taken to employ third-country nationals in Malta. The single permit is a process which leads to receipt of an e-residence card, which serves as both an employment licence and residence permit.

Certain categories of employees (posted workers, intercorporate transferees, workers with special humanitarian status and others) should first seek to obtain an employment licence and then, on the basis of this, a residence permit.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, when the occupation is not one listed on the Malta Vacancy Exemption List Jobsplus will assess the labour market situation when considering the employment licence application or the single permit application.

Employers are required to provide evidence of their efforts to search for Maltese/Swiss/EEA candidates.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, please see the answer to question 4.7.

9.4 What is the process for employers obtaining a work permit for a new hire?

Applications may be submitted either whilst the third-country national (prospective employee) is residing in Malta or whilst he/she is abroad, provided that, if the person is in Malta or in the European Union, he/she is in possession of the necessary permits to reside therein.

Employers who wish to submit applications of Third-Country Nationals who are still abroad are able to submit a total of 15 applications on a Friday. A total of three Still Abroad applications can also be submitted on a daily basis between Monday to Thursday; however, employers cannot exceed a total of 25 in the same week.

9.5 What is the process for the employee to obtain a visa as a new hire?

In the case of a TCN residing in Malta, the application, together with supporting documentation, has to be submitted personally, and during that visit biometric data will be taken. The person is required to proceed to the Department for Citizenship and Expatriate Affairs within Identity Malta for such purpose.

Where a TCN is residing outside of Malta the application and all documentation relating to it have to be submitted by post. If the application is accepted, he/she will be notified of the outcome. Applicants whose application is approved are required to proceed to the Department for Citizenship and Expatriate Affairs, following his/her arrival in Malta, in order for the relevant biometric data to be captured. The applicant would then be issued with the residence permit in question. Applicants wishing to be admitted to Malta for work are required to submit a Form CEA-C.

Employees may only visit the Department of Citizenship and Expatriate Affairs to file an application between Mondays and Thursdays. It is important to note that applications for a single permit have to be endorsed by the employer concerned.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

An application in terms of the Key Employee Initiative is processed within one week of completing the application.

In case of other applications, the Maltese authorities are required to adopt a decision on the complete employment licence application as soon as possible, and in any event within four months of the date on

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which the **complete** application was lodged. They are normally issued within four to eight weeks.

If the prospective employee is still outside Malta, he/she needs to apply for an entry visa, which might take from five days to three months depending on the nationality of the applicant.

9.7 How long are initial visas for new hires granted for and can they be extended?

Visas are granted for a maximum period of 90 days. Upon arrival in Malta, the employee is obliged to apply for a residence permit on the basis of employment. Permits are issued for one year and can be renewed annually.

9.8 Is labour market testing required when the employee extends their residence?

Upon application to renew an employment licence, a labour market test will be applied again.

9.9 Can employees coming as new hires apply for permanent residence?

Employees can apply for long-term residence after five years of holding an employment licence in Malta and five consecutive years of residence in Malta. This is subject to other conditions which shall be satisfied by the applicant.

9.10 What are the main government fees associated with this type of visa?

Application fees range from €58 to €280.50. Some ancillary fees, such as duty on documents tax for the purchase of insurance, apply in the case of TCNs.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

An employment licence obliges the employee to apply for a Maltese e-residence card within three months of arrival in Malta. The card is equivalent to a Schengen residence permit and serves as an Identity Card for the Maltese Islands.

Jobsplus is to be notified immediately of any change of address. A new employment licence will be issued free of charge against submission of the old licence. A licence holder may not undertake any other work than that for which the licence was issued or work for a different employer to that indicated on the employment licence.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, this registration is done automatically by virtue of the application for an e-residence card. They will of course be required to register with the authorities to obtain an income tax number, social security number, etc.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

There are no formal rules on the qualification of dependants (other than degrees of relationship or equivalent); however, they are able to apply for an e-residence card.

Family members of long-term residents (LTRs) who acquire a residence permit under the Family Reunification Regulations (LN150 of 2007) are entitled to apply for an employment licence to work in Malta. From the 13th month after reunification, family members of LTRs are entitled (in the same way as the LTR him/herself) access to employment and to self-employment, without the need for labour market considerations. In this instance, "family members" refers to:

(a) the LTR's spouse who is aged 21 or over;

(b) the unmarried minor children of the LTR and of his spouse, including children adopted in a manner recognised by Maltese law; and

(c) the unmarried minor children, including adopted children, of the LTR or of the spouse, as the case may be, where the sponsor or the spouse has custody and the children are dependent upon him/her.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, provided that the relationship has endured for at least two years.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

They would need to apply for an employment licence in their own right.

11.4 Do children have access to the labour market?

Generally no, with some exceptions in the case of professional entertainers.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

In order to obtain long-term residence, one has to submit an application and must satisfy the following conditions for the granting of such status:

1. Five years of continuous legal residence. However, there are exceptions to this since temporary absence is allowable for as long as periods of absence are:
   - shorter than six consecutive months; and
   - do not exceed a total of 10 months in a five-year period.

   A longer period of absence may be considered for:
   - health reasons;
   - secondment by the employer of the third country national;
   - business travel; or
   - educational or training purposes.

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Within this context, the applicant is required to present a list in chronological order of the dates of his/her arrivals in, and departures from Malta during the said period of five years. The list should be drawn up by eliciting the relative information from the endorsements (date-stamps) contained in the passport/s for the period in question.

2. Be in receipt of stable and regular resources which are (were) sufficient to maintain himself/herself and the members of his/her family, which resources should be at least equivalent to the minimum wage in Malta with an addition of another 20% income or resources for each member of the family.
3. Accommodation, regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta.
4. Sickness insurance in respect of all risks normally covered for Maltese nationals for himself/herself and the members of his/her family.
5. Compliance with the following integration conditions:
   - Twelve months prior to the application s/he has attended a course organised by the National Commission for Further and Higher Education (NCFHE) about the social, economic, cultural and demographic history and environment of Malta. S/he must provide evidence that s/he has attended lessons for at least 100 hours and must achieve an examination pass mark of at least 75%.
   - Obtain a pass mark of at least 75% after being assessed for the equivalent of Malta Qualifications Framework Level 2 in English.
   - Provide evidence that the fees charged for the above-mentioned courses, examinations and certificates have been paid.
6. A letter giving their history since they first arrived in Malta. This letter should include information on the grounds on which they came to and remained in Malta, their employment history since then, the current and previous premises occupied by them, family members, if they are living with them in Malta, and any other information which could be useful in the consideration of their request for long-term resident status.

A long-term resident permit is valid for five years and shall be automatically renewable upon application.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

The applicant would need to go through the application process and satisfy the conditions mentioned in question 12.1 in order to obtain long-term residence.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission for work are lack of police clearance, health clearance (infectious diseases) or lack of clearance from stakeholders (Malta Tourism Authority for chefs; Malta Sports Council for sportspersons, etc.).

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Lack of police clearance is a bar for the issuance of both an entry visa to Malta and an employment licence.

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Wayne is the President of the Malta Institute of Financial Services Practitioners and a member of the board of governors of FinanceMalta. He is also a member of the International Fiscal Association, the International Bar Association and the Maltese Chamber of Advocates.

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Paul has been working in the financial services field for several years, having previously worked in the Commercial Law department at a boutique law firm, in the Trusts Department of a top-tier law firm and a Corporate Services Provider before joining Grant Thornton in 2016.

Paul is an Assistant Manager within the legal & fintech team at Grant Thornton servicing a varied portfolio of Maltese and overseas clients.

Paul focuses predominantly on the private clients, corporate services, trusts, compliance, capital markets, virtual financial assets framework, regulatory and licensing fields. He provides legal support for corporate structuring, in the drafting of public offering documentation, in engagements for legal and regulatory due diligence on regulated entities, advising on regulatory compliance, drafting of licence applications in the financial services and gaming sector, providing support of a legal and regulatory nature to licenced companies, and works alongside the tax and advisory teams providing legal input for projects and business plans.

He also supervises the immigration team advising clients on the various citizenship and residence programmes operated by the Maltese government, helping guide them through the entire application process.

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Grant Thornton Malta is an accredited agent under both the MIIP and MRVP programmes, authorised by the Government of Malta to prepare and submit applications for prospective applicants looking to obtain Maltese citizenship or apply for residence in Malta according to the provisions of Maltese law.

Our residency and immigration services are targeted towards both individuals and businesses with interests in Malta. The firm has created a comprehensive package of services that provides the applicant and their family members with a holistic approach when it comes to satisfying their investments and residency requirements – be it the procurement of citizenship or any of the other attractive residence programmes available. Our experienced professionals are fully abreast with all that the application process entails so that they can provide unparalleled service to individuals and companies seeking an alternative residence in Malta, at reasonable prices.

With over 40 years industry experience, we focus on providing a full range of services including assurance, tax, advisory, specialist financial services and capital markets support (including digital and crypto assets), corporate, trustee and outsourcing services to clients ranging from public companies, multi-nationals, and government agencies to entrepreneurial businesses across a broad spectrum of industries.

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Mexico

Enrique Arellano Rincón Abogados
S. de R. L. de C. V.

Enrique J. Arellano

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in the Mexican jurisdiction are the following:

- The Political Constitution of the United Mexican States.
- International treaties signed by Mexico.
- The Immigration Law published in the Federal Official Gazette on 25 May 2011.
- The Immigration Law Rulings, published in the Federal Official Gazette on 28 September 2012.
- Guidelines for Immigration Filings and Procedures, published in the Federal Official Gazette on 8 November 2012.
- Guidelines for the criteria of visa issuance of the Ministries of the Interior and Foreign Affairs, published in the Federal Official Gazette on 10 October 2014.
- Administration resolutions and bulletins published by the National Immigration Institute.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The administration of corporate immigration is entrusted to the Federal Executive Branch, through the Ministry of Foreign Affairs and the Ministry of the Interior; the former via the Mexican consular posts and the latter via the National Immigration Institute (INM).

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Mexico has signed 12 Free Trade Agreements with 46 countries. By means of Free Trade Agreements and other major trade and commerce agreements, Mexico seeks to encourage investment, commerce and the free movement of people between nations from the signatory countries.

The current version of the USMCA agreement that will supersede NAFTA establishes the same terms and conditions in chapter XVI of the actual NAFTA Agreement, related to the free movement of people amongst the signatory countries.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Mexico has signed treaties with several countries meaning that citizens from such countries wishing to travel do not require visas. The nationals from said countries may enter Mexican territory through any land, maritime or air entry point. It is relevant to consider that any foreign visitor who wishes to enter Mexico should have a valid ordinary passport with a minimum validity of six months. In addition, there are visa-waiver programmes, applicable to foreigners from non-visa-exempt nations who hold: a) a valid visa for the US, Canada, UK, Japan or the Schengen countries; b) permanent residence in the US, Canada, UK, Japan, the Schengen countries or the Pacific Alliance member countries (Colombia, Peru and Chile); or c) an APEC Business Travel Card (ABTC card).

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Any business visitor without remunerated activities in Mexico shall be authorised to transit through, or remain in, Mexican territory for an indefinite period of time and for no longer than 180 days. Visa-waiver nationals may enter Mexico for a new 180-day period every time they visit, which means they will have a maximum stay period of 180 days for every visit. The prior is applicable to non-visa-exempt nationals that do not apply under any programme when they wish to obtain a new visitor's visa.

2.3 What activities are business visitors able to undertake?

According to law, visitors for business purposes fall under the category as Visitors without permission to perform remunerated activities and may carry out any activity within the Mexican territory so long as such activity is legal and honest and there is no legal restriction on it being carried out by foreigners. It is important to specify that business visitors cannot receive any type of remuneration, originating from a Mexican source, while in Mexico.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, there are no such special categories.

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2.5 Can business visitors receive short-term training?

Yes, as long as they do not receive any remuneration and do not exceed the 180-calendar-day stay in Mexico. It is not our recommendation to pursue business visitor status if this training somehow involves performing any risky activities for social security matters.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The National Immigration Institute has a Control and Verification Area to control and supervise the regular stay of foreigners in Mexico.

The National Immigration Institute may carry out inspection visits in homes or offices – private as well as governmental – to prove that foreigners found in the Mexican national territory comply with the obligations set forth under its laws and regulations, as well as to ensure that a company, when offering a job, actually exists and is operating regularly. The regularity of site visits may increase when job offers are issued to nationals from countries that are flagged due to a substantial increase in the number of applications from these countries or whenever the authorities have grounds to believe that a job offer is sponsored in contravention of the law.

3.2 What are the rules on the prevention of illegal working?

The prevention of illegal working is monitored through the conditions of the Work Offer Visa. This is granted when a foreigner is invited to work for the first time in Mexico. The hiring company must file the Work Offer Visa with the National Immigration Institute. In these circumstances, it is very important to take into account that the company inviting the foreigner to work in Mexico must have its Employer Registry Certificate.

N.B. If the foreigner has a Visitor Visa, Temporary Residence or Permanent Residence, the document's validity shall be verified when the person is hired. The validity of the Permanent Residence Permit granted to a foreigner who has a Work Permit shall also be verified. If the foreigner does not have a Permanent Residence Permit, the company must notify the relevant authorities.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Immigration authorities shall set financial sanctions, based on the liability of the offender, taking into account the following circumstances:

a) The socio-economic level of the foreigner.
b) The background of this process.
c) Recurrence of the breach of the law by said foreigner.
d) An analysis of the damage and detriment caused by the defendant not holding the necessary valid documentation.
e) The hierarchal level of the offender and his/her seniority in said company.

In accordance with the Immigration Law, as required by the same, the rights of the immigrant shall always be fully respected.

It is important to mention that if a company hires a foreign national who is not fully authorised to work in Mexico, it is noted on the company's record and it may affect any future applications to hire foreign nationals.

Foreign nationals may face deportation for not having the correct authorisation to work in Mexico.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

In accordance with the Immigration Law of Mexico, said registration shall be performed through the Employer Registry Certificate, before the National Immigration Institute and pursuant to the provisions of Article 166 of the Rulings of the Immigration Law.

The individuals and companies that hire foreign personnel or who make a job offer to a foreigner shall apply to the National Immigration Institute for an Employer Registry Certificate.

With this Employer Registry Certificate the employer can prove its legal capacity and authority in such a manner that in further filings, where the employer makes a job offer and acts as an applicant, it shall only be required to deliver the updated Certificate in order to prove the legal capacity and authority of the Legal Representative.

Recently, the competent authorities have stated that further job offers granted to foreign employees need to include the National Classification System for Occupations (SINCO) number, which is an organisation that allows for ordering the occupations developed by the employed population in Mexico.

The SINCO is a basic tool that reflects the country's occupational structure, as well as generating information that contributes to a better knowledge of the labour market and facilitates the integration of public policies to promote employment.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, they shall keep the Employer Registry Certificates up to date, notifying the authorities of any of the following changes within the next 90 natural days in which such change has been made:

a) Changes to domicile.
b) Changes to legal representatives.
c) Changes to the corporate name.
d) Filing of annual and monthly tax returns.

It is important to request the renewal of the Employer Registry Certificates on an annual basis.

In addition, employers need to be compliant pursuant to Article 7 of the Mexican Labour Law which states that every company needs to have a 90% of Mexican employees for every 10% of foreign employees.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, current Mexican immigration regulation does not establish this obligation for employers at this moment.

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4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

This does not apply in Mexico; nonetheless, a Mexican company may consider the provisions of Article 7 of the Federal Labour Law, which establishes the following:

> Article 7 – "In any company or establishment, at least 90% of workers hired by the employer shall be Mexican. In the categories of technicians and professionals, workers must be Mexican, except if same do not exist in a certain specialty, in which case the employer may hire, temporarily, foreign workers, in a proportion that does not exceed 10% of the specialty. The employer and the foreign workers shall have a joint obligation to train Mexican workers in the relevant specialty. Medics at the service of companies shall be Mexican."

The legal provision we have referred to contains a restriction regarding the percentage of foreigners: an employer may hire a 10% maximum of foreigners. The purpose is to train Mexican personnel in the industrial or business sectors or areas of production in the country.

Directors, Administrators and General Managers are excluded from this quota restriction as they would be considered key roles for the development of a foreign company's operations in the country.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, immigration authorities in Mexico may perform verification visits at any time, pursuant to Articles 194 and 195 of the Rulings of the Immigration Law, which provide that:

> Article 194 – "The National Immigration Institute shall have the authority to verify that foreigners in Mexico comply with the obligations set forth under the Law and its Rulings."

Immigration authorities shall carry out the corresponding procedures and shall apply the sanctions established under law, notwithstanding the provisions of other legal provisions, at all times seeking to respect human rights.

> Article 195 – "Personnel from the National Immigration Institute who perform verification visits or immigration reviews shall have an official writ from the commission as well as the relevant verification or review order, as applicable. Both documents shall be issued by the competent immigration authority and shall be duly founded and reasoned."

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

This does not apply in Mexico; nonetheless, a Mexican company may consider the provisions of Article 7 of the Federal Labour Law, which establishes the following:

> Article 7 – "In any company or establishment, at least 90% of workers hired by the employer shall be Mexican. In the categories of technicians and professionals, workers must be Mexican, except if same do not exist in a certain specialty, in which case the employer may hire, temporarily, foreign workers, in a proportion that does not exceed 10% of the specialty. The employer and the foreign workers shall have a joint obligation to train Mexican workers in the relevant specialty. Medics at the service of companies shall be Mexican."

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Directors, Administrators and General Managers are excluded from this quota restriction as they would be considered key roles for the development of a foreign company's operations in the country.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

In Mexico there are no special exemptions of any type.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Currently, the Immigration Law and its Rulings establish an Annual Quota System which shall be assessed by the Ministry of Labour; nonetheless, to date, said system has not become effective in Mexico.

The day on which said system will take effect is governed by Articles 119 and 120 of the Rulings of the Immigration Law.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Yes, there are restrictions as stated in Article 7 of the Federal Labour Law, which establishes the following:

> Article 7 – "In any company or establishment, at least 90% of workers hired by the employer shall be Mexican. In the categories of technicians and professionals, workers must be Mexican, except if same do not exist in a certain specialty, in which case the employer may hire, temporarily, foreign workers, in a proportion that does not exceed 10% of the specialty. The employer and the foreign workers shall have a joint obligation to train Mexican workers in the relevant specialty. Medics at the service of companies shall be Mexican."

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Foreign employees are not required to prove a proficient knowledge of the Spanish language to request a Work Visa in Mexico.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No, it is not required to submit any type of medical certificate or vaccines prior to visiting the Mexican territory.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Medical insurance is not required as a condition for work permits sponsored by a Mexican entity. All foreigners in Mexico, regardless

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of their immigration status, have access to free public medical services in the country, as it is established and recognised in the Constitution.

Employers must enrol all of their employees, despite their nationality, with the Mexican Institute of Social Security (IMSS).

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

A foreign employee of a certain company, in the exercise of the duties related to his/her position, who is authorised by the immigration authorities of Mexico, may visit or assist any client outside the company's premises without any restriction.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

No, the Immigration Law in Mexico does not have any special category for highly skilled individuals but there exists an obligation on those of certain professions to obtain, through the General Directorate of Professions of the Ministry of Public Education, the corresponding Professional ID for the exercise of the activity the person is to carry out. These professions are: medicine; engineering; and law, etc.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

The law provides the grounds to request a Temporary Residence permit on the grounds of investment, directly at the nearest Mexican visa adjudicating consular post to the applicant's place of residence.

A foreign national may setup an entity on a regular immigration status: either as visitor or temporary resident.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

This may happen in any of the following cases (depending on the time the foreigner is to stay in Mexico):

a) A visitor without a permit to carry out remunerated activities, as long as he/she is to stay for less than six months and does not leave Mexico during this time.

b) A Temporary Resident without a permit to carry out remunerated activities, which shall be personally filed by the interested party before the Mexican consulate with jurisdiction over his/her country of residence. This is appropriate for permits for more than 180 days.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes, pursuant to Article 52 of the Immigration Law, Paragraphs II, III and IV:

II. Visitor With Permit to Carry Out Remunerated Activities: authorises the foreigner to receive a job offer, with an invitation by any authority or academic, artistic, sporting or cultural institution for which it may receive remuneration in Mexico or shall perform a remunerated activity for a seasonal station pursuant to the inter-institutional agreements executed with foreign entities, to stay in the Mexican territory for an uninterrupted time of no longer than 180 days, as of the date of entry into the country.

III. Regional Visitor: authorises the foreigner from, or resident of, a neighbouring country to enter the border regions with the right to enter and exit as many times as desired, without his/her stay exceeding three days and without being allowed to receive remuneration in the country.

IV. Border Visiting Worker: authorises the foreigner that is a national of the countries with which the United Mexican States share territorial limits, to stay up to one year in the Mexican States so determined by the Ministry. The Border Visiting Worker shall have a permit to work for remuneration in Mexico, in the activity related to the job offer he/she has received, and is entitled to enter and leave the country multiple times without restrictions.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, the Immigration Law does not consider any benefit or special treatment when referring to intra-company personnel transfers.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The company must:

a) be legally incorporated pursuant to Mexican laws;

b) hold an Employer Registry Certificate, issued by the National Immigration Institute; and

c) fulfil all the requirements of personal documentation of the foreigner.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The employer must fulfil the same conditions as for any authorisation of a Job Offer Visa, since there is no distinction for intra-company transfers.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Mexican immigration law does not consider work permits for intra-company groups.

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8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The immigration process is not different from any other resolution of a Job Offer Visa.

8.6 How long does the process of obtaining the work permit and initial visa take?

The permit for the resolution of a Job Offer Visa has a duration of four to six weeks, followed by the consular process that the foreigner shall follow at the Mexican consulate nearest to his/her place of residence, and shall take from one to three business days. Finally, the exchange process when the foreigner enters Mexico shall take five to eight business days, and we should once again mention that there is no distinction or special category for an intra-company transfer.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Intra company transferees on a long term assignment for more than 180 days would fall under a Temporary Residence permit, which is valid for one year initially and can be extended for up to four years in total.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, a Temporary Resident with a continuous residence for four years will be eligible to change status to a Permanent Resident on the grounds of the previous uninterrupted residence.

8.9 What are the main government fees associated with this type of visa?

Approximately, the fees that are paid for this visa are:

- USD 40 for consular fees (visa stamped).
- USD 250 for government fees (local registration).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main category used in such cases is the status of stay as a Temporary Resident, obtained through a job offer.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

It is established under the Immigration Law and its Rulings that there is a requirement to review the list of quotas which shall be issued by the Ministry of State pursuant to the recommendations issued by the Ministry of Commerce and the Ministry of Labour in Mexico. Said list is not currently in effect and has not been published in the Official Gazette to become effective.

9.3 Are there any exemptions to carrying out a resident labour market test?

This is not applicable to Mexico.

9.4 What is the process for employers obtaining a work permit for a new hire?

The process is divided in three main stages, as follows:

a) Work visa authorisation based on job offer. The sponsoring entity based in Mexico requests advance authorisation from the National Immigration institute.

b) Consular interview. Once the authorisation is granted, the applicant must attend any Mexican consular post for an interview and obtain an entry visa.

c) Exchange of FMM for residence card. Upon entering Mexico with an approved visa, the applicant can exchange the landing card (FMM) for a Temporary Residence card, which will allow the employer to formally hire the foreign employee.

9.5 What is the process for the employee to obtain a visa as a new hire?

The same documentation is required for any visa obtained through a job offer. Mexican immigration law does not distinguish between the process to obtain a work permit for an intra-company transfer and a new hire.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Please refer to the timing described under question 8.6.

9.7 How long are initial visas for new hires granted for and can they be extended?

The term initially authorised is only for one year but upon expiration of the year the visa may be renewed for one, two or even three years, through the same process, in such a manner that allows a regular uninterrupted stay in Mexico for four years.

9.8 Is labour market testing required when the employee extends their residence?

No, it is only necessary to prove that the labour conditions are maintained, pursuant to which the Temporary Residence was initially granted.

9.9 Can employees coming as new hires apply for permanent residence?

To the extent they have a link with a Mexican national (parents, son, or daughter) or apply under the case of pensioned or retired individuals. The Immigration Law establishes a points system that is not currently in effect in Mexico.

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9.10 What are the main government fees associated with this type of visa?

The fees are the same as referred to in question 8.9.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The conditions of stay applicable in Mexico with a work permit are:

a) Temporary Resident, valid for one year, and renewable for three more.

b) Permanent Resident, indefinite validity.

c) Temporary Resident Student, same conditions as under a) above.

A Temporary Resident Student needs to obtain a work authorisation once in Mexico.

Foreigners granted Permanent Residence shall have the possibility of obtaining a Work Permit to work in exchange for remuneration in Mexico, subject to a job offer and with the right to enter and exit the country as many times as they wish.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they shall only comply with the obligations set forth under the Immigration Law in relation to registers. The same shall notify the municipal authorities within 90 days after any change of name, civil status, nationality, domicile or workplace.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A Temporary or Permanent Resident may bring to Mexico (within the definition of the family unit) the following:

a) A parent.

b) A spouse.

c) A live-in partner or similar figure.

d) Children of the resident and children of the spouse or live-in partner, as long as they are under the age of 18 years.

e) Siblings of a Permanent Resident, as long as they are under 18 years of age.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, as long as they have irrefutable documentation, duly apostilled and/or legalised, issued by their country of residence and that, pursuant to Mexican civil law, which may be comparable to a cohabitation scheme.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, they can work, to the extent that:

a) they have a job offer from a company registered as an employer before the National Immigration Institute; and

b) they carry out the filing before the National Immigration Institute to obtain the relevant resolution of the Labour Permit.

11.4 Do children have access to the labour market?

No minor may become part of the labour market. Only those who are of the legal age to work, pursuant to the labour laws that allow working, may enter the labour market. In case of complying with such requirement, a Labour Permit from the National Immigration Institute shall be requested, leaving said authority to grant such permit according to its criteria.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The main conditions are found under Article 54 of the Immigration Law and number 109 of its Rulings.

Article 54 – The Status of Permanent Resident shall be granted to a foreigner considered in any of the following cases:

I. due to political asylum, acknowledgment of the status as refugee and complementary protection or for the determination as stateless, prior fulfilment of the requirements established under the Immigration Law, its Rulings and other applicable legal provisions;

II. for the right to preserve a family unity in the cases set forth under Article 55 of this Law;

III. retired or pensioned individuals that receive from a foreign government or international organisms or private companies, for services rendered abroad, an income that allows the individual to live in Mexico;

IV. by decision of the National Immigration Institute, pursuant to the points system so established, pursuant to Article 57 of this Law;

V. if four years have passed since the foreigner has obtained a temporary resident permit;

VI. if the individual has children of Mexican nationality by birth; and

VII. if the individual is a direct-line ascendant or descendant, up to the second generation, of a Mexican national by birth.

Foreigners granted Permanent Residence shall have the possibility of obtaining a work permit to work in exchange for remuneration in Mexico, subject to a job offer and with the right to enter and exit the country as many times as they wish.

Moreover, Permanent Residents may introduce their movable assets in the form and terms set forth under the applicable law.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, it is possible to change a Temporary Visa to Permanent Residence; generally, this occurs in the following cases:

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a) if four prior and uninterrupted years have elapsed as a regular resident in Mexico, under the state of Temporary Resident; or

b) having children that were born in Mexico.

13 Bars to Admission

13.1 What are the main bars to admission for work?

An applicant will be barred from admission if:

- the company is not legally incorporated pursuant to the legal provisions in Mexico;
- the company is not registered with the Employer Registry;
- he/she does not have a job offer;
- he/she does not have authorisation from the National Immigration Institute as a Visitor or Temporary Resident with a Permit to Work in Mexico;
- the foreign national fails to provide proper and truthful information; or
- the company fails to provide proper and truthful information.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

There is no impediment to obtaining a Labour Permit or visa in Mexico; nonetheless and pursuant to Article 43 of the Immigration Law, it is established that immigration authorities may withhold the issuance of a visa, regular entry into Mexico, or their stay, from foreigners found to fall within any of the following categories:

a) they are subject to a criminal process or have been convicted of a grave crime pursuant to the Mexican laws relating to criminal matters or the provisions under the International Treaties or Agreements to which Mexico is a party, or who, pursuant to their background in Mexico or abroad, may compromise national or public security;

b) they do not fulfil the requirements established in this Law, its Rulings and other applicable legal provisions;

c) the authenticity of their documents or the accuracy of the elements provided therein is doubted;

d) they are subject to express authorisations from the competent authority; and

e) as established under other legal provisions.

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Mr. Arellano lectures frequently at national and international immigration conferences. He has published various articles and has contributed to several global publications related to Mexican immigration issues. He served as a member of the Immigration Commission for the National Development Plan during Mexican President Ernesto Zedillo Ponce de León's term. Mr. Arellano has been an immigration consultant for over 350 multinational corporations. As of 2013 and each year thereafter consecutively, Mr. Arellano was selected among the top 15 most highly regarded individuals internationally in his field worldwide by *The International Who's Who of Corporate Immigration Lawyers*. He is also recognised in the 10th edition of *The Best Lawyers in Mexico* as the sole Immigration Law attorney, which is based purely on peers review.

ENRIQUE ARELLANO RINCÓN ABOGADOS
Providing Immigration Solutions for a Globalized World

Founded in 1976, the firm Enrique Arellano Rincón Abogados S. de R. L. de C. V. specialises in Corporate Immigration Law, as well as Nationality Law (*Ley de Nacionalidad*).

Our experienced and professional team of attorneys offers services to Mexican and multinational companies. The services that we offer are based on the needs of each of our clients, amongst which we offer a wide range of services related to the transfer of personnel to and from Mexico.

The team is formed of more than 55 professionals who are dedicated to responding proactively to your immigration needs and providing and expediting efficient solutions. You can depend on us to communicate with the Mexican immigration authorities on your behalf and notify you of the milestones of your case throughout the process.

In Mexico, Enrique Arellano Rincón Abogados S. de R. L. de C. V. is one of the leading firms in Immigration Law. The trajectory and prestige of the firm have afforded us acknowledgments by the relevant authorities and invitations to several national and international forums and conferences.

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Netherlands

Mynta Law

Arend van Rosmalen

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The basic immigration law in the Netherlands is the Immigration Act 2000 (*Vreemdelingenwet* 2000 or Vw). Delegated rules are laid down at government level in the Immigration Decree 2000 (*Vreemdelingenbesluit* 2000 or Vb) and at ministerial level in the Immigration Regulation 2000 (*Voorschrift Vreemdelingen* 2000 or Vv). Policies and binding interpretations are published in the Immigration Circular 2000 (*Vreemdelingencirculaire* 2000 or Vc).

The Employment of Foreign Nationals Act (*Wet arbeid vreemdelingen* or Wav) holds the rules on the employability of foreign nationals, and sets out the sanctions regime for breaches of this law. Delegated rules are laid down at governmental level in the Executive Decree Employment of Foreign Nationals Act (*Besluit uitvoering Wet arbeid vreemdelingen* or BuWav), and at ministerial level in the Executive Regulation Employment of Foreign Nationals Act (*Regeling uitvoering Wet arbeid vreemdelingen* or RuWav). Policies on the sanctions regime are published in the Sanctions Policy Employment of Foreign Nationals Act 2017 (*Beleidsregel boeteoplegging Wet arbeid vreemdelingen* 2017 or BbWav 2017). The sanctions regime has in part been overturned by subsequent case law, which has not yet been codified.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The executive power to issue and withdraw a residence permit lies with the Secretary of State for Security and Justice. This power is mandated to the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst* or IND).

Besides the IND, there are important roles for the Minister for Economic Affairs, mandated to the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland* or RVO) and the Netherlands Foreign Investment Agency (NFIA) and the Minister for Social Affairs and Employment, mandated to the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen* or UWV).

The police are charged with the control of foreign nationals and may take measures to ensure the return of illegally residing persons. The Minister for Social Affairs maintains the rules on employability of foreign nationals. There is a specialised division of the Inspectorate for Social Affairs and Employment (*Inspectie SZW*) which inspects employers on their compliance with these and other employment-related rules.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Being a Member State of the EU, the Netherlands allows EU citizens and their families free movement rights. EU employers benefit from the free movement of services. Also, the immigration rules for third-country nationals are increasingly influenced by EU directives.

The Netherlands is a member of the World Trade Organization, which provides for a few minor benefits in employment-based immigration.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

EU citizens do not need a visa to enter the Netherlands. Anyone holding a valid residence permit of a Schengen state, regardless of nationality, may enter the Netherlands without a visa.

A general visa waiver applies to the citizens of Albania, Andorra, Antigua and Barbuda, Argentina, Australia, the Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Canada, Chile, Colombia, Costa Rica, Dominica, El Salvador, Georgia, Grenada, Guatemala, Holy See (Vatican City), Honduras, Hong Kong, Israel, Japan, Kiribati, Macao, Malaysia, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Nauru, New Zealand, Nicaragua, North Macedonia, Palau, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles, Singapore, Solomon Islands, South Korea, Taiwan, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, Ukraine, United Arab Emirates, United States of America, Uruguay, Vanuatu and Venezuela.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

EU citizens can stay up to three months with no restrictions and may extend their stay under very lenient conditions. Overstay in their case is practically not sanctioned. Non-EU nationals who either rely on the

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general visa waiver (see question 2.1) or hold a long-term multiple-entry Schengen visa can stay up to 90 days in any period of 180 days. Non-EU nationals holding a Schengen (business) visa must keep to the validity of that visa.

2.3 What activities are business visitors able to undertake?

EU citizens face no restrictions on the Dutch labour market, and may perform any kind of work.

For non-EU nationals, a work permit is always required for any kind of work, unless either the person(s) performing the work or the nature of the activities fall under one of several general exemptions, or have been cleared in advance (see question 2.4). There are detailed exemptions regarding the following incidental activities:

- incidentally holding business meetings and negotiations, and signing contracts;
- incidentally holding exhibitions at fairs; and
- incidentally giving after-sales instructions about the use of goods or software.

There are other, more specific exemptions in the field of journalism, arts and sports, science, international transport and inspections, diplomacy, military and international education.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

EU citizens face no restrictions on the Dutch labour market.

Companies that regularly need short-term work to be performed by non-EU nationals can, depending on their circumstances, use the following two policies:

- International Trade Regulation.
- Intra Community Service Providers policy.

International Trade Regulation

Employers in the Netherlands can ask UWV (see question 1.2) to give prior approval to a project which involves more than the type of incidental work normally allowed for visitors (see question 2.3). If UWV approves such a project, individual work permits are no longer required for work carried out within the framework of the approved project. This regulation leaves much discretion to UWV.

Intra Community Service Providers policy

Companies within the EU/EEA or Switzerland (but outside the Netherlands) may temporarily second their employees to a client located in the Netherlands in order to provide services. This extends to non-EU nationals if the following conditions are met:

- the employee resides legally in the employer's home state within the EU; and
- the employer is permitted to let the employee perform the same type of activity in its home state, for which the employee is being seconded to the Netherlands. Prior notification of the arrival of non-EU nationals, however, is mandatory.

2.5 Can business visitors receive short-term training?

The receiving of short-term training and/or instructions on the use of goods made in the Netherlands or services to be performed in the Netherlands is an activity for which business visitors do not need a work permit. If the training does not relate to the use of goods made in the Netherlands or services to be performed in the Netherlands, or if the training is not short-term, a work permit is required.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Inspections on compliance with the rules on employability of foreign nationals are regularly carried out by *Inspectie SZW* (see question 1.2).

Recently, the IND (see question 1.2) has intensified its compliance inspections of so-called "recognised sponsors" (see question 4.1).

3.2 What are the rules on the prevention of illegal working?

A far reaching chain liability is achieved by the fact that the term "employer" in the sense of the Wav (see question 1.1) is very broadly defined. Every company which – directly or indirectly – "lets a foreign national perform work" is responsible for compliance with the rules on employability of foreign nationals. Thus, several companies – clients, contractors, staffing agency, subcontractors *et cetera* – can each receive penalties for the same issue, because all these companies qualify as the "employers" of the same foreign nationals.

In practice, every employer – broadly defined – is (almost) fully responsible for identifying forged documents. *Inspectie SZW* (see question 1.2) has published Guidelines employers may use when identifying personnel.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

First of all, the Wav (see question 1.1) defines the term "employer" very broadly (see question 3.2). Every employer that – directly or indirectly – "lets a foreign national perform work" will receive an administrative penalty. The amount of this penalty is primarily calculated on the basis of the BbWav (see question 1.1). Legal persons incur a standard penalty of EUR 8,000 per individual breach of the rules (per illegal employee). The amount is increased by 50% if aggravating circumstances can be proven, such as if the person(s) concerned had no legal stay, or if there are more than three foreign workers involved. Recidivism automatically leads to much higher penalties. Persistent violators of the Wav (see question 1.1) will face temporary closure of business sites and the withdrawal of government licences or clearances.

Additionally, employers incurring these kinds of penalties are increasingly excluded from obtaining future work and residence permits. So-called "recognised sponsors" (see question 4.1) will eventually jeopardize their recognition by the IND (see question 1.2) if they violate the Wav (see question 1.1) too often.

All sanctions for violations of the Wav (see question 1.1) are made public.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Employers may apply to be recognised as a sponsor. In the course of this recognition process, the IND (see question 1.2) assesses the

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reliability, solvency and continuity of the company as an employer. Only entities established in the Netherlands and registered with the Netherlands Chamber of Commerce can be recognised as a sponsor. The admission process is usually straightforward for larger employers long established in the Netherlands, so long as there are no serious fiscal antecedents or criminal records. Newly established companies or subsidiaries and smaller employers, whose solvency is less obvious, usually need more documentation.

Recognition as a sponsor has the following advantages:

- Recognised sponsors are allowed to process their immigration applications through an accelerated admissions procedure using different types of forms or online. The IND strives to decide within two weeks. This term is usually met even though it is not enforceable.
- Recognised sponsors are seen as trusted parties by the IND. They generally do not need to provide as much documentary evidence as other sponsors do. A declaration to the effect that the immigration requirements are met will often be sufficient evidence. Such declarations are of course the responsibility of the employer (and employee); the IND never foregoes the right to withdraw residence permits issued on the basis of information that turns out to have been incorrect. Recognised sponsors thus bear a crucial responsibility.
- Recognised sponsors are exclusively allowed to hire Highly Skilled Migrants (see question 5.1).

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers hiring foreign nationals have the following ongoing duties.

- Every employer must keep a copy of every employee's identity document on file. In case of an inspection, labour inspectors may demand identification within 48 hours, under threat of a severe administrative penalty (see question 3.3).
- If the employer sponsors the stay of a non-EU national, the employer is obliged to inform the IND of any changes that could warrant the withdrawal of the employee's residence permit, such as a change in position, salary, termination of the employment contract and so forth.
- If the sponsor is a recognised sponsor (see question 4.1), there are additional responsibilities related to the accelerated admission procedure. Since recognised sponsors may often simply declare that immigration requirements are met, they have the legal obligation to keep all documentation on record to support these statements if they are inspected. *Inspectie SZW* and the IND (see question 1.2) may assess this documentation and may hold interviews with employees, business relations, accountants, in order to assess compliance.

In the last few years, the IND has begun inspecting recognised sponsors as to their financial position as well. The employer in practice is being subjected to a full audit, which may lead to the termination of their recognition as a sponsor in case of a low solvency ratio, unclear or unproven business prospects. If an employer loses the recognition as a sponsor, then any Highly Skilled Migrants (see question 5.1) sponsored by that employer will in principle lose their residence permits if they do not find a new employer.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Employers who hire foreign nationals are not required to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Employers who hire foreign nationals are not required to pay fees in order to contribute to the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

During routine inspections, *Inspectie SZW* (see question 1.2) assesses compliance with the Wav (see question 1.1) as well as laws relating to working and rest hours, registrations of secondment agencies, and the minimum wage. According to its Annual Report, *Inspectie SZW* has carried out 1,947 inspections in 2018. In 49% of these cases, employer(s) were sanctioned for violation(s) of (one of) these laws.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

In general, this is not how the authorities determine which positions may be filled by foreign nationals and which may not. There are, however, certain sectors where particular occupations can practically be filled by foreign nationals, such as religious teachers, Asian cuisine chefs and professional musicians in orchestras. Apart from this, the determination which foreign workers are admitted and which ones are not is done mainly on the basis of salary levels. Higher paying occupations may be filled by highly skilled migrants (see question 5.1). Lower paying jobs can, in practice, only be filled by persons with a priority on the Dutch labour market (i.e. Dutch nationals, EU/EEA/Swiss citizens and third-country nationals with full access to the labour market).

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

EU/EEA/Swiss citizens have unlimited access to the Dutch labour market. Since thirteen Middle and Eastern European countries joined the EU in 2004, 2007 and 2013, the demand for regular work permits for third-country nationals has decreased dramatically. The Wav (see question 1.1) theoretically opens the possibility for employers to obtain regular work permits if no prioritised candidate is present to fulfil the employer's vacancy. In our view, however, this is theoretical. Even though the Dutch employment market currently is indeed very tight, especially in certain sectors, regular work permits will still (almost) never be issued given the availability of such a large pool of prioritised supply. The Highly Skilled Migrant policy (see question 5.1) remains the most practical and popular immigration category for employment of non-EU nationals.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

In general, this kind of restriction is not maintained.

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4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

In general, this kind of restriction is not maintained.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not. However, the candidate must have the necessary qualifications to fulfil the position.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Newly admitted persons need to undergo a TB test within three months after arriving in the Netherlands. This does not apply to EU/EEA and Swiss citizens, nor to the citizens of Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Bahamas, Bahrain, Barbados, Belize, Benin, Bosnia and Herzegovina, Brazil, Brunei, Burkina Faso, Canada, Chile, China, Colombia, Comoros, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Galapagos Islands, Georgia, Grenada, Guatemala, Guyana, Honduras, Hong Kong, Iceland, Iran, Iraq, Israel, Jamaica, Japan, Jordan, Kazakhstan, Kosovo, Kuwait, Lebanon, Libya, Liechtenstein, Macau, Malaysia, Maldives, Mali, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Niger, Niue, North Macedonia, Oman, Panama, Paraguay, Qatar, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Serbia, Seychelles, Singapore, Solomon Islands, South Korea, Sri Lanka, Surinam, Syria, Taiwan, Tajikistan, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela and Yemen.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Medical insurance is mandatory for everyone legally residing in the Netherlands. Insurance companies are bound by law to accept the employee on the same terms applying to Dutch citizens. The monthly cost of a basic health insurance lies between EUR 121, and EUR 134. The exact costs vary per insurance company.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

This is usually permitted. In specific cases, secondment may not be permitted.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There are two competing policies in the Netherlands:

- The Highly Skilled Migrant policy.
- The European Blue Card policy.

In most circumstances, the Highly Skilled Migrant policy sets more favourable conditions than the European Blue Card policy does, but in specific situations the Blue Card policy can be a better alternative (see below).

Highly Skilled Migrant policy

The Highly Skilled Migrant policy is by far the most widely used employment-based immigration policy in the Netherlands. This policy hinges on the assumption that an employee's salary reflects his or her added value for the employer. It is assumed that, indirectly, the admission of highly *paid* employees serves the wider economic interests of the Netherlands.

The most important requirements under the Highly Skilled Migrant policy are the following:

- The employer must be recognised as a sponsor (see question 4.1).
- The employee has an employment contract with the recognised sponsor. The salary must at least meet the applicable thresholds set out below:
  - If the employee is 30 years old or older: EUR 4,500 – gross per month.
  - If the employee is younger than 30 years: EUR 3,300 – gross per month.
  - If the employee holds a valid Search Year Visa (see question 7.1) or would qualify for one (regardless of the person's age): EUR 2,364 – gross per month.
- Highly Skilled Migrants must receive their net salaries from their sponsors in a personal bank account. The payments need to be made strictly on a monthly basis. Even minor delays in salary payment indeed cause the withdrawal of residence permits as well as severe administrative penalties on the employer (see question 3.3).

The salary thresholds described above are for the year 2019. These thresholds will be increased slightly on 1 January 2020 to compensate for inflation. The new thresholds will apply to applications received in the year 2020; Highly Skilled Migrants admitted in 2019 only need to comply with the raised norms upon the renewal of their residence permit or if they assume employment with a different employer.

The thresholds relate to the fixed monthly salary, which excludes any additional compensation like holiday allowances, bonuses, company cars, pensions and so forth.

The offered salary must objectively reflect the Highly Skilled Migrant's added value. It is not permitted to use the Highly Skilled Migrant policy for work that would not normally justify a salary of at least the applicable norm. It is also not permitted to use the Highly Skilled Migrant policy if the employment in fact has no substance.

European Blue Card

With the European Blue Card, the Netherlands government has implemented EU Directive 2009/50/EC. Although the aim of both policies is the same – to attract highly qualified employees and companies that employ them, in practice the European Blue Card regime is stricter than the Highly Skilled Migrant policy in almost every aspect.

The most important requirements under the Blue Card regime are the following:

- The employee has a binding offer for employment of at least one year with a company based in the Netherlands.
- The employment must be for "highly qualified employment" in the sense of article 2, under b of Directive 2009/50/EC.

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This means the employee must have a higher professional education or a Bachelor's, Master's or Ph.D. title. This will be verified by the Dutch government.

- The employee's salary must be at least EUR 5,272 – gross per month.
- The employer needs not be a recognised sponsor, but if the company has incurred administrative penalties for certain breaches of immigration and tax law, the application for a Blue Card may be turned down and any Blue Cards already issued may be withdrawn.

For employers, the Blue Card policy has two advantages over the Highly Skilled Migrant policy:

- Although the salary threshold is higher, there is no requirement that the content of the employee's job description *objectively* justifies such a high salary. If admission through the Highly Skilled Migrant policy fails because of this requirement, while the candidate does hold a higher degree and the employer is willing to pay the higher salary for a Blue Card, the European Blue Card policy is a good alternative to the Highly Skilled Migrant policy.
- The employer needs not be a recognised sponsor. This is useful in two situations. Firstly, it is sometimes difficult for newly established companies (or branch offices) to become recognised as a sponsor. In this scenario, the European Blue Card can be useful. Also, as indicated above, the IND (see question 1.2) has stepped up its compliance inspections of recognised sponsors, causing certain companies to lose their recognition. Companies and the government may dispute about cases like this for a long time. Meanwhile, the European Blue Card policy can help curb the damage.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

EU/EEA/Swiss citizens enjoy the fundamental freedom of establishment in the Netherlands, and may set up and run businesses in the Netherlands with no significant restrictions. For non-EU nationals, the Netherlands has four immigration policies:

- American / Japanese Entrepreneurs' policy.
- Innovative Start-up policy.
- Entrepreneur policy.
- Investor policy.

Entrepreneurship

American and Japanese citizens can file straightforward applications for entrepreneurship-based residence permits. This is due to the applicability of bilateral treaties. American and Japanese citizens are required to invest an amount at least equal to EUR 4,500 – in their business or in a Dutch subsidiary. Their residence permits will be valid at first for two years, after which they have to be renewed. During the renewal process, the IND (see question 1.2) may require documentation showing the genuine nature of the business (annual accounts, VAT submissions). If the business is found to be genuine, and the investment has not been withdrawn, residence permits will be renewed for five years.

Innovative Start-up Policy

Non-EU nationals can make use of the innovative start-up policy since 2015. The most important requirements are the following:

- The applicant has sufficient capital to fund his/her own living expenses for one year (at least around EUR 15,000 – for a single person and at least around EUR 21,000 – to support a family).
- The applicant has a plan describing the set-up of an innovative business, and containing the steps to realise a viable business from the initial concept.
- The applicant signs a facilitation agreement with a start-up facilitator in the Netherlands. This could be an acceleration programme or a similar guidance agreement.

The start-up residence permit is temporary and valid for one year. For renewal, the applicant is dependent on the facilitator approving their taking part in the facilitation programme.

Entrepreneur policy

The Netherlands has a general policy allowing the admission of any non-EU national who wishes to set-up a business or subsidiary in the Netherlands. The policy uses a point-based system to determine whether the admission of the applicant serves the Dutch economic interest. Important factors in this point-based system are:

- The applicant's CV (higher education, proven experience as an entrepreneur or in a key position).
- Concrete business connections with the Netherlands (contracts, letters of intent).
- Detailed, to-the-point market analysis.
- Detailed pricing and marketing strategy.
- Realistic view on market access and competition.
- Sufficient capital to enable the set-up of a profitable business.

Investor policy

The Netherlands has an investment immigration policy as well. The checks on the origin of the invested capital are strict, the amount of investment required is very steep (EUR 1,250,000 per permit) and there is a requirement to invest in either innovative business(es), government seed funds or certain private equity funds. Investments in private residences are excluded. The policy is not widely used.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

EU/EEA/Swiss citizens have full access to the Dutch labour market and may be hired for any type of employment with no prior permission being required.

For non-EU nationals, there are mainly three policies which can be used to achieve temporary work permission:

- Search Year policy.
- Inter-Company Traineeships.
- Working Holiday Programs.
- Other Traineeships.

Search Year policy

Non-EU nationals who have recently graduated at master level from a global top 200 university or faculty can obtain a Search Year residence permit. This is a temporary residence permit of one year granting full access to the Dutch labour market during the year. A Search Year residence permit cannot be extended except if the applicant has obtained a new qualifying degree. The transition to a Highly Skilled Migrant policy (see question 5.1) is facilitated with a low salary threshold. Applying for a Search Year residence permit

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is thereby a good way to achieve temporary work permission, but it is possible to extend the employee's contract as well.

Inter-company traineeships

Multinational companies may obtain temporary work permission for trainees seconded from a group entity (see question 8.2) established outside the EU to a group entity established in the Netherlands. The employee must hold a master degree. Unlike the Search Year policy (see above), the inter-company transfer policy (see question 8.1) does not require the degree to be recent, nor are transfers limited to individuals having obtained their degree from global top-ranked universities.

Working holiday programmes

The Netherlands has signed Working Holiday treaties with Argentina, Australia, Canada, Hong Kong, New Zealand and South Korea. Nationals of these states who are under 30 years old can obtain a temporary residence permit valid for one year. Labour market access is limited to 12 weeks for every single employer. It should be noted that the treaties with Argentina and South Korea include a cap of 100 permits per year.

Other traineeships

Aside from the above, a specific work permit policy exists relating to internships and apprenticeships. The rules contain very specific requirements, but no labour market test.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The rules enabling short-term temporary work are not sector-specific.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

EU/EEA/Swiss citizens have full access to the Dutch labour market.

Inter-company transfers of non-EU nationals within international groups of companies can be achieved through the following policies:

- Intra-Company Transfer policy (see question 8.3).
- Intra EU Service Provision policy (see question 8.3).
- Highly Skilled Migrant policy (see question 5.1).
- European Blue Card policy (see question 5.1).

Intra-Company Transfer policy vs. Intra-EU Service Provision policy

The Intra-Company Transfer policy only governs inbound secondments from a group entity outside the EU to one or more group entities within the EU. The policy additionally accommodates EU-wide mobility, meaning the persons admitted to any EU member state under this policy may, during the term of their assignment, be further seconded to any group entity within the EU. The Netherlands does accommodate these transfers.

To otherwise achieve the secondment of non-EU nationals between two EU-based group entities, the Intra-Company Transfer policy may not be used. Such transfers can be accomplished through either the Intra-EU Service Provision policy (see question 8.3), the Highly Skilled Migrant policy (see question 5.1) or the European Blue Card policy (see question 5.1).

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

Depending on the circumstances, intra-company transfers can be achieved by using different policies (see question 8.1). Only one of these policies exclusively applies to temporary secondments within a group of companies: the Intra-Company Transfer policy which addresses the temporary secondment of non-EU nationals from a group entity outside the EU to one or more group entities within the EU.

The Intra-Company Transfer policy implements Directive 2014/66/EU, according to which two or more companies belong to the same group if one of them:

- directly or indirectly holds a majority of the other's subscribed capital;
- controls a majority of the votes attached to the other's issued share capital;
- is entitled to appoint more than half of the members of the other's administrative, management or supervisory body; or
- is managed like the other on a unified basis by a parent company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The answer to this depends on the specific policy used to accomplish the intra-company transfer (see question 8.1).

Intra-Company Transfer policy

If the secondment is approached through the Intra-Company Transfer policy, then the local employer must:

- be part of the same group of companies (see question 8.2);
- be registered with the Dutch Chamber of Commerce;
- not be a secondment agency;
- display genuine economic activities;
- not be set up in order to facilitate the transfer of persons;
- not have incurred penalties (see question 3.3) for violation of the Wav (see question 1.1).
- offer the applicant a salary that is at least competitive to Dutch standards.

The employee must in this case qualify as a "manager", "specialist" or "trainee" (see question 7.1) and have a high level of education and experience (in case of managers or specialists).

Intra-EU Service Provision policy

If the secondment is approached through the Intra-EU Service Provision policy, the Dutch entity relies on its freedom to receive services provided to it by a service provider from a different EU member state. The service may consist of the temporary transfer of a person between group entities. The local Dutch entity must in any case notify the presence of non-EU nationals providing services. The notification must be made ahead of the commencement of the work.

Highly Skilled Migrant policy

The Highly Skilled Migrant policy (see question 5.1) is by far the most widely used employment-based immigration policy in the

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Netherlands, even when it comes to intra-company transfers. In order to use the Highly Skilled Migrant policy, the local employer must:

- be a recognised sponsor (see question 4.1);
- offer the employee a local employment agreement; and
- comply with the salary thresholds (see question 5.1).

European Blue Card policy

The European Blue Card policy (see question 5.1) is an alternative to the Highly Skilled Migrant policy, and can be used to achieve the transfer of personnel between group companies. The employer in the Netherlands must:

- be registered with the Dutch Chamber of Commerce;
- display genuine economic activities;
- not have incurred penalties (see question 3.3) for violation of the Wav (see question 1.1);
- offer the employee a local employment agreement; and
- comply with the salary threshold (see question 5.1).

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The process of obtaining a combined work and residence permit for an intra-company transfer consists of the following phases:

- Phase 1: preparation of documents, including the applicant's birth certificate, employment agreement or assignment letter, passport *et cetera*.
- Phase 2: submission of the written or digital application by the sponsor.
- Phase 3: collection of the entry visa (see question 8.5) and relocation of the candidate to the Netherlands.
- Phase 4: collection of the residence card and commencing work.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The procedures for a work and residence permit and entry visa are synchronised. Once the IND (see question 1.2) approves the sponsor's application, it immediately informs the Dutch embassy or consulate, which has been selected in advance. The candidate can make an appointment to pick up the entry visa. During this visit, the embassy or consulate will collect biometric information. Upon the candidate's arrival in the Netherlands, his or her residence card has often already been produced.

8.6 How long does the process of obtaining the work permit and initial visa take?

If the sponsor is a recognised sponsor (see question 4.1), the IND (see question 1.2) will strive to decide within two weeks, except in case of the transfer of a trainee employee. If the sponsor is not recognised, applications usually take between two and three months, depending on the workload of the IND and the complexity of the application.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

EU/EEA and Swiss citizens can be seconded indefinitely.

If the transfer of a non-EU national is between EU-based group entities that make use of the Intra-EU Service Provision policy (see question 8.1), the residence permit will be issued for the duration of the assignment with a maximum of two years. This permit is extendable, but only up to the maximum of two years in total.

If the transfer of a non-EU national is from outside the EU to the Netherlands under the Intra-Company Transfer policy, the applicant's residence permit will be issued for the duration of the assignment, with a maximum of three years in case of managers and specialists and one year in case of trainee employees. The permit is extendable, but only up to a maximum of three years in total in case of managers and specialists and up to one year in case of trainee employees.

If the transfer of non-EU nationals is achieved through the Highly Skilled Migrant or European Blue Card policy (see question 5.1), the residence permit will be issued for the duration of the local Dutch employment contract, with a maximum of five years under the Highly Skilled Migrant policy and four years under the European Blue Card policy. These residence permits are extendable indefinitely as long as the conditions continue to be met.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

The answer to this depends on the specific policy used to accomplish the intra-company transfer (see question 8.1).

The residence permits issued under the Intra-Company Transfer policy and the Intra-EU Service Provision policy are strictly temporary. Holders of such residence permits have no permanent residence perspective, although they may apply for a change of residence permit.

The residence permits issued under the Highly Skilled Migrant and European Blue Card policies (see question 5.1) are not temporary in nature, and grant a permanent residence perspective (see question 12.1).

8.9 What are the main government fees associated with this type of visa?

The following government fees are applicable:

- Intra-Company Transfer policy: EUR 285.
- Intra-EU Service Provision policy: EUR 285.
- Highly Skilled Migrant policy: EUR 285.
- European Blue Card policy: EUR 285.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

EU/EEA/Swiss citizens have full access to the Dutch labour market.

For hiring non-EU nationals, the Highly Skilled Migrant policy (see question 5.1) is by far the most popular immigration policy.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

EU/EEA and Swiss citizens have full access to the labour market and do not need a work permit.

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For non-EU nationals, the following applies: if a regular work permit is applied for, a labour market test is indeed performed, and this will almost always lead to a refusal. However, if the application is made under the Highly Skilled Migrant policy (see question 5.1) the European Blue Card policy (see question 5.1), the Intra Company Transfer policy (see question 8.3) or several other specific categories, labour market testing is not a part of the application process.

9.3 Are there any exemptions to carrying out a resident labour market test?

The most widely used exemption are in the Highly Skilled Migrant policy (see question 5.1) the European Blue Card policy (see question 5.1), the Intra Company Transfer policy (see question 8.3).

9.4 What is the process for employers obtaining a work permit for a new hire?

The process of obtaining a combined work and residence permit for a new hire usually consists of the following phases:

- Phase 1: preparation of documents, including the applicant's birth certificate, employment agreement or assignment letter, passport *et cetera*.
- Phase 2: submission of the written or digital application by the sponsor.
- Phase 3: collection of the entry visa (see question 9.5) and relocation of the candidate to the Netherlands.
- Phase 4: collection of the residence card and commencing work.

9.5 What is the process for the employee to obtain a visa as a new hire?

The procedures for a work and residence permit and entry visa are synchronised. Once the IND (see question 1.2) approves the sponsor's application, it immediately informs the Dutch embassy or consulate, which has been selected in advance. The candidate can make an appointment to pick up the entry visa. During this visit, the embassy or consulate will collect biometric information. Upon the candidate's arrival in the Netherlands, his or her residence card has often already been produced.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

If the sponsor is a recognised sponsor (see question 4.1), the IND (see question 1.2) will strive to decide within two weeks, except in the case of the transfer of a trainee employee. If the sponsor is not recognised, applications usually take between two and three months, depending on the workload of the IND and the complexity of the application.

9.7 How long are initial visas for new hires granted for and can they be extended?

If the new hire's immigration is achieved through the Highly Skilled Migrant policy (see question 5.1) the residence permit will be valid for the duration of the employee's employment agreement, with a maximum of five years. This permit is extendable.

If the application is made under the European Blue Card policy (see question 5.1) the residence permit will be valid for the duration of the employment agreement, with a maximum of four years. This permit is also extendable.

9.8 Is labour market testing required when the employee extends their residence?

Since the largest share of corporate immigration in the Netherlands is achieved through policies in which labour market testing is not part of the application process, the same applies to the extension of these employees' residence permits.

9.9 Can employees coming as new hires apply for permanent residence?

The Highly Skilled Migrant policy (see question 5.1) and the European Blue Card policy (see question 5.1) both provide the holder of a residence permit with permanent residence perspective.

9.10 What are the main government fees associated with this type of visa?

The following government fees are applicable:

- Highly Skilled Migrant policy: EUR 285.
- European Blue Card policy: EUR 285.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

EU/EEA/Swiss citizens face few conditions of stay.

For non-EU nationals it is essential that they continuously meet the conditions under which their residence permits have been issued. Incorrect assumptions in this regard on the part of the employer are an important cause for the withdrawal of residence permits. Non-EU nationals must keep their main residence in the Netherlands.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

All residents in the Netherlands need to register with municipal authorities after arriving in the Netherlands. Relevant changes can subsequently be notified digitally in most municipalities.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Spouses, registered partners and unmarried partners, as well as the applicant's and his/her partner's children or foster children under the age of 18, are regarded as family members who can join the family in the Netherlands.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, they do. Polygamous marriages are not recognised similarly.

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11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

In most cases, spouses have unrestricted access to the labour market.

11.4 Do children have access to the labour market?

In most cases, children have unrestricted access to the labour market.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The most important conditions for obtaining permanent residence are the following:

- The applicant must live in the Netherlands on a legal basis for an uninterrupted period of five years.
- An application for permanent residence cannot be made so long as the applicant resides on a strictly temporary basis, for example under the Intra-Company Transfer policy (see question 8.3).
- The applicant must have sufficient and lasting income.
- The applicant must have passed a Dutch language and integration exam.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, that is possible. In most cases, the time spent on the temporary work visa will afterwards be taken into account in the determination of whether the applicant is eligible for a permanent residence permit.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The most common immigration policy for work is the Highly Skilled Migrant policy. The most often encountered bar to admission for work under the Highly Skilled Migrant policy relates to the competitiveness requirement (see question 5.1). If the IND (see question 1.2) starts an investigation into this, the sponsor must provide a detailed assignment description, as well as evidence of the candidate's qualifications. This competitiveness test very often surprises and indeed frustrates recognised sponsors. A more thorough preparation of applications is the best remedy for these situations.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal convictions will quickly cause a bar to obtaining work permission or a visa. The more time a foreign national has spent in the Netherlands, the more severe a conviction has to be in order to trigger the withdrawal of his/her residence permit.

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Colleagues within the field of corporate immigration recognise that Arend van Rosmalen ranks among the best immigration lawyers in the Netherlands. His detailed knowledge of the multi-layered immigration legislation, and his careful, analytical assessment of every immigration challenge, are much valued by his corporate clients. Arend is pragmatic in the client's interests, but has a sharp eye for principle. He is cordial, open-minded, thorough and persistent.

Arend acts as counsel for the applicant in the case of *Tjebbes and Others v. Minister van Buitenlandse Zaken*, in which the Grand Chamber of the European Court of Justice delivered judgment on 12 March 2019 (C-221/17). He was on the litigation team acting for the applicant in the case of *Essent Energie Productie BV v. Minister van Sociale Zaken en Werkgelegenheid*, in which the European Court of Justice delivered judgment on 11 September 2014 (C-91/13).

Arend obtained his law degree from the University of Groningen in 2013, and was given a national distinction for his thesis on EU citizenship.

MYNTA LAW

Mynta Law was founded by experienced partners George Qiao and Arend van Rosmalen in 2014. The office currently employs six dedicated lawyers. Mynta Law's practice centres around business immigration, including company incorporation services, drafting and/or reviewing commercial and employment contracts, handling work and residence permit applications and providing ongoing advice on immigration compliance to managers, HR professionals and business planners. Important clients are international trading and manufacturing and research companies, logistics companies, financial service providers and insurance companies, staffing, payrolling and relocation companies. Mynta Law's team of lawyers aim for pragmatic solutions wherever possible. However, if litigating is necessary, Mynta Law will leave no stone unturned for the best possible outcome. Mynta Law's team have ample experience handling many different corporate immigration cases successfully before all the Dutch courts, and even the European Court of Justice.

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Chapter 22

New Zealand

Ryken and Associates

David Ryken

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

Immigration law in New Zealand is governed by two primary sources. The first is the Immigration Act 2009 and regulations passed pursuant to that Act. The second primary source is the Operational Manual which has the instructions to immigration officers on how to process applications and what visas can be approved (both temporary entry and residence). Information about who may be approved, what type of visa is primarily found in the Operational Manual subject to certain provisions in the Immigration Act.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Immigration officers are part of Immigration New Zealand (INZ) (a subsidiary of the Ministry of Business, Innovation and Employment, MBIE) and they make decisions on each application, on a case by case basis. An application must be properly presented in accordance with regulations. Once accepted for filing it will then be scrutinised to see if it comes within the categories in the Operational Manual. Where an application is declined, it can be refiled with further or different information or a complaint can be lodged within the complaint system internal to Immigration New Zealand. The (Associate) Minister of Immigration will accept representations in some circumstances where an application has been declined. There is also a right to judicial review involving temporary entry but only where the application has been lodged onshore.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

New Zealand is not part of any multinational agreement, though it has a number of free trade agreements which have provisions relating to immigration. However, the Courts regard human rights treaties to which New Zealand is a signatory as a mandatory relevant consideration.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

New Zealand's business visitor exemption is express. It is often misunderstood. It is incorrect to suppose that because a visitor is going to do "business" in New Zealand, that a work visa is not required. In this context "business" has a very specific meaning. If a visitor proposes to carry on an activity properly described as work outside of the business visitor rule, they may face repatriation at the border or a very short visit instead. New Zealand has a visa waiver scheme with a number of countries, however that does not entitle a visitor to carry out "business" outside of the definition set out below in breach of the exception to the rule that visitors may not work. The fact that remuneration is in the home country has nothing to do with it. It is not correct to assume the business visitor rule is an open-ended invitation to enter on a visitor visa, and to carry out work of a business nature. Generally, a work visa must be applied for in advance. Rocking up and intending to carry on work outside of what is allowed on the business visitor visa is a frequently made error.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

A business visitor can enter, in order to carry out an approved business visitor activity, for a maximum of three months in any calendar year. However, a special category work visa can be obtained where it has been established that a longer period of time is needed. Such a work visa does not require a contract with a New Zealand entity, or a sponsor.

2.3 What activities are business visitors able to undertake?

The full text of the business visitor exception (which can be carried out on a visitor visa) is as follows:

Business visitors who are not considered to be undertaking employment include the following:

i. representatives on official trade missions recognised by the New Zealand Government;

ii. sales representatives of overseas companies in New Zealand for a period or periods no longer than a total of three months in any one year;

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iii. overseas buyers in New Zealand goods or services for a period or periods no longer than a total of three months in any calendar year; and

iv. people undertaking business consultations or negotiations in New Zealand on establishing, expanding, or winding up any business enterprise in New Zealand, or carrying on any business in New Zealand, involving the authorised representatives of any overseas company, body or person for a period or periods of no longer than a total of three months in any calendar year.

The categories (i) to (iii) are straightforward. Category (iv) is the area of confusion.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Where a person does *not* fall within the above definition and for example wishes to carry out an activity that does not involve establishing expanding or winding up any business enterprise, etc., and is not the representative of an overseas company, then, with some exceptions, a work visa must be obtained. Other exceptions enabling work whilst on a visitor visa include within certain parameters: visiting media, conference delegates, owners and crew of superyachts, sportspersons associated with a match and/or tournament, travellers associated with a contracting party to the Antarctic Treaty and other Antarctic travellers, crew members joining their vessels or aircraft, partners and dependent children of military visa holders, visiting academics, approved arts or music festival performers, short term live entertainment acts and international tour escorts.

A special application for a work visa is, however, required for those seeking to extend their stay beyond three months to continue to carry out business negotiations, etc. There are additional special categories where there is not necessarily a New Zealand employer: referees or judges of sports events, etc, dance and music examiners, installers or servicers of specialised machinery, sports players etc., entertainment industry sector workers, etc., Philippines nurses seeking entry to obtain New Zealand occupational registration, and in certain circumstances those seeking entry for a specific purpose or event where the granting of a work visa is justified.

2.5 Can business visitors receive short-term training?

A student visa is not required for a visitor as long as the course that they undertake is less than three months duration. Where a longer course is required an application for a student visa must be lodged.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

MBIE carries out inspections and investigations involving all employers who employ overseas workers. An employer who is found to be non-compliant will not be able to sponsor further work visas. Where the company has immigration accreditation, accreditation can be lost.

3.2 What are the rules on the prevention of illegal working?

The Ministry of Business, Innovation and Employment does have, in certain instances, powers of entry and inspection into work places and work sites. However, it regularly requires further documentation to be provided in the course of a further application for a work visa, from an employer. Typically, a visa officer will uncover irregularities, including irregularities in the contracts that are submitted, the amount of tax that is being paid to Inland Revenue and will then initiate an enquiry. It is vital that companies seeking to employ overseas workers engage immigration and employment law specialists to confirm their compliance.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

An employer that employs an individual who is not authorised to work (and is not either a New Zealand citizen or resident) may be prosecuted. The worker will face deportation. An employer who allows or continues to allow a person to work in that employer's service knowing that the person is not entitled under the Act to do the work, may be penalised by way of a fine not exceeding NZ $50,000. If the employer has employed the person without knowing his or her status, the fine will not exceed NZ $10,000. Where the employer has however, exploited the worker, the penalty is up to seven years in prison and a fine up to NZ $100,000, or both.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Employers wishing to hire foreign nationals are not currently required to register. At the time of writing however, it is expected that this will change during 2019. However, companies should consider very carefully whether in certain circumstances an application should not be lodged for prior approval to recruit overseas workers. This is referred to as an application for "approval in principle to recruit overseas workers". This will confirm the suitability of the employing company and confirm that there are no New Zealand citizens or residents available to take up the position in the region or area proposed for the employment.

However, established companies should also consider obtaining accreditation (immigration). This enables an employer to recruit a worker from overseas as long as the minimum threshold income is NZ $55,000 *per annum* (base salary). Where a company is accredited, the position will not be market-tested and the worker will also have a work-to-residence work visa and will be entitled to apply for residence at the end of the two year period (even if they are not able to meet the criteria under the Skilled Migrant Category), subject to certain requirements (there are age restrictions). Employers who are accredited can be included in a list of accredited companies, or this can be kept private.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers who hire foreign nationals must ensure that their employees are paid in accordance with the contract provisions and

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meet all holiday and wage requirements under New Zealand employment law. Unless the employer has given Immigration New Zealand an undertaking as to repatriation, however, should the worker leave the employ of the sponsoring company, generally there are no further requirements involving the former employee.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

In essence, the answer to this question must indeed be yes. There is no fixed requirement, however, if an employer is not involved in training or upskilling local workers Immigration New Zealand may well not approve work visas for overseas workers. Although there is no hard and fast rule, it is unwise for companies not to be involved in a commitment to train or upskill local workers if they wish to hire overseas workers. This is also an important aspect of any application for immigration accreditation, as discussed above. Approval is unlikely where there are no training or recruitment policies. As indicated in question 4.1, there is likely to be a number of changes in this area during 2019.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, there is no such levy. New Zealand companies pay taxes.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Immigration authorities in New Zealand regularly make routine inspections of employers to verify immigration compliance. An area of some controversy is whether a contractor is responsible for the compliance of a subcontractor or a sub-subcontractor.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, but see below occupations which are in short supply. Where a person has a job offer in a skilled occupation, they may apply for residence under the Skilled Migrant Category. An occupation listed on the Immediate Skill Shortage List or the Long Term Skill Shortage List is deemed to have the market test met. There is also a special list for construction and infrastructure shortages.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

New Zealand has shortages lists including a general shortages list (see above) a long term shortages list, and a special shortages list for construction and infrastructure. The applicant comes within the shortages lists if he or she has the appropriate work experience and/or qualification(s), as listed. The employing company must still meet certain criteria, however (financial sustainability and past compliance).

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No. There are annual quotas for seasonal workers who work in the agriculture and horticulture industries.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions on the number of foreign workers an employer may sponsor and there is no maximum percentage setting. However, of course an employer that employs a high percentage of foreign workers will be carefully scrutinised by INZ (MBIE), either during compliance checks or during a visa application. The employment must be financially sustainable and so INZ may audit the overall pattern and refuse further visas.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

There are no language requirements for work visas, however obviously the issue may be relevant in terms of whether or not the employment is genuine or appropriate. Some categories of residence have an English language requirement (not all).

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

For any worker who seeks to work in New Zealand for more than 12 months, full medicals must be obtained. Anyone wanting to be present in New Zealand for three months or more from a high incidence tuberculosis country must complete the chest X-ray process. Workers coming for short stays, for example multinational intra-corporate transferees, or senior executives on a business secondment and who do not intend to remain for more than 12 months, may not need to provide full medicals (unless they want a visa for two years duration or more, depending on the visa type). Short-term intra-corporate transferees may also not need medicals accordingly (unless they come from or have been in a high-incidence tuberculosis country).

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Public medical services are available to all those who hold work visas of 24 months or more duration. Medical insurance for shorter stays is not always required but advisable.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

In some circumstances only. Work authorisation under the Essential Skills programme is normally determined on a site-by-site basis and a process called a Variation of Conditions is required if the person is to be transferred to a different site by the same employer. In some circumstances, work visas can be issued relevant to a multiple site arrangement and should be negotiated as part of the work visa authorisation.

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With multinational intra-corporate transferees specialised staff can be seconded to a client site, even where there is no local New Zealand subsidiary and the secondment is itself to a client.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Senior or specialist business persons on short term secondments who have a job offer either in a substantial New Zealand company or a New Zealand subsidiary of an overseas company, can obtain a work visa for up to 12 months with a possible rollover of a further 12 months.

A multinational company can transfer its own employee to New Zealand without the need for a job offer or contract from a subsidiary or local company. These visas can be for up to three years with a possible further rollover of three years but apply only to an executive, a senior manager, or a specialist personnel.

Some highly skilled individuals who have a job offer to work in a company in New Zealand may obtain their work authorisation through the grant of residence (which authorises work). Such an application would be made under the Skilled Migrant Category and would depend on our points system.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Basically, no. There is no work authorisation available for those that invest in a company and in fact it may be regarded as a form of "job purchase" and illegal. We do have a self-employment visa category, called entrepreneur work and entrepreneur residence. Entrepreneur work involves the individual setting up their own company or purchasing into an existing company and enhancing the existing company. In changes to our rules in the Operational Manual in May 2017 however, entrepreneur work projects must involve business plans that indicate either high-growth, innovative projects, or export/import projects. The programme is now extremely restricted. Once the business is established a residence application (entrepreneur) can be filed.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There are no special categories for internships unless part of a course of study through a New Zealand university or tertiary education provider. There is a special category for German tertiary students working as part of their course requirements.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

There are special rules applying to Philippines nurses seeking to enter to obtain New Zealand occupational registration who have a job offer from a District Health Board and who have been accepted for the Nursing Council's Competence Assessment Programme. There are other special categories mainly as a result of our free trade agreements. There are special programmes also for Philippines farm managers, Philippines engineering professionals, Vietnamese Chefs, Vietnamese engineering professionals, Indonesian chefs, Indonesian Halal slaughterers and Indonesian Bahasa teacher aids. There is also a process enabling employers to make special applications for sector-specific temporary work visas, similar to the above. Short-term work visas where required must be obtained, even if the work is for a day or less. This is often misunderstood and can lead to entry refusal or repatriation. A visa is not normally obtainable at the port of arrival. One area of concern are nannies coming to work on a visitor visa while their employers are on holiday. A work visa must be first obtained.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

New Zealand immigration rules (instructions) include a special category for "multinational" company intra-corporate transferees involving an executive, senior manager or specialist personnel. A special application can be lodged on a case-by-case basis for individuals outside these categories. The rules only refer to multinational companies and to a group of companies. It would be open for an applicant to argue that an international group is the same as a multinational company.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

There is no definition specifying what is meant by a "multinational company". The company that employs an individual does not however need to be a New Zealand company under the multinational intra-corporate transferee policy.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

There must be evidence that the individual is a senior manager, executive or specialist personnel. The terms of the secondment including its duration must be submitted and there must be evidence of sufficient funds to show that the employment is sustainable and to cover maintenance and accommodation.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This process involves various documentation from the multinational

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company. In most circumstances the application can now be made online. All supporting documents must be attached and in some circumstances the visa can be an e-visa without needing to submit the passport. Where required, depending on the length of the visa sought, police clearances and medicals may need to also be completed. Medicals must be completed at an approved facility.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The application is a single application but essentially is a hybrid instruction (involving both the employer and the employee). The application is lodged on behalf of the employee, but with the company documents attached.

8.6 How long does the process of obtaining the work permit and initial visa take?

Additional documentation can be requested, particularly if the applicant employee holds a passport from a high-risk country. Visa processing time has however reduced. The processing time however should be within three to four weeks, possibly much quicker.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

It is incorrect to refer to a visa as being "extended" in a New Zealand immigration context. Instead, a further application can be lodged. At all times full supporting evidence must be filed with the new further application, just as it was provided at the first application. A senior or specialist business person on secondment to a substantial New Zealand company or a New Zealand subsidiary of an overseas company normally has a duration of 12 months, with a further visa for a second 12-month period available if required. Intracorporate transferee visas can be for up to 36 months (but must be accompanied by police clearances and medical documentation). Upon application, a further visa for up to 36 months may be obtained (coming to a total of six years).

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, but only if he or she qualifies. An application for residence under the Skilled Migrant Category requires a job offer. If a multinational company has a New Zealand subsidiary, then a Skilled Migrant Category application can be lodged, depending on the number of points that the applicant has. A New Zealand company with immigration employer accreditation can instead apply for a work-to-residence visa, and an application, depending on the circumstances, can then be made for residence after two years.

8.9 What are the main government fees associated with this type of visa?

Currently as of 31 March 2018, NZ $318 for hardcopy applications and NZ $298 for online applications for a work visa. There are separate fees for dependent partners and children (see below).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Intra-corporate visas normally require a senior manager or executive to have worked for the organisation for at least 12 months. There is no longer a 12-month requirement for "specialist personnel" but the individual must possess knowledge of the organisation's service, research, techniques or management. An application can however be lodged outside of these requirements under the open-ended category WS2.1.1(l) (people who need to come to New Zealand for any other specific purpose or event, where they meet the objective of these instructions and the circumstances justify the grant of a work visa).

Otherwise a New Zealand subsidiary or New Zealand company can apply for a new hire through the Essential Skills programme which will be market tested, unless the employment is for an individual that comes within the definitions on the shortages lists. For those companies with immigration accreditation, a new hire can be chosen (without any market test restrictions) provided that the threshold base salary of NZ $55,000 is met.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Where the case does not make use of the business secondment or intra-corporate multinational transferees policies discussed above, then the position is market tested under the Essential Skills Category, unless on the shortages list.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, if the job offer comes within the job classifications as listed in the shortages lists.

9.4 What is the process for employers obtaining a work permit for a new hire?

An applicant company can apply for Approval in Principle to Recruit Overseas Workers, prior to the application, or where market test advertising has been completed and it can be established that there are no available New Zealanders, the application for a work visa can simply be lodged (and on the application, the labour market test will be scrutinised). Please note that these rules are likely to change during 2019.

9.5 What is the process for the employee to obtain a visa as a new hire?

As above. If the employer has obtained approval in principle, evidence of this should be included with the employee's work visa application (in some circumstances this can be online). Where approval in principle has not been obtained, the applicant must establish a shortage (advertising and credible supporting evidence).

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9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

An application for Approval in Principle can take two to three months, particularly if the company is new, and if the company's financial capacity needs to be scrutinised. Where there is an Approval in Principle, the processing time on a work visa would be under three to four weeks. Where a work visa application is lodged without an Approval in Principle however, and the market test needs to be scrutinised, the processing time can be in excess of two to three months. Processing times are reducing as INZ sets up a centralised processing system.

9.7 How long are initial visas for new hires granted for and can they be extended?

This depends on the type of work visa. If the position is classed as highly skilled under the Essential Skills rules, a visa for up to five years can be obtained. Those earning above NZ $37.49 per hour are classed as higher skilled. Mid-skilled earn between NZ $21.25 and NZ $37.49 and those earning less than NZ $21.25 are deemed to be lower-skilled. Those earning less than NZ $37.49 in certain job classifications, are also classed as lower skilled. A higher skilled work visa can have a visa length for up to five years. A mid-skilled visa can be for up to three years. There is no restriction on further grants. Those classed as lower skilled however can only obtain a work visa for up to one year with two further 12-month work visas, with a maximum of three years and a stand-down period of one year outside of New Zealand. The earning thresholds will be altered in November each year.

9.8 Is labour market testing required when the employee extends their residence?

It is assumed that the term "residence" means "stay". As there is no such thing as an "extension," the same labour market testing rules will apply at the time of the subsequent application. If the individual was on a shortages list at the time of the first application, but no longer is (the lists change annually), then the employer must put forward a case to establish that there is no available New Zealand citizen or resident to take up the position. At the time of the further application then, the current rules (and not the old rules) will apply. There are restrictions as discussed above that apply to lower-skilled positions or lower-remunerated positions.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, provided that they have a sufficient number of points under the Skilled Migrant Category. Where the employer is immigration-accredited, the residence application can be lodged after two years of successful employment.

9.10 What are the main government fees associated with this type of visa?

As of 31 March 2018, filing fees are NZ $318 for hardcopy work visa applications and NZ $298 for online applications.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Those who hold work visas for two years or more have access to New Zealand's universal healthcare system. Correct taxes must be paid and the worker must remain of good character. The employer must also remain immigration and employment law compliant, otherwise a further visa will be declined. Employer requirements are due to change during 2019 as discussed above.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not required to register with municipal authorities or the police after their arrival.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A dependent spouse or *de facto* partner (including same-sex) can normally obtain a spouse or work visa where the application involves short term secondment or multinational intra-corporate transferees. The partner's work visa will normally be an open work visa allowing employment with any employer. Dependent children will be able to obtain a domestic student visa, but only for primary and secondary (not for tertiary).

With regard to Essential Skills work visas, for those assessed as lower skilled, they may not sponsor partners and children unless they obtain visas in their own right (essentially for children this will mean a student visa as an overseas fee-paying student). Dependent children can be classified as dependent up to and including the age of 19, unless they are in employment, or in a married or *de facto* partnership, or have children.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes. The full test for applicants is whether or not the couple have lived together for 12 months in a genuine and stable relationship (whether married, *de facto*, same sex or opposite sex). The same rule fits all. Where a partner has lived together with his or her sponsor for less than 12 months a work visa can be issued.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, as above, in some circumstances (except where employment is defined as lower skilled under the Essential Skills policy) an open work visa will be issued.

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11.4 Do children have access to the labour market?

No. Once a child is working they are no longer dependent and cannot have a work visa, unless in their own right. Part time work authorisation can be obtained in some circumstances for children at secondary school.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Space does not permit to describe in detail an answer to this question. The primary routes to residence are through the Skilled Migrant Category, the Investor Categories, and the work-to-residence categories (employer accredited and long-term shortage list). An intra-corporate transferee can shift to permanent residence should they have the requisite number of points through a job offer and/or work experience in New Zealand. For the work-to-residence programme the work visa must be a work-to-residence work visa.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Where a Skilled Migrant Category application is lodged, any existing work visa may lead to residence. Where an individual comes into the country under a transferee visa or an Essential Skills work visa, and wishes to later make use of the work-to-residence (employer-accredited) programme, or the Long Term Skills Shortages List, there needs to be an application to switch from one type of work visa to the other.

13 Bars to Admission

13.1 What are the main bars to admission for work?

In practice, the main areas which operate to prevent the granting of work visas are good character issues, medical issues, medical issues involving dependent children or a spouse, and from the employer's point of view, financial sustainability of the employment (where the company is not clearly able to sustain the worker).

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

In many instances, criminal convictions are a bar; however a waiver can be obtained depending on the circumstances including how serious the offending was, how long ago and the importance of the employment to the ongoing work of the employer or company.

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Since 2000, David has been a member of the Immigration Committee of the International Bar Association. He regularly presents papers at local and global conferences on business investor and other immigration issues, and is often asked to give evidence as an immigration expert in matters before the courts.

David also appears regularly in New Zealand's courts on a wide range of matters including appeals and judicial reviews of immigration decisions, and in our criminal courts in cases involving immigration compliance and deportation. David has also contributed to a number of textbooks on New Zealand immigration law.

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Ryken and Associates includes a full team of enthusiastic and committed legal professionals, proficient in a number of languages. The team is committed to providing a prompt, accurate and professional service to clients around the globe, interested in either doing business in New Zealand, working in New Zealand, or in permanent stay in New Zealand. Ryken and Associates combines its advice and experience with all aspects of legal practice including employment, family, criminal and commercial law, where these intersect.

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Nigeria

Dayo Adu

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The primary sources of law regulating immigration in Nigeria are: the Immigration Act, 2015 and the Immigration Regulations, 2017. The secondary source is the Constitution of the Federal Republic of Nigeria 1999 (as amended), and the Nigerian Oil and Gas Industry Content Development Act, 2010.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

These are the Federal Ministry of Interior (FMI), Nigeria Immigration Service (NIS), Federal Ministry of Foreign Affairs and Nigerian Content Development and Monitoring Board (NCDMB).

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Nigeria is a party to ECOWAS (Economic Community of West Africa States) Protocol on the Free movement of persons within the ECOWAS community.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

There is no visa waiver programme in our jurisdiction.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

A Business Visa is usually granted for a period of one month at the first instance. It can be extended in-country to a maximum period of one year.

2.3 What activities are business visitors able to undertake?

The Business Visa allows foreign travellers to visit Nigeria for the purpose of meetings, conferences, seminars, contract negotiation, marketing, sales, purchase distribution of Nigerian goods, trade fairs, job interviews, to train Nigerians (Humanitarian Services), emergency/relief work, or for musical concerts. It also applies to crew members, staff of NGOs, staff of INGOs and researchers.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

There is no special visitor category that allows business visitors to undertake work or provide services for a temporary period. To undertake work or provide a service for a temporary period, a Temporary Work Permit (TWP) is required.

2.5 Can business visitors receive short-term training?

A business visitor may receive short-term training by way of attending seminars or conferences, so long as a valid Business Visa is obtained.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, they do. Compliance inspections are usually carried out periodically and most times unexpectedly. An inspection can also be triggered by a third party petition.

3.2 What are the rules on the prevention of illegal working?

The general rule to prevent illegal working within Nigeria is that employers of foreign nationals must accept immigration responsibility on behalf of the foreign nationals, they must also ensure they obtain

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regulatory approval (expatriate quota/temporary work permit), work/residence authorisation from the appropriate national authorities. Employers of foreign nationals are also required to file monthly expatriate quota returns so as to monitor the expatriates working in the company and the legality of the permits and visas they are working on.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

A defaulting organisation shall be liable on conviction to imprisonment for up to five years or a fine of one million Naira (approximately $2,774) or both (Section 38(5)) of The Immigration Act, 2015. Furthermore, such an organisation may be wound up and made to bear the cost of deportation of affected foreign nationals. The authorities may also withdraw any immigration facilities/approvals previously granted to such an organisation.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Yes, there is. Employers who wish to hire foreign nationals must apply for expatriate quota positions from the Federal Ministry of Interior (FMI). Additionally, employers in the Oil and Gas sector are required to register with and obtain pre-approval from the NCDMB before applying to the FMI for expatriate quota positions.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers are required to accept full immigration responsibility in respect of their foreign employees and must ensure compliance with the provision of Immigration laws at all times. Particularly, employers are required to file appropriate monthly returns stating information about the location, status, permits and visa details of foreign employees in their employment. These returns will be filed with the immigration authorities.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Yes. This is a prerequisite for the renewal of expatriate quota positions. For every foreign employee, an employer must hire at least **two** Nigerians to understudy the foreign employee. Commitment to training for local employees are mandatory requirements in support of development of local content.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There is no such requirement in respect of foreign employees. However, the Industrial Training Fund (Amendment Act) 2011 mandates every employer with five employees or more or having less than five employees but with an annual turnover of 50,000,000 Naira and above to contribute 1% of its annual payroll to the Industrial Training Fund for training purposes in the public and private sector of the economy.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, routine inspections are undertaken by immigration authorities.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, the Federal Ministry of Industry and the Nigerian Immigration Service periodically designate skills or capacities which are not locally available. The NCDMB does the same in relation to skills and capacities in the Oil and Gas sector.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

To some extent, there is such a recognition of skill shortages in some sectors such as the Oil and Gas sector and power sector. Nevertheless, expatriate quota positions approvals are still required to be obtained in respect of these occupations.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

The law does not provide for specific annual quotas for work permits or visas. Short-term work permits are issued outside the expatriate quota and for long term-permits, the employer can only employ a number of foreign workers consistent with the number of expatriate quota positions granted by the Federal Ministry of Interior.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions on the number of foreign workers an employer may sponsor. What is required is that a commensurate number of expatriate quota positions be obtained and monthly returns be filed.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not required.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

This is not mandatory. However, the Yellow Fever Vaccination Certificate is required for the STR visa application and foreign employees in the Oil and Gas Industry are usually required to demonstrate fitness and competence to work offshore by presenting a certificate of medical fitness.

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4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign employees are not entitled to free public medical services. Employers of foreign nationals may provide such nationals with private health insurance as part of their annual remuneration package.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

The work permit system allows employees to work anywhere within Nigeria. Employees may therefore be seconded to a client site subject to their employment contract.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no category like this.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

The long term work permit; the Combined Expatriate Residence Permit and Alien Card (CERPAC) applies to all cases of foreign nationals working in Nigeria for a long term and the Temporary Work Permit, for short term work. However, for some investors, they are granted a quota referred to as Permanent Until Review (PUR). This is usually granted for a longer period and for slots like chairman of the company's board of directors and the managing directors. This assists the foreign investors to adequately protect their business interests in Nigeria. Once a PUR is granted, a certificate is issued stating the position the PUR covers.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The Temporary Work Permit (TWP) applies to temporary workers on projects for up to two months.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

There are no sector-specific temporary work permit categories. The Temporary Work Permit (TWP) generally applies to all expatriates in all sectors in Nigeria.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

For inter-company transfers (transfers between separate entities), the transferring entity will need to make an in-country application for change of employment and also an application to deregister the employee from the company's expatriate quota.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

To qualify as part of a group of companies, a company must first be registered as a Nigerian Company as provided for in Section 54 of the Companies and Allied Matters Act (Cap C20, LFN 2004), which is the law regulating the registration of companies and incidental matters in Nigeria.

Other conditions to be complied with are provided for in the Companies Regulation 2012, which include:

(1) Formal application for consent.

(2) Evidence of no less than three associate companies to form the "Group" company.

(3) Evidence of common membership of the associate companies.

(4) Resolutions of the associate companies consenting to the "Group" Relationship.

(5) Statement by the majority of the directors of the proposed "Group" company that the share capital of the company shall not be less than the highest share capital amongst the associate companies.

(6) Updated annual returns of associate companies.

(7) Updated section 553, CAMA filing where applicable.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

To obtain a work permit for an intra-company group employee (transfer from one country to another), an employer in Nigeria must fulfil the same conditions for the employment of a new hire, which is either to obtain a TWP or CERPAC.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The employing company must first apply for an expatriate quota position for the expatriate and obtain approval. The application will be made to the Federal Ministry of Interior. The expatriate then applies for a Subject to Regularisation (STR) visa at the Nigerian embassy in the country where he/she is resident. Requisite documents must be provided in support of the application. The STR visa grants the employee entry to Nigeria and enables him/her to work and reside in Nigeria for an initial period of 90 (ninety) days.

Once in Nigeria, the employer must, within 90 (ninety) days, regularise the immigration status of the employee by applying for a Combined Expatriate Residence Permit and Alien Card (CERPAC/ Residence Permit/or Green Card) on behalf of the employee.

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8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The employee would go through the STR-CERPAC route as it applies to new hires.

8.6 How long does the process of obtaining the work permit and initial visa take?

It takes eight to 10 working days to obtain the STR visa in the country of residence of the expatriate (this is dependent on the country of residence of the expatriate). It takes seven to 10 working days to regularise in-country and obtain the Combined Expatriate Residence Permit and Alien Card (CERPAC).

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

There is no distinct visa category for intra company transfers. The CERPAC route will still apply. As it relates to the CERPAC, the initial visa (STR visa) is valid for 90 days and cannot be extended.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Employees coming under an intra-company transfer route cannot apply for permanent residence unless they fulfil the conditions for the grant of permanent residency.

8.9 What are the main government fees associated with this type of visa?

The main government fees associated with this type of visa are the CERPAC fees, which amount to $2,000.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

An expatriate quota is the most important permit an employer needs to obtain to be able to employ new hires.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Generally there is none. However, some sectors such as Oil and Gas require labour testing.

9.3 Are there any exemptions to carrying out a resident labour market test?

Generally, it doesn't apply. For recruitments in the Oil and Gas sector, labour testing will not be required for yearly position renewals.

9.4 What is the process for employers obtaining a work permit for a new hire?

For new hires, the employing company first applies for expatriate quota position(s) for the expatriate(s) and obtains approval. This application is made to the Federal Ministry of Interior.

The expatriate then applies for a Subject to Regularisation (STR) visa in the country where he/she is resident. Requisite documents must be provided in support of the application. The STR visa grants the employee entry to Nigeria and enables him/her to work and reside in Nigeria for an initial period of 90 (ninety) days.

Once in Nigeria, the employer must, within 90 (ninety) days, regularise the immigration status of the employee by applying for a Combined Expatriate Residence Permit and Alien Card (CERPAC/ Residence Permit/or Green Card) on behalf of the employee. This application is made to the Nigerian Immigrations Service.

9.5 What is the process for the employee to obtain a visa as a new hire?

Subject to the availability of expatriate quota slots, the expatriate is required to apply for a Subject to Regularisation (STR) visa in the country where he/she is resident. Requisite documents must be provided in support of the application. The STR visa grants the employee entry to Nigeria and enables him/her to work and reside in Nigeria for an initial period of 90 (ninety) days.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

It takes 8–10 working days to obtain the STR visa in the country of residence of the expatriate (this is dependent on the country of residence of the expatriate). It takes 7–10 working days to regularise in-country and obtain the CERPAC.

9.7 How long are initial visas for new hires granted for and can they be extended?

The initial visa (STR visa) is valid for 90 days and cannot be extended.

9.8 Is labour market testing required when the employee extends their residence?

No, labour market testing is not required.

9.9 Can employees coming as new hires apply for permanent residence?

New hires cannot apply for permanent residence unless they fulfil the conditions for the grant of permanent residency.

9.10 What are the main government fees associated with this type of visa?

The main government fees associated with this type of visa are the CERPAC fees, which amount to $2,000.

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10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

It is pertinent that both the employer and the employee ensure compliance with immigration law and regulations. The employer has a duty to ensure that work permits are renewed periodically and expatriate quota returns are filed monthly. It is an offence for an expatriate to continue work on an expired work permit or remain in Nigeria with an expired visa.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

All foreign nationals, including work permit holders entering Nigeria who intend to stay for a period exceeding 90 (ninety) days, are required to register at the Immigrants' Registry where he/she resides within 21 days of their arrival in Nigeria.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A spouse, child(ren) and the parents of the individual qualify as dependants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No, they do not qualify.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, spouses have access to the labour market. However, there has to be a hiring entity (employer), and will have to bear the immigration responsibility on their behalf.

11.4 Do children have access to the labour market?

Children younger than 18 years old do not have access to the labour market.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Foreign nationals desirous of obtaining permanent residence status, must import an annual minimum threshold of capital over a period of time. The minimum threshold capital is determined from time to time in the national visa policy. It is important to note that if the investment is withdrawn from Nigeria, the permanent residency will be forfeited. Foreign nationals married to Nigerians, persons of dual nationality who qualify to be Nigerian citizens by birth but do not possess Nigerian passports as well as those who lost their citizenship (for non-criminal reasons) but wish to retain family ties to Nigeria may also qualify for permanent residency. It is important to note that the National Visa Policy is not easily assessable.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

It is ordinarily not possible to switch from a temporary work visa to a work visa that would lead to permanent residence.

13 Bars to Admission

13.1 What are the main bars to admission for work?

Persons that fall within the category of prohibited immigrant in the Act will not be admitted to work in Nigeria. Persons in this category include those without visible means of support, any person against whom an order of deportation from Nigeria is in force, a person who has no valid passport, prostitutes, sexual offenders or individuals under the age of 16 years old.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, they are. The Act states that any person convicted in any country of any crime wherever committed, which is an extradition crime within the provisions of the Extradition Act, is barred from admission into Nigeria.

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Dayo is the Managing Partner at Famsville Solicitors and leads the firm's Business and Investment Immigration practice group. He is well known for assisting companies to mobilise their employees from a legal and operational point of view by providing services within expatriate work authorisation, tax and employment related matters.

Dayo was recently recognised by *Who's Who Legal (WWL) 2018* and 2019 for his expertise in Corporate Immigration Practice in Nigeria. Dayo Adu was recommended for his "in-depth knowledge of the whole immigration regularisation process", with the "ability to solve very difficult immigration issues amicably" and offers "great customer service" on matters including expatriate work authorisation. Dayo's practice provides "in-depth knowledge of the entire relocation business" and he has particular strength on matters relating to immigration procedures.

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Omolola is an Associate with a passion for corporate and commercial practice. Omolola's specialty spans across: Employment Law, Immigration Law and Regulatory Compliance. She is well known for assisting companies to mobilise their employees by providing expert on-boarding advice, securing requisite expatriate work authorisation and providing solutions to their tax and employment-related issues. She has consistently provided advice to help both international and local companies navigate the ever-changing landscape of labour and employment laws.

She is positioned to advise local and international companies on a wide range of complex HR management, labour and industrial relations issues such as employment contracts/handbooks, pensions, health and safety in the workplace, collective bargaining and trade union negotiations. Her impeccable attention to details has aided her in reviewing contracts thoroughly and also conducting due diligence exercises on companies and employees. Omolola enjoys writing and research and she strives for excellence in all she does.

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Norway

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Immigration Act with regulations, which regulates the entrance into and residence in Norway, is the main source.

Other significant sources are the EEA-agreement and the Schengen-agreement, which have implications on Norwegian immigration law.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Directorate of Immigration handles most cases under the Immigration Act, including applications for visa and residence and work permits.

The Labour Inspection Authority's main responsibility is supervision of compliance with the labour legislation. However, the Labour Inspection Authority also oversees that enterprises employing foreign nationals comply with the conditions for residence permits with regard to pay, other working conditions and the extent of the position, and that the conditions for residence permits for citizens from the EU/EEA-area are complied with.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Norway is party to the EEA-agreement, which is an agreement entered into between the EU, Norway, Iceland and Liechtenstein. Free mobility of employees, services and goods, and the freedom to establish enterprises within the EU/EEA-area are the four core principles. Citizens of EU/EEA-countries may freely enter into, reside and work in the EU/EEA-area, without a visa or residence permit.

Norway is also party to the Schengen-agreement, which aims for free movement between the Member States by creating an internal area without border control.

The Nordic countries have entered into multilateral agreements, entailing the citizens of the Nordic countries freely to enter into, reside and work in other Nordic countries without applying for a visa or residence permit.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Foreign nationals from the Nordic countries, the EU/EEA-area and Switzerland may enter into and stay in Norway without a visa, *cf.* question 1.3. The same applies to citizens from countries that have entered into bilateral or multilateral agreements with Norway concerning visa-free entrance. Foreign nationals with a Schengen visa issued in another country party to the Schengen-agreement may freely enter Norway.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period a foreign national may stay in Norway on a visa is 90 days within a period of 180 days.

Foreign nationals that are able to document a need for frequent visits to Norway and the Schengen-area may be granted a multiple-entry visa valid for up to five years.

2.3 What activities are business visitors able to undertake?

A Schengen visa may be issued for all purposes not requiring a residence permit, i.e. visiting family members or organisations, participating in cultural arrangements, tourism or business purposes. Business purposes includes participation in meetings and conferences, leading contractual discussions and similar.

As a general rule, foreign nationals shall need a residence permit in order to perform work in Norway. Some categories of foreign nationals may, however, work on a visa, provided that the work does not exceed three months, *cf.* question 2.4.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

As a general rule, foreign nationals must have a residence permit granting the right to work in order to work in Norway. Some categories of foreign nationals are exempt from this requirement. However, in order to enter into and stay in Norway, the foreign nationals must hold a visa or be entitled to visa-free entry. Further,

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there are strict requirements as to the duration of the work, the stay, and the type of work assignments that apply. For example, the duration of the work in Norway must be less than three months.

The categories are:

- Commercial and business travellers.
- Persons with technical qualifications who are to install, disassemble, inspect, repair, maintain or provide information on the use of machinery or technical equipment.
- Foreign nationals in the private service of persons visiting Norway for a period of up to three months.
- Professional athletes and accompanying support personnel.
- Public employees in the pay of another state, when they come to Norway on the basis of a cooperation agreement between foreign and Norwegian authorities.
- Journalists and other personnel on assignment for a foreign media institution.
- Tourist guides for foreign travel companies in connection with a visit to Norway.
- Personnel on foreign trains, aircraft, buses and trucks in international traffic.
- Necessary security and maintenance crew on foreign-owned-laid-up ships in Norway.
- Researchers, lecturers and religious workers.
- Foreign nationals who are employed in an international company and are to undergo in-house training.
- Musicians, performers, artists or accompanying necessary auxiliary personnel on assignments in Norway not exceeding 14 days in the course of a calendar year.
- Foreign nationals that are employed in an organisation performing international humanitarian work.

2.5 Can business visitors receive short-term training?

Yes, see the answer to question 2.4.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The Labour Inspection Authority superintend that enterprises employing foreign nationals comply with the conditions for residence permits with regard to pay and other working conditions, *cf.* the answer to question 1.2.

The Labour Inspection Authority annually performs thousands of inspections at work places, including work places with foreign employees, with the aim to combat social dumping and poor working conditions. The inspections may be announced or unannounced.

The Labour Inspection Authority may also demand that enterprises present documentation necessary for the performance of the supervision.

3.2 What are the rules on the prevention of illegal working?

The Labour Inspection Authority, the Labour and Welfare Administration, the police and the Tax Administration are currently working under a common action programme for strengthened effort against working life crime. The authorities cooperate through various measures, i.e. controls, cooperation with other authorities and preventive and guidance activities.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Performance of work without a work permit is a legal offence, and may lead to a criminal liability for both the employee and employer. The employee may be expelled from Norway and the Schengen-area on the grounds of illegal work, for a minimum period of two years.

The Labour Inspection Authority may issue orders and other individual decisions, impose coercive fines and administrative fines and halt work activities in order to fulfil the duty of supervision concerning fulfilment of the conditions for residence permits.

An employer that grossly or repeatedly violates the Immigration Act with regulations, with regard to pay or other working conditions, may be banned from employing foreign nationals for a period of two years.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, there is no particular system for Norwegian employers who wish to hire foreign nationals.

The website www.nav.no/workinnorway/en/Home is hosted by the Norwegian government, and provides *i.a.* information for Norwegian companies considering recruiting foreign employees. Employers may post vacancies on www.nav.no.

The website www.altinn.no/en/start-and-run-business provides information for foreign self-employed persons and enterprises considering to establish a business in Norway. Foreign nationals and enterprises seeking to establish a business in Norway must register the business at the Brønnøysund Register Centre, www.brreg.no. A registration fee applies.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers are in general obligated to comply with Norwegian law, including Norwegian immigration law. Employers are *i.a.* obligated to ensure that the foreign national has a right to work in Norway prior to employing the person concerned, and that the foreign national receives pay and other working conditions on the same level as the Norwegian employees.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No. But employers are obligated to ensure that their employees, whether Norwegian or foreign, at all times have the competence required to hold the position.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, see question 4.3.

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4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

See question 3.1.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, immigration authorities do not maintain such a list.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No, there is no such recognition.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There is a quota for residence permits for skilled workers (5,000 workers per year) and for seasonal workers in agriculture and forestry. The quotas have never been filled. Otherwise, quotas do not apply.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No. There is no restriction on the number of foreign workers an employer may sponsor.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No. Language requirements are, however, a condition for being granted a permanent residence permit, *cf.* question 6.2.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No, not in general. Medical examinations may, however, be required in order to perform certain professions, regardless of whether the employee is Norwegian or foreign.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Anyone who takes up employment in Norway will be enrolled automatically in the Norwegian Insurance Scheme. As a member of the Insurance Scheme, one is entitled to public medical services. Necessary healthcare will then be covered by the national healthcare service, and the patient will only be charged with user fees. When it comes to dental treatment, children receive free public treatment, but in principle adults have to cover the expenses themselves. For more information concerning healthcare for foreign nationals in Norway, see www.helsenorge.no.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

It depends on the type of work permit. A residence permit as a skilled worker with a Norwegian employer, *cf.* question 5.1, entitles the foreign national to change employer as long as the new position requires competence as a skilled worker and the foreign national holds the required competence.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, there is a main category covering residence permits for skilled workers. "Skilled workers" refers to employees who have special training which at a minimum corresponds to upper secondary school level, have a craft certificate, have a university college or university education or who have special qualifications.

There are several subcategories under the residence permit for skilled workers:

- Skilled workers with an employer in Norway.
- Employees of international companies who are going for an assignment for the Norwegian branch of the company.
- Employees of companies abroad who are going on assignment in Norway.
- Offshore workers.
- Athletes or coaches.
- Ethnic cooks.
- Religious leaders/teachers.
- Self-employed persons with a company in Norway.
- Self-employed persons with a company abroad.

All the subcategories require fulfilment of the basic criteria for being a skilled worker. However, the rights vary between the subcategories.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Self-employed persons who intend to engage in a permanent business activity are entitled to a residence permit if the presence of the self-employed person in Norway and active participation in running the business is necessary for the establishment or continued operation of the business, *cf.* question 5.1 on residence permit as skilled workers, under the subcategory "self-employed persons with a company in Norway".

Permits may be granted for one year at a time, and may be renewed. After three years, the foreign national may apply for permanent residence.

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7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The following categories cover residence and work permits for foreign nationals that are to be hired for a fixed, time-limited period:

- Researchers who are to carry out research at a university, an institute or the like, may be granted a residence and work period for a total of two years.
- Trainees may be granted a residence and work permit for a total of two years.
- Foreign nationals who have been placed as a working guest in agriculture through an organisation may be granted a permit for a total of three months.
- Associates in an established organisation performing non-profit or humanitarian work may be granted a residence and work permit for a total of four years. The same applies to associates in an established organisation performing religious operations.
- Au pairs may be granted a residence and work permit for a total of two years.
- Young people who are to take a working holiday and who are covered by a working holiday agreement between Norway and another state may be granted a residence and work permit for a total of two years.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

See questions 2.4 and 7.1.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes. A foreign national may be granted a residence permit as a skilled worker, under the subcategory "employees of international companies who are going for an assignment for the Norwegian branch of the company", *cf.* question 5.1.

The employee must be employed by an enterprise that has a contract with an enterprise in Norway to carry out an assignment in Norway. As a general rule, the offer of an assignment must be for one specific enterprise in Norway.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

There are no conditions. The terms and content of the residence permit under this subcategory is the same as under the subcategory "employees of companies abroad who are going on assignment in Norway".

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

There is no particular process for this subcategory. However, the employee must have pay and working conditions that are not poorer than the Norwegian standard. The employer abroad must therefore ensure this.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The foreign national has to apply for a residence permit as a skilled worker, *cf.* question 5.1. The foreign national must register the application online, and book an appointment, and physically hand over the original application and the required documentation. A passport or other valid identity card must also be presented.

The appointment shall normally be held at a Norwegian foreign service mission in the country of nationality or the country where the foreign national has held a residence permit for the last six months.

Foreign nationals may document that they qualify as a skilled worker, *cf.* question 5.1, and may apply from Norway, provided that they have legal entry and residence in Norway. The appointment will be held at a police station or Service Centre for Foreign Workers in the police district where the foreign national is to reside.

The Directorate will assess whether the conditions for granting the work permit is fulfilled, based on received documentation.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

There is no specific visa covering intra-company group transfers.

8.6 How long does the process of obtaining the work permit and initial visa take?

An application for a work permit under the subcategory mentioned in question 8.1 is usually handled within five to six weeks from submission.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Work permits under the subcategory mentioned in question 8.1 are granted for two years at a time.

The permit may be renewed. If the residence permit has been granted for up to six years, the foreign national must live outside Norway for two years before applying for a new permit under this category.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No. If the foreign national is going to carry out assignments other than that described in the contract or for another enterprise, the foreign national must apply for a new residence permit.

Further, time spent in Norway under this subcategory does not give grounds for permanent residence.

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8.9 What are the main government fees associated with this type of visa?

Application for residence permits for work (including renewals) requires payment of an application fee of NOK 5,400. Additional fees may apply if the application is handed in at a foreign service mission.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category for work permits for Norwegian employers who want to hire foreign nationals with residence permits as skilled workers, is the subcategory "skilled worker with an employer in Norway", *cf.* question 5.1. The following questions in section 9 are based on this subcategory of residence permit as skilled worker.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, formally. Residence permit as skilled worker presupposes that the employee falls within the quota for skilled workers (5,000 workers). If the quota has been filled, a permit may be granted when the position cannot be filled by domestic labour or labour from the EU/EEA-area or Switzerland. However, the quota has never been filled.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes. The requirement does not apply to citizens of a country that is a member of the World Trade Organisation (WTO), if the foreign national is employed in an international company.

9.4 What is the process for employers obtaining a work permit for a new hire?

As the main rule, the foreign national must apply for the work permit himself. The employer has to give the foreign national an offer of employment or employment agreement, which the foreign national must submit with his application.

When it comes to residence permits for skilled workers, the employer may hand in the application on behalf of the foreign national, provided that the foreign national gives the employer in Norway a written power of attorney. A representative of the employer must physically hand over the application and the required documentation, including an offer of employment or employment agreement, at a police station or Service Centre for Foreign Workers in the police district where the foreign national is to reside.

9.5 What is the process for the employee to obtain a visa as a new hire?

As a main rule, foreign nationals must have a work permit in order to work in Norway. Exceptions are limited, see questions 2.3 and 2.4.

For the process of obtaining a work permit, see question 8.4.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 8.6.

9.7 How long are initial visas for new hires granted for and can they be extended?

Residence permits may be granted for up to three years at a time if the position requires a completed education or degree from a university or college, and for up to one year at a time if the position only requires a completed secondary education.

9.8 Is labour market testing required when the employee extends their residence?

Yes. The conditions for a first-time residence permit must be fulfilled in order to be granted renewal.

9.9 Can employees coming as new hires apply for permanent residence?

Yes. After three years, the foreign national may apply for a permanent residence permit.

9.10 What are the main government fees associated with this type of visa?

Application for residence permits for work (including renewals) requires payment of an application fee of NOK 5,400. Additional fees may apply if the application is handed in at a foreign service mission.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The conditions vary with the type of work permit. The conditions and limitations shall appear from the permit.

A first-time residence permit shall be granted as a temporary residence permit. The permit is normally granted for a period of at least one year, but does not exceed three years. The duration shall not exceed the length of the employment relationship.

A residence permit contains the following conditions, unless otherwise prescribed in law:

- The right to reside anywhere in Norway.
- The right to take employment and engage in business activities anywhere in Norway.
- The right to repeated entry into Norway.
- The permit provides a basis for a permanent residence permit.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes. Foreign nationals must register with the local authorities in order to receive a D-number, which is a temporary identity number, and a tax card.

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11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Spouses, registered partners, cohabitants, fiancés, children and parents of the employee all qualify as dependants, and may, under certain conditions, be granted a residence permit in family immigration with the employee.

The employee has to fulfil certain criteria, including requirements as to means of subsistence and accommodation and conduct.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes. A cohabitant only qualifies as a dependant if the relationship has lasted for at least two years or the cohabitants are expecting a child, and provided that neither of the cohabitants are married to someone else at the time of the decision.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes. As the main rule, a residence permit grants the right to take employment and engage in business activities anywhere in Norway.

11.4 Do children have access to the labour market?

Yes, under certain requirements as to work and work conditions.

Children at the age of 15 years or older normally have free access to the labour market, provided that requirements as to working conditions for employees under the age of 18 years are fulfilled. Children under the age of 15 years have limited access to the labour market.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Foreign nationals that have resided in Norway for the last three years, under a temporary residence permit that provides a basis for a permanent residence, may apply for a permanent residence permit.

Such a permit shall be granted if the following conditions are met:

- The foreign national has not stayed outside Norway for more than seven months in total over the course of the last three years.
- The conditions for a temporary residence permit are still fulfilled.
- The conditions for expulsion are not fulfilled.
- The foreign national has completed compulsory Norwegian language training.
- The foreign national has achieved a minimum level of spoken Norwegian in the final Norwegian language examination.
- The foreign national has completed compulsory training in social knowledge and has passed the final examination in social knowledge in a language he or she understands.
- The foreign national has been self-supporting for the past 12 months.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

The foreign national is entitled to a permanent residence if the conditions for a permanent residence permit is fulfilled, *cf.* question 12.1.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The foreign national may not be granted a residence permit with the right to work if the conditions for expulsion are fulfilled. Violations of the penal legislation or the Immigration Act with regulations qualifies as grounds for expulsion.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, *cf.* question 13.1.

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RÆDER

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Oman

Omar Al Hashmi

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

Oman does not have a specific law related to immigration and this is catered through various Royal Decrees, Ministerial Decisions, the Ministry of Commerce & Industry's regulations, Labour Law, Royal Oman Police Regulations, Ministry of Foreign Affairs and Ministry of Manpower Regulations.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

Corporate immigration involves a combined jurisdiction of the Ministry of Commerce and Industry, Ministry of Manpower and Royal Oman Police. Some types of activities may require further approvals from the Ministry of Environment, Ministry of Education, etc. depending on the type of activity. For this purpose, several One-Stop Shops are set up by the government which facilitate administering corporate immigration through a single window.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Oman has been open to facilitate foreign businesses in Oman, and has been party to several agreements like the FTA between Oman and the US, the FTA between GCC and Singapore and the GCC Unified Economic Agreement. It further went ahead to promulgate the Foreign Capital Investment Law that allows foreign companies to own up to 70% of equity shares and up to 99.999% profit in the mainland companies, as against the maximum 49% equity shares in most other Middle Eastern countries. The branch companies of foreign based companies can own up to 100% of the branch company. Similarly, Freezone companies can own up to 100% equity shares and a tax holiday for up to 30 years.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Normally, any visitor to Oman requires a visa, however, there are several types of visas available to facilitate business visitors, including the express visa that can be issued the same day. Besides that there are nationals from several countries, besides GCC residents, who can obtain a visa on arrival.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The Royal Oman Police offers several types of work permits for expats. This type of work permit is predominately utilised when a project was created to fulfil a specific objective or the project was designed to have a limited time period. The investor's resident visa is issued initially for six months and is extendable for periods of two years each, while the express visa is valid for three weeks and the GCC visa for four weeks.

2.3 What activities are business visitors able to undertake?

The Ministry of Commerce and Industry provides an extensive list as to what a person can undertake.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Yes, Oman offers an Employment Contracting visa which caters specifically to foreign individuals who come to Oman to fulfil a specific purpose, e.g. ministry projects. This is in addition to the employment visa, which could also be issued depending on the nature of the work. Both visas require the foreign individual to have an Omani sponsor.

2.5 Can business visitors receive short-term training?

Yes, the visitors can receive training during their visit, although there are certain conditions that apply.

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3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, various ministries conduct investigations, and field inspections to ensure compliance. The Ministry of Commerce & Industry, for instance, requires certain documents at the time of issuance of a new visa to ensure that the previous rules have been complied by the applicant.

3.2 What are the rules on the prevention of illegal working?

Article 18 part 2 and Article 114 of Oman's Labour Law provides the regulations regarding employers employing illegal workers.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The penalty of employing a worker illegally is a fine of not less than OMR 1,000 and up to OMR 2,000, or imprisonment for up to one month for each worker who does not have a valid work permit. The illegal worker may be deported in the authorities' discretion.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

The employer has to procure a labour clearance from the Ministry of Manpower. There is a set of procedures to follow to get the clearance to employ foreign nationals, after which the visa can be applied for with the Royal Oman Police for the specific person.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, the area of the work is mentioned on the Residence Card issued to the foreign worker, and working in another position is prohibited. For example, if a foreigner is employed as a HR Consultant then such employment shall be identical to the one stated in the labour permit. Further, there are certain positions specifically for Omani nationals, which too, must be complied with.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

There are no legal requirements for foreign nationals to train local workers, however, there may be a case where a clearance is sought for a person who may not be suitably qualified. In such cases, the Ministry of Manpower may impose a condition of further training, however, the Ministry is flexible and approachable in considering any related requests. It may be noted that internal policies and agreements in companies may require an expert to train local employees.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No. It is not required for employers to pay for the training of employees. However, an employer might find it necessary and beneficial for his business, for which the government does not impose any charges.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. According to Oman's Labour Law, Articles 18 and 114, there are penalties for employers who employ workers illegally as well as employees who continue to remain in the country illegally, i.e. without a valid work permit.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

There are categories that are primarily reserved for Omani nationals, apart from those, there are no reservations for any nationality or occupation.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The government encourages certain industries that contribute majorly towards Oman's economic growth, such as IT and medical professionals, which may receive certain exemptions. The Knowledge Oasis Muscat is one such area, developed as a free zone for IT companies, which provides various incentives to IT-related companies, such as 100% foreign ownership, tax exemptions, etc.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

The Royal Oman Police and Ministry of Manpower regulate the issuance of new visas based on certain factors such as, but not limited to, nationality and occupation.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no specified limits in law, however, companies employing a large number of foreign nationals may sometimes be required to justify further labour clearances. In any case, Omanization has to be followed.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

It is not a requirement for the visa related purposes. The employer may require the employee to demonstrate certain language proficiency besides other skills, however, that is a private arrangement between the parties.

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4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Foreigners from certain countries are subjected to medical examinations. For example, India, Pakistan, the Philippines, Bangladesh, Indonesia, Sri Lanka, Egypt, Syria, Sudan, and Ethiopia. Individuals from these countries have to undergo a medical check-up through a registered medical practitioner and the medical report needs to be endorsed by the Ministry of Health in Oman. However, some private companies may require all employees to undergo medical examinations.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

The employer is required to provide general medical benefits to all expatriate employees. This could be done either through a medical insurance or otherwise by reimbursing the qualified medical bills. Nationals and government employees have free access to public hospitals. However, some private companies offer medical insurance to all employees regardless of their nationalities. Oman is mulling making medical insurance mandatory for all expatriate employees, however, this law is not yet in effect.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, it is permissible for employees to act as secondees to other companies, but it should be greatly expressed that it does not amount to employment for that company. In case of a secondment, the agreement should be between the official employer of the employee being seconded and the company where the seconded employee will work.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

An employment visa/employment contracting visa fulfils such purpose.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Any expatriate willing to work in Oman requires an employment visa. There is no such category which automatically entitles an expatriate to work in Oman based on the investment of a company.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

It is permissible for workers to arrange a short-term visa for such purposes. For example, a student visa would suffice for educational purposes such as internships, in addition to the employment visa for temporary workers. The government of Oman is planning to permit the recruitment of expats under temporary work permits in order for them to work in specified jobs, such as education, medical, training, etc., for a limited duration.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

There are certain visas that can allow an individual to temporarily work in the Sultanate in order to execute a specific project. However, the preferable method is to obtain an employment visa.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No. The employment visa will only be transferred from one employer to the other. Another possibility is if the worker is seconded to another company, in which case the worker's visa will still be under the initial sponsor.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The conditions are based upon the internal agreements of the shareholders. However, typically, if a company wants to qualify as a subsidiary company then a certain percentage of shares would need to be bought from that company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Each company is a separate legal entity for the purposes of Oman Labour Law, and hence intra-group company employment transfers do not hold legal value in Oman. As such, a company can have a secondment agreement with another company for the purposes of hiring the services of an employee of the other associated company. However, the employer remains the same company which originally issued the visa, unless the visa itself is transferred.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

If the worker is seconded to another company, the visa still remains under the initial sponsor. However, if the worker is transferred to

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another company then he will not need an extra work permit as the visa can just be transferred to the new sponsor.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

It is the same process as obtaining an employment visa.

8.6 How long does the process of obtaining the work permit and initial visa take?

This varies based on various factors and can take anywhere from a couple of days to a few weeks or more.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

This is not applicable in view of our answers above.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

This option is not available in Oman.

8.9 What are the main government fees associated with this type of visa?

This is not applicable in Oman.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Oman offers different categories of visas, such as, but not limited to: employment visas; and temporary-work visas. However, the preferred method of obtaining a visa is through an employment visa.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The requirements are not as stringent as in most western countries. The authorities are flexible to issue employment visas to expatriates, even if without a specific labour market testing, however, there are certain positions that are reserved primarily for Omanis, such as HR Manager and cashiers.

9.3 Are there any exemptions to carrying out a resident labour market test?

This is not applicable in Oman.

9.4 What is the process for employers obtaining a work permit for a new hire?

The employer has to procure a manpower clearance from the Ministry of Manpower by submitting the required documents and fees, and upon receipt of the clearance, apply to the Royal Oman Police for issuance of the visa.

9.5 What is the process for the employee to obtain a visa as a new hire?

The process is mostly the employer's responsibility. The employees normally have to provide passport photos, a medical certificate from an authorised medical centre (if applicable), a passport copy, their educational degrees and mark-sheets, etc.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The labour clearance may take around one week or more, subject to the fulfilment of the requirements of the Ministry of Manpower, which requirements may vary with each case depending on various factors, such as the type of employment, employee's status, existing employees of the employer, Omanization rate, etc.

9.7 How long are initial visas for new hires granted for and can they be extended?

Employment visas are normally given for an initial period of two years, after which they can be renewed for similar periods.

9.8 Is labour market testing required when the employee extends their residence?

There is no legal requirement as such, however, the relevant authorities may impose certain restrictions on the renewal of certain visas.

9.9 Can employees coming as new hires apply for permanent residence?

No. Employment visas are normally issued for two years and they don't accord a right of eligibility for permanent residence.

9.10 What are the main government fees associated with this type of visa?

A labour clearance fee and the employment visa fees.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Their stay in Oman is subject to the validity of their employment, their fulfilling the health requirements and not indulging in serious crimes that may warrant an expulsion from Oman. It may also be noted that if an employee is found working for a person (non-employer) other than the employer stated in the Employment Visa

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without a written agreement between the employer and the non-employer, or without a justified explanation, the immigration authorities may detain and deport such employee.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, a brief procedure is followed after the arrival of the expatriate employees that requires certain certification by the Ministry of Health and the Royal Oman Police, after which a Residence Card (also known as a Labour Card) is issued to the employee.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Wife, parents and children below 18 years of age qualify as dependants. Unmarried daughters are normally granted exemptions after they reach 18 years of age.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No. In Oman, religious, cultural and social beliefs are held in the highest regard.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

It is not allowed for a dependant to work in Oman without having an employment visa.

11.4 Do children have access to the labour market?

Yes, children over the age of 16 are allowed to be employed with the consent of their guardians. Although it is not permitted for foreigners under the legal age of 21 to be employed in the Sultanate, it is only permitted for educational purposes (i.e. internships).

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Employment in Oman is generally not considered a route for obtaining a permanent residence in Oman, however, the matter rests with the authorities to consider a request for permanent residency (or citizenship) in cases where the employee has made significant contributions in the development of Oman and has stayed in Oman for a considerably long period.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

It has recently become permissible in Oman to switch from one type of visa to another by paying a small fee. However, the Royal Oman Police has discretion in permitting such transfer.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission to work are being medically unfit, or not having the required specialisation/skill.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal clearance is not a preliminary document required for obtaining a work visa, however, the authorities reserve their right to exercise their discretion to deny a work visa to a convict. The employer may have his own discretion in such cases.

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Peru

AOV ABOGADOS

Ariel Orrego-Villacorta Icochea

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in Peru, are the following:

1. Legislative Decree N° 1350 (MIGRACIONES' Act) in force since March 1st 2017.
2. Supreme Decree N° 007-2017-IN, Regulations of the Legislative Decree N° 1350, also in force since March 1st 2017.
3. The Single Text of Administrative Procedures of Peru's National Superintendence of Immigration (MIGRACIONES). A new text is more than required to match with the new scopes of the current legislation, however, it still has not been issued.
4. The Single Text of Administrative Procedures of the Ministry of Foreign Relations. A new text should be enacted as well.
5. Guidelines issued and posted by MIGRACIONES and/or the Ministry of Foreign Relations.
6. Other related rules.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system is administered by:

1. MIGRACIONES.
2. The Ministry of Foreign Relations.
3. The Peruvian Ministry of Labour, but only in certain labour matters related to the hiring of foreign staff.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Yes, it is:

1. Peru has signed and has in force a Multilateral Agreement with some countries of the Andean Community Nations (CAN) such as Ecuador, Colombia and Bolivia.
2. Peru is an Associate State of the MERCOSUR Agreement.
3. Peru maintains in force a bilateral agreement with Spain for employment purposes about labour reciprocity.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes, in the case of some foreign nationals, such as those coming from Mexico, Chile and Colombia, who are not required to apply for the obtainment of a Temporary Business Visa at a Peruvian consulate abroad before entering Peru, for business purposes, under the framework of the Pacific Alliance Agreement recognised in Peru by Legislative Resolution N° 30053 and Supreme Decree N° 024-2013-RE.

Likewise, Brazilian nationals, according to Supreme Decree N° 052-2004-RE, are exempted from applying for a Temporary Business Visa, prior to their entry into Peru.

Moreover, Panamanian nationals are exonerated from applying for and obtaining a Temporary Business Visa at a Peruvian consulate abroad, as per Supreme Decree N° 003-2015-RE.

Additionally, foreign nationals from the European Union belonging to the Schengen Area, according to Supreme Decree N° 058-2015-RE, are exempted from applying for a Temporary Business Visa abroad prior to their entry in Peru. Likewise, foreign nationals from Bulgaria, Croatia, Cyprus, Romania, Iceland, Switzerland, Liechtenstein and Norway are exempted as per Supreme Decree N° 008-2016-RE.

Exemption of the requisite to obtain, while abroad, a business immigration status prior to their entry into Peru, has been granted for nationals from the People's Republic of China on the basis of the Supreme Decree N° 069-2016-RE.

Indian nationals also have been exempted from applying for the obtainment of a Temporary Business Visa abroad prior to their entry into Peru, as per Supreme Decree N° 006-2017-RE.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

In general, the maximum period is 183 calendar days, consecutive or cumulative, over a period of one year, counted from the first entry to the Peruvian territory. However, e.g., for foreign nationals from the European Union belonging to the Schengen Area, the maximum period is 90 calendar days for one or consecutive entries, during a period of six months.

It is not renewable.

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2.3 What activities are business visitors able to undertake?

Business visitors are able to undertake business that is legal, contractual, or a specialised technical assistance or similar activities. Among these, the following can be carried out:

- performing business, legal or similar arrangements;
- attending business meetings or discussions with Peruvian affiliates or related parties;
- attending sales calls to potential Peruvian clients provided the alien represents a commercial entity outside of Peru;
- observing the operations of a Peruvian affiliate or client;
- attending "fact-finding" meetings with Peruvian affiliates or clients;
- attending seminars;
- signing documents, contracts or settlements;
- acting as an international lecturer or consultant;
- acting as the director of a company domiciled in Peru;
- collecting data or information regarding investments and similar activities; and
- supervising business or investments.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Strictly, there is no typical short-term Visitor Technical Visa in our legislation that authorises foreign individuals to work or provide services in Peru for a short period of time. However, with basis on the Law of MIGRACIONES, the definition of the temporary business immigration status applicable for business visitors allows them to perform specialised technical assistance, although only for a maximum period of 183 consecutive or cumulative days over a period of one year.

2.5 Can business visitors receive short-term training?

According to the scope of the temporary business immigration status established by the Law of MIGRACIONES and its Regulation, a foreigner non-resident as a business visitor would be able to receive short-term training, assessed on a case-by-case basis.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, the National Superintendence of Labour Inspection (SUNAFIL) is the labour authority that conducts compliance inspections of companies that employ foreign or national workers, without any distinction.

A team of labour inspectors are responsible for advising employers on the standards to be met, monitoring whether employers act according to the labour rules on hiring foreign staff, and penalising companies that commit violations. Violations are punishable with fines up to a significant amount of money in cases of very serious violations, or serious and minor ones accumulated, with the amount depending on the number of foreign workers affected by the non-compliance.

The MIGRACIONES' law establishes that this authority and the Ministry of Labour will share the information on the infractions committed by employers, foreign persons and third parties, for the exercise of the functions that are within their competencies.

3.2 What are the rules on the prevention of illegal working?

Peruvian labour legislation prohibits the hiring of underage or undocumented workers, or foreign workers with an illegal status in the country, among other rules. However, our system fundamentally focuses on penalising rather than preventing illegal work.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The main legal aspects of Peruvian labour and immigration legislation in this regard, are the following.

In case of foreigners who hold a Temporary Business Visa or Tourist Visa, when the applicable Resident Worker Visa or Temporary Worker Visa is required to work in Peru, or foreign nationals with an illegal status are found to be rendering services without the corresponding immigration status and the work permit at a local company under a subordinated, paid working relationship, according to Peruvian Labour legislation, these specific situations shall be subject to the applicable penalties in force.

The local employer might be subject to labour penalties if found liable for hiring foreign nationals without an Immigrant Worker status, either temporary or resident, in the event that such foreigners are presumed to be performing subordinated work in its favour, without an employment contract executed with the local company duly approved by the Peruvian Ministry of Labour as required by law. This applies to Business, Tourist, and Training Visa-holders, among other types of Visa, that do not entitle the holder to work, and it also applies to those with no Visa or with an illegal status in the country. In such cases, the infractions are basically of an administrative nature.

In the event the Administrative Labour Authority carries out an administrative labour inspection and verifies that a breach of the rules on foreign recruitment prescribed in the General Labour Inspection Regulations – Supreme Decree N° 019-2006-TR – has occurred, SUNAFIL (National Superintendence of Labour Inspection) may impose the following penalties, taking into consideration the seriousness of the "infringement" committed:

1. **Very serious violations in the recruitment of foreigners**

   The following are considered very serious infringements:

   - Engaging or hiring foreign workers without prior administrative approval thereof.
   - Submitting false information or documentation before the Peruvian Ministry of Labour in order to have foreign personnel exempted from the limiting percentages established by the Law of Hiring Foreign Staff.
   - Fraudulent hiring of foreign nationals.

2. **Serious violations in the recruitment of foreigners**

   The following are considered moderately serious infringements:

   - Not signing written employment contracts with foreign workers in accordance with the requirements established in the Special Law of Hiring Foreign Personnel.

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- Non-compliance with the limiting percentages of the hiring of foreign nationals, as established by law.

3. Minor violations in the recruitment of foreigners

The following are considered minor infringements:

- Breaches affecting formalities or documentary obligations in the recruitment of foreign workers, provided they are not classified as serious infringements.
- Not delivering a copy of the employment contract duly approved by the Peruvian Ministry of Labour to the foreign employee within the deadline and with the formalities established by law.

In order to illustrate the above, the amount of the fine depends directly on the number of workers affected by the non-compliance. It is therefore important to mention that the rules governing the mechanics of the sanctions to be imposed by SUNAFIL determine that the penalty could reach a high amount of money in case of "very serious violations", on the basis of the applicable factor established by the authority for this circumstance, which is the Peruvian Tax Reference Unit (UIT) (currently, in 2019, the UIT is PEN 4,200 – equivalent to approximately USD 1,280). Thus, e.g. in cases where one to 10 foreign employees are involved, the penalty could be UIT 2.25 as a minimum (equivalent to approximately USD 2,875), and in cases of 1,000 or more foreign employees, it could reach UIT 45 as a maximum (equivalent to approximately USD 57,450), according to Article 2° of the Supreme decree N° 015-2017-TR.

Likewise, the amount of the penalty should be less significant in case of "serious infringements" or "minor violations", respectively.

On the other hand, as is stated in Article 161° of the Regulation of Legislative Decree N° 1350, the foreigner and the local employer that will subscribe an employment contract must comply with the cited immigration legislation. Thus, in the particular event that a foreign national is found working in Peru without the corresponding Immigration Worker status, it is likely that an administrative sanction will be imposed on the employer by MIGRACIONES. Nevertheless, MIGRACIONES must establish the applicable fine in such a circumstance through a corresponding guideline.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is no system as such in Peru. However, local companies must be registered with the Public Registry, the Tax Authority and the Labour Ministry in order to hire foreign or local workers.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers must ensure that their foreign workers' employment contracts, as well as the extension of their resident or temporary permits, are renewed on time, provided that such foreign employees will continue working for the local company.

Also, the employer must have withheld monthly and paid the income taxes affecting income of the foreign employee to the Peruvian tax authority while the labour relationship was in force and until it has ended, in order that no inconvenience arises to the foreigner at the moment of leaving the country and for the Process of Cancellation of the Resident Permit, that is required.

Additionally, according to the Regulation of the MIGRACIONES Act, public entities, private companies or natural persons that have requested the entry of foreign persons into Peruvian territory, within the framework of any immigration statuses, shall inform MIGRACIONES about the termination of their relationship with the aforementioned foreigners, whatever the reason is, in order that the public entities, within the scope of their competences, evaluate the information and, accordingly, apply the corresponding sanction, to both the foreigner and contracting entity, if applicable.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Yes, indeed. Local employers assume the commitment to train national personnel in the same position in which the foreign worker is being hired. Therefore, according to Law N° 26196 which modified Legislative Decree N° 689 and paragraph e) of Article 14° of Supreme Decree N° 014-92-TR, the foreign employee and the local employer will have to fulfil the commitment to train national personnel in the same occupation as the foreign worker.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No. There is no such requirement established in our labour and immigration law.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

MIGRACIONES with the support of the Aliens Police, if necessary, can carry out inspection and verification activities in the workplaces of those companies which employ foreign nationals, to check compliance with the immigration legislation as per the Law of MIGRACIONES. Likewise, the Labour Ministry, through SUNAFIL, will also monitor employers' compliance with labour regulations.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

There is no such list held by MIGRACIONES, but the Labour Ministry website has a jobs board with job positions available to everyone, which may be filled by either national workers or foreign workers if they comply with the provisions for the hiring of foreign workers.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

There are occupations where a larger workforce is needed in different sectors of the economy, but there are no exemptions applicable to any special sectors or occupations, so far.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no annual employment quotas.

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4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are maximum percentage limitations on the hiring of foreign staff, which are contained in Legislative Decree N° 689 – the Law on the Hiring of Foreign Workers – and its regulations approved by Supreme Decree N° 014-92-TR and its amendments, which limits the hiring of foreigners to no more than 20% of the total number of workers and states that their remunerations shall not exceed 30% of the local company's payroll. Exemptions regarding such limiting percentages are permitted according to the cited law.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Language proficiency is not a legal requirement in order to hire foreign workers in Peru.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Undergoing medical examinations prior to admission into Peru is not currently mandatory for foreign workers. However, this may be necessary depending on the working area within Peru where the foreign worker will render services effectively (e.g. in the jungle or remote areas where special vaccinations are required). It is important to mention that, according to the Law of Safety and Health at Work N° 29783 and its Regulation, both foreign and national employees are required to undergo a medical examination at the beginning, during, and at the end of the labour relationship, as an obligation of the employer in case the employees carry out high-risk activities.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign or national workers on a local company's payroll are covered by the Public Health System (ESSALUD), although health plans provided by employers, contracted through private healthcare providers (*Entidades Prestadoras de Salud* or EPS), may also be used in addition to ESSALUD.

The employer is exclusively responsible for paying the ESSALUD contribution related to healthcare, as a monthly contribution equivalent to 9% of the employee's salary.

The public social security health system offers the following benefits, among others: prevention; recovery; subsidies for health care; social welfare; and work-related and professional illness.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, it is allowed, provided this is specified in the scope of the employment contract and as long as the foreign employee remains under a subordinated working relationship with the local employer and not with the client. It should be allowed as well in case of appointed workers if specified in the documentation supporting this kind of visa.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no immigration category as such, but foreign workers such as highly qualified professionals, specialised technicians (those who are under a subordinated labour relationship with a local company), or Appointed Workers (those who work for their employer overseas and not for the local company, however, they will be working in Peru), are required to be highly specialised in order to perform certain services in Peru which cannot be performed by nationals.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

First, the Investor-Resident immigration status allows the foreigner to establish, develop or manage one or more lawful investments within the framework of Peruvian legislation. The specific conditions for the granting of this status are: A) to accredit an investment equal to or higher than five hundred thousand Soles (PEN 500,000 equivalent to USD$ 152,000 approximately); and B) foreign persons may only serve as Manager or Director of their company, for which they must comply with the corresponding labour or tax norms. Foreigners are not included in the quotas of the payroll established in the Legislative Decree 689 "Hiring Foreign Personnel Law" mentioned before. In no case will the foreign person be able to support the investment through the transfer of shares.

On the other hand, if any foreign national incorporates a new company in Peru together with other(s) shareholder(s), it will allow the alien to work in such company as a foreign employee, according to the Law of Hiring of Foreign Workers, under a subordinated labour relationship.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, this is the temporary training immigration status. It allows the entry and stay of foreigners who wish to carry out the same activities referred to under the immigration status of resident training (allows the foreigner to develop regular studies of superior education, basic education, arts or crafts, in institutions recognised by the Peruvian State. It includes foreigners from student exchanges, pre-professional or professional, cultural practices, and other training modalities recognised by Peru).

Either temporary or resident training immigration status do not allow them to work or to perform activities remunerated or lucrative, barring the previous emission of an Extraordinary Work Permit granted by MIGRACIONES.

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7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

According to the Law of MIGRACIONES, there are no typical sector-specific temporary work permit categories, but foreigners such as: artists, athletes and journalists can be permitted to perform in short-term temporary work in their corresponding temporary immigration statuses.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

As per the MIGRACIONES' Act, in order to be able to work in Peru, employees of multinational companies or corporations who travel to Peru to work in a company of the same economic group or holding company, to perform as senior management or trusted personnel or as specialist or specialised personnel, may apply for the corresponding immigration status existing in Peru according to the current legislation, either as a Temporary or Resident Worker.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

A local company in Peru must either be an affiliate, subsidiary or branch of any parent company abroad, making the local company, in all aforementioned cases, a company linked with the principal abroad (head office). The main company abroad must always be the sole owner of the local branch, or own almost the totality or be the owner of the absolute majority of shares in the local company, at least.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Taking into account the answers to questions 8.1 and 8.2, a local employer must also comply with Peru's special labour legislation on the hiring of foreign staff, and with Peruvian immigration rules, in order to obtain a work permit for any foreign employee.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Taking into consideration the answers to questions 8.1, 8.2 and 8.3 above, any local employer who wishes to hire foreign personnel in Peru must follow the corresponding Visa process to obtain the appropriate work permit and applicable immigration status/visa in favour of the foreign employee to be enrolled on the local company's payroll, in order that the foreigner may start to work in Peru.

The Visa process for a foreign employee who will perform labour activities in Peru under a subordinated labour relationship for a local company, as a dependent worker, unless otherwise indicated, has two stages. The first one, the labour stage, is related to the obtainment of the work permit to be granted by the Peruvian Ministry of Labour with the approval of the employment contract subscribed by the local employer and the foreign employee. Nowadays, this approval is granted automatically. Once the work permit has been obtained, the second stage of the Visa process, the immigration stage, is done through MIGRACIONES by applying for the Worker immigration status, either temporary or resident, which will authorise the foreign employee to perform work activities at the local company in Peru, as a dependent worker.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The process is indicated in the answer to question 8.4 above. When the new Single Text of Administrative Procedures of MIGRACIONES is issued, any particular characteristic or difference will likely be noted.

8.6 How long does the process of obtaining the work permit and initial visa take?

In the case of workers under a subordinated working relationship with the local company, applying either for Temporary Worker status (granted for 183 days extendable for the same period, although, less than a year) or Resident Worker status (granted for one year, renewable annually), the first stage of the Visa process – approval by the Peruvian Ministry of Labour of the employment contract signed by the foreign employee and the local company (employer) is now automatic, and soon will be carried out on-line. The second stage of the Visa process may take up to 60 working days, according to Peruvian immigration rules, if an in-country proceeding takes place (to change the immigration status of the applicant internally in Peru). However, if an overseas Visa proceeding is chosen (which involves an additional consular step) where the applicant will remain abroad from the time the proceeding is initiated with MIGRACIONES and while it is ongoing, it will take up to 30 working days.

In practice, currently both kinds of proceedings take less time, depending on MIGRACIONES' workload.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

As mentioned above, in the case of Temporary Workers, once it is approved, the initial authorised length of stay will be 183 calendar days consecutive or cumulative over a period of one year counted from the first entry to Peru. It is extendable for the same term but less than a year.

On the other hand, in the case of Resident Workers, once it is approved, the resident permit is granted for one year, and is renewable, and so on.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes. Foreigners with the immigration status of worker may apply to change their status to permanent residency after three years of residing in Peru, consecutively.

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8.9 What are the main government fees associated with this type of visa?

Government fees include:

- Application Government Fee: PEN 117.50 (USD 35.70).
- Interpol Fee: PEN 80.50 (USD 24.50) in case of Resident Workers.
- Employment Contract Approval Government Fee: PEN 21.60 (USD 6.60).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main category used in these cases is a Resident with Worker Immigration status.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There is no labour market testing required in Peru in order to fulfil any kind of occupation for foreign workers. They shall demonstrate their professional or technical degrees, capabilities, skills, and expertise with the corresponding documentation.

9.3 Are there any exemptions to carrying out a resident labour market test?

No. Please refer to our answer regarding question 9.2.

9.4 What is the process for employers obtaining a work permit for a new hire?

This Visa process has two (2) stages:

1. Labour stage: wording of the employment contract and related papers. The contract is signed between the foreign employee and the local company. It must be approved by the Peruvian Ministry of Labour. At present, the approval is automatic.
2. Immigration stage: gathering all the documentation required, such as notarial legalisation of the approved employment contract, payment of government rates, etc., and coordination with the foreign employee for starting the submission of the dossier before MIGRACIONES.

Finally, the registration of the foreign employee on the local company's payroll once the work permit has been obtained and the corresponding immigration status, either Temporary Worker or Resident Worker.

9.5 What is the process for the employee to obtain a visa as a new hire?

The foreign national must sign the employment contract. Once the first phase of the Visa process is completed with the approval of the contract, the foreign employee can apply for either a Resident Worker or a Temporary Worker immigration status before MIGRACIONES. This stage can be done internally in Peru via MIGRACIONES, in which case it is called a "Change of Immigration Status" or, if performed while the foreign national remains abroad and involves a consular step, through the "Obtainment Visa Process". Nevertheless, in this second case, the complete file with documents duly certified by apostille or legalised abroad is also required, and must be submitted before MIGRACIONES in Peru even if the applicant remains abroad.

He/she must attend to the appointment at INTERPOL's offices and at MIGRACIONES' offices as well for the corresponding check of his/her background, and for the foreign national to go through the necessary steps with the immigration authority (taking a photo, registering at RIM and obtaining the foreign card when they are resident).

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The first stage of the Visa process (labour phase), at the level of the Peruvian Ministry of Labour, for the approval of the employment contract signed by the foreign employee and the local company (employer) is now automatic.

The second stage of the Visa process (the immigration phase), if an in-country proceeding takes place (to change the immigration status of the applicant internally in Peru), will take up to 60 working days according to Peruvian immigration rules. However, if an overseas Visa proceeding is chosen (that involves an additional consular step) where the applicant remains abroad when the proceeding is initiated before MIGRACIONES and while it is ongoing, this will take up to 30 working days. Nonetheless, it is important to bear in mind that in practice, both procedures may take less time depending on MIGRACIONES' workload.

9.7 How long are initial visas for new hires granted for and can they be extended?

Temporary Worker immigration status is approved with an initial authorised length of stay by law of 183 calendar days extendable for the same term, but less than a year. If the term of the employment contract is less than 183 days, the authorised length of stay shall be shorter. On the contrary, in case of Resident Workers, the residence permit is granted in favour of the foreign nationals for a year, and is renewable annually.

9.8 Is labour market testing required when the employee extends their residence?

It is not required in Peru.

9.9 Can employees coming as new hires apply for permanent residence?

Yes. Please refer to the answer provided under question 8.8.

9.10 What are the main government fees associated with this type of visa?

Please see the answer to question 8.9.

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10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

In the case of Resident Visa holders, they must comply with the following conditions, among others:

1. If they continue performing work activities in Peru, they must sign their work contract extension with their local employer prior to the end of the contract term, and have it approved by the Peruvian Ministry of Labour.
2. Once the employment contract extension has been approved, they shall request from MIGRACIONES the corresponding extension of the residence permit for another year.
3. Every time foreign Resident Workers exit Peru, they must declare that they have complied with their income tax payment obligations and deliver their tax form over to the Immigration Control Officer at the international airport or any port of exit, prior to their departure.
4. They must not remain outside Peru for a period exceeding 183 consecutive calendar days in a 365-day period, otherwise they might lose their residence permit, except if they have a special authorisation. In the case of a permanent resident, they lose this immigration status if they remain abroad more than 365 consecutive days in a period of two years.
5. They mandatorily must provide to MIGRACIONES opportunely any information related to them (change of address, new civil status, change of passport, etc.) to keep their information duly updated at the RIM (Migratory Information Registry) of such authority.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not. However, residence permit holders with the immigration status of "worker" must report mandatorily any change of address in Peru, each time, to MIGRACIONES, to keep their records and personal files updated.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Dependants include:

- a spouse or the person who is a member of the "*de facto* union", according to the provisions of the Peruvian Civil Code;
- a son or daughter who is a minor;
- a son or daughter of legal age up to the age of 28 years and of single marital status, who is following technical or higher studies;
- a son or daughter of legal age and unmarried, who is not able to attend to their subsistence due to physical or mental disabilities, duly proven;
- an underage son or daughter of the spouse or the member of the *de facto* union abroad;
- a son or daughter of legal age and unmarried of the spouse or member of the *de facto* union, who is not able to attend to their subsistence due to physical or mental disabilities, duly proven;
- a first-degree ascendant; and
- a first-degree ascendant of the spouse or member of the *de facto* union.

All of them can be sponsored by a Resident Worker Visa holder.

A national who has a family relationship with a foreigner can apply before MIGRACIONES and RREE, as appropriate, for the Resident immigration status of any of the members of the nucleus family. This scope also assists the foreigner to apply for family reunification in the situations provided for in the regulations. Foreign relatives with Temporary immigration status with a stay of more than 90 days are assigned by family reunification in the same migratory status as the foreign holder. The immigration status of the foreign holder extends to his/her relatives.

On the other hand, the relatives of the foreigner with an immigration status of Resident may or may not choose the Resident status or another of their choice, as long as they meet the requirements required by current legislation. The immigration status of the foreign holder does not extend to their relatives, and may be different.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

As per the Political Constitution of Peru and the Civil Code, same-sex partners do not qualify as family members and cannot be sponsored by a Resident Worker Visa holder. According to the Law of MIGRACIONES, unmarried (common law) partners qualify to apply for a Family Call proceeding.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, according to the Article 29.2° section i) of the Aliens Law, the Dependant Resident Visa allows residence to the foreigner who is a member of the family unit of a Peruvian or of a Foreign resident, and it allows carrying out lucrative activities of subordinate form or independent.

11.4 Do children have access to the labour market?

Peruvian labour regulations do not allow underage foreign children to work.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

In general terms, after residing for three years in Peru consecutively with a valid Visa.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes it is possible to switch from a temporary worker visa to a resident worker visa that leads to permanent resident status.

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13 Bars to Admission

13.1 What are the main bars to admission for work?

Fundamentally, foreign workers must demonstrate that they possess the experience, qualifications, knowledge, skills and capabilities to transfer their know-how to national staff in the same position they were hired for in the local company, depending on their profession or specialty. This is a mandatory aspect which the local employer and the foreign worker must comply with, as agreed in the employment contract with the foreign worker, to prevent any labour violations of the Law of Hiring of Foreign Personnel.

Foreign workers in some occupations are required to have their foreign diploma, certifications and credentials evaluated by the National Superintendence of University Higher Education, and to obtain a permit from the corresponding professional associations (e.g. those for architects, physicians, and other professions).

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, they are. A Resident Worker Visa applicant or person with a Temporary Visa applying for an extension beyond the 90-day initial term of stay must undergo a criminal background check by visiting INTERPOL's offices in Peru.

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Ariel Orrego-Villacorta is a member of the International Bar Association (IBA) as well as a Global ABIL (Alliance of Business Immigration Lawyers) member representing Peru for more than 10 years, and an Associate of the American Immigration Lawyers Association (AILA).

He has been recognised by the International Who's Who of leading Corporate Immigration Lawyers as a Peruvian leading immigration lawyer annually since 2012 onwards.

His vast professional experience in corporate immigration includes the obtainment of resident or temporary worker and resident or temporary appointed worker Visas, providing services on different immigration proceedings, either in-country and overseas, including, but not limited to: change of immigration status; obtainment visa procedures with a consular step abroad; exit and entry records; exit / re-entry permits; final exit proceedings; Visa extensions; Investor Visas, permanent Visas among others. He liaises with clients in both English and Spanish, and advises local and international companies, mainly in the corporate immigration field, as well in labour matters helping them achieve their business and immigration or labour objectives successfully to private companies belonging to different sectors with basis on his extensive experience and highly specialised practice in the aforementioned fields.

Bachelor of Law and Political Science from the University of Lima, Peru in 1992, he was admitted to the Bar of Lima in 1994. He also has a postgraduate degree in Law and Corporate Finance from the University ESAN, in 2000–2001.

Currently, he is an IBA officer of the Immigration & Nationality Law Committee.

AOV Abogados is a boutique law firm. Its members have vast experience in various areas of law, such as: Immigration, Labour, Corporate and other related areas. Our firm has professionals in law with a very well-reputed recognition worldwide in the field of immigration law, labour law and related matters. We are specialised in advising international and local clients, with a special emphasis on corporate immigration, labour, employment, human resources, tax/labour matters as well as corporate related issues, providing advice and assistance from the start of the labour relationship, through its course, and until its conclusion.

We provide consultancy, legal advice and assistance in: the obtainment of work permits in its different characteristics in favour of foreign nationals, the obtainment of resident or temporary worker or appointed worker immigration statuses; the naturalisation process, training, business, investor or permanent visas, amongst others required, the family call proceedings; exit/re-entry permits and others; cancellations of resident permits; foreign worker employment contract approvals or registration, as corresponds; as well as providing comprehensive legal advice in Peruvian Labour and Immigration Law matters. If required, we also provide training on labour and immigration legislation to our clients' HR departments.

Our advice and support is personal, constant, and it is combined with our solid expertise and knowledge with the versatility required by our clients, helping all of them to achieve their corporate business and immigration goals effectively and in a successful manner.

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Chapter 27

Philippines

Aris L. Gulapa

Phillip Don G. Recentes

Gulapa Law

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main source of immigration law in the Philippines is the Commonwealth Act No. ("*C.A.*") 613, also known as The Philippine Immigration Act of 1940, as amended by Republic Act No. ("*R.A.*") 118, R.A. 135, R.A. 144, R.A. 503, R.A. 749, R.A. 827, R.A. 1901, R.A. 4376, R.A. 5171, R.A. 5701 and Presidential Decree No. ("*P.D.*") 542. Other sources of immigration law in the Philippines include Executive Order No. ("*E.O.*") No. 292, also known as the Administrative Code; R.A. 562 or also known as the Alien Registration Act of 1950; R.A. 7919 or also known as The Alien Social Integration Act of 1995, as amended by R.A. 8247; R.A. 9225 also known as the Citizenship Retention and Reacquisition Act of 2003; E.O. 226 or also known as the Omnibus Investments Code of 1987 as amended by R.A. 8756; R.A. 9139 or also known as the Administrative Naturalization Law of 2000; R.A. 9208 or also known as the Anti-trafficking in Person Act of 2003, as amended by R.A. 10364; P.D. 1034; LML-M-03-A12-001; E.O. 408; and LML-MC-15F15-064. Other sources also include bilateral or multilateral treaties entered into by and between the Philippines and other sovereign states.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Bureau of Immigration (the "*BI*") is principally responsible for the administration and enforcement of alien registration laws including admission, registration, exclusion, deportation and repatriation of aliens in accordance with the provision of CA 613 as provided under E.O. 292. The BI also supervises the immigration into and emigration from the Philippines for aliens.

Other authorities, which administer the immigration system in the Philippines, include (a) the Department of Foreign Affairs ("*DFA*"), which administers the visa-waiver programme of the Philippines, and (b) the Philippine Retirement Authority ("*PRA*"), which administers the Special Residents Retirees Visa. Both the DFA and the PRA work in coordination with the BI, which is the agency that issues the relevant visa.

Foreign service posts also administer immigration laws with respect to issuing temporary tourist visas for visa-required nationals. There are also special non-immigration visas that are administered and issued by agencies, which have jurisdiction over special economic zones such as the Clark Development Corporation ("*CDC*"), the Subic Bay Metropolitan Authority ("*SBMA*"), Authority of the Freeport Area of Bataan and the Cagayan Economic Zone and Freeport Area.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Yes. The Philippines is a Member State of the Association of Southeast Asian Nations ("*ASEAN*"). The ASEAN is a 10-member regional organisation, which includes Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Under the ASEAN Economic Blueprint, several Mutual Recognition Agreements ("*MRA*") have been established in support of liberalising and facilitating trade in services in the following priority sectors: (1) engineering services; (2) nursing services; (3) architectural services; (4) surveying; (5) dentistry; (6) medical services; (7) accounting services; and (8) tourism professionals.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes. The Philippines has a visa-waiver programme under E.O. 408 (1960). This programme allows foreign nationals of certain countries to enter the Philippines without a visa for business purposes and for an initial limited period depending on their country of nationality. E.O. 408 contains a list of countries, whose nationals are eligible to participate under this programme.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum duration will depend on whether the foreign national who enters the Philippines requires a visa or not.

"No Visa Required" foreign nationals who are nationals of countries listed under E.O. 408 as amended, are allowed an initial stay ("*Initial Period*") of either 59 days, 30 days, 14 days, or seven days depending on the country of nationality. A "No Visa Required" ("*NVR*") foreign national admitted for an Initial Period of 30 days may apply for a visa-waiver, which will grant them an extension of

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stay for 29 more days. Prior to the expiration of the Initial Period or of the 29-day extension for foreign nationals admitted for 30 days, such foreign nationals may apply for a one-month, two-month or six-month extension at least one week prior to the expiration of the valid stay. All NVR nationals may extend their stay up to a total of 36 months.

For nationals who require a visa, they may apply for an extension of stay for up to two months per extension. This is renewable but the total period of stay should not exceed 24 months.

2.3 What activities are business visitors able to undertake?

Business visitors can undertake investment opportunities, attend conferences, negotiate contracts, attend business meetings and conferences.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Yes. The following are the special visitor categories that enable business visitors to undertake work or provide service for a temporary period: (1) nationals of the United States of America, Japan and Germany who enter the Philippines to develop and direct the operations of an enterprise in the country; (2) foreign nationals seeking work or employment in the Philippines who apply for a Pre-Arranged Employee Visa provided that they secure the necessary employment permit from the Department of Labor and Employment ("*DOLE*"); (3) a foreign national employed under the public interest category, which includes those involved in power generation, reforestation, special technical and academic exchange programmes and industry; (4) a foreign national who is assigned by any foreign bank to work in its offshore banking unit in the Philippines; (5) a foreign national or executive of a regional or area headquarter or regional operating headquarter of a multinational company; and (6) a foreign national who works in special economic zones.

2.5 Can business visitors receive short-term training?

Yes. Business visitors who are either NVRs or have a temporary visitor's visa can receive short-term training in the Philippines.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes. The DOLE monitors the compliance of employers who employ foreign nationals through the Labor Laws Compliance System (the "*LLCS*") programme. The LLCS is implemented through the following: (1) Joint Assessment; (2) Compliance Visit; and (3) Occupational Safety and Health Standards Investigation. Employers and establishments, which are compliant with labour laws, are issued a Certificate of Compliance by the regional director of DOLE, which is valid for two years.

3.2 What are the rules on the prevention of illegal working?

A foreign national who seeks employment in the Philippines, unless he is exempted or excluded under the laws, must apply for an Alien Employment Permit ("*AEP*") from the DOLE within 15 days after signing the contract or before the commencement of employment (if employment commences after the said 15-day period).

DOLE regional directors are authorised to conduct ocular inspection to verify the legitimacy of the employment of foreign nationals as deemed necessary based on the documents submitted within two working days, upon payment of fees. The regional directors may also conduct a verification inspection of the establishment employing foreign nationals within 30 days after issuance of the AEP.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

A penalty of PhP 10,000 per year or a fraction of such year shall be imposed against an employer for employing a foreign national without a valid AEP. The foreign national will also be liable to pay the penalty of PhP 10,000 per year or a fraction of such year for working without an AEP.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There are none.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes. Employers are required to hire and continue the employment of foreign nationals who have a valid working visa and AEP. Employers who fail to observe the law by hiring and continuing to employ foreign nationals without a valid working visa or AEP shall be penalised by either a fine of PhP 10,000 or imprisonment.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Yes. Employers covered by CA 108, as amended by PD 715, or the Anti-Dummy Law, are required to submit an Authority to Employ Foreign National ("*ATEFN*"), which is issued by the Department of Justice ("*DOJ*"), in their AEP application with the DOLE. One of the requirements to apply for an ATEFN is a written undertaking by the employer to train at least two (2) Philippine citizen understudies in technical skills with conformity of the understudies.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There is no such requirement.

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4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. The BI, through its Intelligence Division, together with the relevant unit of the DOLE, conducts periodic and routine inspections of employers who sponsor foreign nationals, to ensure proper and effective implementation of immigration rules and regulations.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No. The employment of a foreign national depends on there being no qualified and able Philippine citizens available for the position which is determined after a labour market test by the DOLE.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes. The DOLE keeps a list called the Skills Occupational Shortage List, which enumerates occupations where there is a shortage of skills. The law also recognises that there are some occupations that are in short supply by providing for the issuance of Pre-Arranged Employee Visa (Commercial) to foreign nationals with skills, qualifications and experience which may not be available or is in short supply in the Philippines.

There are currently no special exemptions that apply to certain sectors and occupations.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Generally, there are no annual quotas for issuing AEPs or working visas. Working visas are categorised as non-quota visas under Philippine immigration law. The exemption to this general rule is the issuance of AEPs or a working visa to foreign nationals who will be employed by Philippine Economic Zone Authority ("*PEZA*")-registered companies. Employment by PEZA-registered companies of foreign nationals is capped at five percent (5%) of the total work force.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Generally, there is no restriction on the number of foreign workers an employer may sponsor. The rule is that an AEP may be issued to a foreign national or to an applicant employer only after it is determined that there is no available Philippine citizen who is competent, able and willing at the time of application to perform the services desired.

That said, please note that employment by PEZA-registered companies of foreign nationals is capped at five percent (5%) of the total work force.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

There is no current rule or regulation that requires a sponsored foreign national working in the Philippines to demonstrate language proficiency.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, but this requirement is limited. Certain employees applying for a conversion to a Pre-Arranged Employee Visa, who are nationals of any of the countries listed under Annex A of the Immigration Operations Order No. SBM-14-059-A and who arrived in the Philippines on or after June 2014, are required to present a certified true copy of a Bureau of Quarantine Medical Clearance. There are also municipalities, which require the medical clearance of certain employees of establishments, whether they are foreign or local hires, before the necessary permit to operate is issued or renewed. Under the employer's prerogative, employees are also required to undergo medical examination before being admitted.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign national employees are not required to have medical insurance. Philippine law may allow a foreign national working in the Philippines to be covered by the Philippine Health Insurance Programme if their respective countries of nationality have existing reciprocity agreements with the Philippines and if they apply for the Philippines Health Insurance Programme and comply with the requirements.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

No. This is not expressly allowed under the law, and the DOLE and the BI, in practice, will look for an AEP that names the client (*i.e.*, site owner) as the employer.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes. The Philippines may grant a quota immigrant visa to a foreign national who, among other requirements, possesses qualifications, skills, scientific, educational or technical knowledge, which will advance and be beneficial to national interest. This type of visa is limited because it is granted to no more than 50 foreign nationals of any one nationality for a given calendar year.

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6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes. Under RA 7042, investment shall include any equity participation in any enterprise organised or existing under the laws of the Philippines. This covers setting up a subsidiary or corporate presence where the foreign employer has equity participation in the subsidiary. Accordingly, the Philippines grants special types of visas based on investments made in the country. First, there is a visa called Special Investor's Resident Visa ("*SIRV*"), which is available to a foreign national who invests in some viable economic activities and tourist-related projects and establishments. This is issued upon the endorsement of the Board of Investments pursuant to Book V of the Omnibus Investment Code of 1987. Second, a Special Visa for Employment Generation ("*SVEG*") is available to a foreign national who shall actually employ at least ten (10) Filipinos in a lawful and sustainable enterprise, trade or industry. Thirdly, the Special Employment Visa for Offshore Banking Unit under P.D. 1034 ("*PD1034 Visa*"), which is granted to a foreign national who is assigned by any foreign bank to work in its offshore banking unit in the Philippines. And fourth, the Special Non-Immigrant Visa under R.A. 8756 ("*RA8756 Visa*"), which is for foreign personnel or executives of regional or area headquarters and regional operating headquarters of multinational companies.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

None. The Philippines only allows two types of temporary work permits and both are for economic purposes. The first one is called a Special Work Permit issued to a foreign national who comes to the Philippines to render a short or temporary work or service assignment. The other one is called a Provisional Work Permit and is issued to a foreign national who is a holder of a temporary visitor visa and whose application for a work visa is being processed.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes. The Philippines issues Special Work Permits ("*SWP*") to a foreign national who comes to the Philippines to render temporary service or assignment. There are SWPs for commercial purposes, which are valid for three months extendible to a maximum of six (6) months per application and SWPs for temporary visitors who will be engaged in their respective profession as athletes, artists, entertainers and performers whose engagement shall be less than six (6) months.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes. The Philippines allows intra-corporate transfers of employees from the foreign origin company to any branch, subsidiary, affiliate or representative office in the Philippines.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The employing company or organisation must be a branch, subsidiary, affiliate, or representative office of the sending foreign origin company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The employing company must have employed the intra-corporate transferee for at least one year prior to his/her deployment and the transfer must be based on a secondment agreement between the foreign origin company and the Philippine-based company.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The process is the same for securing an AEP discussed under question 9.4. Note that foreign nationals, who are intra-corporate transferees and are either managers, executives or specialists, as defined under DOLE Order 186-17, are excluded from securing an AEP.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The employee who is either a manager, executive or specialist, through his/her employer in the Philippines, must first secure a certificate of exclusion as an intra-corporate transferee from the DOLE. Thereafter, the employee can apply for an appropriate working visa which can be a (1) Pre-Arranged Employee Visa, (2) 47A2 Visa, (3) P.D.1034 Visa, (4) R.A.8756 Visa, (5) Subic Free Port Work Visa, or (6) Clark Special Economic Zone Work Visa.

8.6 How long does the process of obtaining the work permit and initial visa take?

The Certificate of Exclusion from an AEP is processed within 24 hours.

On the other hand, the processing time for the work visa will depend on the type of visa being applied for. Generally, based on the Anti-Red Tape Act, all applications filed before any government office should be acted upon by the assigned officer within 10 working days from the date of receipt of the application if it involves complicated transactions, which require the use of discretion in the resolution of a complicated issue by the officer. That said, depending on the volume of applications for visas, the processing period may take up to two months.

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8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The maximum period of validity of the initial intra company transfer visa will depend on the type of visa. Pre-Arranged Employee Visas are valid for an initial one to three years, depending on the employment term and the assessment of the DOLE regional office processing the same, and may be extended for another one to three years depending on the contract of the foreign personnel. Both the 47A2 Visa and P.D.1034 Visa have an initial maximum period of validity of one year and it can be extended from year to year as long as the foreign individual remains employed by the same employer. An R.A.8756 Visa has a maximum validity of three years or less depending on the contract of the foreign personnel. The Subic Free Port Work Visa and the Clark Special Economic Zone Work Visa have an initial validity of one to two years depending on the contract of the foreign personnel, and may be extended from year to year.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, not on the sole basis of coming under an intra-company transfer.

Additionally, see our response to question 9.9.

8.9 What are the main government fees associated with this type of visa?

The main government fees will include applicable application and processing fees for the visa being applied for. Another type of fee is for the Alien Certificate of Registration Identity Card ("*ACR I-Card*") and it will depend on the period of validity of the ACR I-Card.

For a Pre-Arranged Employee Visa, the applicant has to pay an application fee, which will depend on whether the employer belongs to the top 1,000 corporations or not, as determined by the BI, and on the period of validity of the visa. For non-top 1,000 corporations, the visa application fee is PhP 12,861.50 for a visa valid for one year, Php 21,633 for a visa valid for two years, and PhP 30,904.50 for a visa valid for three years. For the top 1,000 corporations, the visa application fee is PhP 12,861.50 for a visa valid for one year, PhP 22,633 for a visa valid for two years, and PhP 32,404.50 for a visa valid for three years.

For 47A2 Visa applications, the applicant has to pay the required legal fees amounting to PhP 2,525 as well as the applicable ACR I-Card fees.

For the P.D.1034 Visa and RA8756 Visa applications, the applicant has to pay a visa application fee of PhP 5,530.

For the Subic Free Port Working Visa and Clark Special Economic Zone Working Visa applications, the applicant has to pay USD 100 for a visa valid for one year.

In addition to the above visa application fees, an applicant also has to pay an ACR I-Card fee. The amount depends on the period of validity. For an ACR I-Card valid for one year, the fee is USD 50; for two years, it is USD 100; and for three years, it is USD 150.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category used for employers who wish to obtain work permits for new hires refers to non-resident foreign nationals seeking work or employment in the Philippines who possess skills, qualifications and experience which may not be available or in short supply in the Philippines. Under this category, the Philippines issues a visa called a Pre-Arranged Employee Visa. Applicants under this category are required to first secure an AEP unless exempted or excluded from securing the same.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes. The DOLE publishes in a newspaper of general circulation and on their website all applications for new AEPs, including change or additional positions in the same company or subsequent assignment in related companies within two working days from receipt of the application. The DOLE will also refer to the DOLE Skills Registry System, the Professional Regulation Commission Registry of Professionals, and the Technical Education and Skills Development Authority Registry of Certified Workers to establish the availability or non-availability of able and qualified Philippine resident citizens.

9.3 Are there any exemptions to carrying out a resident labour market test?

None. It is mandatory for the DOLE to carry out a resident labour market test before a work permit can be issued to new hires pursuant to Section 7 of DO 186-17 implementing Article 40.

9.4 What is the process for employers obtaining a work permit for a new hire?

Employers, jointly with the foreign new hire, should file an AEP application with the DOLE regional office having jurisdiction over the intended place of work. Thereafter, the DOLE regional office shall conduct a labour market test by publishing, in a newspaper of general circulation and on the DOLE website, all applications for new AEPs, changes or additional positions in the same company or any subsequent assignment in related companies within two working days from the receipt of application. The publication of the AEP application shall contain information such as the name, position, employer and address, a brief description of the functions to be performed by the foreign national, the qualifications, monthly salary range and other benefits of the position, if there are any. The publication shall also indicate that any person in the Philippines who is competent, able and willing at the time of application to perform the services for which the foreigner national is desired may file an objection at the DOLE regional office. All AEP applications shall be processed within 24 hours after the publication and payment of the required fees or fines. The regional office will issue the AEP unless there exist grounds listed under the Revised Rules for Issuance of Employment Permits to Foreign Nationals to deny the AEP application.

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9.5 What is the process for the employee to obtain a visa as a new hire?

Subject to certain exceptions, the foreign employee, jointly with the local employer, must first file an application for an AEP as mentioned in question 9.4. Once the AEP is issued, an application for the relevant visa must be filed.

Applications for Pre-Arranged Employee Visas, PD1034 Visa and RA8756 Visas are filed with the BI, where the local employer signs the application as petitioner and the foreign employee signs as applicant. Petitioners and applicants for Pre-Arranged Employee Visas, which are valid for two to three years, are required to attend a hearing before the BI. The approval of Pre-Arranged Employee Visa applications is uploaded onto the BI website.

Applications for 47A2 Visas are filed with the DOJ who will decide on the application and issue the 47A2 Visa, if approved.

An application for a Subic Free Port Work Visa is filed with the SBMA.

An application for a Clark Special Economic Zone Working Visa is filed with the CDC who will also issue the visa.

Both the Subic Free Port Working Visa and the Clark Special Economic Zone Visa require applicants to undergo an interview process.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The average time to process and obtain a work permit is 10 working days while the average time to obtain an initial visa is 40 days depending on the volume of applicants and provided that all documentary requirements submitted are complete.

9.7 How long are initial visas for new hires granted for and can they be extended?

The initial visa for a new hire is usually valid for one, two or three years. The foreign national holding a Pre-Arranged Employee Visa may apply for an extension of the visa.

9.8 Is labour market testing required when the employee extends their residence?

Labour market testing is not required when the foreign employee extends his/her residence. The labour market test is only required for new AEP applications or when the position of the foreign employee is changed, or an additional position is added.

9.9 Can employees coming as new hires apply for permanent residence?

No. Permanent residence is not granted based on employment in the Philippines alone. In order to apply for permanent residence, the new hire has to prove that he/she is legally married to a Philippine citizen.

9.10 What are the main government fees associated with this type of visa?

See our response to question 8.9.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreign nationals who obtain work permits are expected to obey and abide by Philippine laws, including the payment of correct taxes, and maintain his/her employment with the employer for which the AEP was issued. The AEP is valid only for the position and company for which it was issued. Any change in the position or company shall require a new AEP.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

It varies from local government to local government. Certain local governments require registration prior to actual work.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The spouse and children, who are unmarried and are under 21 years of age, of the principal applicant qualify as dependants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No. To be a valid dependant spouse, there must be a valid and subsisting marriage between the spouse and the principal visa holder.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

No. Spouses admitted as dependants are not allowed to work in the Philippines without a valid working visa and AEP.

11.4 Do children have access to the labour market?

No. Children admitted as dependants have no access to the labour market.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

To acquire permanent residence in the Philippines, a foreigner must satisfy the following conditions: (1) actual presence; and (2) intention to reside in the country. For this purpose – that is to be able to permanently reside in the Philippines – the foreigner must have the necessary visa: (a) he may apply for a quota immigrant visa which is limited to not more than 50 of any one nationality for any one calendar year; or (b) he may apply for a non-quota immigrant visa provided that he falls under any of the listed foreign nationals under Section 13 of The Philippine Immigration Act of 1940, as amended.

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Applicants for a quota immigrant visa should file their application together with any proof of the applicant's special qualifications, such as academic degrees, awards, certificates of recognition, or other documents attesting to the applicant's special qualifications, skills or knowledge, or proof of financial capacity or investment such as, but not limited to (a) bank certification of inward remittance of at least USD 50,000 or its equivalent foreign currency, (b) documents evidencing ownership of condominium unit/s acquired within four (4) years prior to the filing of the application and with corresponding proof that the amount invested came from or was inwardly remitted from foreign sources, or (c) documents evidencing ownership or investment in a corporation or a business concern acquired within four years prior to the filing of the application with corresponding proof that the amount invested came from, or was inwardly remitted from foreign sources.

Under the Philippine Immigration Act, the following foreign nationals may apply for a non-quota immigrant visa: (1) the wife, husband or unmarried child under 21 years old of a Philippine citizen; (2) a child of alien parents who is born during a temporary visit abroad of the mother who is a permanent resident of the Philippines, provided the child applies within five years from birth; (3) a child born subsequently to the issuance of the immigration visa of the accompanying parent; (4) a former Filipina who lost her citizenship by virtue of her marriage to a foreign national; (5) a returning permanent resident who went for a temporary trip abroad; and (6) a natural-born Philippine citizen who is returning back to the Philippines after being naturalised in the foreign country.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

No. There is no type of work visa, which leads to permanent residence currently available in the Philippines.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission for work include: having a criminal record or being a fugitive from justice in the Philippines or abroad; availability of a Philippine citizen who is competent, able and willing to do the job in question; and/or being afflicted with an incurable and communicable disease.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes. One of the grounds for the denial of an AEP application, which is a pre-requisite for a working visa, is conviction of a criminal offence or being a fugitive from justice in the Philippines or abroad.

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Gulapa Law was established by Aris L. Gulapa in September 2015. It is currently headed by its Managing Partner Charmaine Haw-Lim with its corporate and immigration practice being led by Aris L. Gulapa.

Gulapa Law's main specialisation is assisting foreign investors in doing business in the Philippines, which would include obtaining the necessary work permits, visa and immigration-related documents for investors and their officers, directors and employees.

In February 2017, Gulapa Law launched its New York office, Gulapa & Baclay LLP. Gulapa Law, in coordination with Gulapa & Baclay LLP, seeks to strengthen its immigration practice by providing assistance to clients in relation to both Philippine and United States ("*US*") immigration matters.

In June 2018, Gulapa Law established a representative office in San Francisco providing legal services to its United States-based clients with Philippine bound legal concerns.

Since its founding, Gulapa Law Office has been nominated for legal awards by foreign legal organisations and has been ranked as a leading Philippine law firm by international legal publications. It has been named by Asian Legal Business as one of the "Firms to Watch" in Asia for 2017 and was awarded Boutique Law Firm of the Year and Rising Law Firm of the Year at the 2016 and 2018 Asian Legal Business Philippine Law Awards, respectively.

Gulapa Law continues to expand globally, transcending borders and servicing more international clients, in line with its vision to continuously innovate, achieve and excel.

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Portugal

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Raquel Cuba Martins

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in Portugal are: the EU Directives (transposed into national law), EU Regulations, EU Agreements and Portuguese Law, mainly Law no. 23/2007, of 4th July, Decree Law no. 84/2007, of 5th November, and the Labour Code.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Portuguese Immigration Office (*Serviço de Estrangeiros e Fronteiras – SEF*), which is a department of the Ministry of Internal Affairs, processes the visa requests and residence permits.

The City Councils deal with registrations in the case of European Union citizens.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Portugal is part of the European Union, which entitles EU citizens the right to live, move and work in an EU Member State.

It is also a party to the Schengen Agreement, under which internal border controls have been abolished and of agreements between the EU and specific countries on the facilitation of the issuance of visas.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

The possibility of travelling to Portugal without a visa depends on the nationality of the individual.

The following business visitors are exempted from holding a visa:

a) nationals of an EU Member State, Iceland, Liechtenstein, Norway or Switzerland;

b) third country nationals listed in Annex II of Regulation (EU) 2018/1806; and

c) third country nationals holding a Schengen visa or a residence permit issued by an EU Member State.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors can stay in Portugal for a maximum of 90 days within a 180-day period.

2.3 What activities are business visitors able to undertake?

Business visitors may not undertake remunerated professional activities in Portugal without an appropriate visa.

This being said, business visitors may:

- attend conferences, events or congresses;
- participate in meetings, negotiations or trade deals;
- visit clients or partners; and
- execute research and networking activities.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Business visitors mentioned in question 2.1 point a) may work and provide services. Business visitors mentioned in question 2.1 point c) employed in an EU Member State may work or provide services in Portugal for a temporary period provided that they remain employed with their employer in the EU Member State.

2.5 Can business visitors receive short-term training?

Yes, they can receive short-term training.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

SEF, the Authority for Labour Conditions (*ACT*) and the police entities act in co-operation to warrant the compliance with the

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Portuguese Labour Law and with the Immigration Law, which includes executing inspections in companies.

3.2 What are the rules on the prevention of illegal working?

Although there aren't specific rules on the prevention of illegal working, employers need to execute the following procedures: confirming that the employee holds a valid work permit, notifying the authorities in case of illegal stay and to provide *SEF* with a copy of the employment contract executed with foreign nationals.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

There are two types of penalties:

- The act might be subjected to an administrative offence: the penalty may vary from €2,000 to €90,000.
- The act may be qualified as a crime: according to the specific situation an imprisonment penalty of up to two years might be applicable.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is no mandatory system for the registration of employers.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

According to the Portuguese Labour Code an employer who hires foreign nationals must:

- attach a copy of the residence visa/residence permit of the employee to the employment contract;
- inform ACT of the execution of an employment contract with a foreign national; and
- inform ACT of the termination of the contract, within 15 days.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

There is no such obligation. However, according to the Portuguese Labour Code employers must provide ongoing training to all employees, foreign or national.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There is no such obligation.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Please see question 3.1.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, the immigration authorities do not maintain such a list.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, there is a short stay visa for seasonal work in the following sectors:

- Agriculture, livestock, hunting, forestry and fishing.
- Hospitality, restaurants and similar.
- Food, liquor and tobacco industries.
- Gross and retail commerce.
- Construction.
- Land transport.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Yes, there is an annual quota of 3,800 for work permits.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Such restrictions are not generally set out in the law.

However, there are some restrictions that only apply to foreign workers hired under certain programmes, namely the Tech Visa programme.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Employees are not required to demonstrate language proficiency, except if they are applying for permanent residence.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Some Portuguese consulates may request that a medical declaration confirming the applicant does not have any contagious diseases is filed together with the visa application.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

In order to apply for a visa the employee must have a travel insurance including medical coverage. Once the employee is granted a residence permit he/she will be eligible to enrol with the national health service which entitles them to access the public medical service.

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4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, foreign employees who hold work permits may be seconded to a client site under the terms foreseen in the Portuguese Labour Code.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There are two immigration categories for highly skilled individuals:

Highly skilled activity, with the following requisites:

(i) evidence of academic qualifications;

(ii) in the case of a profession subject that has its own regulations, evidence of the fulfilment of the requirements;

(iii) the existence of at least a promissory employment contract adequate to the activity they intend to execute; and

(iv) a salary that matches or exceeds the amount that is set out by law (at present €1,310 per month).

The "Blue Card", with the following requisites:

(i) evidence of academic/professional qualifications;

(ii) evidence of having had an employment contract with duration of, at least, one year; and

(iii) a salary that matches or exceeds the amount that is set out by law (at present €1,310 per month).

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There are a few categories:

- A residence permit for self-employed workers, for individuals intending to incorporate a company in Portugal or to move the head office of an existing company to Portugal.
- A residence permit for entrepreneurs, named the "Startup visa".
- A residence permit for investment purposes, named the "Golden Visa", which implies the execution of an investment in Portugal.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There are the following categories:

- the temporary stay visa to attend a study programme in an educational establishment, for a student exchange programme, for an unpaid professional internship or voluntary work, or for the execution of a non-remunerated sports activity; and
- the temporary stay visa related to the transfer of employees between countries belonging to the World Trade Organisation.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The temporary visa for seasonal work (see question 4.7) enables foreign workers to perform short term temporary work in Portugal. However, such activity must be included within the list identifying the sectors to which seasonal work is applicable.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

There are two categories for the transfer of employees within branches of the same company or within companies of the same group of companies: the ICT (Intracorporate transfer) and the temporary stay visa for transfer of employees within Member States of the World Trade Organisation.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

A group of companies is defined as two or more companies which in relation to each other: directly or indirectly, holds the majority of the share capital; controls the majority of the votes; is entitled to appoint more than half of the members of the corporate bodies; or which are managed on a unified basis by the parent company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Obtaining a work permit under the ICT implies that the hosting company and the company established in a non EU Member State belong to the same organisation/group of companies.

Also, the employee should have been working with the employer company for a minimum of three to six months in the case of a trainee, or three to 12 months in the case of managers or specialist workers.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The process to obtain a work permit is in general exempted from a previous work visa.

Therefore, the request is filed by the employee at *SEF*, together with the following documents/evidence:

(i) Passport valid for at least the duration of the stay.

(ii) Proof that the companies belong to the same group of companies.

(iii) Proof that the employee had been working with the employer company for a minimum of three to six months in the case of a trainee or three to 12 months in the case of managers or specialist workers.

(iv) Declaration by the employer company including the identification of the hosting company and the terms and conditions of the employment.

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(v) Proof of the necessary qualifications and previous professional experience or diploma.

(vi) Health insurance.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The ICT does not necessarily need to be preceded by a visa. The visa is only necessary in case the individual is not exempted from obtaining a visa.

In that case, the visa request must be filed at the Portuguese Consulate along with the documents referred to in question 8.4 above, the applicant's criminal record from the country of residence, and a travel insurance.

8.6 How long does the process of obtaining the work permit and initial visa take?

The process for the initial visa filed at the Consulate (if necessary) usually takes 45 to 60 days but might vary depending on the availability of the Consulates and the backlog at the *SEF*.

After being filed with *SEF* in Portugal the work permit is issued within 90 days. Usually this deadline is not so long and residence permits are issued quickly, but the 90 days is the term set out in the law.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The ICT residence permit is issued for the period of one year or the same period as set out in the employment contract, and can be renewed for equal periods, as long as the total period does not exceed three years.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, it is not possible. The ICT residence permit allows individuals to live in Portugal for the maximum period of three years.

8.9 What are the main government fees associated with this type of visa?

The government charges are the following: an initial fee of €83.10 to analyse the application and €193 for the issuance of the residence permit.

In case a previous visa is necessary the fee to be charged by the Consulate is around €90.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category for new hires are the residence permit for workers (considered non-skilled) and the residence permit for highly skilled professionals.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, labour market testing may be required before visa applications. Employers who wish to hire third country nationals who are in their country of origin must register the job offer on IEFP's website and may only employ them if the offer is not filled within 30 days by Portuguese nationals, EU Member States nationals, nationals of the EEA, nationals of third countries with which the EU has signed a free movement agreement, or third country nationals who are legally residing in Portugal.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, a resident labour market test is not required for independent workers, highly skilled professionals, ICT transfers, transfers within member States of the World Trade Organisation and for people that possess a Blue Card.

9.4 What is the process for employers obtaining a work permit for a new hire?

The employee must first obtain a work visa in his country of residence and subsequently to their entry into Portugal, request a work permit before the *SEF*.

Highly skilled employees and ICT employees, among others, may apply for the work permit directly without a prior residence visa.

9.5 What is the process for the employee to obtain a visa as a new hire?

The employee shall apply for a work visa at a Portuguese Consulate in his country of residence with the following documents:

- Application form.
- Passport.
- Two passport photos.
- Valid travel insurance, including medical emergencies and repatriation.
- If the country of residence is not the country of nationality, a residence permit.
- Authorisation for checking the employee's criminal record in Portugal.
- Criminal record from the country of origin or the country of residence in case they have been living in the latter for over a year.
- Proof of means of subsistence.

Non Highly skilled workers: employment contract or promissory employment contract, declaration issued by IEFP confirming that a labour market test was carried out and the position was not filled, and a professional certificate, when the profession is regulated in Portugal.

Highly skilled workers: employment contract or promissory employment contract with a minimum duration of one year and a minimum salary of €1,310 per month and professional certificates/diplomas adequate for carrying out a high-skilled activity.

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9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Regular work visa: 60 days.

High skilled work visa: 30 days.

Regular and high skilled work permit: 90 days.

9.7 How long are initial visas for new hires granted for and can they be extended?

The work visa is valid for two entries within a period of 120 days. Holders of work visas will apply for a work permit valid for one year which can be renewed for periods of two years.

9.8 Is labour market testing required when the employee extends their residence?

No, the labour market testing is not required for renewals.

9.9 Can employees coming as new hires apply for permanent residence?

Holders of a work permit that have been renewing the temporary residence permit for at least five years may apply for a permanent residence permit provided that some conditions are met: absence of criminal record and basic knowledge of Portuguese which can be proved by presenting an A2 or higher certificate issued by certified entities.

9.10 What are the main government fees associated with this type of visa?

Please refer to question 8.9.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

There are no specific conditions of stay for holders of work permits.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Foreign nationals that possess a visa who enter into the Schengen area through another border than the Portuguese one must submit a declaration of entry before *SEF* within three working days from the date of entry.

Also, registration with the tax authority and social security is required for whoever holds a residence permit.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

For family reunification purposes the following family members are eligible: spouses; children under 18 or over 18 if single and studying; adopted children; direct ascendants of the applicant or spouse that are considered economically dependent (which is assumed if they are over 65 years old); and siblings under 18 whose guardianship has been determined by the Court.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

For immigration purposes, there are no differences between married/unmarried and/or same-sex partners, even though unmarried partners must prove that they have been living together for more than two years.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

When spouses and partners are admitted, the residence permit issued allows them to work in Portugal.

11.4 Do children have access to the labour market?

Individuals between 16 and 18 years old may have access to the labour market, as long as they have concluded or are still attending compulsory education and have physical and mental conditions adequate to the job.

Individuals under 16 years old may also have access to the labour market, as long as they have concluded or are still attending compulsory education and the work consists of soft tasks that do not harm their health, education and growth.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

In Portugal permanent residence is a residence permit valid for five years that can be renewed at the end of such a period.

The main requisites are the following:

- To have been living in Portugal for at least five years (under a temporary residence permit).
- To not have been convicted for a crime(s) that, individually or jointly, exceed(s) one year of imprisonment.
- To prove to have a basic knowledge of the Portuguese language which can be proved by presenting an A2 or higher certificate issued by certified entities.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Under the circumstances that the individual fulfils the conditions for permanent residence, they would be entitled to apply.

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13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars are related to the issuance of work visas. The applicant must not have been convicted for a crime which is punishable (in Portugal) by imprisonment that exceeds one year, should not be identified at the Information Integrated System of *SEF* or referenced in the Schengen Information System and shall not be within a period of prohibition of entry into Portugal, following an expulsion measure. Also, in some cases, for some professions it is mandatory to register with the Portuguese regulatory authorities.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

According to the Immigration Law all individuals intending to apply for a work visa or a residence permit cannot have been convicted for a crime that, in Portugal, is subject to imprisonment that exceeds one year.

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ADVOGADOS

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Chapter 29

Singapore

Magrath Global

Ruth Wilkins

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The primary legislation determining Singapore foreign manpower is the Employment of Foreign Manpower Act (Chapter 91A) (EFMA) and the Immigration Act. Subsidiary legislation includes the Employment of Foreign Manpower (Work Passes) Regulations – Conditions of Work Pass, the Employment of Foreign Manpower (Levy) Order 2011, the Employment of Foreign Manpower (Security Measures for Work Place) Notification, the Employment of Foreign Manpower (Work Pass Exemptions) Notifications 2 and 4, the Employment of Foreign Manpower (Bail and Personal Bond) Regulations, the Employment of Foreign Manpower (Work Passes) Regulations 2012, and the Employment of Foreign Manpower (Infringement and Appeal Board Proceedings) Regulations 2013.

Following the introduction of the Fair Consideration Framework in 2014, the Ministry of Manpower (MOM) together with the Tripartite Alliance for Fair Employment Practices (TAFEP) promotes the adoption of fair, responsible and progressive employment practices which directly impacts on the MOM's review of work pass applications. TAFEP was established together with the National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF) in 2007. Elements of the TAFEP Guidelines in relation to the Fair Consideration Framework which have a particular bearing on corporate immigration are those requiring employers not to discriminate based on race, gender, age, religion or marital status during the advertisement, recruitment and selection process. While these remain Guidelines, the importance attached to these processes by MOM can result in work pass privileges being curtailed for those employers considered to hold discriminatory practices.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The MOM is the government ministry that is responsible for the development and implementation of labour policies related to the Singapore workforce. In this capacity, MOM retains authority to oversee matters relating to corporate immigration, and consequently, the issuance of relevant passes including an Employment Pass to foreign professionals.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Singapore is a member and participant in the Asian-Pacific Economic Cooperation Scheme (APEC) scheme. The APEC Business Travel Card (ABTC) facilitates pre-cleared and short-term entry into participating member countries by pre-approved business travellers. Nineteen economies are fully participating members of the ABTC scheme: Australia, Brunei Darussalam, Chile, China, Chinese Taipei, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Thailand and Vietnam. The USA and Canada are transitional economies in the ABTC scheme. ABTC holders from transitional economies do not have pre-clearance to fully participating economies and must present any visas or other required entry documents to the destination economy, but may use 'fast-track' immigration lanes at participating airports.

Approved ABTC applications are currently granted for five years, or up to the validity of the passport, whichever is shorter.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes, Singapore enables a number of foreign nationals to enter as a business visitor without a visa through the grant of a Short Term Visit Pass (STVP) issued upon arrival in Singapore.

Those foreigners holding travel documents that are expressly excluded from this programme, and require a visa to enter Singapore, are currently listed by the Immigration & Checkpoints Authority (ICA) as: Afghanistan; Algeria; Bangladesh; the Commonwealth of Independent States (stated as Armenia; Azerbaijan; Belarus; Kazakhstan; Kyrgyzstan; Moldova; Russia; Tajikistan and Uzbekistan); the People's Republic of China; Egypt; Georgia; India; Iran; Iraq; Jordan; the Democratic People's Republic of Korea; Kosovo; Lebanon; Libya; Mali; Morocco; Nigeria; Pakistan; Saudi Arabia; Somalia; Sudan; Syria; Tunisia; Turkmenistan; Ukraine; Yemen; Hong Kong Document of Identity, Macao Special Administrative Region (MSAR) Travel; Palestinian Authority Passports; and Refugee Travel Documents issued by Middle-Eastern countries.

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2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The period of stay granted is subject to the discretion of the reviewing ICA officer at the point of entry. The typical period of stay granted ranges from 30–90 days; however, in some cases, this may be as short as 14 days.

2.3 What activities are business visitors able to undertake?

A business visitor may typically engage in limited activities such as attending company meetings, exploring business opportunities, attending corporate retreats or meetings with business partners, attending workshops, seminars and conferences as a participant, or exhibitions as a trade visitor.

Work activities or paid employment under a contract of service or contract for services are expressly forbidden without a relevant work pass.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

MOM enables certain defined activities to be carried out for a limited time without a work pass. This category is referred to as a Work Pass Exemption (WPE). Eligible WPE activities require notification to MOM on arrival in Singapore, and require a valid STVP issued by the ICA for the duration of the activity. The maximum duration of WPE activities is up to 90 days in a calendar year (this maximum number of days can be performed over any number of visits to Singapore, for example, three visits of 30 days). A WPE notification is separate to any specific legal requirements in Singapore (for example, the registration requirements to practise in Singapore for specific professions). It is an offence to commence work under the WPE before notification to the MOM.

The 11 listed categories of WPE activities are: arbitration or mediation services; exhibitions; journalism; judicial or legal duties in Singapore International Commercial Court; junket activities; location filming and fashion shows; performances; specialised services related to a new plant/operations/equipment; seminars and conferences; sports; and tour facilitation. Certain specific restrictions apply to each category, however, a general provision is that an activity must not relate to either religious belief or religion, race or community generally, or a cause related or directed towards a political end.

2.5 Can business visitors receive short-term training?

Business visitors may attend training courses or workshops without further notification to MOM. A business visitor who is a trainer or speaker at a training course or workshop will need to notify MOM for a WPE or obtain a Miscellaneous Work Pass. On-the-job training requires a work pass.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, MOM is enabled to carry out compliance inspections of employers at any time.

3.2 What are the rules on the prevention of illegal working?

The EFMA sets out the criminal offences relating to illegal working. These include illegal employment by an employer, a foreign worker working without a valid pass, employment otherwise in accordance with work pass conditions, obstruction of an employment inspector and providing false information to the controller of work passes.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The penalty for employing a foreign employee without a valid work pass can include a fine between S$5,000 and S$30,000, or imprisonment for up to one year, or both. For subsequent convictions, a mandatory imprisonment and a fine between S$10,000 and S$30,000 may be imposed.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

The process of application to the MOM for the relevant work pass requires submission of all relevant corporate details relating to the employer. An additional system of registration of employers is not required in Singapore for these purposes.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes. Employers of foreign nationals have various reporting duties to ensure continuing immigration compliance for each foreign employee. This includes notification and updating MOM of a change of address, notification of any salary reduction during the term of the work pass, and cancellation of the work pass upon termination of employment.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

The importance of up-skilling local workers is a key priority for the Singapore Government. A large number of Government initiatives and employer incentives have been launched in recent years in order to up-skill local workers (and, in particular, older members of the workforce). Of particular note is the Capability Transfer Programme (CTP). The CTP is a flagship initiative designed to improve what the Government terms 'local-foreign workforce complementarity' by facilitating the transfer of skills from foreign specialists to locals.

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Funding support through the CTP can include salary and training support for foreign and local specialists, and Singaporean trainees on overseas attachments.

While participation in such schemes is strongly encouraged where possible, it is not mandatory. However, employers who apply for Employment Passes to hire foreign nationals will be assessed on their company profile, and their ratio of foreign to local employees. Despite no formal quota being in place, companies with a high ratio of foreign staff and who are not considered to be demonstrating sufficient willingness to develop the local workforce may be placed on the MOM Watchlist and have their ability to apply for Employment Passes curtailed.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

The Skills Development Levy (SDL) is a compulsory levy that employers must pay for all employees working in Singapore, regardless of whether they are local or foreign. The SDL is paid in to the Skills Development Fund (SDF) and administrated by the SkillsFuture Singapore Agency. The SDF is used to support workforce upgrading programmes and to provide training grants for employees under the National Continuing Education Training system.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, the MOM is enabled through the EFMA to send an Employment Inspector to the premises of an employer to verify immigration compliance in relation to its foreign employees.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The relevant legislation in Singapore does not set out a list of skilled occupations that may be filled specifically by foreign nationals. However the CTP initiative referred to in question 4.3 above, is designed to facilitate the transfer of capabilities that are lacking or in short supply in Singapore. The scheme will assess the merit of each application and the potential impact of individual companies on the broader industry sector as a whole. Successful applicants will receive salary and training support for both foreign and local trainers, as well as local trainees.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Formal exemptions for occupations in short supply in certain sectors do not exist. However, strategic skills in demand are recognised by various government schemes and government agencies and would be a factor taken in to consideration during the assessment of such work pass application for a relevant position.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No express quota exists for the Employment Pass category of work pass designed for foreigners engaging in managerial, executive or specialised jobs.

A foreign worker quota (and related levy) does exist for the S Pass category designed for mid-level skilled professionals and for Work Permits for skilled and unskilled foreign workers in the construction, manufacturing, marine, process or services sector.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No formal quota or number restrictions exist for the category of Employment Pass holders. However, the criteria for an Employment Pass has been tightened in recent years and the overall profile of an employer and its diversity of local citizen employees contrasted with foreign employees will be subject to assessment during the MOM's individual review of an application. An employer's adherence to the Fair Consideration Framework as set out by TAFEP and its related Tripartite Guidelines on Fair Employment Practices will be taken into consideration. These promote the adoption of fair, responsible and progressive employment practices with the encouragement of employers not to discriminate based on race, gender, age, religion or marital status during the advertisement, recruitment and selection process. Failure to demonstrate adequate adherence to these Guidelines can result in work pass privileges being curtailed by the MOM for those employers considered to hold discriminatory practices.

The number quotas in force in relation to an S Pass for mid level skilled foreigners is currently capped at 15% in the services sector (and with effect from 1 January 2020 and 1 January 2021, the services sector cap will reduce to 13% and 10% of the total workforce, respectively), and 20% in other sectors. Work Permit quotas for blue collar workers vary according to nationality and industry sector.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No; the demonstration of language proficiency is not a formal requirement.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

It is not standard practice for an Employment Pass applicant to be required to undergo a medical examination before being issued an Employment Pass. However, following In-Principle Approval of an application, the individual must sign a declaration that they have not suffered from or are not suffering from Acquired Immune Deficiency Syndrome (AIDS) or Tuberculosis, or are not infected with Human Immunodeficiency Virus (HIV).

In relation to S Pass and Work Permit applications, each applicant must undergo a medical examination following In-Principle Approval of the pass and before issuance of the actual S Pass or Work Permit.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreigners are not entitled to free public medical services in Singapore. Employers can elect whether or not to provide medical insurance for its Employment Pass holders.

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Employers of S Pass holders must buy and maintain medical insurance with coverage of at least S$15,000 per year and cover inpatient care and day surgery for the duration of their employment. The same provisions apply for employers of Work Permit holders with the additional requirement that hospital bills for conditions that may not be work related are covered.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

An Employment Pass holder is understood to be performing work at the stated premises of the sponsoring employer. In circumstances where an employee is required to attend at a client site to perform duties directly attributable to the delivery of contracted services between the parties, this is generally permissible, subject to the employee continuing to be subject to the employment and supervision of its employing and sponsoring company.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

The Employment Pass category of work pass covers foreign professionals who work in a managerial, executive or specialised position.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There is no special category of work pass for foreign investors. Eligible foreign entrepreneurs who wish to set up a new business in Singapore may qualify for a MOM issued EntrePass, subject to strict criteria. Options also exist for foreign investors wishing to apply for Singapore Permanent Residence through available investment schemes, but this is subject to strict investment type and eligibility criteria.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The Training Employment Pass is available for eligible foreign students or foreign trainees wishing to undergo training in Singapore. It is granted for up to three months and is non-renewable. Qualifying criteria includes that the training attachment in Singapore must be part of the course of study, students must be studying at a recognised institution or earn a fixed monthly salary of at least S$3,000, and be sponsored by a well-established Singapore company. A trainee from a foreign office or subsidiary is required to earn the same minimum fixed monthly salary of S$3,000 and be sponsored by a well-established Singapore registered company.

A foreign student may also have the option of applying for the Work Holiday Pass (under the Work Holiday Programme) which enables eligible foreign students or graduates to work and holiday in Singapore for up to a period of six months. The criteria includes the limited age range of 18–25 and being an undergraduate or graduate of a recognised university from one of nine countries: Australia; France; Germany; Hong Kong; Japan; New Zealand; Switzerland; the United Kingdom; or the United States. It is valid for six months and can be applied for multiple times, provided at least 12 months has passed since last holding the pass. The capacity of places are limited to 2,000 in Singapore at any one time.

A separate Work Holiday and Visa Programme has been created for Australian citizens who are studying or have graduated from university in any country. The criteria includes an age range of 18–30 and being an undergraduate who has completed at least two years of full-time university study or a graduate holding a university degree. It can be issued only once and is valid for one year.

A Training Work Permit (TWP) is available for unskilled or semi-skilled foreign trainees requiring practical training in Singapore for up to six months. A TWP is not renewable, and following the expiry or cancellation of an existing TWP, holders must wait six months before being enabled to apply for another.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

This is not applicable in Singapore.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Inter-company transfers fall within the Employment Pass category. An Intra-Corporate Transferee (ICT) may be exempted from the mandatory requirement to advertise the job posting on the Singapore Jobs Bank prior to submission of an Employment Pass application subject to compliance with the strict definition of ICTs under the World Trade Organisation (WTO)'s General Agreement on Trade in Services (GATS) or any applicable free trade agreements to which Singapore is party.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The MOM may request documents that demonstrate the relationship between the group of companies at its discretion. It may also request documents that demonstrate that the Employment Pass applicant meets the definition of an ICT, such as an organisational chart of the Singapore company and the applicant's position in it.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

An ICT must have worked for the company or organisation outside of Singapore for at least one year before being posted to the branch,

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subsidiary or affiliate in Singapore. Where the applicant possesses specialist skills or knowledge, their stated job description would be required to demonstrate this advanced level of expertise.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The process for applying for an Employment Pass for an intra-company group employee is the same as the process set out in question 9.4, with the exception that the requirement to advertise the position on the Singapore Jobs Bank for 14 days in advance of submission of an application may be exempt for an ICT (subject to the stringent definition referred to in question 8.1 above). The MOM may also request supporting documents referred to in questions 8.2 and 8.3 at its discretion during the application process.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Please refer to the process set out in question 9.5 below.

8.6 How long does the process of obtaining the work permit and initial visa take?

Please refer to the answer to question 9.6 below.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

ICTs are restricted to a three-year term, but this may be extended for up to two additional years, for a total term not exceeding five years.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

An Employment Pass holder falls within a category eligible to apply for Singapore Permanent Residence subject to assessment of an applicant's individual profile.

8.9 What are the main government fees associated with this type of visa?

The government fees associated with an Employment Pass application are S$105 payable upon submission of the application, followed by S$225 per pass and S$30 for each Multiple Journey Visa (if applicable) upon issuance of the approved pass.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The Employment Pass category of a work pass is the appropriate category for new hires of foreigners working in a managerial, executive or specialised role.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes. The Fair Consideration Framework was introduced as part of the Singapore Government's move to strengthen the Singaporean core in the workforce and the requirement to consider Singaporean candidates fairly for job opportunities prior to the hiring of a foreigner to a position. Before an Employment Pass application is submitted, an employer must advertise the job vacancy on the Jobs Bank website administered by Workforce Singapore, a statutory board under the MOM. The advertisement must satisfy a number of requirements and be open to Singaporeans, must comply with the Tripartite Guidelines on Fair Employment Practices and run for at least 14 calendar days before an Employment Pass application is submitted.

9.3 Are there any exemptions to carrying out a resident labour market test?

The MOM permits the following practical exemptions from the Jobs Bank advertising requirement where one of the following criteria are met:

- The company has fewer than 10 employees.
- The fixed monthly salary of the job position is S$15,000 and above.
- The position is to be filled by an Intra-Corporate Transferee (ICT, as referred to above). In line with the WTO GATS, ICTs relate to positions of seniority in the organisation or individuals who possess an advanced level of expertise.
- The job is necessary for short-term contingencies (considered a period of employment in Singapore for not more than one month).

Notwithstanding the above categories of exemptions, the MOM strongly encourages employers to advertise all positions on the Jobs Bank to facilitate access to a larger pool of local candidates and to demonstrate that the company is serious in its endeavour to implement fair employment and recruitment practices that are founded on open, merit-based and non-discriminatory principles, even in such circumstances where a technical exemption from advertising applies.

9.4 What is the process for employers obtaining a work permit for a new hire?

Following completion of the Jobs Bank advertising process, the employer must submit an Employment Pass application through the designated MOM online application system. Typically, the review process by MOM requires three weeks; however, this can be longer where requests for further information are made by MOM and subject to the individual profile of the application. Upon approval, an 'In-Principle Approval' letter is issued. Once the applicant is present in Singapore, a request for the pass to be issued can be made. This step must be completed within six months from the issuance of the In-Principle Approval. Once the Employment Pass is issued online, a notification letter is issued that enables the individual to commence working and also facilitates travel in and out of Singapore for one month pending issuance of the pass card. Within two weeks of the pass issuance, the individual must make an appointment to attend the Employment Pass Services Centre to register biometric details. The Employment Pass card will subsequently be delivered four working days later to the individual.

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9.5 What is the process for the employee to obtain a visa as a new hire?

For foreign nationals who require an entry visa to enter Singapore, a Multiple Journey Visa will be issued concurrently with the issuance of the Employment Pass for the same duration. The Government fee for this is currently S$30.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The typical processing time from submission of an application to MOM is three weeks. However, this may be extended where requests for further information or documents are made by MOM or if there are complicating factors relating to an individual case.

9.7 How long are initial visas for new hires granted for and can they be extended?

The duration of the Employment Pass granted will be at the discretion of the MOM but typically would be up to two years for a first time candidate. An application to renew can be made up to six months in advance of the expiry of the existing pass, typically for a further two years but could be for a maximum of three years.

9.8 Is labour market testing required when the employee extends their residence?

No, the requirement to advertise in the Jobs Bank does not apply when applying to renew an existing pass for a foreign employee. However, where an Employment Pass holder determines to change jobs and apply for a new position with a different employer in Singapore, such a job would be subject to the Jobs Bank advertising requirements.

9.9 Can employees coming as new hires apply for permanent residence?

Once a foreign employee holds a valid Employment Pass or S Pass, they fall within one of the eligible categories to apply for Singapore Permanent Residence. However, each individual application would be subject to strict assessment by the ICA of the strength and profile of the application.

9.10 What are the main government fees associated with this type of visa?

The government fees for a Permanent Resident are typically around S$250, subject to the individual's requirement for an entry visa.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

An Employment Pass holder is permitted to reside and work in Singapore for the duration of the pass granted. The employer/sponsor undertakes to bear responsibility for the employee's upkeep and maintenance in Singapore and to indemnify the Singapore Government for any charges or expenses which may be incurred by the Government in respect of the foreign employee or their dependants.

The employer/sponsor also undertakes to bear the costs of repatriating the employee (except where the employee consents in writing to bear such costs). Up to six months prior to its expiry, a renewal application may be submitted for a further period. In order to start working for a different employer in Singapore, the new employer must apply for a new Employment Pass in compliance with the advertising and submission requirements, and the previous employer must cancel the existing work permit upon termination of the employment.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

This is not applicable in Singapore.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A legally married spouse and unmarried children under 21, including those that are legally adopted, are eligible to apply for a Dependant Pass. Unmarried step-children under 21 and unmarried handicapped children over 21 are eligible to apply for a Long Term Visit Pass.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

A common law spouse is eligible to apply for a Long Term Visit Pass. The Singapore government does not recognise same-sex partners.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

A dependant of an Employment Pass holder is eligible to apply for a Letter of Consent (LOC) attached to their Dependant Pass to work in Singapore, provided their pass has a remaining validity of at least three months. Alternatively, they may obtain a work pass in their own right subject to their own eligibility criteria. A dependant of an S Pass holder is not eligible to apply for an LOC and would need to obtain a work pass in their own right.

11.4 Do children have access to the labour market?

If a child is a dependant of an Employment Pass holder and is at least 18 years of age and holds a Dependant Pass which is valid for at least the next three months, they may be eligible to apply for a Letter of Consent to work. Any such application would be subject to the individual assessment by MOM in the usual way as to whether it is approved.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

An Employment Pass or S Pass holder falls within one of the eligible categories of foreigner able to apply for Permanent Residence in

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Singapore. Applications for Permanent Residence are assessed by the ICA and are subject to strict scrutiny of the applicant's personal profile, qualifications, and experience. The number of new PRs granted has been tightened significantly in recent years.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

There is no automatic progression to Permanent Residence from an Employment Pass or S Pass. An individual must elect to submit an application.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission for work in Singapore would include a criminal record or a person infected with AIDS or HIV. The Immigration Act (Chapter 133) Part II section 8 defines all Prohibited Immigrants to Singapore. In relation to individual work pass applicants, each application will be carefully scrutinised as to whether the personal profile, professional skills and qualifications, salary and job scope are commensurate with the level of job expertise required.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Work Pass and Permanent Resident applications must declare any criminal convictions and such a declaration would result in an application rejection.

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Ruth Wilkins qualified as a solicitor in the United Kingdom and practised as an Employment lawyer before moving to Singapore in 2006 and transferring to the practice area of Business Immigration. Ruth has more than 12 years of experience advising on all aspects of Singapore immigration to an extensive range of clients across the industry sectors, guiding businesses and HR professionals through the practical implications of transferring employees from abroad or hiring locally and the related regulation compliance and strategic direction that the Singapore immigration regulations require. During this time, Ruth has managed a large team of immigration specialists and overseen the delivery of comprehensive corporate immigration services to major multinational companies. Ruth contributes regularly to article updates on the evolving Government policies in this area, and speaks about the increasing challenges employers face in hiring foreigners in Singapore and how best to navigate the tightened regulations.

Magrath Global

Magrath Sheldrick LLP is an independent law firm practising as a Limited Liability Partnership, regulated by the Solicitors Regulation Authority (SRA) of England and Wales. Founded in 1990, it is a "top tier" Business Immigration practice headquartered in London.

Our primary focus, and largest department, is Business Immigration. We are ranked as a leading firm by *The Legal 500* and the *Chambers Directory* (Guide to the Legal Profession). Our Partners are listed as "Leading Practitioners" in these directories. Our partners are also listed as market leading practitioners in *Who's Who Legal*, *Legal Experts* and *Super Lawyers*. We have one of the largest dedicated business immigration departments in the United Kingdom.

In 2012, the firm opened a dedicated Business immigration operation in Singapore, to serve as a regional hub. We focus on all aspects of UK and Singapore immigration requirements as they apply to businesses and their employees.

We were the first solicitor firm to offer a dedicated US immigration law department and our Global Immigration Department assists multinational companies with their Immigration requirements in over 70 jurisdictions worldwide. We also provide advice and assistance on immigration and nationality issues to a wide range of private clients. We act for some of the world's leading companies, providing a fully outsourced bespoke service, taking devolved responsibility for all aspects of immigration compliance. In particular in the UK, we act as representatives and Level 1 Users on the Sponsor Management System (SMS) for over 200 registered corporate sponsors.

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Slovenia

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in the Republic of Slovenia are the Aliens Act, the Employment, Self-employment and Work of Aliens Act and the Residence Registration Act. Furthermore, immigration law is regulated by various other laws, rules and decrees such as the Employment Relationship Act and Labour Market Regulation Act.

The new Employment, Self-employment and Work of Aliens Act entered into force on 15 July 2015, and became applicable on 1 September 2015. The new Act redefines the employment of foreign nationals and introduces a single permit for work and residence and the principle of a "one-stop shop", to which an alien or his employer submits a single application for a single permit (for residence and work), without prior application for a working permit.

The Transnational Provision of Services Act entered into force on 1 January 2018. This Act sets the criteria under which a legal or natural person, that is registered for performing services in the Republic of Slovenia, can temporarily provide services in other EU countries, and the criteria under which a legal or natural person that is registered for performing services in another EU country can temporarily provide services in the Republic of Slovenia.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

A single permit for residence and work is issued by the Administrative Unit offices, with the consent of the Employment Service of Slovenia. An alien is required to register his temporary or permanent residence at the Administrative Unit offices; supervision of the employment and work of aliens is the responsibility of the Labour Inspectorate of the Republic of Slovenia, and visas are issued by embassies or consulates of the Republic of Slovenia abroad.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

The Republic of Slovenia is a member of the European Union (EU) and European Economic Area (EEA). Citizens of Member States of the European Union, as well as citizens of Norway, Liechtenstein, Iceland and the Swiss Confederation, do not need work permits to work in Slovenia, which enables them to have free access to the labour market. Citizens of EU Member States, the EEA (Norway, Liechtenstein, Iceland) and the Swiss Confederation are equal to Slovene workers when it comes to job-seeking and employment.

Family members of workers coming from the EU, EEA or Swiss Confederation (who are citizens of a third country) also have the right to access the labour market freely. This means that they can be employed or become self-employed without the need to obtain a work permit. They prove their right to do so with a residence permit for a family member for the purpose of family reunification.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

A business visitor is an alien who resides in the Republic of Slovenia without generating income in the Republic of Slovenia, or directly performing public sales, or providing services, and who fulfils other conditions stipulated in the answer to question 2.3. Business visitors can enter Slovenia and participate in some activities without a work permit; however, they still need to apply for a visa to enter the Republic of Slovenia.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors can stay in the Republic of Slovenia for a limited period of 90 days within six months, counting from the day of first entry.

2.3 What activities are business visitors able to undertake?

Business visitors can only participate in business meetings and the establishing of business contracts, including negotiations regarding the provision of services and similar activities, and those services and activities which relate to a foreign employer's preparation for establishing a market presence in the Republic of Slovenia.

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2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Business visitors may be employed, self-employed or perform work if their residence in the Republic of Slovenia is in accordance with the legislation governing the residence of aliens.

2.5 Can business visitors receive short-term training?

No, business visitors can only undertake activities listed in the answer to question 2.3 without generating income in the Republic of Slovenia or directly performing public sales or providing services. If a business visitor wants to receive short-term training, he will need a single permit for residence and work.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Supervision of the employment and work of aliens is the responsibility of the Labour Inspectorate of the Republic of Slovenia, and partly the police. National authorities do not operate a system of compliance inspections of employers who regularly employ foreign nationals.

3.2 What are the rules on the prevention of illegal working?

Illegal working in the Republic of Slovenia is regulated by the Prevention of Undeclared Work and Employment, Self-employment and Work of Aliens Act, which both prohibit illegal working and impose pecuniary and non-pecuniary fines.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

A fine ranging from 3,000 to 30,000 EUR is imposed on an employer that commits an offence by enabling the work of an alien, which does not possess a valid single permit for residence and work. In addition, a fine ranging from 500 to 5,000 EUR is imposed on the person responsible at the place of employment.

A fine ranging from 500 to 5,000 EUR is imposed on an alien who commits an offence by performing work for which a valid single permit for residence and work was not issued.

If a fine is imposed, such employer is banned from employing aliens for a period of two years; the same applies to an alien.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, however, the Employment Service keeps a register on consents, given by the Employment Service and on permits, issued for seasonal work. The Employment Service keeps registers in order to decide whether to give or withdraw consent in order to decide upon issuance or revocation of permits for seasonal work and for the purpose of monitoring the labour market.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, employers have ongoing duties to ensure immigration compliance. Upon the conclusion of an employment relationship (which must be in accordance with the law governing labour relationships and potential collective agreements binding on the employer), an employer is obligated to register aliens in social insurance schemes. Aliens who are employed in the Republic of Slovenia have equal rights and obligations arising from the work relationship to those of Slovenian citizens. If an alien is employed on the basis of a single permit for residence and work, he has all of the rights and obligations, in accordance with national law, related to the wages, working time, breaks, rest periods, and safety at work, among other rights.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, the employers who hire foreign nationals are not required to show a commitment to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There are no extra charges or fees that would contribute towards the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Inspections can take place at any time if there is an indication of illegal working or non-compliance with the Employment, Self-employment and Work of Aliens Act. Inspections and supervision can be initiated by any legal or natural person and *ex officio* by the Employment Service if it suspects that a violation of the employment and working situation of aliens has occurred.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, the immigration authorities do not maintain a list of skilled occupations which may be filled by foreign nationals; however, in some cases, the labour market test is not required (see question 9.3).

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

For certain occupations, determined by the Minister of Labour, labour market control is not necessary (see question 9.3).

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4.8 Are there annual quotas for different types of employment-related work permits or visas?

The Government of the Republic of Slovenia may, taking into account the situation and anticipated trends of the labour market, annually determine the quota of consents to the issuance of single permits and the quota of permits for seasonal work, through which it restricts the number of aliens in the labour market. The quota is determined with a decree.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are no such restrictions.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, but language proficiency can be required by an employer. Aliens who are third-country nationals are entitled to Slovenian language courses, facilitating integration into the cultural, economic and social life of the Republic of Slovenia. In any case, knowledge of the Slovene language might benefit an alien while working and living in the Republic of Slovenia.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

In order to establish a candidate's health condition for carrying out work, an employer has to refer the applicant for a preliminary medical examination (at his own cost) in accordance with the regulations on safety and health at work.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

In accordance with specific regulations, an employer is obligated to register an employee with a compulsory pension, disability and health insurance, and insurance against unemployment, no later than on the day of commencement of work. Foreigners who are not included in the health insurance system of the Republic of Slovenia have the right to urgent or necessary healthcare services, the payment of which is provided in accordance with the European legal order, international agreements or from the state budget.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

An alien who possesses a single permit for residence and work may change workplace, change employer, get employment with two or more different employers or conclude a new contract of employment, on the grounds of a written authorisation provided by the authority competent to issue such authorisation after receiving the consent of the Employment Service of Slovenia.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, there is a special immigration category for highly qualified employment, which represents the employment of a third-country national (not a citizen of the EU, EEA or Switzerland) who has required relevant and special competences, is certified with proof of higher education, and is receiving appropriate payment. A person who meets these criteria can receive an EU Blue Card, which is a temporary residence permit for highly qualified employment, issued in accordance with the law governing the residence of aliens, and enabling the holder to enter, reside and take up employment in the Republic of Slovenia.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Depending on the opinion of the competent ministry, an alien may represent economic interest for the Republic of Slovenia. If so, a long-stay visa and permit for temporary residence and single permit for residence and work will be issued for such alien on the grounds of economic interest for the Republic of Slovenia.

Also, in accordance with the Employment, Self-employment and Work of Aliens Act, a special single permit can be issued to an alien based on the consent of the Employment Service to a representative. Consent to a representative shall be granted for the purpose of representing a sole trader, a legal entity established pursuant to the act governing companies, or a Slovenian branch of a foreign undertaking with which the alien wishes to take up employment or carry out work. Certain conditions have to be met in order for the Employment Service to grant the consent.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Aliens who perform work on the grounds of agreements with international organisations, agreements between the competent institutions or related to international projects on technical assistance, education, training or research, as well as aliens who perform clerical jobs in established religious communities, can become employed, self-employed or perform work if their residence in the Republic of Slovenia is in accordance with the legislation governing the residence of aliens.

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7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Seasonal work can be performed in agriculture or forestry, which is inseparably connected to a season, in which, for an individual activity, a distinct increase in the scope of the need for the labour force is typical. An alien can perform seasonal work under a permit for seasonal work, if the seasonal work does not exceed 90 days in one year. If seasonal work exceeds the period of 90 days within a year, an alien can perform such work on the grounds of a single permit for residence and work, issued with consent for seasonal work, given by the Employment Service.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes, there is a special category for inter-company transfers within international groups of companies.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

Training of seconded alien workers may be performed if the Slovenian and foreign companies are capital-related, or in the case of business and technical cooperation or transfer of technology. Slovenian and foreign companies are capital-related if either of the companies has at least a 10% share in the other company, which shall not be lower than 10,000 EUR.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The training of foreign seconded workers is performed on the basis of a contract for training concluded by the Slovenian and the foreign companies. The contract for training must contain provisions on the payment, board and lodging of seconded workers, as well as a training programme, approved by the responsible chamber or association of employers. A single permit for seconded workers is issued on application by a foreign company.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The conditions for obtaining a single permit are listed in the answer to question 8.3 above. The consent of the Employment Service can only be given for workers who are continuously employed by the foreign employer or by the capital-related company in a third country for at least six months, or in certain cases for at least nine months.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Foreign employees must obtain a visa at a diplomatic mission or consulate of the Republic of Slovenia abroad prior to entering the Republic of Slovenia.

8.6 How long does the process of obtaining the work permit and initial visa take?

In principle a visa application should be lodged at least 15 calendar days before the intended visit (as this is the normal processing time). It is the applicant's responsibility to take the necessary precautions to respect the deadlines where an appointment system is in place. A single permit for residence and work should be issued within 30 days after the submission of the complete application, however the duration of the process depends on which Administrative Office is competent for issuing certain single permit (some Administrative Unite offices are preoccupied, therefore it can also take much longer for them to issue the permit).

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The first single permit for residence and work is issued for the duration of the employment contract or the contract concluded for the performance of the work, but not longer than one year. The single permit can be extended. The first single permit for posted workers is issued for a maximum period of one year. In the case of performing services that have special importance for Slovenia, the single permit can be issued for a longer period. The first single permit for persons who are transferred within companies is issued for the period of transfer, but no longer than one year. In certain cases stipulated in the Foreigners Act, the single permit can be extended.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

A permanent residence permit can only be granted after five years of continuous legal stay in the Republic of Slovenia (see question 12.1).

8.9 What are the main government fees associated with this type of visa?

The visa procedure fee for A- and C-type visas (airport transit visa, short-stay visa) is 60 EUR. Diplomatic missions and consular posts of the Republic of Slovenia may also accept the fee in the counter-value of other convertible currencies used in the receiving country. The fee is the same for both types of visas at all diplomatic missions and consular posts of Schengen States. A different visa fee amount may be fixed by international agreement.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main category used by employers who wish to obtain work permits for new hires is a single permit for residence and work, which enables an alien to enter, reside and work in the Republic of Slovenia and is issued by the Administrative Unit office with the consent of the Employment Service. The consents of the

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Employment Service differs considering the purpose of issuing a single permit. The first single permit is issued for a maximum period of one year and can be extended.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, the consent of the Employment Service to a single permit for residence and work is given only if there are no suitable persons in the records of the Employment Service.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes. The minister responsible for labour can lay down cases in which the employment of aliens is not dependent on the labour market because of the nature of the work involved or because of the special circumstances of the employer or the alien. In such cases, the consent of the Employment Service is not dependent on a labour market test. The minister responsible for labour can also lay down professions for which a labour market test is not necessary. In accordance with the Order determining the occupations in which the employment of aliens is not tied to the labour market, there are currently 12 professions for which the labour market test is not necessary.

9.4 What is the process for employers obtaining a work permit for a new hire?

An alien can only find work or employment in Slovenia if he has previously obtained a single permit for residence and work, unless he is entitled to free access to the labour market. The application for a single permit can be filed by an alien or by the employer. The application is filed with all the necessary documents, including a contract of employment or work. After receiving the application, the Administrative Unit office will require consent of the Employment Service, which shall be given within 15 days. The employer is obligated to register the alien into social insurance schemes (health insurance, pension and disability insurance, parental protection and unemployment insurance). The employer is not obligated to provide accommodation to aliens, however if the employer provides accommodation, he shall ensure compliance with the minimum housing and hygiene standards.

9.5 What is the process for the employee to obtain a visa as a new hire?

Employees from one of the Member States of the EU, EEA or Swiss Confederation do not need a work permit or visa. If a third-country national (all countries except EEA Member States, which include EU member countries and Norway, Iceland and Liechtenstein) wishes to enter the Republic of Slovenia or stay there for tourism, business, personal or other purposes, he is required to obtain a visa at a diplomatic mission or consulate of the Republic of Slovenia abroad prior to entering the Republic of Slovenia. A visa application should be lodged at least 15 calendar days before the intended visit.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

After submitting a complete application, a single permit for residence and work should be granted within 30 days (also see question 8.6). Visas should be processed within 15 calendar days.

9.7 How long are initial visas for new hires granted for and can they be extended?

A short-stay visa (type C) entitles its holder to free movement throughout the entire territory of the EU Member States but is limited to 90 days' stay within 180 days. Visas can be extended.

9.8 Is labour market testing required when the employee extends their residence?

The Employment Service will give consent to the extension of a single permit without labour market testing if an alien will continue to work for the same employer and at the same workplace. In other cases, a labour market test will be required.

9.9 Can employees coming as new hires apply for permanent residence?

A first permit for residence in the Republic of Slovenia may only be issued as a temporary residence permit. The conditions for obtaining a permanent residence permit are listed in the answer to question 12.1.

9.10 What are the main government fees associated with this type of visa?

The fee for issuing a long-stay visa (type D) for the Republic of Slovenia is governed by the Administrative Fees Act and is set at 77 EUR.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

During his stay, an alien must observe the Constitution of the Republic of Slovenia, laws and other regulations in the Republic of Slovenia and comply with measures of competent national authorities.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

For registration or change of temporary or permanent residence, the competent administrative units are responsible. If an alien is accommodated in tourist, catering or accommodation facilities, the host must register his arrival with the police station within 12 hours of his arrival.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

A spouse and unmarried minor children qualify as dependants.

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11.2 Do civil/unmarried or same-sex partners qualify as family members?

A spouse, registered partner or partner with whom the alien resides in a long-term partnership is also considered a family member.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Aliens residing in the Republic of Slovenia on the basis of a permit for temporary residence for family reunification with a Slovene citizen have the right to free access to the Slovenian labour market.

11.4 Do children have access to the labour market?

An employment contract in the Republic of Slovenia can only be concluded by persons who have reached the age of 15. An employment contract concluded with a person who has not reached the age of 15 shall be deemed null and void.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The conditions for obtaining a permanent residence permit are: five years of continuous legal stay in the Republic of Slovenia on the basis of a temporary residence permit; or a certificate attesting to the submission of an application for an extension, or the issue of a renewed temporary residence permit, and that the conditions that apply for the first residence permit have been fulfilled. The application for a permanent residence permit must be submitted by an alien or his legal representative or assignee at the administrative unit in the area of his residence. While the application is being processed, an alien is required to reside in the Republic of Slovenia on the basis of a temporary residence permit.

The condition of five years of continuous legal stay is also fulfilled if, during this period, an alien was not in the Republic of Slovenia and was not issued a temporary residence permit or a certificate attesting to the submission of an application for the extension or renewal of a temporary residence permit, if his absences were shorter than six consecutive months and, if combined, they do not exceed 10 months in a five-year period.

The duration of an alien's stay on the basis of a long-stay visa is considered part of the period of the issue of a permanent residence permit if he applied for a temporary residence permit before the expiry of his visa and was issued a residence permit as a holder of a long-stay visa.

Only half of the duration of an alien's stay on the basis of a temporary residence permit for education and vocational training purposes is considered part of the period of the issue of a permanent residence permit.

Time spent in the Republic of Slovenia on the basis of a temporary residence permit for the purposes of seasonal work, as a posted worker or a daily commuter or as a person under temporary protection is, however, not considered part of the period of the issue of a permanent residence permit.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Permanent residence can only be granted after five years of continuous legal stay in the Republic of Slovenia, as explained in the answer to the question above.

13 Bars to Admission

13.1 What are the main bars to admission for work?

If an alien wishes to work in the Republic of Slovenia, he will need to be in possession of a single permit for residence and work. In order to obtain the permit, an alien will have to possess a valid passport, health insurance covering urgent healthcare services in the Republic of Slovenia as a minimum requirement, sufficient means of subsistence in a monthly amount at least equal to the basic minimum income in the Republic of Slovenia, etc. If an alien does not meet these conditions, he will be unable to work in the Republic of Slovenia. An alien may also not meet the conditions of an employer. Furthermore, failure of the market test can be a problem, or if the annual quota of permits is exceeded.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

When applying for a residence permit, an alien will have to provide the authorities with a police clearance certificate, no older than three months, issued by his country (if the country in question issues it), translated into Slovenian and verified. A residence permit may also be terminated or permanent residence revoked if an alien was convicted of a criminal offence in Slovenia and given an unconditional prison sentence of more than three years.

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Polona speaks English and German, and understands Croatian and Spanish.

ŠAFARINPARTNERJI

Law firm Šafar & Partners, Ltd is a Slovenian boutique law firm providing all types of legal services while specialising in labour and employment law. It was funded by Vesna Šafar, who has over 40 years of experience in labour and employment law both as a judge and as a lawyer.

The highly dedicated team, managed by Martin Šafar, is widely recognised for its work among Slovenian and foreign clients, as well as its peers. Law firm Šafar & Partners, Ltd counsels not only the biggest and most important companies in Slovenia regarding every possible employment law issue, including mergers and acquisitions, but also takes on difficult cases from private clients who need the best representation possible.

Members of the firm, which together with Vesna Šafar are also recognised in the legal guide *Chambers & Partners*, are highly active as legal authors and lecturers at many conferences.

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South Africa

J Fetting Inc.

Jonty Fetting

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Immigration Act 13 of 2002 (as amended) ("Immigration Act"), the associated Immigration Regulations ("Regulations") and other related notices published in the Government Gazette from time to time.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The immigration system is administered and enforced by the Department of Home Affairs ("DHA"), a South African Government Department. Certain of its immigration and administrative functions are performed at the South African Diplomatic Missions around the world and supported by VFS Visa Facilitation Centres ("VAC") in certain countries and across South Africa.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, whilst South Africa is a member state of the South African Development Community ("SADC") and the African Union ("AU"), there is no agreement which facilitates the movement of people into South Africa for employment purposes.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes, subject to nationality. Certain nationalities are subject to a visa waiver for 30 days and others for 90 days and do not require a visa or electronic travel authorisation prior to travel. Certain nationalities are not subject to a visa waiver and always require a visa prior to entering South Africa for business or any other purpose.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

In respect of 30- and 90-day visa exempt/waiver nationals, they may be issued a Visitor's Visa at the Port of Entry upon arrival in the country. The visa is valid for no more than the duration of the visa waiver and it is issued free of charge. Both categories may renew their visa for a period not exceeding three months from within the country, subject to, amongst others, being able to sufficiently justify continued business activities for a lengthy period without conducting work. This requires the submission of a formal visa renewal application at the VAC for consideration by the DHA; it is not an automatic entitlement.

2.3 What activities are business visitors able to undertake?

Neither the Immigration Act nor its regulations provide a definition for a business visit and associated permissible activities. A business visitor is not legally allowed to work, and the Act has a specific definition for work; thus, in this context, it can be deduced that business activities are those which do not constitute work. Work is defined as conducting any activity normally associated with the running of a specific business, being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward, within South Africa. A simplified interpretation for a business visitor is that, as soon as he/she starts actively conducting his/her profession within the country, he/she is deemed to be working. Specific and limited business activities such as, but not limited to, business meetings, attending a conference, seminar, trade show or event as a participant and others which are ancillary to a foreign national's profession might generally be accepted as business activities.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

When a foreign national is only required to conduct short-term specific work in South Africa for a limited period, not exceeding 90 days initially, and he/she does not qualify for any of the three categories of work visa, an employer may defer to Section 11(2) of the Immigration Act to secure permission to conduct work in South Africa on a Visitor's Visa for up to 90 days. Section 11(2) of the Immigration Act is not a visa category in itself – rather, it refers to an endorsement to allow for work on a Visitor's Visa. The foreign national must apply for a Port of Entry Visa on this basis at the South African Mission abroad, prior to travel. Upon arrival and having presented the visa, the Immigration Officer will admit him/her on the Visitor's Visa with the Section 11(2) work authorisation endorsed on it and valid for the duration specified under the visa

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conditions, which will not exceed 90 days. After arrival, he/she may apply to renew the visa for a further maximum period of three months. This requires the submission of a formal visa renewal application at the VAC for consideration by the DHA; it is not an automatic entitlement. No adjustment/change of status or further renewal is permissible from within the country.

2.5 Can business visitors receive short-term training?

As the Immigration Act defines work to include, amongst others, a foreign national conducting activities consistent with being employed or consistent with his/her profession, in most instances, training falls within the ambit of the definition and equates to work. The foreign national then requires a Visitor's Visa with the authorisation to conduct work in terms of Section 11(2) of the Immigration Act.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Generally, our opinion is that, currently, immigration compliance inspections at corporate entities by the DHA in the majority of, but not all, incidences tends to be reactive as opposed to structured, predictable and systematic. Inspections do take place and usually attract significant media attention; however, notably the inspections appear to be triggered by tip-offs or complaints which the DHA receives from aggrieved parties on which it acts. Inspections may also be triggered in instances where applications being submitted by employees of companies contain suspicious statements and give sufficient rise to question the integrity of the sponsoring employer. The DHA has previously indicated that it intends to implement structured random inspections of corporate companies and advised that employers should be familiar with legislative provisions and the duties and obligations placed on them in relation to the employment of foreign nationals.

3.2 What are the rules on the prevention of illegal working?

The Immigration Act places a duty on an employer to make a good-faith effort to ensure that no illegal foreigner is employed by it and to ascertain the status or citizenship of those who it employs. Legally, no person shall employ:

- an illegal foreigner;
- a foreigner whose status does not authorise him or her to be employed by such person; or
- a foreigner on terms, conditions or in a capacity different from those contemplated in the foreigner's status.

A "good-faith effort" is not defined in the Immigration Act; however, an employer should, at the very least, request proof of formal photo identification and, if it is established that the individual is a foreign national, the employer should then seek to establish that person's immigration status and request evidence of such status which must be examined closely to determine potential restrictions.

If an employer employs a foreign national who is an illegal foreigner or whose visa status or visa conditions did not allow him/her to be employed, it will be presumed that the employer knew that this was the case at the time of employment and the burden of proof will be on the employer to prove that it employed the person in good faith and that it made a good-faith effort in the first instance. Stricter compliance is required of any employer who employs more than five employees or who has previously been found guilty of an offence.

If an illegal foreigner is found on any premises where a business is conducted, it is automatically presumed that the foreigner is employed by the person who has control over the premises. It is then the duty of that person to provide sufficient compelling evidence to the contrary.

Employers are legally required to report the termination of the foreign national's employment and/or any breach on the part of the foreign national of his/her visa status/conditions to the DHA. They are also required to keep the undermentioned on record for at least two years after the termination of the foreign national's employment:

- a certified copy of his/her passport bio-data page/s;
- a copy of the relevant visa or other legal authorisation which permits work/employment, permanent residence permit or other status permitting work;
- proof of the capacity/position in which he/she is or was employed; and
- copies of the IRP5 form or certificate of earnings and job description, respectively.

Save for necessary humanitarian assistance, no employer or person shall aid, abet, assist, enable or in any manner help:

- an illegal foreigner; or
- a foreigner in respect of any matter, conduct or transaction which violates his/her status.

When applicable, this includes, amongst others:

- conducting any business or carrying on any profession or occupation in co-operation with him/her; or
- assisting, enabling or in any manner helping him/her to conduct any business or carry on any profession or occupation and doing anything for him/her or on his or her behalf in connection with his or her business, or profession, or occupation.

In any criminal proceedings, it is no defence to aver that the status of the foreign national concerned, or whether he or she was an illegal foreigner, was unknown to the employer if it is proved that the employer ought reasonably to have known the status of the foreigner, or whether he/she was an illegal foreigner.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

An employer that is found guilty of an offence relating to failing to comply with one or more of its duties and obligations will be liable on conviction to a fine or to imprisonment not exceeding five years.

An employer who knowingly employs an illegal foreigner or a foreigner in violation of the conditions of his/her visa status (or any other provision of the Immigration Act) will be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year. If the employer is convicted a second time, the offence is punishable by either imprisonment not exceeding two years or a fine and the third or subsequent conviction by imprisonment not exceeding five years without the option of a fine.

When applicable, the amount of the fine imposed is determined by the Court.

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4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Employers are not required to undertake a specific registration process to enable them to hire foreign nationals.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, employers are legally required to report the termination of the foreign national's employment and/or any breach on the part of the foreign national of his/her visa status/conditions to the DHA. They must also notify the DHA when the foreign national is employed in a different capacity or role (General Work Visa holders) and they must ensure that the foreign national's passport remains valid for the duration of his/her employment or temporary work tenure.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

One of the primary objectives of the Immigration Act is to ensure that policy connection is maintained between foreign nationals working in South Africa and the training of South African citizens – thus the transfer of skills is certainly one of the DHA's desired objectives. In respect of a foreign national who is temporarily transferred to South Africa on an Intra-Company Transfer Work Visa, employers are required to ensure that a plan is developed for the transfer of skills to a South African citizen or permanent resident. This is not a legal requirement in respect of holders of General Work Visas and Critical Skills Work Visas; however, more stringent general requirements might eventually apply across the board in respect of the provisions of the Employment Service Act, which empower the Minister of the Department of Labour to make specific regulations which relate to, amongst others, the preparation of a skills transfer plan by an employer in respect of any position in which a foreign national is employed. However, to date, no such regulation has been promulgated.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

In terms of the provisions of the Immigration Act, there is no related fee or charge; however, in terms of the Skills Development Levies Act, a Skills Development Levy ("SDL") to encourage learning and development in South Africa and to be used to develop and improve skills of employees is payable by qualifying employers who are required to register with the South African Revenue Service. The SDL amount is 1% of the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in relevant schedules applicable to the Income Tax Act. In the case of a private company, it is required to pay the SDL, unless there are reasonable grounds for believing that the total amount of remuneration, as determined, paid or payable by that employer to all its employees during the following 12-month period will not exceed R500,000.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

As noted previously, immigration compliance inspections at corporate entities by the DHA, in the majority of, but not all, cases, tend to be reactive as opposed to structured, predictable and systematic/routine. This may change in time as the DHA applies stricter enforcement.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

There is a list of skills or qualifications deemed to be critical for South Africa in relation to an application for a Critical Skills Visa or Permanent Residence Permit (Extraordinary Skills). The current list was published by notice in the Government Gazette on June 3, 2014 and has remained unchanged to date. This is generally referred to as the "Critical Skills List".

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The Critical Skills List reflects the professions which are, by their critical nature, in short supply within the South African labour market; as these professions are already deemed critical, there is no requirement to prove that there is no South African citizen or permanent resident who is available, i.e. provide evidence of a labour market search. However, there are no specific general exemptions which apply. A foreign national possessing a defined critical skills set must still pursue a formal application for a Critical Skills Work Visa or Permanent Resident Permit, the approval of which is subject to the fulfilment of all legal requirements, rather than an automatic entitlement.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no annual quotas applicable to any of the work visa categories set out in the Immigration Act.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

In terms of the three available work visa categories, namely General Work Visas, Critical Skills Work Visas and Intra-Company Transfer Work Visas, there is no legislated maximum percentage of foreign workers in the employer's work force. However, a corporate entity that is issued a Corporate Visa to facilitate the employment of a predetermined number of foreign nationals must, at the time of application and at any time for the duration of the visa, be in a position to prove that at least 60% of its total staff complement employed in the operations of business are South African citizens or permanent residents employed in various permanent positions. This applies equally to an employer who is the holder of a Business Visa (which is issued to a foreign national to establish or invest in a business in South Africa). Thus, the ratio of foreign nationals employed in the case of Corporate Visa and Business Visa holders may not exceed 40% of the formal staff complement.

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4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

There are no language proficiency requirements set out in the Immigration Act.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, in support of any long-term visa application, a foreign national is required to undergo both a medical and radiological examination. The medical examination constitutes a report by a registered medical practitioner with regard to the foreign national's general state of health, detailing any medical condition from which he/she suffers. The radiological examination constitutes a report by a registered radiologist certifying that the applicant has been examined and that no signs of active pulmonary tuberculosis could be detected. Foreign nationals' resident in or travelling from or through Yellow Fever Endemic countries must be in possession of valid Yellow Fever Vaccinations Certificates.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employers are not required by law to provide medical aid/insurance cover to foreign or local employees; however, South Africa's public health system is currently in a less-than-desirable state – thus, private medical aid is strongly recommended and considered a necessity by most who can afford it. Many employers contract to private medical aid providers and, as part of their employee benefit structure, contribute towards the premiums for their employees. Notwithstanding the poor state of public healthcare in South Africa, whilst foreign nationals resident in South Africa, i.e. work visa holders and permanent residents, are entitled to access the public health care system, it is not completely free. It may be subsidised to a greater or lesser degree depending on their income and certain exceptions might apply.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

This scenario is not expressly provided for in the Immigration Act; however, in our opinion, an employee in possession of a work visa endorsed to allow for employment/an intra-company transfer ("employment") with an employer may be temporarily seconded to a client site to conduct work, provided that he/she is doing so pursuant to his/her primary employment with his/her employer as an inherent requirement of the position which he/she occupies within the company personnel structure. The work must be pursuant to a broader agreement between the client company and the employer and not pursuant to any form of direct contractual agreement between the foreign national and the client company which might be construed as creating an employment relationship. The foreign national must continue to receive his/her remuneration and benefits from his/her employer, as opposed to rendering services and being remunerated by the client company in his/her personal capacity. The foreign national may be issued with a secondment agreement by his/her employer outlining the terms and conditions of his/her temporary secondment; however, it must be clearly noted that he/she is not relinquishing his/her position with the company and that the secondment is of a temporary nature to fulfil a scope of work required by the employer at its client.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

A Critical Skills Work Visa may be issued to a foreign national possessing skills or qualifications determined to be critical for South Africa. The prevailing critical skills list was published on June 3, 2014. In order to make an application in this category, a foreign national will have to prove, by the fulfilment of specific requirements prescribed in the Immigration Regulations, that his/her qualification/s and/or skills and post-qualification experience fall within the parameters of one of the critical skills categories.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

A Business Visa may be issued by the DHA for up to three years at a time to a foreigner intending to establish or invest in, or who has established or invested in, a business in South Africa in which he/she will be employed. In summary, in respect of a first application relating to the establishment of a new business, the foreign national must be in a position to invest a minimum of ZAR5,000,000 in cash, or in cash and a capital contribution which will form part of the intended book value of the business. This must be confirmed by a registered South African Chartered Accountant. The capital contribution may be reduced or waived in respect of certain types of business which are deemed to be in the national interests of South Africa. There are also certain categories of business which are listed as undesirable and in respect of which a Business Visa may not be issued.

The application must be supported by a letter of recommendation from the Department of Trade & Industry ("DTI") regarding the feasibility of the business and the contribution to the national interest of South Africa. This requires a prior submission and assessment by the DTI.

The foreign national must provide an undertaking that at least 60% of the total staff complement to be employed in the operations of the business will be South African citizens or permanent residents employed permanently in various positions and proof of compliance with this undertaking must be submitted within 12 months of issuance of the visa.

Further undertakings regarding registration with various South African statuary bodies including, but not limited to, the South African Revenue Service and the Companies & Intellectual Properties Commission are also required.

The holder of a Business Visa may not conduct work other than work related to the business in respect of which the visa has been issued and must submit proof to the satisfaction of the DHA that he/she has fulfilled the capital contribution requirement within 24 months of the issuance of the visa and within every two years thereafter.

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Similar requirements apply to a foreign national investing in a business which is already established in South Africa; however, considering the business is already established, registered and operational, they will differ slightly.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The Exchange Visa category is split into two sub-categories. The first category provides for the visa to be issued for a foreign national participating in a programme of cultural, economic or social exchange, organised or administered by an organ of state or a learning institution, in conjunction with a learning institution or an organ of a foreign state. The second provides for a foreign national under the age of 25 years to be employed by an employer in South Africa employed for a maximum period of up to 12 months, provided the employer, amongst other requirements, provides specific undertakings. There is no need for any labour market test or minimum qualification requirement, etc. The latter is ideal for internships and career development for a limited period.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

From a corporate immigration perspective, there are no sector specific temporary work visa categories to allow for temporary work.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes, the Intra-Company Transfer Work Visa category.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The foreign company and the South African company must operate in a branch, subsidiary or affiliate relationship. Affiliate means an associate member of a company or organisation.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The Intra-Company Transfer Work Visa ("ICT") category specifically provides for the temporary transfer of a foreign national who is employed abroad by a foreign company operating in a branch, subsidiary or affiliate relationship with a company/business/organisation ("company") in South Africa. This visa category is restricted to a maximum period of four years, is not renewable and only allows the foreign national to work in the role in which he/she was transferred.

The foreign national must be employed by the foreign company for at least six months prior to the date of application for the ICT Work Visa and a copy of his/her employment contract must be included in the application. He/she may not take up direct permanent employment with the South African company under the auspices of his/her ICT Work Visa. The foreign national must maintain his/her employment with the sending company for the duration of the transfer, even if that employment is suspended. The foreign national may be issued with a fixed-term local contract of employment with the South African entity pursuant to his/her assignment; however, his/her employment with the sending entity must not be terminated.

The South African company will need to undertake to ensure that a plan is developed for the transfer of skills to a South African citizen or permanent resident during the period of the transfer and evidence of such a plan must be readily available, as it might be requested by the South African Mission.

Regarding remuneration and benefits, the Immigration Act does not expressly prescribe where or how the foreign national may receive his or her remuneration or benefits during his/her transfer to South Africa; thus he/she may either receive them from the foreign company and/or the South African branch, subsidiary or affiliate company, or a portion from both, for the duration of his/her transfer. Furthermore, there is no legal requirement for the foreign national to maintain any benefits pursuant to his/her employment with the foreign company for the duration of his/her transfer to South Africa, unless compelled to do so in terms of any applicable legislation in that country.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

There is no prior approval required from the DHA by the South African company before proceeding with the ICT Work Visa application. The South African company must provide a supporting letter with the necessary legal undertakings in respect of the foreign national, including undertaking that a plan will be developed for the transfer of skills to a South African citizen(s) or permanent resident. It is general practice for it to also provide evidence of the skills transfer plan for inclusion in the application. The sending company must also provide a supporting letter confirming the transfer of the foreign national, as well as his/her contract of employment with it which must have been in force for no less than six months at the time of application. These documents are provided to the foreign national for inclusion in his/her ICT Work Visa application. Additional personal support documents are required from the foreign national, and, where applicable, his/her family members.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The foreign national gathers all legally required personal supporting documents for inclusion in the application; these include, but are not limited to, a Medical Report, a Radiological Report, Police Clearance Certificates from all countries in which he/she has resided for 12 months or more since his/her 18th birthday, where applicable, Marriage Certificate, Divorce Decree, Death Certificate of late spouse, passport photographs, etc. These are annexed to the required government application for a Temporary Residence Visa, along with all supporting documents from the foreign and South African companies. He/she then proceeds to submit the application to the South African Mission or its appointed Visa Application Centre ("VAC") in his/her country of citizenship or ordinary residence (which includes long-term temporary or permanent

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residence) and pay the required Government fee and, where applicable, VAC fee. A personal appearance is mandatory for the submission of the application. Certain South African Missions insist on retaining the passport and others do not. The passport might, however, be returned by post or courier if the foreign national provides the necessary pre-paid courier/postage envelope. The practices of the South African Missions vary considerably.

Once the work visa is issued, it is endorsed in the foreign national's passport. The work visa constitutes both a work and residence visa. The foreign national may then travel to South Africa immediately. The work visa will become active upon his/her admission to South Africa once the Immigration Officer has affixed an entry stamp.

8.6 How long does the process of obtaining the work permit and initial visa take?

There is no legislated processing/adjudication time for a work visa application. The processing times of the South African Missions vary substantially – some missions take as little as one to two weeks, others take up to four and more weeks, and others in high-volume countries such as India and China can take as long as eight to 12 weeks.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The maximum duration for which the ICT Work Visa may be issued is up to four years; however, if the foreign national is not being transferred for a full four-year period, then it may be issued for any lesser period in line with the intended duration of the transfer. The work visa is not renewable beyond the maximum four-year duration for which it may be issued. If it is issued for less than four years in the first instance, it may be renewed for the remaining period of the four years.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Legally, yes, a foreign national may, subject to the approval and issuance of either a Critical Skills Work Visa, General Work Visa, or Permanent Residence Permit. Unless or until one of the aforementioned statuses is issued to him/her, the foreign national must maintain the validity of, and remain in compliance with, his/her Intra-Company Transfer Work Visa status and the conditions attached to it. In practice however, even although it is provided for in the Immigration Act, the DHA, in terms of its current practices, will not allow the holder of an ICT Work to change his/her status to any other category of visa from within the country. It requires that he/she return abroad and apply for the new visa status. It will also, for example, not recognise time spent on an ICT Work Visa to accrue towards the five-year period to qualify a foreign national to apply for a Permanent Residence Permit in the Direct Residence sub-category based on him/her having held a work visa for the said period, and having received a permanent offer of employment. Due to the apparent conflict between legal provisions and the practices of the DHA, employees wishing to localise should seek professional advice before doing so.

8.9 What are the main government fees associated with this type of visa?

The government application fee is ZAR1,520, the equivalent of which is paid in local currency in the country in which the foreign national is submitting his/her work visa application. In countries were VACs are operational, additional service fees apply.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

There are only two work visa categories which can facilitate a foreign national taking up permanent employment with a South African company – these are the Critical Skills Work Visa ("CSWV") and General Work Visa ("GWV") categories.

A CSWV may be issued to a foreign national possessing skills or qualifications determined to be critical for South Africa. The prevailing critical skills list was published on June 3, 2014. To make an application in this category, a foreign national will need to prove that his/her qualification/s and/or skills and post-qualification experience fall within the parameters of one of the critical skills categories by providing:

1) confirmation, in writing, from the professional body, council or board recognised by the South African Qualifications Authority ("SAQA") or any relevant Government Department confirming his/her skills or qualifications and appropriate post-qualification experience;
2) if required by law, proof of application for a certificate of registration with the professional body, council or board recognised by SAQA; and
3) proof of evaluation of his/her foreign qualifications by SAQA and translated by a sworn translator (if applicable) into one of the official languages of South Africa.

A GWV may be issued to a foreign national who does not qualify for a CSWV; therefore, the point of departure is to determine whether the foreign national qualifies for a CSWV. As a pre-requisite for applying for a GWV, the prospective employer must first approach the South African Department of Labour ("DOL") for a letter confirming that:

- despite a diligent search, they have been unable to find a suitable South African citizen or permanent resident with qualifications or skills and experience equivalent to those of the foreign national;
- the foreign national has qualifications or proven skills and experience in line with the job offer;
- the salary and benefits offered to the foreign national are not inferior to the average salary and benefits of South African citizens and permanent residents occupying the same or similar positions in South Africa; and
- the contract of employment stipulating the conditions of employment signed by both the employer and the foreign national are in line with labour standards in South Africa and made conditional upon the GWV being approved.

Proof of evaluation of the foreign national's qualifications by SAQA and translated by a sworn translator (if applicable) into one of the official languages of South Africa are also recommended as part of GWV application.

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9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

No labour market testing is required in respect of a CSWV application; however, a labour market test is required for a GWV application and proof thereof is included as part of the submission to the DOL.

9.3 Are there any exemptions to carrying out a resident labour market test?

A foreign national, in conjunction with an employer, may apply to the DHA Minister for a waiver to request to be exempted from the requirement to obtain the certificate from the DOL. This requires the submission of a formal waiver request to the DHA for adjudication. If favourably considered, a waiver letter is issued, and the employer is exempted from the requirement (which includes the labour market test).

9.4 What is the process for employers obtaining a work permit for a new hire?

CSWV: The foreign national's foreign qualifications are evaluated by SAQA to determine local equivalency, pursuant to which a Certificate of Evaluation is issued. He/she approaches the relevant SAQA accredited professional body, board or council and obtains written confirmation of his/her qualifications or skills and appropriate post-qualification experience in relation to the critical skills category in which he/she wishes to apply for the work visa. Some professional bodies are voluntary – thus membership is not legally mandatory; however, it is generally necessary to obtain the written confirmation required. Registration with a statutory body, board or council is required by law for certain professions and proof of application for registration or registration, as opposed to written confirmation, is deemed sufficient by the DHA in terms of a current policy Directive it has in place. If the foreign national is required by law to register with any professional body, board or council, then he/she must provide proof of his/her application for registration.

GWV: The foreign national's foreign qualifications are evaluated by SAQA, pursuant to which a Certificate of Evaluation is issued. The prospective South African employer conducts the labour market search and combines evidence thereof with other mandatory requirements in a submission to the DOL. The DOL adjudicates the submission and, in terms of its processes, amongst others, conducts an onsite inspection at the employer's premises to evaluate its compliance to applicable labour legislation. Once the DOL has finalised its evaluation of the submission, it will send a notification to the employer and it will send its full decision directly to the DHA. It will also provide an indication as to whether or not it supports the issuance of the GWV. If not, whilst it is still possible to attempt the application, it is generally futile to do so, as the DHA will almost certainly reject the application. If it is, then the foreign national may apply for the GWV, including the DOL confirmation which is sent directly to the employer, and the receiving South African Mission will retrieve the DOL certificate from the DHA when it adjudicates the application.

9.5 What is the process for the employee to obtain a visa as a new hire?

For both CSWV and GWV applications, in addition to the aforementioned, the foreign national gathers all legally-required personal supporting documents for inclusion in the application; these include, but are not limited to, a Medical Report, a Radiological Report, Police Clearance Certificates from all countries in which he/she has resided for 12 months or more since his/her 18th birthday, where applicable, Marriage Certificate, Divorce Decree, Death Certificate of late spouse, passport photographs, etc. These are annexed to the required government application for a Temporary Residence Visa, along with all supporting documents from the South African employer, where applicable.

He/she then proceeds to submit the application to the South African Mission or its appointed Visa Application Centre ("VAC") in his/her country of citizenship or ordinary residence (which includes long-term temporary or permanent residence) and pay the required Government fee and, where applicable, VAC fee. A personal appearance is mandatory for the submission of the application. Certain South African Missions insist on retaining the passport and others do not. The practices of the South African Missions vary considerably. The passport might, however, be returned by post or courier if the foreign national provides the necessary pre-paid courier/postage envelope.

Once the work visa is issued, it is endorsed in the foreign national's passport. The work visa constitutes both a work and residence visa. The foreign national may then travel to South Africa immediately. The work visa will become active upon his/her admission to South Africa once the Immigration Officer has affixed an entry stamp.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

CSWV: An average lead time of one and a half, to three or more months is required to complete the SAQA qualifications evaluation process and the membership or registration with the professional accredited professional body, board or council and obtaining the written confirmation, where possible. In the case of certain statutory professional bodies, boards or councils, this might take substantially longer.

GWV: The employer should allow for up to one month for it to conduct the labour market search and prepare the DOL submission and for the foreign national's qualifications to be evaluated by SAQA. The DOL takes an average of up to 60+ business days to complete its evaluation of the submission – at times longer. Thus, an overall leave time of three to four or more months should be anticipated.

As with an ICT Work Visa application, there is no legislated processing/adjudication time for a work visa application once is has been submitted to a South African Mission. The processing times of the South African Missions vary substantially; some missions take as little as one to two weeks – others take up to or more than four weeks, and others in high-volume countries such as India and China can take as long as eight to 12 weeks.

9.7 How long are initial visas for new hires granted for and can they be extended?

Both the CSWV and GWV may be issued for a maximum period of five years at a time and they are renewable, subject to meeting renewal application requirements and legislative provisions at the time of renewal, as these might have changed. A renewal application must be submitted less than 60 days prior to the expiry of the work visa.

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9.8 Is labour market testing required when the employee extends their residence?

As with the first GWV application, prior to renewing a GWV, it is necessary for the employer to make another submission to the DOL in order for it to issue a certificate to the DHA confirming that, amongst others, the foreign national continues to be employed in line with labour standards. Whilst the law does not expressly require that a labour market search be conducted again, it is currently a requirement of the DOL.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, foreign nationals may apply for Permanent Residence Permits, if they qualify in one of the available categories.

9.10 What are the main government fees associated with this type of visa?

The government application fee is ZAR1,520, the equivalent of which is paid in local currency in the country in which the foreign national is submitting his/her work visa application. In countries where VACs are operational, additional service fees apply. Additional fees are charged by SAQA and the accredited professional bodies, boards and councils and these vary.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Work visas are issued with conditions denoted on the visa label. The conditions vary, but typically include the name of the employer, the occupation/capacity in which the foreign national is authorised to work/be employed and the period for which the visa is valid. The foreign national is restricted to only working for the employer specified in the occupation/capacity specified for the duration of the visa. He/she has a legal duty to abide by the terms and conditions of the work visa, as any violation of the terms or conditions causes the work visa to expire. He/she is required to depart from South Africa upon the expiry of the visa. It is possible for a foreign national to apply to change the conditions attached to the work visa, subject to meeting relevant application requirements and the approval of the application by the DHA.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, no additional registration requirements apply.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Dependants are limited to spouses and dependent children. Parties to a legal marriage or civil union concluded in terms of the laws of South Africa or a foreign country, a customary union concluded in terms of the South African Recognition of Customary Marriages Act, or a permanent heterosexual or homosexual spousal relationship may be recognised as spouses.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, unmarried same-sex/opposite-sex partners who are parties to a permanent spousal relationship qualify for recognition as spouses, provided that neither party is still party to a legal marriage or any other legally-recognised union/spousal relationship and provided their relationship has existed for at least two years prior to the date of application for the visa.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Spouses and partners of work visa holders do not have an automatic entitlement to pursue employment in South Africa. They may, however, apply for a CSWV or GWV in their own right from within the country, subject to meeting application requirements. Foreign spouses of South African citizens and Permanent Residence Permit holders who do not qualify for either of the afore-mentioned work visas may apply for a Visitor's Visa in terms of Section 11(6) of the Immigration Act to allow them to pursue employment, or self-employment. This is a specific visa sub-category for spouses and allows for a work/employment authorisation based on significantly reduced requirements.

11.4 Do children have access to the labour market?

No, they do not.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

There are 11 categories in which a Permanent Residence Permit ("PRP") may be applied for; however, from a corporate employment perspective, possibly the two most relevant options are as follows:

1) On the basis of the foreign national having held a work visa for a period of five or more years and who has received a permanent offer of employment. This is a direct residence PRP application category which is contemplated in Section 26(a) of the Immigration Act. The work visa holder will be the main applicant and the application does not extend to include immediate family members; they may only apply for their PRPs once the main applicant has been granted the same.
2) On the basis of extraordinary skills or qualifications, which is subject to the foreign national qualifying in one the of the critical skills categories provided for on the Critical Skills List and providing at least five years' post-qualification experience. This constitutes an application on other grounds (as opposed to direct residence), which is contemplated in terms of Section 27(b) of the Immigration Act. The category corresponds with the CSWV category. The application can extend to include the immediate family members of the work visa holder/main applicant.

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Whilst there is a category for a PRP to be issued to a foreign national who has received a permanent offer of employment provided for in Section 27(a) of the Immigration Act, which does not require him/her to have held a work visa for five or more years, applying in this PRP category is, due to legislative provisions referencing a repealed work permit category (Quota Work Permits), in our opinion, currently not viable.

Other categories are available for spouses, children and relatives (within the first step of kinship) of a South African citizen or PRP holder (correlates with the Relative's Visa category), establishing or having established a business in South Africa (correlates with the Business Visa category), retirement (correlates with Retired Persons Visa category), refugee status and based on minimum net worth.

Permanent residence is not an automatic entitlement – rather, a formal application including all legally required supporting documents must be submitted to the DHA at the relevant provincial Visa Application Centre and it can take eight to 12+ months to be adjudicated. Applications for foreign spouses of South African citizens and Permanent Residence Permit holders can take 18 to 24+ months to be adjudicated.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

A foreign national in possession of a CSWV or GWV who qualifies to apply for a PRP may do so directly without having to adjust his/her status. The application may be submitted from within South Africa while he/she is working. He/she must, however, maintain his/her work visa status while the PRP application is being adjudicated, as the submission of the application alone does not afford him/her any relief or provisional entitlement to the benefit of the PRP status (including working beyond the expiry date of his/her work visa), unless and until it is issued to him/her. Once the PRP is issued, subject to approval of the application, it supersedes the foreign national's temporary residence work visa status and he/she can allow it to expire. As noted before, while the Immigration Act does not expressly prohibit the holder of an ICT Work Visa from applying for a PRP, if he/she qualifies, the DHA, in terms of its interpretation of the law and current practices, imposes certain restrictions and does not favour such applications from within South Africa.

13 Bars to Admission

13.1 What are the main bars to admission for work?

There are many challenges in the sphere of South African immigration. Whilst, in principle, the Immigration Act is a robust piece of legislation which, if administered optimally in line with its provisions, would be highly effective in ensuring that companies and the South African economy at large have swift access to the needed valuable contribution of foreign nationals, as well as facilitate much-needed foreign investment, there are a number of administrative challenges which hamper the efficiency of the system.

There are positive aspects to the immigration system within South Africa, as can be seen from the implementation of privately-owned VACs nationwide and in many locations worldwide that accept applications on behalf of the DHA, thus improving the integrity of the application submission and initial administration process and the overall user experience. The DHA is also progressively seeking to improve its use of technology to enhance the functions of immigration control.

Whilst it cannot be disputed that the immigration systems within any country are subject to numerous unscrupulous applications and many other challenges faced by authorities, particularly when there are ever-increasing strong economic push factors from certain countries where hardships are rife, this should not be to the detriment of legitimate applications from highly skills and qualified immigrants, a balance between strong enforcement and a reasonable and fair administration in line with legislative provisions must be struck. Although many applications are successful, a substantial number of legitimate and legally compliant applications for skilled and qualified corporate professionals, including those in professions that are deemed critical to South Africa, are unnecessarily refused without valid legal reasons.

Whilst foreign nationals have the legal right to two appeal or review processes in relation to any administrative decision which materially and adversely affects their rights, these processes can take excessive periods of time, with no guarantee of success and during which foreign nationals and employers are left in a state of limbo. In many instances, those who are present in South Africa are no longer able to work and derive an income and companies and foreign nationals alike are at times eventually forced to abandon the visa/permit application processes and make alternative arrangements.

Many foreign nationals do not have the financial resources to litigate against the DHA and many companies do not wish to litigate against it over concerns of the negative sentiment it might create. Even in those cases where they do intend to do so, the appeal/review internal remedies must have been exhausted first which can take so long that it eventually reaches the point where it is no longer viable to do so.

South Africa is generally viewed as a difficult jurisdiction by companies when it comes to immigration application processes.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

This depends on the nature of the criminal conviction and the sentence imposed by the Court of Law. Any foreign national in respect of whom a warrant is outstanding or a conviction has been secured in South Africa or a foreign country in respect of genocide, terrorism, human smuggling, trafficking in persons, murder, torture, drug-related charges, money laundering or kidnapping is by automatic statutory operation deemed a Prohibited Person and does not qualify for a port of entry visa, admission into South Africa, a visa or a permanent residence permit. However, it is possible to apply to the Director General of the DHA to have a foreign national to be declared not to be a prohibited person, provided a compelling case can be presented. This requires a formal submission to the DHA for consideration, which is entirely discretionary. If the submission is favourably considered, the foreign national will receive a written confirmation and he/she may proceed to apply for the visa.

A foreign national with previous criminal convictions without the option of a fine for conduct which would be an offence in South Africa may be declared an Undesirable Person by the DHA and, once declared as such, he/she will not qualify for a port of entry visa, admission into South Africa, a visa or a permanent residence permit. The emphasis here is that the declaration is discretionary. Should the DHA declare a foreign national undesirable, it is possible for the foreign national to apply to the Minister of the DHA to have the declaration of undesirability waived, provided sufficient good cause can be presented. This also requires a formal submission to the DHA for consideration, which is entirely discretionary. If the submission is favourably considered, the foreign national will receive a written confirmation and he/she may proceed to apply for the visa.

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Jonty Fetting is corporate immigration compliance specialist with a wealth of knowledge and experience in South African immigration legal compliance, advisory and process solutions gained through over 19 years of experience at a high level in the industry. Having commenced his career at Andersen (previously Arthur Andersen) in 1999, he went on to work in Senior Consulting roles within the Tax & Legal Service Lines of KPMG and Deloitte. In 2004, Jonty established his own practice. Jonty is fluent in the language of immigration and compliance in the sphere of corporate immigration. Jonty studied law at the University of South Africa, and he has a proven track record of successful management of large corporate engagements spanning all major industries. He has long-standing relationships with many of the world's largest global immigration law firms and international immigration, relocation and destination service providers serving as their South African immigration partner of choice.

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Spain

Bojorge & Associates

Marla Vanessa Bojorge Zúñiga

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The Organic Law on the rights and freedoms of foreigners in Spain and their social integration and the Regulation, approved by Royal Decree, that develops it.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The authorities that administer the corporate immigration system are the Ministry of Labour, Migration and Social Security.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Spain is part of the European Union that allows freedom of movement among its member countries. Spain has a unilateral agreement on the mobility of young people with: Korea, Japan, Australia, Canada and New Zealand; on Labour Mobility with: Ukraine, Mauritania, the Dominican Republic, Morocco, Ecuador and Colombia; on Cooperation on Immigration with: Guinea Bissau, Niger, Mali, Cape Verde, Guinea Conakry and the Gambia; and on the issue of readmission of persons in an irregular situation with: the Former Yugoslav Republic of Macedonia, Switzerland, Poland, Algeria, France, Mauritania, Guinea Bissau, Italy, Estonia, Lithuania, Latvia, Slovakia, Bulgaria, Romania, Portugal and Morocco. In terms of processing a visa application for a stay at the border, the European Union has signed a Visa Flexibility Agreement covering nationals of the following countries: Albania; Armenia; Azerbaijan; Bosnia and Herzegovina; Cape Verde; the Former Yugoslav Republic of Macedonia; Georgia; Moldova; Montenegro; Serbia; Russia; and Ukraine.

Finally, under recent legislation, the children and grandchildren of Spaniards in Argentina are allowed to enter Spain for 90 days with a job search visa, if they meet the working conditions required by Spain.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Under the general law on foreigners, a business visa can be requested in order to make one or several visits to Spain for the purpose of business meetings, to close a contract, to start negotiations to establish commercial relations, to attend events, fairs, congresses, and in other cases related to the above purposes. Under no circumstances may such a visa be requested in order to undertake professional training, which in Spain would be considered a contract of work.

According to the law of 2013, there is a type of visa in the section of investors and entrepreneurs that allows you to visit Spain for one year to see if the market would be favourable for your business or products. That is, before investing or starting a business, you are allowed to review everything related to your business. You are not obligated to convert your initial visa into a residence permit after the year, you can end it and not continue or, if you will continue with this professional project, and find the market is favourable, then you are allowed to convert the initial one-year visa into a residence and work permit to carry out such investment or company activities.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

It depends on the visa. The maximum period is 360 days.

2.3 What activities are business visitors able to undertake?

Please refer to the answer to question 2.1.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, there are no such special visitor categories.

2.5 Can business visitors receive short-term training?

No. A work permit is required.

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3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

It depends on the type of permit and the geographical area. Yes, the law contemplates revisions without prior notice.

3.2 What are the rules on the prevention of illegal working?

Those contained in the law on foreigners and relating to them, as well as the Penal Code, in addition to the compliance officer of each company.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The hiring of foreign workers without having previously obtained the corresponding residence and work authorisation, will incur an infraction for each of the employed foreign workers, provided that the act does not constitute a criminal offence.

The administrative penalties are a fine from 10,001 to 100,000 euros, or the closure of the establishment from six months to five years, and if the person who has committed the act is in a subcontracted company they will also be responsible, unless they demonstrate due diligence. In the Penal Code, the penalty is imprisonment for three to 18 months or an economic penalty of 12 to 30 months.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

On December 31, 2018, the order that refers to hiring foreign seasonal workers at source was published. This applies to foreign workers who do not reside in Spain for a certain type of seasonal or project work or service, such as the assembly of industrial or electrical plants, the construction of infrastructure, buildings, electricity, telephone, gas or rail networks, the installation and maintenance of production equipment, as well as its commissioning or repairs.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

For cases such as those mentioned in question 4.1, the Administration can check the employer during the entire validity of the permit. The workers are obligated to return to their country of origin once the validity of their permit ends, and to appear before the Embassy or Consulate. The employer must also inform the Competent Authority. For all other cases, the employer is obligated to comply with the Spanish labour regulations regarding the prevention of occupational risks, Social Security, and persons' legal status, to prevent illegal immigration.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No. There are subsidised programs with Social Security for workers to participate in refresher courses in subjects such as risk prevention, etc. In the case of hiring of origin, the employer can train them before they travel to Spain.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Only the monthly payment corresponding to the Social Security fee per employee, if they are subscribed to the Spanish Social Security. If the employee is under a bilateral Social Security agreement with Spain, in this case they would not pay the Spanish Social Security fee for that period of time, but his training or up-skilling would be for the account and cost of the company that hires the foreign worker.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

The check is electronic. They verify if they are up to date on their obligations. There may be some in-person visits from an inspector, but it is not the general practice.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No. There is a list in the employment office of hard-to-cover occupations that, if not covered by a national, can be covered by any nationality.

On the other hand, the 2013 law allows companies to hire highly qualified foreigners without the limit of the Spanish unemployment barrier. In other words, companies can hire a qualified foreigner that is necessary for their company demonstrating their skills.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Please refer to question 4.1; there are some exceptions, as follows:

Individuals exempted from obtaining a work permit:

- Foreign nationals who are technicians or scientists hired by national, regional or local governments or by entities dedicated to the promotion and development of research promoted or controlled primarily by the former.
- Foreign national professors invited or hired by a Spanish university.
- Foreign national teachers and directors of cultural institutions, Deans of other States, or private organisations with recognised expertise which are officially recognised by Spain who are developing cultural programmes.
- Foreign nationals who are duly accredited media correspondents, and are carrying out activities.
- Members of international scientific missions, who carry out research and work in Spain and are authorised by the State.
- Artists entering Spain for specific performances that do not involve any other ongoing activity.

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- Ministers, religious or representations of other churches and denominations, duly registered in the Register of Religious Organisations, as long as their activity is limited strictly to religious functions.
- Foreign nationals who are part of the representation, government and administration of internationally recognised unions, as long as their activity is limited strictly to union functions.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, there are no such annual quotas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are no such restrictions.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

To obtain the visa you must present a health certificate, if the foreigner is in Spain legally and a company hires him. The type of medical certificate to be submitted depends on the position to be held in the company. Sometimes they are just some questions to answer by the Human Resources Department of the company that hires the individual.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Yes. You must have Public Insurance or Private Insurance. Public Insurance does not mean free insurance.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Only the permits obtained under the special law of 2013 cover the national territory, and an employee with a work permit can be moved to a client company. The other types of permits obtained under the general law on foreigners only allow work in the company and territory of a city or Autonomous Community of Spain (e.g. only in Barcelona, Madrid, Valencia and Seville).

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes. There are two assumptions, one in the general law on foreigners called "Transnational" and another in the special law of 2013 called "Highly Qualified".

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes. It is called "Investor" if it is a large amount of money and "Entrepreneur" if the amount to invest depends on the applicant.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, it is called an "intra-company transfer". For internships, the category is exactly that: "internships", and you need a work permit. It is not possible with a business visa.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes, especially in the agricultural area of vineyards and olive-growing.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes. It is called an "intra-company transfer".

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

In our Law there is no definition for a group of companies. The applicant company must demonstrate that the company exists both inside and outside of Spain.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Provide an employment contract, salary and health insurance to the employee, among other details.

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8.4 What is the process for obtaining a work permit for an intra-company group employee?

It is requested by the authorised person electronically.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

It is the same as other types of visas, the only thing that changes is the duration: 10 days instead of one month.

8.6 How long does the process of obtaining the work permit and initial visa take?

The deadline established by law is 20 days, if it takes longer to resolve it is considered to be approved, and 10 days to obtain the visa, although these deadlines are halted if more documentation is requested by the authorities.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The visa is not the work permit. The visa is to enter Spain and may have a limited validity of one or more entries (one month or more than one month). The work permit can have the duration that the company needs. There is no minimum and the maximum is three years.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, this can be done in the jurisdiction of Spain.

8.9 What are the main government fees associated with this type of visa?

The main government fees associated with this type of visa are approximately 72 euros with a possible addition of another 16 euros.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

It depends on the company and the professional category of the employee. It can be "*initial authorisation for work as an independent employee*".

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

If the permit application is through the general law, then the foreigners' office can verify if there is not an unemployed Spaniard who can perform the same job. If the application for the permit is through the 2013 law, it is not necessary to review the unemployment level of the National Market.

9.3 Are there any exemptions to carrying out a resident labour market test?

The cases in which it is necessary to have a work permit and the assumptions of the law of 2013.

9.4 What is the process for employers obtaining a work permit for a new hire?

Submit the application to the immigration authorities where the foreigner will perform his work if it is an assumption of the general law, or present it to the special unit if it is a case of the law of 2013 and in the case of artists.

9.5 What is the process for the employee to obtain a visa as a new hire?

The visa is not the residence permit. The application for a residence permit as a general rule has to be done by the company. Once obtained, the employee should fill the application and provide the documentation required at the Spanish Embassy/Consulate.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

If the request refers to any of the cases of the general law on foreigners, if everything goes well it takes from one to three months to obtain the permit, and one month for the visa. If it is deemed to fall under the law of 2013, it is established that it will take 20 days and then an additional 10 days to issue the visa.

9.7 How long are initial visas for new hires granted for and can they be extended?

The work permit can be for 12 months and can be extended for a similar period.

9.8 Is labour market testing required when the employee extends their residence?

No, it is not required.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, if they meet the requirements.

9.10 What are the main government fees associated with this type of visa?

For the permanent residence permit (21.44 euros). For work permits, depending on the type of application, it can be: 199.82 euros; 399.67 euros; or 71.81 euros.

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10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreigners have the same rights as Spaniards, except that they cannot access the public service.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes. It is mandatory to register with the Police.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The spouse, be it a man or a woman, dependent children that are economically minors, those of legal age who are ill or demonstrate their economic dependence, and ascendants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, they do.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

If your application is through the 2013 law, the spouse or the domestic partner will get work and residency permits.

11.4 Do children have access to the labour market?

The working age in Spain is 16, except in a few cases of underage artists. If dependent children want to work, and are at least 16 years old, and permission has been obtained through the 2013 law, they can do so. If the child is a dependent and is not allowed to work because it is a type of permit that does not allow it, he or she cannot do so. If the permit has been obtained according to the general law and the applicant is a student, they can do the work of a student, which is restricted to a certain amount of hours.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The general requirements are: to obtain any residence permit, and to also not be out of Spain for more than 180 days a year, generally speaking.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, it is possible.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission are staying irregularly within Spanish territory, and having a criminal record, among others.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, it is.

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MB
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Abogado

Marla Bojorge is the owner of Bojorge & Associates, an international corporate and immigration law firm located in Valencia, Spain. The firm specialises in finding the right legal solution for each client's unique circumstances.

Primarily we practice immigration law and assist with Spain visas and travel, but we are diverse in capacity.

1. We assist in proceedings and representation services mainly in Spanish immigration law.
2. We provide businesses, employees, foreign resident citizens and foreign non-resident citizens with legal and consulting services in the areas of visa, immigration and business resources for opportunity.
3 We assist in the purchasing of property in Spain and investment projects.

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Switzerland

Rayan Houdrouge

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources governing immigration law in Switzerland are: the Federal Act on Foreign Nationals and Integration of December 16, 2005 as amended ("**FNIA**"); the Ordinance on Admission, Residence and Gainful Employment of October 24, 2007 as amended ("**OARG**"); the Ordinance on Foreign Nationals and Integration of August 15, 2018 ("**OFNI**"); the Agreement on Free Movement of Persons ("**AFMP**") between the European Union ("**EU**") and Switzerland of June 1, 2002 as amended; the Ordinance on the Agreement on Free Movement of Persons of May 22, 2002 as amended; the European Free Trade Association ("**EFTA**") Convention of January 4, 1960 as amended; the Schengen Agreement of December 12, 2008 as amended; and the General Agreement on Trade in Services, as amended ("**GATS**").

Moreover, the Directives of the State Secretariat for Migration ("**SEM**") are an important source when interpreting Swiss immigration law, even if they are not legally binding.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

In a Federal State such as Switzerland, immigration authorities exist on two levels: the cantonal level; and the federal level.

Each canton determines autonomously its organisation and the administration of its immigration authorities, which thus vary from one canton to another.

For example, in the canton of Geneva, the main competent authorities for immigration are the "*Office Cantonal de la Population et des Migrations*" ("**OCPM**") and the "*Office Cantonal de l'Inspection et des Relations de Travail*" ("**OCIRT**"). The OCPM is the deciding authority for all permit applications not subject to local market testing (see question 9.2), as well as the permits without gainful activity. The OCPM is mainly in charge of filing all the applications, especially those regarding work permits. The OCIRT is competent for employment-related aspects of immigration, such as verifying that local market testing is respected (see question 9.2).

Regarding the canton of Zurich, the "*Migrationsamt des Kantons Zürich*" is the competent authority regarding the immigration aspects strictly related to immigration, such as a foreign national's personal compliance with Swiss immigration law. The "*Amt für Wirtschaft und Arbeit*" is the competent authority to verify the employment-related aspects of immigration, such as local market testing (see question 9.2).

The competent federal authority is the State Secretariat for Migration.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Switzerland is part of the AFMP with the EU. The AFMP gives nationals of Member States the rights to circulate freely, to work and to establish themselves within the other Member States' territories.

Please note, however, that Croatian nationals, despite being part of the EU, are subject to specific restrictions. In particular, the domestic workforce can be given precedence over Croatian nationals (see question 9.2).

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Switzerland does not have a visa waiver programme *per se*. However, and according to the Schengen Agreement, Member States' nationals may freely circulate within the Schengen area without a visa.

Non-Schengen nationals may obtain Schengen visas in order to visit Switzerland for business purposes. That being said, the conditions to grant such Schengen visas depend on the nationality of the applicant.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

A business visitor's stay in the Schengen area (including Switzerland) may not exceed 90 days in any 180-day period.

2.3 What activities are business visitors able to undertake?

According to the SEM, business visitors are permitted to participate in:

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- business meetings;
- scientific, economic, cultural, religious or sporting events;
- professional conferences, seminars or meetings, including invitations of international organisations, NGOs or associations; and/or
- educational or professional meetings without internship such as instruction courses, e.g. technical courses which a Swiss company organises for its own personnel or for its foreign customers in connection with the purchase or supply of technical installations.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Yes, business visitors are authorised to undertake work or provide services for a temporary period (see questions 2.2 and 2.3).

According to the AFMP, the categories hereunder do not need work permits, but can instead benefit from an online registration procedure where companies need only inform the immigration authorities of the employment or secondment by completing an online form ("**90-day online authorisation**") for:

- EU/EFTA nationals ("**EU nationals**") taking up employment, providing services or being seconded to Switzerland for a maximum period of 90 days per civil year; and
- non-EU nationals seconded to Switzerland for a maximum period of 90 days per civil year by EU companies, and provided said non-EU nationals have worked for the concerned EU company at least one year before coming to Switzerland.

2.5 Can business visitors receive short-term training?

As set out in question 2.3, business visitors can receive short-term business training.

According to Article 14 OARG, foreign nationals can stay in Switzerland for a maximum of eight days per calendar year when working for a foreign employer, even though non-EU nationals still require a visa to enter Switzerland. Therefore, short-term training is possible, depending on whether the aforementioned training period is longer than eight days. If so, foreign nationals usually need a work permit to stay in Switzerland.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

No, the Swiss national authorities do not operate a system of compliance inspections. However, the cantonal immigration authorities have inspectors who ensure that foreign nationals working in their canton have the proper immigration status and documents.

3.2 What are the rules on the prevention of illegal working?

The main sources governing illegal working in Switzerland are: the FNIA; the Federal Act on Illegal Work of June 17, 2005 as amended ("**FAIW**"); the OARG; the Federal Act on Employment Services of October 6, 1989 as amended ("**FAES**"); the Federal Act on Posted Workers of October 8, 1999 as amended ("**FAPW**"); and the Federal Labour Act of March 13, 1964 as amended ("**FLA**").

The cantons are responsible for ensuring that the illegal work rules are complied with (Article 4 FAIW).

Employers are especially responsible for declaring their employees for the purposes of social security and unemployment insurance. Employers must also comply with certain aspects of Swiss law such as the minimum wage, holidays, a certain amount of working hours, security, hygiene and health standards and providing a lodging for posted workers (Articles 2 to 4 FAPW).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Employers can incur criminal penalties usually ranging from fines to one-year jail sentences. In more serious cases, jail sentences can reach three years. If jail sentences are ordered, they are combined with a fine (Article 117 FNIA).

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, there is no system that registers employers looking to hire foreign nationals in Switzerland.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

The employer's main obligation is to ensure that the minimum wages and working hours set by the collective labour agreements, Swiss law and the local customs are complied with (Article 1 FAPW).

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, employers who hire foreign nationals do not need to train or up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, there is no such requirement on a federal level (see question 4.3).

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

No, there are no routine inspections of employers in Switzerland. Indeed, Switzerland operates through random inspections and the reporting of potentially illegal situations. The cantonal immigration authorities are tasked with verifying the employers' and the employees' compliance with Swiss law.

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4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, the Swiss immigration authorities do not maintain a list of skilled occupations which may be filled by foreign nationals.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No, there is no recognition that some occupations may be in short supply, nor are there exemptions related to sectors or occupations that might have a supply shortage. That being said, in certain sectors, such as IT, authorities may be more flexible when deciding on the issuance of a work permit.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

The Swiss Federal Council sets yearly quotas for the different kinds of work permits to be issued in favour of non-EU nationals (except for the L-permits for four consecutive months and for the 120-day work permits which are, in principle, not subject to quotas). For the year 2019, these quotas amount to 4,000 for short-duration permits (i.e. L-permits, see question 7.1) and 4,500 for long-term work permits (i.e. B-permits, see question 9.1) (Article 19 OARG).

As a general rule, no yearly quotas apply for the different kinds of work permits to be issued in favour of EU nationals. However, specific quotas are applicable to seconded workers and Croatian nationals. In 2019, with respect to seconded workers, quotas amount to 3,000 for short-term work permits (i.e. L-permits, see question 7.1) and 500 for long-term work permits (i.e. B-permits, see question 9.1); with respect to Croatian nationals, quotas amount to 748 for short-term work permits (i.e. L-permits, see question 7.1) and 78 for long-term work permits (i.e. B-permits, see question 9.1).

In addition, in the event of a "no-deal" Brexit, British citizens would not be subject to the AFMP anymore and the "ordinary regime" would therefore in principle apply to them. This being said, the Swiss government and the British government have agreed to maintain as far as possible the existing rights. In this context, it has been agreed that specific quotas would apply to British citizens for a transitionary period, until future migration arrangements have been clarified. Also, the usual conditions applicable to the "ordinary regime", i.e. the professional qualifications, the economic interests of Switzerland and the labour market testing (see question 9.2) will not be examined, and the Swiss work permit applications will be reviewed by the cantonal immigration authorities only (and not by the SEM).

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No; as a general rule, there are no restrictions on the number of foreign workers an employer may sponsor.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Switzerland's national languages are German, French, Italian and Romansh. Employees are not required to show a national language proficiency.

However, proficiency in a national language can sometimes help to demonstrate that there is no good candidate on the local market (see question 9.2).

In addition, with the revision of the FNIA, foreign employees may be required to demonstrate certain skills of the speaking language of their place of residence upon the renewal of their work permit (A1 oral level of the Common European Framework of Reference for Languages).

Also, the revision of the FNIA has triggered such language skills requirements for foreigners applying for a permanent residence permit (C-permit), which may be applied for after a certain number of years under a B-permit. Under the revised FNIA, foreigners applying to transition from a B-permit to a C-permit will be required to demonstrate higher language skills in the language of their place of residence (A2 oral level and A1 writing level of the Common European Framework of Reference for Languages; see question 12.1).

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No; medical examinations are not required before one's admission into Switzerland.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

As a general rule, people who reside in Switzerland have to take out a Swiss health insurance policy. Regarding foreign employees, they are in principle required to have Swiss health insurance if they benefit from a work permit allowing them to work for more than three months in Switzerland. Foreign employees who are allowed to work for three months or less in Switzerland are usually not required to have Swiss health insurance, provided they have a foreign health insurance policy which would cover health costs in Switzerland.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, once employees benefit from work permits, they may be allowed to be seconded to a client site within or outside Switzerland.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

All non-EU nationals must be highly skilled to obtain work permits in Switzerland. Consequently, there is no specific immigration category for highly skilled non-EU nationals (Article 23 FNIA).

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There is also no such category for EU nationals as they are entitled to work in Switzerland based on the AFMP, except for seconded workers.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

As a general rule, there are no specific work permits based on investment in a particular sector in Switzerland.

However, according to the FNIA, non-EU nationals may apply for self-employed work permits, which are granted if the Swiss authorities can determine that, among other things, the self-employed activity may lead to "substantial investments" in favour of the Swiss economy and that the applicant possesses sufficient financial means to conduct business.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There is no category regarding such non-economic purposes. Regarding short-term work permits, Switzerland delivers the following kinds of permits in order to allow the likes of temporary workers to be employed for a short time in Switzerland:

- L-permit: this is a short-duration permit, the purpose of which is to allow a foreigner to perform a short assignment in Switzerland. The validity of the L-permit is limited to a period of one year but it may be extended for another period of one year. Depending upon the duration of the stay in Switzerland, different sorts of L-permits may be applied for: (a) L-permit for 12 consecutive months; (b) L-permit for four consecutive months; and (c) L-permit for 120 days per 12-month period ("**120-day work permit**").
- 90-day online authorisation: see question 2.4.

Regarding young professionals (trainees), Switzerland has concluded bilateral agreements with various countries, including Canada and the USA, in order to enable trainees to extend their skills through internships in Switzerland. Based on those agreements, work permits can be granted for a maximum of 18 months.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes, according to Article 19 OARG, sector-specific work permits enabling non-EU nationals to perform temporary work can be granted, provided that Swiss employers wish to carry out tasks requiring specific know-how. Categories of specific know-how include art, hotels or construction. Such workers are not subject to the quotas of Article 19 OARG (see question 4.6) and are subject to specific rules which may vary depending on the categories.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

According to the GATS, intra-company transfers of non-EU nationals are possible for executives and senior managers, as well as highly qualified specialists. According to the SEM, the executive and senior managers are the people whose essential task is to manage the company or one of its departments. They only answer to the company's board members or shareholders. In addition, highly-qualified specialists are those who, by their specific knowledge and experience regarding services, research equipment, technical skills or firm management, are indispensable when providing a particular service.

In addition, and according to Article 46 OARG, intra-company transfers of non-EU nationals are possible for executives and senior managers, as well as indispensable specialists. According to the SEM, these executives and senior managers are people with a right to make decisions within the company. In addition, indispensable specialists are highly qualified people in the economy or in research, working for international companies or research institutes.

In principle, there are no such categories for EU nationals as they are entitled to work in Switzerland based on the AFMP, except for seconded workers.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

According to the SEM, a legal entity abroad must have a legal entity or a branch in Switzerland in order to qualify as part of a group of companies.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

According to the GATS, international groups of companies can transfer non-EU nationals to Switzerland for up to four years under the following conditions:

- the employee must be an executive, a senior manager or a highly qualified specialist (see question 8.1);
- the employee must have worked for the group of companies, outside of Switzerland, during at least the whole year preceding the filing of the Swiss work permit application; and
- the general conditions of the FNIA must also be met, in particular, the respecting of quotas and minimum wages.

Alternatively, L- and B-permits can be granted to executives or senior managers and indispensable specialists (see question 8.1) under the following conditions (Article 46 OARG):

- the transfer must serve the economic interests of Switzerland (Article 18 FNIA);
- the employer has filed a request (Article 18 FNIA);
- quotas must be respected (see question 4.6) (Article 20 FNIA);
- the applicable minimum wages set by collective labour agreements, Swiss law or local customs have to be complied with (Article 22 FNIA); and
- employees must have adequate housing (Article 24 FNIA).

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The main advantage of intra-company transfers is that employers are not subject to the local market test condition (see question 9.2).

Regarding EU nationals, the rules set above only apply if they are seconded for more than 90 days to Switzerland.

In the eventuality of a transfer or secondment lasting for fewer than 90 days, EU nationals only need 90-day online authorisations rather than work permits (see question 2.4).

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Once the conditions set out in question 8.3 are fulfilled, employers must file a work permit application with the competent cantonal authority. The application process usually requires that the approval of the cantonal and, for non-EU nationals, the federal authorities be obtained.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Non-EU nationals must fill in the federal application form for a visa and file it with the Swiss authorities' representation of their residence abroad (e.g. an embassy or consulate).

Based on the Schengen Agreement, EU nationals do not need visas to enter Switzerland.

8.6 How long does the process of obtaining the work permit and initial visa take?

The process firstly depends on whether or not the applicant is an EU national. Secondly, the length of the process also depends on the canton from which the work permit emanates.

For EU nationals, the issuance of a work permit usually takes about eight weeks after the work permit application is filed. In addition, EU nationals who are not seconded are in principle able to start working from the moment they have filed their complete work permit application.

The issuance of work permits for non-EU nationals usually takes about 10 to 12 weeks after filing. Moreover, non-EU nationals are not allowed to work until they have received their work permit.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

According to the GATS, international groups of companies can transfer non-EU nationals to Switzerland for up to four years maximum.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

To obtain an "unlimited" B-permit, the process mentioned under question 9.2 must be respected. To obtain a permanent residence permit (C-permit), they are subject to the conditions outlined in question 12.1.

8.9 What are the main government fees associated with this type of visa?

The employer will have to pay a fee of around CHF 800 in order to obtain a long duration work permit (i.e. B-permit) and a fee of around CHF 550 in order to obtain a short duration work permit (i.e. L-permit).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Fundamentally, there are three main types of work permit under Swiss law:

- L-permit: this is a short duration work permit, the purpose of which is to allow a foreigner to perform a short assignment in Switzerland (see question 7.1).
- B-permit: this is a long duration work permit (for a year or more). Unless it is subject to specific conditions, the renewal of the B-permit is usually a formality.
- G-permit: this is the work permit delivered to foreign nationals working in Switzerland and residing abroad (non-EU nationals have to reside near the Swiss border in a foreign country).

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

As a general rule, when employers wish to hire non-EU nationals, they must demonstrate beforehand that there were no suitable candidates on the local market to fill the position.

Employers can prove adequate testing has been conducted by publishing job announcements on specialised websites and by sending the job description to the local authorities which advertise for candidates. Once the local market test has been made, and if no suitable candidate has been found, employers may file a work permit application (Article 21 FNIA).

EU nationals are as a matter of principle not subject to local market testing as they are entitled to work in Switzerland based on the AFMP, except for seconded workers (Article 21 FNIA).

This being said, in certain sectors with a high unemployment rate on a national level (a list of which is published and updated by the Swiss immigration authorities), employers are legally required to proceed to such local market testing even when hiring EU nationals. In this context, the local market testing must be done by registering their job vacancies with the regional unemployment centres; any other type of advertisement for the job vacancy would in this context not be deemed as fulfilling the legal requirement.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, intra-company transfers allow employers to skip the local market test when applying for work permits for non-EU nationals (see question 8.3).

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9.4 What is the process for employers obtaining a work permit for a new hire?

The process for non-EU nationals is more complex and usually takes longer than EU nationals. More importantly, non-EU nationals are not entitled to receive a Swiss work permit. Employers willing to hire non-EU nationals must in principle conduct a local market test, then file a work permit application.

Work permits for non-EU nationals are in principle subject to quotas. The application process requires obtaining approval from cantonal and federal authorities. Upon approval, an entry visa may be issued by the Swiss authorities' representation of the foreign nationals' place of residence abroad.

Usually, EU nationals are entitled to work in Switzerland based on the AFMP, except for seconded workers. As a consequence, EU nationals are usually allowed to start working in Switzerland as soon as all requested documents have been filed with the cantonal immigration authorities.

9.5 What is the process for the employee to obtain a visa as a new hire?

See question 8.5.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 8.6.

9.7 How long are initial visas for new hires granted for and can they be extended?

See question 8.7.

9.8 Is labour market testing required when the employee extends their residence?

No; once the work permit has been granted, employers do not need to prove their inability to find a suitable local candidate in order to be able to renew non-EU nationals' work permits.

9.9 Can employees coming as new hires apply for permanent residence?

No; permanent residence permits are subject to the conditions described in question 12.1 and cannot be granted to new hires.

9.10 What are the main government fees associated with this type of visa?

The employer will have to pay a fee of around CHF 800 in order to obtain a long duration work permit (i.e. B-permit) and a fee of around CHF 550 in order to obtain a short duration work permit (i.e. L-permit).

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

As a matter of principle, L- and B-permits entitle their holders to freely reside and work in Switzerland for a specific period of time.

However, work permits granted to non-EU nationals may be subject to conditions; they may, in particular, be restricted to a specific employer or the achievement of certain targets.

Another example is the case of workers hired under the condition of having to achieve certain objectives or results set at the beginning of their employment contract. In this context, non-EU nationals must meet the conditions linked to the granting of their work permits in order for the immigration authorities to renew them. In addition, the revised FNIA has implemented new language skills requirements upon renewal of a B-permit.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

All work permit holders must announce their arrival to the competent authorities of their place of residence in Switzerland. These authorities vary in each canton.

Moreover, within three months of their arrival in the country, work permit holders must provide the competent cantonal authorities with a criminal history record from their country of origin.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

According to Article 45 FNIA, the spouse as well as minor children (i.e. under the age of 18) are considered to be dependants of a work permit applicant under the following conditions:

- the spouse and the work permit holder live under the same roof;
- the lodging is deemed appropriate; and
- they do not financially depend on social assistance.

According to the AFMP, ascendants of an EU national, i.e. parents or grandparents, can also be considered as dependants if they have been financially supported by their descendant coming to work in Switzerland. Ascendants must also be in a position where they cannot assume the cost of their treatment without impairing the minimal financial amount they need to survive.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

According to the Swiss Civil Code, civil/unmarried partners are not considered as family members. Therefore, they cannot in principle be admitted in Switzerland as part of the family reunification.

In Switzerland, same-sex partnerships are recognised by the law as long as the partnership is valid in the country of celebration.

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Same-sex partners are deemed to have equal rights to those of married persons. As a consequence, same-sex partners have a right to come to Switzerland if their partner was admitted to Switzerland (Article 52 FNIA).

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

According to Articles 26 and 27 OARG, spouses and partners of foreign nationals, whose L-permit is valid for one year or who have a B-permit, have access to the Swiss labour market, under the following conditions:

- the work permit request comes from an employer;
- the working and salary conditions of the employment respect the standards set by Swiss law; and
- the spouse's/partner's personal abilities are taken into account.

Please further note that the validity period of a spouse's or a partner's work permit is limited to that of the main holder.

In addition, the revised FNIA have implemented specific individual requirements in case of a dependant applying for a work/residence permit as part of a family reunion procedure: indeed, in order to be granted a work permit, spouses of the initial work permit holder will have to demonstrate that they have sufficient language skills in the language of their place of residence (A1 oral level of the European Common Framework of Reference for Languages or registration to a language course with the equivalent target).

11.4 Do children have access to the labour market?

According to Articles 46 FNIA, 26 and 27 OARG, foreign children are allowed to work under the same conditions as the work permit holder's spouse or partner (see question 11.3).

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

In order to obtain a C-permit in Switzerland, the applicant must comply with the rules set by Article 34 FNIA:

- the applicant must have lived in Switzerland for a minimum of 10 years, including the last five years, without interruption, with a valid B-permit; unless
- the applicant is a national from certain countries (such as Canada, Great Britain, USA, etc.). In this case, the applicant will only be required to have lived in Switzerland for a minimum of five years without interruption with a valid B-permit;
- the applicant has mastered the place of residence's national language to a certain level (A2 oral level and A1 writing level of the European Common Framework of Reference for Languages); and
- there is no cause for any kind of revocation according to Article 62 FNIA (see questions 13.1 and 13.2).

That being said, and according to Article 34 FNIA, non-EU nationals can obtain an anticipated C-permit, provided that:

- the applicant has lived for five years uninterrupted with a valid B-permit in Switzerland;
- the applicant has adapted him/herself to the Swiss way of life (e.g. by taking part in local events, buying property, sending his/her children to local schools, etc.);
- the applicant has mastered the place of residence's national language to a certain level (B1 in oral and A1 in written); and
- there is no cause for any kind of revocation according to Article 62 FNIA (see questions 13.1 and 13.2).

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

In order to be able to switch from an L- to a B-permit, the employer and the work permit holder must (i) apply for a B-permit, and, thus, (ii) prove that between the moment the applicant came to Switzerland and the expiration of the L-permit, the business requirements have changed to the point where the employer now strongly needs the applicant to stay in Switzerland for an indefinite period of time.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The local market test can be considered as a bar to admission for work (see question 9.2).

Moreover, according to Article 62 FNIA, there are some situations where both EU and non-EU nationals can be barred from being admitted to Switzerland or can have their work permit revoked:

- if a foreign national or his/her legal representative have given false information or hidden important facts during the work permit issuance procedure;
- if a foreign national threatens or endangers the internal or external security of Switzerland or the public order, from inside or outside Switzerland;
- if a foreign national does not comply with the conditions set by a decision to grant a work permit; or
- if a foreign national or one of his/her dependants (see question 11.1) is relying on social assistance support.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Depending on the gravity and the type of the offence, criminal convictions can be a bar to obtaining a work permit or a visa. Foreign nationals who have been condemned to a prison sentence of one year or more can have their work permit revoked (Article 62 FNIA).

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The Employment and Pensions practice also advises clients on obtaining Swiss work permits for foreign nationals, a service underpinned by our firm's tradition of maintaining good contacts with the national and cantonal immigration authorities.

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The immigration law of Ukraine is based on the law 'On legal status of foreign citizens, stateless persons and persons who need additional or temporary protection' (2011) and the law 'On immigration' (2001). Issues related to employment of foreign citizens are included in the law 'On employment of population' (2012).

The aforementioned laws establish basic rules; the detailed procedures are described in a number of regulations issued by the Ukrainian government (Cabinet of Ministers of Ukraine): Regulation of Cabinet of Ministers of Ukraine on the Rules of entrance visa issuing and transit through the territory of Ukraine.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

All the issues related to immigration into Ukraine (including corporate immigration) fall within the responsibility of the State migration service of Ukraine. This State body is responsible for all administrative procedures related to residency matters (local departments consider the temporary and permanent residence cases and refugee statuses, as well as the exercise of control regarding compliance with all requirements in the respective sphere).

The Security service of Ukraine is also empowered to check compliance with the rules for border crossings, compliance with the permitted term of stay in the territory of Ukraine, as well as inspect the documents that were the grounds for issuing the immigration documents.

Employment centres (departments of the Ministry of social politics) are responsible for providing services, such as issuing work permits that allow foreign citizens to work in Ukraine.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Currently, Ukraine is not a member of the EU. However, there is the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), that contains provisions to provide the consent and intent of all involved parties to strengthen cooperation, and to facilitate the movement of employees between Ukraine and the European Union and its Member States.

Since December, 1991, Ukraine has been a member of the Community of the Independent States (CIS) which was the foundation for signing bilateral agreements with each Member State. Such bilateral agreements provide a visa waiver regime for the entrance of their citizens.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Ukraine provides such programmes to EU citizens, citizens of CIS countries, the USA, Brazil, Canada, etc. Citizens of such countries are allowed to enter the territory of Ukraine without obtaining a short-term visa. The permitted period of stay may not exceed 90 days within the last 180-day period.

It is worth noting that irrespective of the visa-free entrance, a border officer can request the documents evidencing the purpose of the visit, booked accommodation and medical insurance policy.

For those foreign business visitors, who are required to get an entry visa, the Ukrainian government has established an e-visa (starting from January 1, 2019), that allows them to get a visa without visiting the consulate or embassy. This visa is for 30 days only and available for residents of 52 countries.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Ukraine has quite a liberal entrance policy. EU citizens, the USA, Brazil, and Canada are permitted to enter Ukraine for 90 days (during the 180-day period) without a visa.

A business visa (also referred to as a type C visa) can be issued by the Ukrainian consulates for the citizens of visa regime countries, on the grounds of an official invitation from the Ukrainian legal entities (for some events: conferences; summits; business meetings; and negotiations), universities, and colleges, for 90 days also.

The e-visa gives the right to stay in the territory of Ukraine for a period of 30-days for business, private, medical treatment purposes, or to attend cultural or educational events.

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2.3 What activities are business visitors able to undertake?

Those foreign citizens who enter Ukraine on the grounds of a business visa (type C visa or e-visa) or visa waiver programme can perform any activity that does not lead to receiving payment and involvement in work in Ukraine under contract with a Ukrainian business entity.

Thus, a business visitor can enter Ukraine for business negotiations, signing contracts, inspection of business, market research, surveying investment opportunities, auditing, attending seminars, training sessions and participating in competitions.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Any type of official work irrespective of the form of involvement in the process requires the obtainment of a work permit. According to Ukrainian legislation, there is the following classifications of work permit with respect to the validity term:

- up to six months;
- from six months to one year; or
- from one year to three years.

There is an option for foreign citizens to provide services in Ukraine and get official payments as Private Entrepreneur (also referred to as 'PE'). But registering as a PE does not give any right for a long term stay within the territory of Ukraine.

2.5 Can business visitors receive short-term training?

Training, as well as short-term education, requires neither the foreign citizen nor the inviting party to comply with the specific regulation. Therefore, the foreign citizen is allowed to enter Ukraine without a visa (if the country of citizenship is included in the list of countries with a visa-free regime).

If a visa is required, the organisation that is responsible for holding the event, will have to file the motion (granting letter) to the consulate. This letter will be the evidence for the visit purpose and the ground for the visa issue. At the same time, this official invitation confirms that the holding organisation undertakes the responsibility for compliance with all immigration rules in the territory of Ukraine.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

There are two main authorised State bodies that are under the duty to supervise the compliance of immigration legislation by the employers. The Security Service of Ukraine constantly checks the information on the legal status of foreigners in the territory of Ukraine.

The State Migration Service checks the validity of documents submitted for obtaining residence permits. The inspection of documents can be initiated at any time and if it finds false information, the issued document will be announced as void.

The issues related to the compliance with the regulation in the field of employment are also checked by the State Labour Inspection.

3.2 What are the rules on the prevention of illegal working?

The Labour Code of Ukraine (1971) defines the list of offences in the field of employment. The fines that are imposed in such cases are extremely high. See question 3.3 below.

In addition to the offences in the field of employment of foreign citizens, the State Labour Inspection can inspect all enterprises in the territory of Ukraine and challenge the compliance to general requirements in the field of employment. If the employer fails to meet all the requirements of the procedure of official employment, a fine in the amount of 30 amounts of the national minimum wage rate is imposed (that in 2019 is 125,190.00 UAH).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

The Labour Code of Ukraine (1971) prescribes the following penalties that can be applied to an employer who fails to comply with all the requirements of the rules for the employment of foreign citizens.

If the employer fails to obtain a work permit, a fine in the amount of 83,460.00 UAH (20 amounts of the national minimum wage's rate) per one illegally employed foreign citizen is imposed.

If the State Labour Inspection finds out that the employer involves the foreign citizen in work on terms that differ from those indicated in the work permit, it can fine the employer for 41,730.00 UAH (10 amounts of national minimum wage rate).

It is worth noting that the size of the fine imposed on the employer, depends directly on the size of the national minimum wage's rate that is increased from time to time.

Moreover, the Code on administrative offences of Ukraine (1984) establishes that if the employer breaches the procedure of the foreign citizen's employment, the State migration service office is entitled to impose the fine of the amount of 1,700.00–3,400.00 UAH on the CEO.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

All employers in Ukraine have the equal right to involve foreign citizens in their business activity. Private entrepreneurs can also employ non-residents of Ukraine. The requirements are equal for both legal entities and private entrepreneurs: they are totally free to choose their employees. However, at the same time, there is a strict wage requirement – a wage of the foreign employee must be at least 10 amounts of the national minimum wage rate (that in 2019 is 41,730.00 UAH).

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

The Ukrainian government has chosen the model with which to control compliance to the rules through concentrating the burden on

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the inviting person (employer, organisation of the conference, etc.) the State establishes administrative offences in this sphere.

All employers who involve foreigner citizens in their business undertake the following obligations:

- Conclude the employment contract within the 90 days' term starting from the moment of obtaining the work and submit the copy of such contract to the local employment centres. Failure to comply with this requirement constitutes an unconditional ground to revoke the issued work permit.
- Timely submit the employment report to the local tax authority (within the following timeframe: after the order of the appointment of the certain position was issued and before the employee starts to work).
- Keep the documents – the employer has to keep the documents that grants him with the right to use the work of foreign citizens, the employment contract.

The employer is also responsible to take care of duly registering the residential address in Ukraine and submiting the notifications to the local migration office department in case of a change in the foreign employee's information.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

All issues related to the relations between employer and employee are solved by the mutual consent of the parties to such relations. There are no direct and mandatory obligations of the employer to provide training or hire local employees, as well as no penalty for the failure to do so.

At the same time, there is an obligation for legal entities to employ persons with disabilities or persons aged 55–65 years if the number of staff is eight or more people. Otherwise the fine will be imposed.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

The law of Ukraine 'On employment of population' establishes the fees paid by the employer for the work permit issued, as well as for the extension of it.

The amount of the fee depends on the validity period of the work permit that is applied for. The money is transferred to the special account of the local department of the State employment centre, that is used to carry out the training and education of the unemployed.

In 2019 the State fee rates are the following:

- for work permits valid for the period one year to three years – 11,526.00 UAH;
- for work permits valid for the period six months to one year – 7,684.00 UAH; and
- for work permits valid for the period up to six months – 3,842.00 UAH.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

The State Migration Service, jointly with the National police and Security Service of Ukraine, are entitled to exercise the inspections of the employers, who involve foreign employees and challenge the correct commitment and the compliance with the legislation of Ukraine.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Since 2017, there are no specific requirements or limits for the types of activities foreign citizens can perform in Ukraine.

According to the law of Ukraine 'On employment of population' if the application for the work permit is filed on specific grounds, such as the candidate is a postgraduate from one of top 100 world ranking universities the respective proof shall be summitted (copy of diploma with apostille), etc.

At the same time, irrespective of the position the foreign employee holds, his salary may not be less than 10 times the national minimum wage rate (in 2019 this is 41,730.00 UAH), except for some cases defined by law (see question 9.2).

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The Ukrainian legislation notes that in case there is the need to involve some foreign professionals to perform certain cultural, educational, athletic, and volunteer programmes, it is possible to apply directly for a temporary residency permit in Ukraine. In this case, the responsible State authority has to provide the motion to the State migration service of Ukraine. The work permission is not required in such cases.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no direct limits (quotas) for available work permits. It is the same with visas: Ukraine issues visas for all foreign citizens who comply with all the requirements of the procedure.

It is worth noting that there is a limit to the number of immigration permits – it is the document which is necessary for foreign citizens who are applying for a permanent residence permit. This limit is established by the decision of the Cabinet of Ministers of Ukraine.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Ukrainian legislation contains no limitations in any form regarding the staff. The State employment centre does not check and request such information. The employer must obey the wage requirement, as explained in question 4.6.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, Ukrainian legislation does not provide minimum language standards. Whilst an employer can specify certain language knowledge for the candidates, it is not a requirement for obtaining neither a work permit, nor a residency permit in Ukraine.

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4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No. Since 2017 the medical examination was excluded from the list of procedures and documents necessary for the admission to the work permit issue procedure.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Generally, medical insurance is not required for the work permit process. Anyhow, the social fee must be paid during payroll, which grants the worker social benefits like medical days off, vacations, etc.

At the same time, two types of medical insurances are checked during the procedure of the foreign worker's documentation (which is not obligatory if the employee stays in Ukraine less than 90 days in the 180-day period).

The first one will be checked at the consulate when the employee will apply for a D type visa, required for a temporary residence permit to be issued. Here, travel insurance is required for 30,000.00 EUR coverage for 90 days.

The second one covers emergency medical services and first aid in Ukraine, and will be required to submit to the Migration Office when applying for the residence permit.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

There is no specific regulation of such cases if the employee is a foreigner. The general rule defines, that in case the employee with the work permit is involved in the work of another company (client) as a seconded employee, there are no new labour relations established. Thus, it is not required to obtain the new work permit.

Such an option should be stipulated in the employment contract (the copy of which will be kept by the local employment centre).

Moreover, the employer in such cases can be recognised as an intermediary. According to the legislation of Ukraine, intermediaries in the employment sphere should be registered in the Ministry of social politics of Ukraine.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

See question 4.7.

This category of foreign citizens apply for the same type D (immigration) visa to the Ukrainian consulate on the ground of the motion from the authorised State body responsible to carry out the respective cultural, educational and athletic programme. After getting the D visa, a foreign citizen can apply for the temporary residence permit. The work permission is not required for such cases.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

According to Ukraine law, 'On legal status of foreign citizens, Stateless persons and persons who need additional or temporary protection' (2011) it is possible to define three categories of investors. The criterion is the size of the investment:

- investment in the amount less than 100,000.00 USD – in this case the foreign citizen can apply for the extended (three-years) residence permit for managing position in the company in which he's invested;
- investment in the amount of 100,000.00 USD and more – in this case the foreign investor is allowed to apply for permanent residency in Ukraine and work without permission; and
- investment in the amount of 100,000.00 EUR – the investor is allowed to apply for a two-year temporary residence permit directly without obtaining a work permit.

Setting up a subsidiary (which is called a representative office under Ukrainian legislation) of a foreign company gives the right to employ foreign citizens directly, without a prior work permit being obtained. Representative office registration takes at least 60 business days and is performed by the Ministry of economic development and trade of Ukraine. The state fee for such registration is 2,500.00 USD.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Internship, exchange and career development are not recognised as a separate ground for obtaining a work permit. Therefore, it is required to sign a contract for international cooperation between the Ukrainian foreign entity where it is providing the permission and procedure for training of personnel. In this case, it will be required to obtain a work permit in Ukraine prior to actually coming to Ukraine.

If the visit is not related to employment and is up to 90 days, it can be deemed as tourism or business travel, and it will not be necessary to obtain the work permit.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Ukrainian legislation does not force sector-specific temporary work permits. At the same time, a work permit can be issued within the general procedure for any time frame, even one month or less.

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8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

According to Ukrainian legislation only officially registered representative offices of foreign companies in Ukraine can involve foreign citizens in its work without obtaining work permits.

It is worth noting that the official representative office is allowed to involve a limited number of employees which is indicated in the registration certificate. This number is decided by the mother company in the application form for the registration of the representative office in Ukraine and the Representative office is not deemed as a separate and independent legal entity in Ukraine.

If the Ukrainian registered company (member of the international group) wants to involve seconded employees, it is also necessary to obtain a work permit for them under the general procedure.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

As the Ukrainian legislation does not provide any specific regulation for employees of a group or company, there are no specific conditions.

But if the foreign legal entity decides to establish a representative office in Ukraine, the full registration procedure must be completed before starting employing foreign citizens.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The Ukrainian registered legal entities (members of the international group) can hire seconded employees according to the general procedure.

If the foreign citizen arrives to work for a Ukrainian company as a seconded employee, the Ukrainian legal entity files the following set of documents to the local employment centre: application form; photos of the foreign citizen; official translation of passport; copy of the employment contract draft with the Ukrainian employer; and a copy of the contract between the Ukrainian company and the foreign company that stipulates the right to involve the foreign citizens, employed by the foreign company as seconded employees. The local employment centre has seven days to consider the issue and agree to the respective decision. The Ukrainian company receives the official notification on the decision, and if it is positive, shall have 10 business days to pay the State fee for the work permit issue. As soon as the local employment centre receives the notification about successful payment, the representative of the Ukrainian company is allowed to collect the work permit.

One additional document that is required, is a valid contract between the Ukrainian employers and the foreign company (member of the group).

8.4 What is the process for obtaining a work permit for an intra-company group employee?

See questions 8.2 and 8.3 above.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

If the Ukrainian employer successfully complies with the requirements of the procedure for getting a work permit (see questions 8.2 and 8.3 above) the foreign citizen seconded employee has the right to apply for a Type D visa to the Ukrainian consulate. The Ukrainian employer is required to provide the copy of the work permit verified by a notary in Ukraine and a granting letter. The valid work permit is the ground for the issue of the long term Type D visa with indication of the subcategory thereof: purpose 'employment'.

Type D Visa, work permit, medical insurance and employers application are the grounds for temporary residence permit application, which is linked to the work permission validity term. The temporary residence permit is the ground for legal stay in Ukraine for more than 90 days.

8.6 How long does the process of obtaining the work permit and initial visa take?

Generally, the process for obtaining a work permit takes up to two weeks.

The local employment centres have the right to consider the work permit applications within seven business days as of the moment of the documents' receipt.

If the authorised person finds any mistake in the document and/or lack of documents, the authorised person has the right to pause the proceeding and send the respective notion to the applicant with the demand to correct the mistake, and complete the set of documents. The employee has seven business days to fulfil the request of the employment centre. As soon as the employer submits the corrected document to the employment centre, the initial term for consideration starts to continue.

By the end of this term, the employment centre takes the decision either on approval on or decline to issue the work permit, and this information is sent directly to the applicant. From this moment, the employer has 10 business days to pay the State fee for the work permit to be issued. On the following day, it will be possible to collect the work permit. Generally, if there are no complications or mistakes in the documents, the whole process does not take more than 10 business days.

According to the regulation on the procedure of visa issuing, the consulates have the right to consider the case on the Type D visa issue for up to 15 days. If there are grounds, and respective motion from the applicant, the consulate has the right to reduce the consideration term. But in such case the consulate fee, paid for visa issue shall be paid in a double amount.

The temporary residence permit application process takes 15 business days.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The temporary residence permit, issued on the ground of the work permission and visa is valid for the work permit validity term.

Both work permission and temporary residence permits can be extended if the employee continues to work in the company.

There is no limitation on number of possible extensions and total length of stay under a temporary residence permit.

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8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, the immigration legislation of Ukraine contains the exhaustive list of grounds that can lead to permanent residency in Ukraine. And there is no employment category in it. Moreover, the foreign citizens who hold a permanent residency in Ukraine enjoy the right to work in Ukraine without a work permit.

8.9 What are the main government fees associated with this type of visa?

The consulate fee for a Type D visa issue is 65.00 USD. At the same time, there are a number of exceptions to that, based on the reciprocity principle.

The exact price of the visa fee depends on the applicant's citizenship or on the reciprocity principle. For example, the citizens of Great Britain will have to pay a standard 733.00 USD consulate fee considering the Type D visa application.

The State fee for the temporary residence permit issuing is 550.00 UAH only.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

There is an exhaustive list of grounds for obtaining a work permit in Ukraine. This affects the documents necessary for the process. The types of foreign employees are divided in the following way:

- ordinary foreign employees;
- foreign employees – graduates from the universities that are included in the top 100 world universities;
- foreign employees in the artistic professions;
- seconded foreign employees;
- intercorporate cessionaries;
- refugees;
- foreign IT-specialists; and
- founders/shareholders and/or ultimate beneficiary owners of Ukrainian companies.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The rules forcing the Ukrainian employees to use its best efforts to employ Ukrainian citizens first were cancelled in 2017. Therefore, currently, all employers in Ukraine enjoy the right to the free choice of employees. At the same time, 10 amounts of minimal wage (41,730.00 UAH) established must be paid to a foreign citizen, except for some cases:

- foreign employees – graduates from universities that are included in the top 100 world universities;
- foreign employees in artistic professions;
- seconded foreign employees;
- intracorporate cessions;
- refugees;
- foreign IT-specialists; and
- founders/shareholders and/or ultimate beneficiary owners of Ukrainian companies.

9.3 Are there any exemptions to carrying out a resident labour market test?

As mentioned in question 9.2 above, there is no such requirement, thus there is no exception to the general rule.

9.4 What is the process for employers obtaining a work permit for a new hire?

The process is general and is applied to all applicants who seek a work permit in Ukraine.

All the work is carried out by the employer itself: filling in all the documents; application; payment; and collecting the permit are in the competence of the employer.

The following documents are required: application form; photos of the foreign citizen; translation of the employee passport into Ukrainian; and the draft of the employment contract.

The additional documents required depends on the category of the employee: if he is a university graduate, included in the top 100 of world universities, he will be required to submit a translated copy of the diploma; if the employee is a shareholder to the employing company, no additional documents are required (such data is included in free access sources).

The documents are submitted to the local centre of administrative services.

9.5 What is the process for the employee to obtain a visa as a new hire?

Those employees who were granted with the work permit in Ukraine have the right to apply for a long-term visa (Type D visa) and then for the temporary residence permit. The temporary residence permit is the ground for legal stay in Ukraine for more than 90 days.

It is necessary to apply to the Ukrainian consulate for a Type D visa. The application form is filed online, where the applicant chooses the most convenient time and date of personal visit. Soon it is expected that foreign citizens will be allowed to apply for this visa type inside Ukraine, without leaving its territory.

The employee will be asked to submit the following documents:

- application form;
- passport;
- two photos (35 × 45 mm);
- travel medical insurance (which covers 30,000.00 EUR);
- notarised copy of the work permit; and
- bank reference evidencing the amount of money, on the bank account, is enough to cover the stay in Ukraine. In case the employer is the sponsor he is obliged to provide the respective information.

An employee submits the following documents to the Immigration service office to obtain a temporary residence permit:

- passport with valid Type D visa;
- work permission;
- medical insurance; and
- employers application.

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9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 8.6 above.

9.7 How long are initial visas for new hires granted for and can they be extended?

The temporary residence permit, issued on the grounds of the work permission and visa is valid for the work permit validity term.

Both work permission and a temporary residence permit can be extended if the employee continues to work for the company.

9.8 Is labour market testing required when the employee extends their residence?

No, the extension of the labour contract with the employer and the applications for the work permit and temporary residence permit submitted in time is enough.

9.9 Can employees coming as new hires apply for permanent residence?

The law of Ukraine "On immigration" (2001) contains the provisions on that which the professional, who qualifies in the field in which Ukraine has extremely high-need, can apply for an immigration permit. The list of such category of professionals must be adopted by the Cabinet of Ministers of Ukraine. Currently, there is no such document, as well as no quotes for the number of immigration permits that can be granted to such persons.

9.10 What are the main government fees associated with this type of visa?

The State fees for the permanent residence application are minimal, and in total do not exceed 1000.00 UAH.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The holders of temporary residence permits are issued such permits on the grounds that they are allowed to stay legally on the territory of Ukraine without any limitations within the validity term of the document. The validity term (as well as permitted term of stay) is directly connected to the validity term of the work permit. Therefore, if the work permit is revoked (by the employer) or expired, the residency permit expires too.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

According to the law of Ukraine 'On freedom of movement and free choice of place of residence in Ukraine' (2003) all private persons have to register their residential address at the municipal authority (the applications are submitted to the local centres of administrative services). At the same time, only the holders of a temporary/permanent residence permit, refugee's certificate and references of the person who applied for the protection can perform such procedure. Therefore, those who have just obtained the work permit and have no residence document do not have to complete this process.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Spouses (official wives and husbands), children, parents, grandparents and grandchildren qualify as dependants of the foreign citizen, who works in Ukraine and holds a relevant temporary residence permit.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The legislation of Ukraine contains the list of persons who are recognised as family members. This list includes: spouses, minor children and parents. Other persons can be treated as family members with respect to the domicile legislation.

Despite the fact that the Family Code of Ukraine does not recognise same-sex spouses, our immigration legislation as well as the law "On international private law" contains reference about what marriage between foreign citizens is concluded in accordance with the domicile law, and our State authorities shall recognise it.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

All foreign citizens irrespective of their legal status have equal access to the labour market and have to comply with the same requirements. Dependency is the ground for obtaining temporary/permanent residency, but does not create preferences in the employment issues.

11.4 Do children have access to the labour market?

The Labour Code of Ukraine (1971) establishes that it is allowed to use the work of a minor who is aged 16.

If one of the parents provides their approval for the work of their child it is possible to involve minors aged 15.

The child, aged 14, can be involved in carrying out easy work that is not harmful to their health, and will not influence the education process, to be taken during time free from classes (holiday period, etc.) with the obtaining of approval (permission) from one parent.

There are special guarantees for such category of employees, such as the duration of the working day, the number of vacation days and a limit to the types of work that can be performed by the minor.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Ukrainian legislation sets out the grounds for issuing a permanent (lifetime) residence permit. They include the following:

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- marriage with a citizen of Ukraine for more than two years;
- being a parent of a citizen of Ukraine;
- being a child of a citizen of Ukraine; and
- being born in the territory of Ukraine.

The aforementioned grounds are unconditional. But Ukrainian legislation also recognises some grounds for issuing an immigration permit (and, therefore, a permanent residence permit) within the annual government-established quotas. These quotas are used in the following cases:

- investors, who invest at least 100,000.00 USD in the Ukrainian economy are permitted to apply for an immigration permit and thus receive a permanent residence permit;
- scientists and cultural activists, in whose immigration Ukraine is interested;
- brothers, sisters, grandparents or grandchildren of Ukrainian citizens;
- parents, spouses, and minors of immigrants to Ukraine; and
- highly qualified specialists in professions for which Ukraine has the need.

Additionally, Ukraine currently supports repatriation processes and provides possibilities for acquiring special status for those foreigners who were citizens of Ukraine in the past.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Official employment in Ukraine (on the basis of a work permit) is the ground for obtaining a temporary residence permit. The list of grounds for permanent residency in Ukraine are exclusive (see question 12.1 above) and are not related to the employment.

13 Bars to Admission

13.1 What are the main bars to admission for work?

Generally, any employee has to comply with the following requirements:

- Age.
- Capacity.

Additionally, depending on the type of work performed the following requirements can defined:

- Health status.
- Clear criminal records.
- Education.
- Citizenship.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

According to the current legislation of Ukraine, it is not required to provide any reference to crimes/offences committed at the moment of application for the work permit.

When the foreigner applies for a visa, the State security service checks this information, and in case it has reason to believe, due to the crime/offence committed in the past, the foreign citizen can damage the security of interests of Ukraine, it may reject in granting a Type D visa, which is obligatory for obtaining a temporary residence permit.

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EXPATPRO
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EXPATPRO law firm is a Kyiv-based boutique law firm. The main focus of the company is to provide high-level individual legal services to foreign private individuals and businesses who are considering the opportunity of relocation to Ukraine.

Our team provides professional legal solutions on how to move to, and reside in, Ukraine and start-up there in the simplest way in accordance with the applicable Ukrainian legislation. We strive for close communication and cooperation with our clients and continue to support them in their daily business activities and as their needs in Ukraine evolve. Whether you are considering relocating to Ukraine, starting a business there, or simply seeking consultation on a work permit, visa, and residency issues, or have other expat-related legal needs, you can count on EXPATPRO.

In addition to immigration and corporate law, EXPATPRO's practice areas include Ukrainian employment law, real estate due diligence and transactions, and dispute resolution and litigation.

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United Arab Emirates

PricewaterhouseCoopers Legal Middle East LLP

Anir Chatterji

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

In the United Arab Emirates (UAE), immigration law relating to foreign nationals is governed by the Ministry of Interior. Since the UAE is a federation of seven Emirates, each Emirate has its own immigration department known as the General Directorate of Residency and Foreigners Affairs (GDRFA) which is responsible for the processing and administering of immigration regulations for foreign nationals residing and working in each Emirate. The labour law is loosely based on the International Labour Organisation's model.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system in the UAE is predominantly administered by two government authorities. Employment and labour law is administered by the Ministry of Human Resources and Emiratisation (MOHRE) formerly known as the Ministry of Labour and Social Affairs, and immigration law is administered by the General Directorate of Residency and Foreigners Affairs (GDRFA) through the Ministry of Interior.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

The UAE is a part of the Gulf Cooperation Council (GCC) which comprises the Gulf states, namely: Bahrain; Kuwait; Oman; Saudi Arabia; and Qatar. Nationals of the Gulf states enjoy free movement between each member country (with the exception of Qatar for the time being). Nationals of these countries are free to live and work in any of the GCC Member States without the need to obtain a valid residence permit, although formal work authorisation (including an employment contract with a local entity) and procurement of an Emirates ID card is still necessary in most cases.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes, business visitors can enter the UAE with a visa upon arrival based on the visa waiver programme for passport holders and citizens of the following eligible countries: Andorra; Argentina; Australia; Austria; Belgium; Brazil; Brunei; Bulgaria; Canada; Chile; the People's Republic of China; Croatia; Cyprus; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hong Kong; Hungary; Iceland; India (provided they have a valid US visa/green card for a duration of six months or longer); Ireland; Italy; Japan; Kazakhstan; Latvia; Liechtenstein; Lithuania; Luxembourg; Malaysia; Malta; Mauritius; Monaco; the Netherlands; New Zealand; Norway; Poland; Portugal; Romania; the Russian Federation; San Marino; Seychelles; Singapore; Slovakia; Slovenia; South Korea; Spain; Sweden; Switzerland; Ukraine; the United Kingdom; the United States; Uruguay; and the Vatican City.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Passport holders of the following countries: Austria; Belgium; Brazil; Bulgaria; Croatia; Cyprus; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; the Netherlands; Norway; Poland; Portugal; Romania; Seychelles; Slovakia; Slovenia; South Korea; Spain; Sweden; Switzerland; and Uruguay can enter the UAE for up to a period of 90 days in any 180-day period. It may be possible, in some instances, to obtain a sponsored visit visa if the foreign national exhausts his/her 90-day visa upon arrival privileges.

Citizens and passport holders of the following countries: Andorra; Argentina; Australia; Brunei; Canada; Chile; the People's Republic of China; Hong Kong; Ireland; Japan; Kazakhstan; Malaysia; Mauritius; Monaco; New Zealand; the Russian Federation; San Marino; Singapore; Ukraine; the United Kingdom; the United States; and the Vatican City are eligible for a multiple entry 30-day visa, depending on the nationality (extendable up to 60 days in-country), upon arrival in the UAE.

Indian passport holders who have a valid US green-card (or visa), a UK or EU visa are eligible for a 14-day visa on arrival extendable once, in the country, for an additional 14 days.

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2.3 What activities are business visitors able to undertake?

Business visitors are not permitted to 'engage' in work, and there is no express definition in UAE law describing the specific activities that would constitute 'engaging in work'. The main permissible activities that can be undertaken by a business visitor on arrival and that are not considered as 'engaging in work' are as follows:

- attending exhibitions or conferences;
- attending business meetings/seminars;
- conducting or attending classroom training; and
- giving a presentation or making sales calls to potential UAE clients, provided that the foreign national represents a commercial entity outside of the UAE.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, business visitors are not allowed to undertake work or provide services while on a business visitor visa. Should the individual wish to work or provide services in the UAE, they will have to apply for the appropriate work authorisation.

2.5 Can business visitors receive short-term training?

Yes, this would depend on the nature of the training (i.e. paid or unpaid), whether it is on-the-job training, and the duration. Ordinarily, a business visitor is allowed to receive short-term training; however, the conservative approach would be for such training to be conducted in an appropriate designated venue such as an allocated office meeting room or designated hotel conference room.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, the MOHRE, GDRFA, and the relevant free zone Government Services Office (GSO) hold the right to conduct inspections at the site of employment, e.g. office premises. This inspection can be conducted with or without providing prior notice to the employer. The purpose of the inspection is to ensure that all the relevant rules and regulations set out by the authorities are being adhered to.

3.2 What are the rules on the prevention of illegal working?

The government authorities and law enforcement department carry out steps to counter illegal working in the UAE. Measures like random or covert inspections on individuals and employers for work permit authorisations are the main prevention method conducted. In addition, the immigration authorities use the latest technology such as retina scanning and biometric registration for all individuals entering the UAE. This process of screening allows the authorities to identify individuals entering the UAE who have a previous record of illegal working. The UAE government occasionally announces an amnesty period that allows illegal workers residing in the UAE to leave the country voluntarily without any penalties.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Non-compliance with immigration law and labour law can result in organisations being fined and their immigration and labour files being blocked or forcibly closed down. The action taken will depend on the level of the breach in question. For instance, in cases where foreign nationals are found to be working for an onshore employer without the requisite permission(s) and/or approval(s) to work, the MOHRE has the power to fine the onshore employer up to AED 50,000 per illegal employee and downgrade its employer classification with the MOHRE. The GDRFA has the power to impose similar fees leading to a combined penalty of AED 100,000. In addition, the managers and directors of the organisation can also be held accountable in certain cases. Individuals can also be fined, imprisoned, deported or have their work permits cancelled. Further, the individual can be subjected to a lifetime ban from entering the UAE.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Yes, this is determined by the jurisdiction the employer operates within. Foreign nationals have to be registered with the relevant authorities during the course of their employment. Foreign nationals employed by an onshore entity must be registered with the MOHRE and foreign nationals employed by an offshore entity must be registered with the relevant free-zone authority.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, it is the responsibility of the employer to ensure the immigration status of a foreign national remains valid during the course of their employment. In addition to this, the employer has to ensure that their immigration establishment card, trade licence, and other company corporate documents are valid and active to process the renewal of their employees' residence permits and labour card. It is also the responsibility of the employer to make any necessary amendments to the residence permit and labour contract if any such changes occur during the course of an individual's employment.

Furthermore, if an individual's employment with the company is terminated, the employer needs to complete the necessary departure formalities such as cancellation of the employee's residence permit and labour card. If the employee is required to repatriate, the employer will need to bear the expense of repatriation.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

There is no legal requirement or obligation to train or up-skill local workers or indeed show a commitment to train or up-skill the local workforce. However, it is common for employers to enrol both foreign and local workers onto internal or external training programmes or initiatives relevant to their roles, grade and/or seniority (such as career advancement or skills enhancement programmes), but this is largely discretionary and company-specific.

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4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No such legal requirement or obligation exists.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes, as per question 3.1 above, the immigration authorities have a right to inspect the site of employment, e.g. office premises. This inspection can be conducted with or without providing prior notice to the employer. The purpose of the inspection is to ensure that all the relevant rules and regulations set out by the authorities are adhered to. The inspection will include ensuring employees hold valid employment residence permits to legally live and work in the UAE.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, the immigration authorities maintain a list of occupations for skilled and non-skilled employment. The list is used to match the job title of an individual with the employment contract of the company when applying for their employment visa. It also provides further information as to whether a university qualification is required or not.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, the government considers that some occupations are in shortage and would consider a request from an employer to issue an appropriate residence permit on an expedited basis. Certain other privileges may also be given to companies that fill roles that are in shortage.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

Yes, there are quota systems in place for hiring foreign nationals seeking sponsorship to enter the UAE for employment purposes. For entities based in the UAE (onshore), the sponsoring business/employer must first request permission to employ the individual from the MOHRE. The MOHRE will consider the tenancy contract registered under the business' trade licence, the nature of the business and the proposed role of the prospective employee before granting approval. The MOHRE may also "test" the market to see if the position can be fulfilled by a UAE national resource.

If the entity is based in a free-zone, the free-zone authority will regulate any employment affairs and will approve any quotas, usually depending on the size of the office (i.e. the bigger the space, the higher the quota).

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No; however, once an onshore entity reaches a head count of 100 employees, it is mandatory to have an Emirati or a GCC national as their public relations officer. The MOHRE will not approve an application unless this criterion is met.

Although the labour law does specify certain "Emiratisation" (localisation) policies that select companies (depending on their head-count or industry) would need to adhere to, the implementation of these policies has not historically been strictly enforced; however, there has of late been an increasing trend to add more "teeth" to Emiratisation measures and initiatives in the private sector. More recently, the MOHRE have introduced Emiratisation policy updates that mandate companies with 1,000 or more employees to have at least two UAE nationals that manage their online labour and immigration portals. Companies operating in the construction or industrial sectors are also required to employ a UAE national that oversees occupational health and safety matters. There are also several incentives, including financial incentives, for companies that hire more Emiratis.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

The official language of the UAE is Arabic; however, business transactions are generally conducted in either English or Arabic. Employers may stipulate certain language requirements as part of their hiring criteria; however, there is no such mandatory requirement stipulated by the immigration authorities.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Foreign nationals are required to undergo a medical examination as part of the visa application process. Medical screenings are, however, not required for foreign nationals applying for a temporary work permit, e.g. a Mission Work Permit. Foreign nationals are required to undertake medical tests for communicable/contagious diseases and Tuberculosis. It is recommended that all visitors check the medical requirements to be met prior to their departure.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

There is no free public health or medical service for foreign nationals in the UAE. It is mandatory for all employers to provide private health insurance for their employees. Private health insurance is a mandatory pre-requisite in order to obtain a residence permit in the UAE for employees, in addition to their dependants.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

For a secondment under six months, a temporary work permit can be issued by the MOHRE for an employee of one onshore company to work for another onshore company. The temporary work permit has a maximum validity of 180 days (renewable once for an additional 180 days) and is subject to approval of the MOHRE based on the nature of the business between the two engaging entities. Secondments to free-zone companies may be possible through the procurement of a Temporary Access Card (TAC) or Temporary ID Card (TID) provided there is a properly executed business contract in place; however, this may vary slightly from one free-zone to another.

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For secondments over 12 months, the client may need to sponsor the individual's employment residence permit.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

No, there is no separate immigration category for highly skilled individuals. However, The UAE has recently introduced an extension to the visa validity option of 10 years for persons with specialised talents and researchers in the field of science and knowledge such as: doctors, specialists, scientists, inventors, as well as creative individuals in the field of culture and art. This visa category is subject to certain conditions being met in the respective field of specialisation.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

High-net-worth individuals, also called 'investors', who have set up a business entity in the UAE can obtain a residence permit if they appoint themselves as a partner, general manager or employee of the said entity. Being a Shareholder of a company does not in itself enable an individual to obtain a residence permit and the individual must undertake actual employment with the entity. In practice, many investors will appoint themselves as Heads of their established entities. It is worth mentioning that the free-zone as a licensor will be the ultimate sponsor of employees working in any entity registered in that specific free-zone. The employers will be referred to as licensees. This relationship is regulated by way of an employee sponsorship agreement signed between the licensor and licensee.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes, a Mission Work Permit is a temporary work permit issued to foreign nationals (applicable to onshore-based entities only). This work permit is a non-extendable single-entry permit valid for a period of 90 days. The permit allows the individual to undertake work. Such visas are granted and issued subject to approval from the MOHRE.

Certain free-zones (including, most recently, the Dubai Development Authority) do have short-term work permits specifically designed to facilitate internships and part-time engagements; however, these may only be available to individuals already residing in the country.

In addition to the above, there is the Temporary Labour Card which is a card issued to foreign nationals alongside GCC nationals. This card is issued by the MOHRE and can be valid for one month, three months or six months.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

No, there are no sector-specific temporary work permit categories in the UAE.

Temporary work permits (for general purposes i.e. not sector-specific) such as Mission Work Permits are granted and issued by the MOHRE for onshore-based entities only. They are issued for a validity of 90 days and are single entry permits.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, there is no intra-company transfer work permit in the UAE.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

There are no relevant conditions as there is no intra-company transfer work permit in the UAE.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

There are no relevant conditions the employer has to fulfil to obtain a work permit for an intra-company group employee, as the intra-company transfer work-permit is not an option applicable in the UAE. The employer has to proceed with the normal employment residence permit process to obtain a work permit for an intra-company group employee.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Please refer to question 9.4 below.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Please refer to question 9.4 below.

8.6 How long does the process of obtaining the work permit and initial visa take?

Please refer to question 9.6 below.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Please refer to question 9.7 below.

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8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Please refer to question 9.9 below.

8.9 What are the main government fees associated with this type of visa?

Please refer to question 9.10 below.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category used by the employer to hire foreign nationals is an employment residence permit.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The MOHRE has launched a labour market testing initiative referred to locally as 'Tawteen Gate'. The new portal aims to make these roles more accessible to Emirati nationals by requiring certain companies to formally post openings prior to hiring any foreign national employees. Unemployed UAE nationals can register on the platform and benefit from accessing the priority job listings. The roles need to be posted for at least five days after which the authorities inform the company about any potential candidates through an automated system. Currently, the company is not required to interview each applicant, however, if they 'accept' an applicant, they are required to interview them. The applicant and the company have an option to reject the opportunity, however, the company must record the reason for the rejection from a set drop-down menu on the portal. Companies learn whether they are subject to the mandatory job posting requirement once they initiate a work authorisation application and prepare a job offer application on the MOHRE's database.

9.3 Are there any exemptions to carrying out a resident labour market test?

Currently, Tawteen Gate only applies to onshore companies.

9.4 What is the process for employers obtaining a work permit for a new hire?

Each work and residence permit application filed at the MOHRE and the GDRFA will be assessed based on criteria such as the business activities of the employer, quota availability and security screening.

Each permit or visa has its own requirements and procedures. However, there are general conditions that all applicants must satisfy in order to obtain a visa or permit as listed below:

- the applicant must hold a passport that is valid for a minimum of six months or a document allowing him or her to enter the country and return to his or her country of residence or the country where the passport was issued. The passport must hold a minimum of two blank pages for the issuance of a new UAE residence permit;
- the official authorities have approved his or her entry for the purpose sought;
- the applicant is not banned from entering the UAE and does not belong to any of the nationalities or categories disallowed by the UAE immigration authorities on the grounds of national security or policy, or both; and
- the applicant has not previously been deported from the UAE, unless special permission has been obtained for their re-entry.

An applicant holding dual nationality should provide a birth certificate from their place of origin.

In addition, a legalised university certificate for use in the UAE is to be submitted if the employee is to have a managerial, professional or executive job title.

The process is then determined based on whether the company is based onshore or offshore.

Onshore companies

The employer must:

1. Submit and obtain approval of a quota of employment with the MOHRE (this step will not apply if a quota has already been granted previously. If previously granted, the process will start from step 2 below).
2. Prepare an offer letter from the MOHRE which needs to be duly signed by the employee and the employer.
3. Obtain approval of the employment from the MOHRE, pay the visa application fee and the labour card approval fee, and deposit a bank guarantee amount (the bank guarantee requirement will soon be waived and instead employers will be required to pay into a workers' insurance fund/scheme).
4. Submit the employment entry permit application along with the supporting documents to the immigration authorities in the UAE.
5. When the application is approved and an employment entry permit is granted, the employee can then enter the UAE, undergo a medical examination and submit their biometric information so that an Emirates ID card can be issued.
6. Acquire a government-approved healthcare insurance plan for the employee.
7. Once the medical results are received: prepare, sign, and submit the local labour contract to the MOHRE for approval.
8. Once the MOHRE approves the contract, submit the employment residence permit stamping application to the immigration authorities for approval with the required supporting documents.

Offshore companies

The free-zone company will be required to undertake steps 1 to 6 listed above with the exception of step 2 which does not need to be completed. Further, a labour card fee is not applicable in this instance. The applications are made to the GSO of the relevant free-zone rather than the MOHRE.

9.5 What is the process for the employee to obtain a visa as a new hire?

Please refer to question 9.4 above.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The process of obtaining a work permit and initial visa takes approximately three to four weeks depending on the jurisdiction

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where the entity is established. If the application is subject to security screening, the standard processing times will not apply.

9.7 How long are initial visas for new hires granted for and can they be extended?

The initial visa known as the employment entry permit is valid for 60 days from the date of issue. The foreign national has 60 days to enter the UAE or if they are already in the UAE on a different visa, must change their status within 60 days. Upon entry to the UAE, or once the individual's status has changed, they have a further 60 days to complete the remaining formalities of the employment residence permit application. The employment residence permit is issued for two years for an onshore entity and three years for an offshore entity, respectively. The validity can be extended for the same duration closer to the expiry.

9.8 Is labour market testing required when the employee extends their residence?

The test is not a requirement to renew work and residence permits.

9.9 Can employees coming as new hires apply for permanent residence?

The UAE has recently launched a 'Golden Card' scheme to grant permanent residency benefits to investors, entrepreneurs, specialised talents, researchers, and outstanding students only. The recipients for a 'Golden Card' are currently being identified by the UAE government office and are specifically invited to avail the card with further details to follow.

In general a foreign national must continue to be employed in the UAE in order to maintain residency status. Depending on the jurisdiction the employee is listed under, they may obtain a two- or three-year residency.

9.10 What are the main government fees associated with this type of visa?

Government fees vary from jurisdiction to jurisdiction and service type to service type; AED 5,000 to AED 7,000 is a broad average of government fees.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

A foreign national needs to hold a work permit (if being sponsored by an onshore company) before being able to obtain a residence permit. The applicant must either be employed by an onshore company or hold a free-zone employment contract if employed by an offshore company. To keep the employment residence permit active, the employee must not spend more than 180 consecutive days outside of the UAE.

Moreover, if the employee wishes to work for a different employer, the employment residence permit will need to be cancelled and reissued under the new sponsor. If both the existing and prospective employers are situated in a free-zone, a quicker (and less document intensive) "sponsorship transfer" process may be possible.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Any foreign nationals arriving in the UAE for employment must register with the Emirates ID Authority. This is a mandatory requirement that must be completed in order to obtain a residence permit. This requirement is typically completed whilst applying for a UAE residence permit.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The following are considered as dependants:

- spouse;
- siblings;
- children (male or female minors, unmarried female adults and males up to 18 years of age); and
- parents and in-laws.

Sponsoring a dependant will involve submitting an application and a refundable deposit with the immigration authorities (which is refundable only upon an application to cancel the visa). The decision is made on a case-by-case basis. The visa regulations are strict in terms of salary, accommodation, bank statements, etc. There is no strict minimum monthly salary requirement for a male main applicant bringing over his spouse and/or children, however, generally the authorities would expect a male employee to be paid approximately AED 4,000. In practice the individual would generally need to earn more than this amount in order to secure his dependants' residence permits. Although the authorities do not specify a minimum salary requirement for a female main applicant to bring over her spouse and/or children, in practice a monthly salary in excess of AED 12,000 – AED 15,000 may be necessary. The authorities may also ask for proof of accommodation with at least one bedroom if the applicant is looking to sponsor his/her spouse and children.

The minimum salary requirement to sponsor parents and in-laws is currently set at AED 20,000 per month (and accommodation with at least two bedrooms). It is mandatory to provide attested originals of the marriage certificate, and birth certificates of children, while submitting the application at the immigration office.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The UAE does not recognise the following as dependants:

- civil partners;
- unmarried partners;
- same-sex partners;
- co-habitees; and
- children from unmarried parents (unless holding an adoption letter/affidavit, or married to the parent of the child).

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Female dependants are permitted to engage in full time or part time employment; however, they will be required to request work

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authorisation in the form of a relative work permit and labour card from the immigration authorities. As part of this process, the main applicant will be required to provide a no-objection letter outlining that they do not object to their dependant undertaking work. The alternative would be for the dependant to transfer onto the sponsorship of his/her new employer.

11.4 Do children have access to the labour market?

Dependant minors are permitted to work in the UAE provided they are aged between 15 and 18 years old.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Please refer to question 9.9 above.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

No, although it is possible to switch from a temporary work permit to an employment visa, there is no option of obtaining permanent residence in the UAE, unless certain conditions are met (refer to question 9.9 above). All resident visas are issued for a set period and must be renewed before the period has expired. Renewal is subject to the conditions of the visa being met.

13 Bars to Admission

13.1 What are the main bars to admission for work?

A foreign national who has a criminal conviction or who has been deported from the UAE will very likely be subject to a permanent ban from entering the UAE. In addition, foreign nationals who do not pass the mandatory medical examination that must be completed as part of the residence permit process may be barred from working or living in the UAE. Foreign nationals identified as having any of the contagious diseases set out by the immigration authorities will be immediately detained and deported from the UAE and will receive a permanent ban from entering the UAE.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Approval in such cases will be on a highly discretionary basis. Such cases, depending on the nature of the offence, may trigger an additional security hit. Criminal convictions generally will lead to a permanent ban and the employee will be blacklisted from entering the UAE on any visa or permit.

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Anir Chatterji leads the Middle East Immigration and Employment practice. He has over 10 years of experience in the employment and immigration industry. Anir is experienced with delivering immigration services, including risk and compliance, to multinational corporations, SME's, and private high net worth individuals for a number of jurisdictions. Anir also has substantial experience in the finance sector, having led an immigration programme on-site for a multinational bank for a few years and having delivered corporate immigration services for top-ranked immigration practices. Since joining PwC Legal, Anir has project managed several global transitions and account implementations and has in-depth experience working with companies in the technology, automotive as well as the oil and gas industries.

Anir regularly speaks at external events advising on changes to immigration law and policy, he also writes extensively in legal journals and numerous other publications. Anir also provides in-house training for clients.

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United Kingdom

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of UK immigration law are: primary legislation (including the Immigration Act 1971 and subsequent Acts of Parliament); delegated legalisation (known as Statutory Instruments or Regulations) which implements primary legalisation; and the UK Immigration Rules which set out in detail the ways in which individuals can qualify to obtain entry clearance (a visa), leave to remain (residence) and indefinite leave to remain (permanent residence) in the UK. The Home Office, which administers the immigration system for UK visas and immigration, also publishes extensive policy guidance on how the rules should be interpreted and implemented by Home Office caseworkers.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system is administered by the Home Office. This is divided into three operational entities: UK Visas & Immigration ("UKVI"), which decides on applications for leave to enter, leave to remain, indefinite leave to remain and citizenship; Immigration Enforcement, which is concerned with enforcement; and Border Force, which carries out immigration and customs controls on people and goods entering the UK.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

The United Kingdom is currently a member of the European Union, having joined in 1973.

On 23 June 2016, a referendum on the UK's continued EU membership was held in which 52% of those voting elected to leave the EU. On 29 March 2017, the UK gave formal notice of its intention to withdraw from the EU in accordance with Article 50 of the Treaty on European Union. This triggered a two-year period for negotiations about the terms on which the UK will leave the EU on 29 March 2019. As a result of the failure of the UK Parliament to agree to the draft EU Withdrawal Agreement, the UK's membership of the EU was extended until 31 October 2019 to allow it time to find Parliamentary consensus on agreeing to the Withdrawal Agreement. If the UK leaves the EU on that date with an Agreement, it is likely that a transitional period will operate for a limited period from that date during which time EU law will continue to apply. If the UK leaves the EU with no deal, there will be no transitional period and the UK will implement its own national immigration rules. As drafted, these rules (Appendix EU) may allow EU nationals to continue coming to the UK to live, study and work, but under temporary residence permits, which will be required for EU nationals staying for longer than three months. In the case of a deal being agreed, EU nationals already in the UK before the end of the transitional period will be able to apply to remain under the new EU settlement scheme, which is currently available to EEA and Swiss nationals resident in the UK. In the event of a no deal, EEA and Swiss nationals in the UK before the UK's departure will be able to apply under the EU settlement scheme, but those arriving after that date will fall under a different regime which currently provides for short stays of up to 90 days and temporary residence status for those remaining beyond that.

In the meantime, the UK currently gives effect to the rights of EU citizens from the 27 EU Member States and their family members to move freely, contained in the Treaty on the Functioning of the European Union ("TFEU") and in Directive 2004/38 (the Citizens Directive), and the decisions of the European Court of Justice ("CJEU"). Under the EEA agreement and a set of bilateral agreements with Switzerland, these rights are also extended to citizens of Norway, Iceland, Liechtenstein and Switzerland. The Treaty and relevant delegated legislation provide for the right of entry and residence for EU nationals coming to the UK as work-seekers, workers, self-employed persons, service providers, self-sufficient students or self-sufficient persons. EU nationals do not require permission to work or reside in the UK. They can enter the UK and start work without any specific authorisation. Non-EU family members of EU citizens, including spouses, civil partners, durable partners and children up to the age of 21 can accompany the EU citizen, reside and have a right to work, as long as the main EU national qualifies for a right of residence as a worker, self-employed or self-sufficient. Directive 2004/38 also provides for the right of permanent residence for EU citizens and their family members who have resided in another EU Member State for a continuous period of five years. Non-EU family members wishing to move to the UK with their spouses can obtain multiple entry visas (known as EEA family permits) which are free of charge and are valid for six months. They can then apply for five-year Residence Cards in the UK which are granted on proof that the EU citizen is exercising their free movement rights through employment, self-employment or self-sufficiency.

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It is important to note that the UK is not part of the Schengen area and that visas obtained for the UK are not valid for entry into the Schengen area – a visa-free area with no internal border controls made up of 22 EU Member States and four additional European countries. In addition, the UK does not participate in many of the EU-wide legislative programmes in the field of immigration, including the Blue Card regime, the ICT Directive and the Long-term Residents' Directive.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

The UK operates a visa waiver system through a designated list of nationals who require a visa. The current list of nationals who require a visa to the United Kingdom is set out in Appendix V, Appendix 2 of the Immigration Rules. In 2014, the UK introduced a new Electronic Visa Waiver ("EVW") which exempts citizens of Kuwait, Oman, Qatar and the United Arab Emirates from requiring a visa where they have obtained an EVW. From May 2019, nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States are able to use the e-gates at UK ports of entry when entering as visitors.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors can be admitted for up to six months. If a business visitor arrives at a UK airport and seeks entry to undertake business visitor activities, they will be granted six months' entry (known as "leave to enter") with a prohibition on employment, even where they are only requesting entry for two weeks. Visit visas for visa nationals are also granted for six months and are usually multiple-entry. In practice, immigration officers will only normally admit visitors seeking to come for short periods consistent with their on-going employment abroad. Requests to stay in the UK as a business visitor for several months will attract greater scrutiny both at the visa and entry stage.

2.3 What activities are business visitors able to undertake?

There is a wide range of activities which business visitors can undertake in the UK, subject to the caveat that a business visitor must not take employment, produce goods or provide services within the UK or intend to live in the UK for extended periods of frequent or successive visits. The Immigration Rules set out the "permitted activities" which business visitors can undertake, which include the following general business activities:

- attending meetings, conferences, seminars and interviews;
- giving a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser;
- negotiating and signing deals and contracts;
- attending trade fairs, for promotional work only, provided the visitor is not directly selling;
- carrying out site visits and inspections;
- gathering information for their employment overseas; and
- being briefed on the requirements of a UK-based customer, provided any work for the customer is done outside of the UK.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

There are a number of specific categories which allow individuals to provide temporary services, including:

- Those working as drivers or tour group couriers on international routes delivering goods or passengers from abroad.
- An employee of a foreign manufacturer or supplier coming to install, dismantle, repair, service or advise on equipment, computer software or hardware where it has a contract of purchase, supply or lease with a UK company or organisation.
- Translators and/or interpreters supporting visiting business people, provided they will attend the same event(s) as the business person and are employed by that business person outside of the UK.
- Personal assistants and bodyguards supporting an overseas business person in carrying out permitted activities, provided they will attend the same event(s) as the business person and are employed by them outside the UK. They must not be providing personal care or domestic work for the business person.
- Film crew (actors, producers, directors or technicians) employed by an overseas company may visit the UK to take part in a location shoot for a film or programme that is produced and financed overseas.
- An artist, entertainer, or musician giving performances as an individual or as part of a group, taking part in competitions or auditions, making personal appearances and taking part in promotional activities, or taking part in one or more listed cultural events or festivals. Personal or technical staff of the production team of artists, etc. who are employed overseas can support the activities of artists, etc. if attending the same event(s).
- Journalists, correspondents, producers or cameramen gathering information for an overseas publication, programme or film.
- Professors from overseas academic institutions accompanying students to the UK as part of a study abroad programme – they may provide a small amount of teaching to the students at the host organisation. However, this must not amount to filling a permanent teaching role for that institution.
- Archaeologists taking part in a one-off archaeological excavation.
- Scientists and researchers gathering information for specific projects related to their overseas employment or sharing knowledge/advising on a UK-led international project (but not carrying out research).
- Academics taking part in formal exchange arrangements, carrying out their own research while on sabbatical from their home institution, or eminent doctors or scientists taking part in research, teaching or clinical practice which does not amount to filling a full-time post.
- Sportspersons:
  - taking part in a sports tournament or sports event as an individual or part of a team;
  - making personal appearances and taking part in promotional activities;
  - taking part in trials, provided they are not in front of a paying audience;
  - taking part in short periods of training, provided they are not being paid by a UK sporting body; or
  - joining an amateur team or club to gain experience in a particular sport.

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- Employees of clients of a UK export company who are seconded to the UK company in order to oversee the requirements for goods and services that are being provided under contract by the UK company or its subsidiary company, provided the two companies are not part of the same group. These employees may exceptionally make multiple visits to cover the duration of the contract.
- Expert witnesses visiting the UK to give evidence in a UK court and other witnesses summoned in person by a UK court to attend a court hearing in the UK.
- Overseas lawyers coming to the UK to advise a UK-based client on specific international litigation and/or an international transaction.
- Those coming to undertake preaching or pastoral work as religious workers.
- Those coming as advisors, consultants, trainers or troubleshooters or to share skills and knowledge on a specific internal project with UK employees of the same corporate group, provided no work is carried out directly with clients.
- Internal auditors carrying out regulatory or financial audits at a UK branch of the same group of companies as the visitor's employer overseas.
- An employee of an overseas-based training company may deliver a short series of training events to employees of a UK-based company, where the trainer is employed by an overseas business contracted to deliver global training to the international corporate group to which the UK-based company belongs.
- An employee of an overseas-based training company may deliver a short series of training events to employees of a UK-based company, where the trainer is employed by an overseas business contracted to deliver global training to the international corporate group to which the UK-based company belongs.
- An academic who is highly qualified within his/her field of expertise may examine students and/or participate in or chair selection panels, if he/she has been invited by a UK Higher Education Institution or a UK-based research or arts organisation as part of that institution or organisation's quality assurance processes.

In addition to the above categories, there is a Permitted Paid Engagements ("PPE") category which allows individuals to come for up to one month and be paid for their work in the UK. The PPE route includes the following provisions:

- An expert may give lectures in his/her subject area, if he/she has been invited by a UK Higher Education Institution, or a UK-based research or arts organisation provided this does not amount to filling a teaching position for the host organisation.
- An overseas-designated pilot examiner may assess UK-based pilots to ensure they meet the national aviation regulatory requirements of other countries, if they have been invited by an approved training organisation based in the UK that is regulated by the UK Civil Aviation Authority for that purpose.
- A qualified lawyer may provide advocacy for a court or tribunal hearing, arbitration or other form of dispute resolution for legal proceedings within the UK, if they have been invited by a client.
- A professional artist, entertainer, musician or sportsperson may carry out an activity directly relating to their profession, if they have been invited by a creative (arts or entertainment) or sports organisation, agent or broadcaster based in the UK.

2.5 Can business visitors receive short-term training?

Employees of an overseas company or organisation may receive training from a UK-based company or organisation in work practices and techniques which are required for the visitor's employment overseas and not available in their home country.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

All UK employers, including those that are registered as Tier 2 licensed sponsors of non-EU national migrant workers, are required to comply with UK laws on the prevention of illegal working. UK employers that are registered as Tier 2 sponsors have additional compliance duties as sponsors and are subject to periodic visits from the Home Office, both announced and unannounced, to ensure that they are complying with their sponsor duties and with current legislation on the prevention of illegal working. The Home Office also undertakes significant enforcement operations in industries which are perceived to be high-risk, where illegal migrants may be more likely to be employed. The inspections are undertaken by enforcement teams often acting on intelligence.

3.2 What are the rules on the prevention of illegal working?

Employers are required to ensure that, before the start of any employment, they check that an individual is entitled to work in the UK. An employer must check specified documents such as passports or other combinations of documents and retain copies of these. If these documents are checked, copied and retained in the correct way, the employer will have a statutory excuse against liability for a civil penalty for illegal working, as long as they did not have reasonable cause to believe that an employee is disqualified from employment due to their immigration status. Companies and individuals who employ a person who is not permitted to work may face criminal liability if they have reasonable cause to believe the person had no entitlement to work. Comprehensive guidance is issued to assist employers to comply with their duties and to ensure that they do not discriminate in the checking process. In certain limited circumstances, employers are required to obtain a Positive Verification Notice from the Home Office Employer Checking Service before the employee can start work. Employers are also required to carry out follow-up checks for employees with limited permission to stay in the UK. These are conducted upon the expiry of their current visa or leave to remain.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

There are two types of penalties for illegal working. The first is a civil penalty of a maximum of £20,000 payable for each employee found to be working without permission in the United Kingdom. In addition to the civil penalty regime, there is a separate criminal offence of having reasonable cause to believe that a person has no right to work. Liability extends not only to the employer but also to individuals within the employer's organisation, including managers and those responsible for the recruitment of employees. An employer found guilty of this offence may be liable to imprisonment for up to five years and an unlimited fine, or both. Employers that are registered as sponsors under Tier 2 of the Points Based System may also have their sponsor licence revoked or downgraded.

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4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

All UK employers wishing to sponsor non-EU employees must first register as a Sponsor under the main Tier 2 sponsor category. Applications are made online and relevant corporate documents are then submitted to show that the business is active and trading in the United Kingdom and, where relevant, holds the appropriate regulatory authorisations or accreditations. The UK employer must appoint a UK-based Authorising Officer who will act as the person responsible for compliance with the sponsor duties. Applications are assessed on eligibility criteria which aim to verify that the entity applying is genuine and has an operating or trading presence in the UK, and on suitability criteria, which assess whether the employer has adequate HR and recruitment systems which will enable them to meet their sponsor duties, that there are no previous immigration-related criminal convictions, and that there is no previous non-compliance.

Once the application is approved, the sponsor licence will be granted for an initial period of four years. The employer will be given access to the online Sponsor Management System ("SMS") and will then have the ability to access the system and assign a Certificate of Sponsorship, in compliance with the current Home Office guidance eligibility criteria, to an individual whom they wish to sponsor in one of the relevant categories. The Certificate of Sponsorship is an electronic document which is assigned to an individual to undertake a specific role in the UK sponsor organisation.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

UK employers registered as licensed sponsors must ensure that they comply with their duties as sponsors, including the following:

- Record-keeping – ensuring that they keep records of documents confirming the employee's right to work, the employee's contact details, and specified documents relating to the employee's employment in the UK.
- Reporting duties – employers are required to report certain information to the Home Office using the Sponsor Management System within specified time limits. This includes reporting sponsored employees' non-attendance, early termination of employment, change of visa status, changes to the employment such as changes in job titles/duties, and corporate changes such as the location of the UK office or ownership of the business through a merger or acquisition.
- Complying with the law – this includes assigning Certificates of Sponsorship for genuinely vacant roles which meet the minimum skills and income thresholds, ensuring that the employee is legally entitled to do the job and has the correct registration and professional accreditations, and complying with UK employment law or other regulations.
- Co-operation – this includes allowing the Home Office to visit the employer's premises for the purpose of a compliance check and following any action plan for improvement set by the Home Office following a compliance visit.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

The UK does not require this.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Sponsoring employers wishing to sponsor new hires or intra company transferees are required to pay the Immigration Skills Charge (ISC). Immigration Skills Charge (paid by the sponsor when the certificate of sponsorship is assigned): £1,000 per year of intended work duration (medium or large sponsor) or £364 per year (small or charitable sponsor). According to the Government announcements made at the time of its launch in April 2017, the ISC is specifically "designed to cut down the number of businesses taking on migrant workers and incentivise training British staff to fill those jobs". The Government has yet to confirm how it will spend the money raised by the ISC and it is currently seen more as a financial penalty for hiring non-EU staff than as a fund to be spent on up skilling the UK workforce.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Compliance visits are undertaken by the Home Office for any businesses applying to register as licensed sponsors or which already holds a sponsor licence. These visits can be undertaken by arrangement with the employer or can be carried out on an unannounced basis. Where an employer is extending their sponsor licence after four years, this will often trigger a visit from the Home Office. The compliance visit will normally involve an immigration official meeting the Authorising Officer responsible for overseeing immigration compliance within the UK organisation, and checking a number of HR files for sponsored employees to ensure that pre-employment document checks have been undertaken, the correct documents are kept on the HR file, and that any changes in relation to sponsored employees have been reported. The visiting officers will also normally ask to interview at least one member of staff who is sponsored to ensure that they are complying with the terms of their Certificate of Sponsorship and are undertaking the duties indicated on their Certificate of Sponsorship were sponsored. Increasingly, Home Office visits include extensive scrutiny of recruitment processes and may include requiring the employer to justify why it discounted resident workers as not suitable for a role which was filled by a migrant worker. Where serious issues of non-compliance are identified, the Home Office may revoke or suspend the licence or downgrade the sponsor's rating and put an Action Plan in place to remedy any non-compliance within a specified time frame.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The Home Office maintains a list of Standard Occupational Classification ("SOC") codes for skilled workers. These codes are regularly updated. The codes set out the relevant occupations which are skilled to Regulated Qualifications Framework ("RQF") Level 6, which is the minimum skill level under which individuals can be sponsored in the UK. In addition, certain lower-skilled jobs at RQF Level 4 in the creative sector can also be sponsored. Each occupation has a specific code with a description of the typical activities and duties related to the occupation, together with possible job titles and the minimum salary which must be paid to the individual undertaking the role.

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4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The Home Office maintains a list of shortage occupations which is updated regularly through consultation with the Migration Advisory Committee, which advises the government and considers submissions from employers, organisations, industry bodies and government departments on the availability of skills in the UK workforce. Where an occupation is included in the shortage occupation list, the employer will not need to undertake advertising or a Resident Labour Market Test (see section 9 below) in relation to that role. The Home Office also maintains a list of Ph.D. occupations for which there are reduced requirements to undertake resident labour market testing through advertising.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There is currently an annual limit of 20,700 Certificates of Sponsorship under the Tier 2 (General) "restricted" category which covers new hires being hired from outside the United Kingdom who are paid less than £159,600. In addition, there are limits for some other categories, including the two-year Tier 5 (Youth Mobility Scheme) visas for nationals of Australia, Canada, New Zealand, Hong Kong, the Republic of Korea, Taiwan, Japan, and Monaco. Finally, Tier 1 (Exceptional Talent) visas for those who are internationally recognised leaders or emerging leaders in science, humanities, engineering, medicine, digital technology and the arts are limited to 2,000 per year, divided between the respective categories.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

The UK does not operate such a system.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Employees who are sponsored to work for UK employers as new hires are required to demonstrate that they are proficient in the English language to Level B1 (intermediate) on the Common European Framework of Reference for Languages ("CEFR"). Employees being transferred to the UK under the Tier 2 (Intra-company Transfer) route do not need to meet this requirement either for the initial application or for the extension application. Any employee who is eligible to apply for indefinite leave to remain (permanent residence) at the end of a period of five years' sponsored employment in the UK will be required to demonstrate proficiency at B1 CEFR level.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

The UK does not require general medical examinations from all applicants coming to take up sponsored employment in the UK. However, where the individual is applying for their entry clearance (a visa) in a specified country, they will be required to undertake a tuberculosis test at a designated clinic.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

There is no requirement for those who are sponsored to work to hold medical insurance. They are generally eligible to use the UK's National Health Service. Since April 2015, all non-EEA nationals obtaining work visas to come to the UK for more than six months or who are extending their leave to remain in the UK are required to pay an Immigration Health Surcharge of £400 for each year of their visa.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Sponsored employees may be seconded to a client site where the UK employer has a contract to provide a time-bound service or project where a specific service is being provided to the end user client. The UK employer must retain responsibility for managing the employee including the employee's duties, functions and outcomes/outputs. The current rules do not allow the provision of staff only to other organisations. The Home Office can undertake visits to a client site and requests that sponsors whose sponsored staff are deployed to client sites ensure that Home Office staff will be given access to these sites for compliance purposes.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

The UK's Tier 1 (General) visa category, which awarded points to potential migrants based on academic qualifications and previous earnings, was closed in December 2010. The only category which now exists is the Tier 1 (Exceptional Talent) visa for those who have been officially endorsed as an internationally recognised leader or emerging leader in their field in science, the humanities, engineering, medicine, digital technology or the arts. Applications for endorsements are first considered by relevant endorsing bodies such as the Arts Council, the Royal Academy, Tech City and the Royal Society. There are specific "eligibility assessment" criteria for endorsement, depending on each endorsing body. Endorsement in the arts and sciences can be given to those who have demonstrated promise in their chosen field. The criteria for endorsement in the Exceptional Talent route are extremely high. There is a quota of 2,000 Tier 1 (Exceptional Talent) visas issued per year, divided between each of the endorsing groups.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There is no specific employer-based visa category which permits an individual to be authorised to work in the UK based on investment. However, where a capital investment of £27 million is made into the UK by an overseas headquartered business, or where the investment will create at least 21 new UK jobs, any employees being sponsored

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as part of the investment can be treated as "high value investment posts" where the usual resident labour market test is not required.

There are also a number of categories which enable companies to establish subsidiaries in the UK and individuals to come for the purposes of establishing or investing in a UK business or coming in as investors. These include:

- Sole representatives of overseas businesses – senior employees of overseas businesses that wish to establish a branch or subsidiary in the UK can be sent to the UK under this category. They must have full authority to take operational decisions on behalf of the parent company overseas, must not be major shareholders in the parent company, must remain employed by the parent company or branch/subsidiary, and may not work for any other business in the UK. The UK business established must operate in the same sector as the parent company.
- Tier 1 (Innovator) – since April 2019, individuals wishing to set up an innovative, scalable and viable business in the UK may apply to be endorsed by an authorised endorsing body under the Tier 1 (Innovator) category. At the time of writing, there were 27 authorised endorsing bodies which were not open to public applications but are only endorsing applicants approved through their own accelerator/incubator or investment programmes. As well as endorsement, applicants require £50,000 investment into the business from any legitimate source. Successful applicants are restricted to working for their own businesses and do not have access to the labour market.
- Tier 1 (Investor) – for those with £2m in disposable capital who wish to invest in UK government bonds, and share or loan capital in UK trading companies. These investors have strict requirements on the permissible investments under this category and all requirements for those investments are to be valued by a regulated financial institution in the UK. They have no restrictions on employment in the UK, other than working as professional sportspersons, or as doctors or dentists in training.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The Tier 5 (Temporary Worker – Government Authorised Exchange) visa provides a route for work experience, training, research or fellowships. Under this category, there are four types of schemes which are approved under the GAE sub-category, which include:

- Work experience programmes such as internships, approved work experience programmes, volunteering and job shadowing.
- Research programmes.
- Overseas government language programmes funded by overseas governments or government-sponsored organisations.
- Training programmes – for those receiving formal practical training in the field of science and/or medicine, the UK armed forces or the UK emergency services, or those who graduated in the UK and are undertaking post-graduate professional training or work experience to obtain a related professional qualification or registration.

A number of organisations have been approved as overarching sponsors which include regulatory bodies, private companies, governmental organisations and UK universities. They will act as the sponsor and will assign a Certificate of Sponsorship to enable the individual to undertake their training, research or exchange at an organisation in the UK. The scheme allows for work experience and training programmes up to a maximum of 12 months, and research and training programmes up to a maximum of 24 months. These schemes are widely used by businesses to bring in short-term interns undertaking paid work experience in the UK. Those coming under these schemes must be coming for primarily non-economic reasons and should be taking supernumerary positions and not filling full-time vacancies in the UK.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The UK has a number of specific categories, contained in Tier 5 of the Points Based System, which enable individuals to come to the UK to work in certain sectors. The Tier 5 categories which currently exist under the Temporary Worker category are as follows:

- Creative and sporting – this covers those who are internationally established at the highest level in their sport as players or coaches and who are making a significant contribution to the development or operation of that sport in the UK, who have been endorsed by the relevant governing body for that sport, or for creative workers and their entourage operating in dance, theatre or film and television. This category is often used for internationally recognised performers coming for a series of performances or engagements in the UK for up to 12 months.
- Charity workers – this category covers those wanting to undertake unpaid temporary voluntary work in the UK.
- Religious workers – this category covers those coming to undertake temporary preaching, pastoral work and non-pastoral work.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

The Tier 2 (Intra-company Transfer) category of the Points Based System allows international groups of companies to transfer staff into the UK.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

To sponsor employees under the Intra-company Transfer ("ICT") sub-categories, the UK employing company or organisation must be able to show a direct link by common ownership or control with the overseas entities from which employees will be transferred to the UK. "Common ownership" or "control" has a broad definition and the current guidance specifies a number of situations in which this may be established. Examples include situations where: one entity holds more than half the issued share capital of the other entity; both entities have a common parent; one entity controls the composition of the other entity's board; or one individual has a majority shareholding in each of the entities. In addition, common ownership or control can be established where both entities are party to a joint venture agreement, or where entities are either accountancy or law firms which use the same firm name in the UK and the country in which the other entity is operating.

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8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The Tier 2 (Intra-company Transfer) category of the Points Based System exists for multinational businesses to transfer skilled employees to a UK branch or to a UK group company or linked company. Sponsors applying for their sponsor licence are required to register under Tier 2 (ICT) and to provide proof of the corporate link between the UK sponsoring entity and the overseas group company or organisation. This will typically be the head office's financial statements or annual report showing the linked entities, or an affidavit from a senior UK employee confirming the link. This is submitted with the initial sponsor licence application. If the UK sponsor did not apply under the ICT category when first applying for a sponsor licence, they can apply to "expand" the licence to include the ICT category.

The qualifying criteria and the period for which the employee can be transferred under the ICT route will depend on which of the two sub-categories the employee qualifies under. All employees must be filling skilled roles at RQF Level 6 (or Level 4 for certain creative roles). The current sub-categories are:

- Long-term staff – this category enables employees of multi-national companies to come to the UK for up to five years. The employee must have been employed for a minimum of 12 months by a group company. If the salary is £73,600 per year or more, there is no minimum period for which the individual must have been employed by a group company. The employee must be paid at least £41,500 per year or the minimum salary as per the appropriate SOC code, whichever is higher.
- Graduate trainee – this category is for employees who are recent graduates, have worked for the overseas group company for at least three months abroad, and are being transferred as part of a structured graduate training programme which will lead towards accelerated promotion to a managerial or specialist role in the organisation. Visas are granted for a maximum of 12 months and there is a limit of 20 Graduate Trainee visas per year per employer. They must be paid at least £23,000 or the minimum salary as per the appropriate SOC code, whichever is higher.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Employers who have been registered as Tier 2 sponsors are given access to the online Sponsor Management System ("SMS") which they can use to assign a Certificate of Sponsorship ("CoS") to the relevant employee. Each sponsoring employer can request an allocation of Tier 2 (Intra-company Transfer) visas for each year which runs from April to April, and can use these Certificates of Sponsorship for transfers within international groups of companies or organisations. The employer will complete all of the relevant details in relation to the individual's employment, start date and the length of employment, salary and allowances, job title and job description required by the online SMS system. The employer is also given the opportunity to certify that they will cover the financial "maintenance" requirements for the individual employee. The employer can then assign the Certificate of Sponsorship, which generates a unique reference number. A fee is payable through the online system for each Certificate. The employer will then notify the employee of the unique reference number so that the employee can use this in support of their Tier 2 (Intra-company Transfer) visa application outside the United Kingdom.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The usual process for obtaining a visa under the Intra-company Transfer category is as follows:

- The employee submits an online visa application form, providing full personal details and confirmation of the Certificate of Sponsorship number.
- The employee pays an online visa fee and makes an appointment to attend a biometric appointment at a designated Visa Application Centre ("VAC"). The employee attends their appointment at the VAC and provides their biometrics (fingerprints and photographs).
- The employee submits their supporting documents including the online visa forms, passport, passport photographs and supporting documentation. This is usually done at the VAC when providing biometrics.
- The VAC will scan the application documents onto the UKVI system and send the passport to the UK/retain the passport for visa endorsement.
- UKVI in the UK will decide the application and forward the passport and endorsed 30 day entry visa VAC. The VAC will contact the individual for collection.
- The employee is issued with a 30-day travel visa during which they must travel to the UK.
- On arrival, they must visit a designated Post Office or an authorised collection point (such as the company's representatives) to collect their Biometric Residence Permit within 10 working days of arrival.

The following supporting documents are required:

1. Visa application form.
2. Biometric appointment confirmation.
3. Current passport.
4. Two passport photographs of the applicant (not required at all VACs).
5. Tuberculosis test certificate (if the employee is applying in a country in which tuberculosis testing is required).

8.6 How long does the process of obtaining the work permit and initial visa take?

Visa processing takes between 24 hours and four weeks to be completed depending on where the applicant is applying and which paid-for priority services are available.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

Initial visas can be valid for up to five years in the Tier 2 (ICT) Long-term Staff subcategory. The visa cannot be extended beyond five years unless the individual is a high earner (paid at least £120,000 per year) in which case the visa can be extended for up to nine years in total.

Tier 2 (ICT) Graduate Trainee visas are valid for up to 12 months and cannot be extended.

When the visa expires, the employee must leave the United Kingdom and is subject to a "cooling off" period, which means that they cannot return to the UK on another Tier 2 visa for the next 12 months. It is therefore important that employees who are sponsored under the ICT category extend their visa in the UK (up to the maximum allowed) and do not allow it to expire while they are outside the UK.

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There are certain circumstances in which the cooling off period does not apply to employees applying outside the UK for a new Tier 2 (ICT) visa. This will be where the employee:

- is applying as a high earner – someone whose gross salary package is £120,000 or more; or
- was only in the UK as a Tier 2 migrant during the last 12 months for three months or less.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Intra-company transferees do not generally qualify for indefinite leave to remain (permanent residence) after five years in the UK. They cannot switch to the Tier 2 (General) category in the UK and cannot therefore count time spent in the UK under Tier 2 (ICT) towards the qualifying five year period for indefinite leave to remain (permanent residence).

8.9 What are the main government fees associated with this type of visa?

The 2019–2020 fees associated with a Tier 2 (ICT) visa application submitted outside the UK are as follows:

- Certificate of sponsorship (paid by sponsor): £199.
- Immigration Skills Charge (paid by sponsor when the certificate of sponsorship is assigned): £1,000 per year of intended work duration (medium or large sponsor) or £364 per year (small or charitable sponsor).
- Visa application fee: £610 (visa valid for up to three years) or £1,220 (up to five years).
- Immigration Health Surcharge: £400 per year of the intended work duration.

The fees are increased in April each year.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration category used for employers who wish to sponsor new hires is Tier 2 (General). The key features of the Tier 2 (General) category are that:

- The individual must be coming to do a skilled role at RQF Level 6 (or RQF Level 4 in designated creative roles).
- The individual must usually be paid at least £30,000 per year or the appropriate rate specified for the relevant SOC code.
- The employer must undertake a Resident Labour Market Test unless an exemption applies.
- The individual must speak English to B1 level on the CEFR (intermediate).

The Tier 2 (Minister of Religion) category covers those who have been offered employment as pastors, missionaries or members of religious orders within the United Kingdom.

The Tier 2 (Sportsperson) category is available for elite sportspersons or coaches where their employment will make a significant contribution to the development of the sport in the United Kingdom at the highest level. The individual must first obtain an endorsement from the relevant governing body for the sport. The endorsement confirms that the individual is internationally established at the highest level and will contribute significantly to the relevant sport in the United Kingdom.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Labour market testing is generally required, through following the Resident Labour Market Test ("RLMT") process, before a prospective employee may be offered sponsorship under Tier 2 (General). Employers registered as Tier 2 sponsors may only recruit a non-EU national where they have carried out the RLMT and can show that no suitable "settled" worker is available to fill the job, unless the job is exempt from the RLMT. A settled worker is a British or EU national, a person who holds Indefinite Leave to Remain/Settled Status.

The RLMT must be conducted in the following way:

- The position must be advertised in the Government's "Find a Job" website (or the regional variant), plus one other medium. Certain occupations or roles are exempt from the requirement to advertise on Find a Job.
- The advert must comply with the strict requirements of the Tier 2 (General) guidance in terms of its content.
- The advert must appear for 28 calendar days and must specify a closing date.
- The employer must consider all candidates and provide reasons for not shortlisting settled workers (generally British or EU citizens, or UK permanent residents).

Settled workers may only be rejected on the grounds that they are not suitable according to the criteria set out in the advertisement. The job cannot be offered to a non-EU national who requires sponsorship if there are suitable candidates from the resident labour market, even if the non-EU national is more skilled or experienced. The only exception to this rule is for jobs falling within the Ph.D. occupational codes, which generally cover scientists, research and development managers in the scientific field, and higher education teaching professionals. In these cases, the job can be given to the most suitable candidate.

9.3 Are there any exemptions to carrying out a resident labour market test?

There are exemptions to the Resident Labour Market Test. These include:

- jobs which are on the shortage occupational list;
- if the individual is transitioning from the Tier 4 (Student) category and has passed a B.A. or M.A. degree, a post-graduate certificate in education, a professional graduate diploma of education or has completed 12 months' study towards a Ph.D.;
- jobs with a guaranteed salary of £159,600 or more;
- High Value Investment posts;
- certain supernumerary research positions where the employee has been issued with a scientific research award or fellowship; and
- certain post-graduate doctors and dentists in "speciality" training sponsored by overseas governments under an agreement with the UK.

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9.4 What is the process for employers obtaining a work permit for a new hire?

Where the Resident Labour Market Test is required and the employee is outside the UK, the sponsoring employer must apply for a "restricted" Certificate of Sponsorship under Tier 2 (General). Restricted certificates are subject to an annual limit of 20,700, which are made available on a monthly basis through an allocation panel administered by the Home Office. Once the Resident Labour Market Test is completed, employers can apply via the UKVI month allocation panel. If the request is approved, the employer can then assign the restricted Certificate of Sponsorship to the relevant employee for them to apply for their visa or for leave to remain. Where the number of requests for the Certificate of Sponsorship exceeds the number of available Certificates in the monthly limit, applications are ranked according to a points scoring system, with shortage occupations and Ph.D. positions scoring the highest points and additional points allocated on the basis of the proposed salary for the role.

If the individual is already working in the UK on a Tier 2 (General) visa for another employer or if the individual holds a visa under a different category which permits them to switch into the Tier 2 (General) category, the employer can assign an "unrestricted" Certificate of Sponsorship to that individual after completing the RLMT. Once the Certificate of Sponsorship is assigned, the employee can apply for further leave to remain in the UK.

9.5 What is the process for the employee to obtain a visa as a new hire?

The process for obtaining a Tier 2 (General) visa is the same as the process described in question 8.5 for obtaining a Tier 2 (Intra-company Transfer) visa, except that there is an additional English language requirement.

The individual must show that they meet the English language requirement by enclosing the following document(s) with their visa application:

- a passport showing that the individual is a national of a majority English-speaking country; or
- a certificate showing that they have passed an approved English language test with at least CEFR level B1 in reading, writing, speaking and listening; or
- a degree certificate and an official statement from UK NARIC confirming that that the degree that was taught in English and is equivalent to a UK Bachelor's degree, Master's degree or Ph.D.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The Certificate of Sponsorship, once obtained, can be assigned immediately through the SMS and will then be available to be used by the prospective employee for a visa application. The visa application process takes between 24 hours and four weeks depending on where the application is made and depending on which paid-for priority services are available.

9.7 How long are initial visas for new hires granted for and can they be extended?

Initial visas can be granted for up to five years. If they are granted for less than five years, they can be extended up to a maximum of six years without the need for any further Resident Labour Market Test. It is important that individuals are able to qualify for indefinite leave to remain (permanent residence) within those six years, as they will not be able to extend beyond this if they have entered the UK in this category on or after 6 April 2011. In particular, those on this route must ensure that they do not disqualify themselves from applying for indefinite leave to remain by having excessive absences outside the UK in the five-year qualifying period (see question 9.9 below).

9.8 Is labour market testing required when the employee extends their residence?

No further labour market testing is required where the employer extends the Tier 2 (General) sponsorship and the employee applies for an extension of their permission to stay. However, if the Tier 2 (General) employee is changing sponsoring employer in the UK, a Resident Labour Market Test will be required subject to the exemptions set above.

9.9 Can employees coming as new hires apply for permanent residence?

Those who are admitted under the Tier 2 (General) route will be eligible to apply for indefinite leave to remain (permanent residence) once they have completed five years' continuous residence and employment under the Tier 2 (General) category. In order to qualify, they will need to meet the following conditions:

- They have been continuously employed throughout the five years with breaks between employment of no more than 60 days at any time.
- They have not been absent from the United Kingdom for more than 180 days in any rolling 12-month period within the five year qualifying period.
- They have passed a Life in the UK test – this is an integration type test which is undertaken online and tests applicants on their knowledge of UK history, politics, society and living in the UK.
- They speak English to Level B1 on the CEFR.
- They do not have any criminal convictions which would prevent them from applying.

They provide confirmation from their current employers that they are still required for their role for the foreseeable future and that they continue to receive the appropriate rate of pay for that role.

9.10 What are the main government fees associated with this type of visa?

The fees are the same as for a Tier 2 (ICT) visa as set out in question 8.9.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Those coming under the Tier 2 categories are permitted to work for the employing sponsor in the role described in their Certificate of Sponsorship. They are able to undertake "secondary" employment in the same sector and at the same level as their main job for up to

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20 hours per week. They are also entitled to study as long as this does not interfere with the job that they are sponsored to undertake in the UK. Those sponsored under the Tier 2 rules cannot have any access to "public funds", which are the main welfare benefits available in the UK. In addition, those who are under Tier 2 (General) visas cannot own more than 10% of the shares in their sponsoring company, unless they earn more than £159,600 per year.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Certain nationals are required to register with the police within seven days after the date of their arrival. A list of nationalities is set out in Appendix 2 of the UK Immigration Rules, and those who are required to register within seven days will have an endorsement on their entry clearance visa confirming this. Registration takes place at the Overseas Visitors' Registration Office in London or at a local police station if the person is resident outside Greater London.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Employees coming to work in the UK are entitled to bring their spouses, partners and children under 18 with them. There is no provision for any other family members or children over 18 to accompany the employee, and any applications will normally be refused unless there are exceptional compassionate reasons.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

For civil partners with overseas civil partnerships, the civil partnership will need to be recognised as equivalent to a UK civil partnership or marriage in order to qualify. For unmarried partners or for those whose overseas civil partnerships are not recognised as equivalent to UK marriages or civil partnerships, the partner will need to demonstrate that they have cohabited in a relationship akin to marriage or a civil partnership for at least two years. Significant documentary evidence of cohabitation such as bank statements, utility bills and other official evidence addressed to the partner and/or the employee at the same address must be provided.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Spouses and partners who are admitted to the UK as dependants have full access to the labour market and are not required to obtain further permission or authorisation to work in the UK.

11.4 Do children have access to the labour market?

Children who are admitted as dependants have access to the labour market and can work in the UK in accordance with UK employment law.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Those who are admitted under the Tier 2 (General) route will be eligible to apply for indefinite leave to remain (permanent residence) once they have completed five years' continuous residence and employment under the Tier 2 (General) category. In order to qualify, they will need to meet the following conditions:

- They have been continuously employed throughout the five years with breaks between employment of no more than 60 days at any time.
- They have not been absent from the United Kingdom for more than 180 days in any rolling 12-month period within the five years.
- They have passed a Life in the UK test – this is an integration type test which is undertaken online and tests applicants on their knowledge of UK history, politics, society and living in the UK.
- They speak English to Level B1 on the CEFR.
- They do not have any criminal convictions which would prevent them from applying.
- They provide confirmation from their employer that they are still required for their role for the foreseeable future and that they will continue to receive the appropriate rate of pay for that role.

The rules for obtaining indefinite leave to remain in other immigration categories vary but all generally require the applicant to meet the residence, Life in the UK and language requirements in addition to continuing to meet the relevant category-specific criteria.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

The circumstances in which employees can switch from a temporary to a permanent visa are very limited. Switching from Tier 2 (Intra-company Transfer) to the Tier 2 (General) route within the UK is only generally possible if the person came to the UK under the Immigration Rules in place before 6 April 2011 and they are changing their employing sponsor in the UK. In addition, they cannot leave the UK and seek fresh admission under the Tier 2 (General) route as they will be caught out by the "cooling off" provisions which require them to be outside the UK for 12 months before being able to re-enter under that route. The only exception to this is where they are sponsored as high earners paid at least £159,600 per year. It is therefore extremely important to ensure that whenever there is a possibility that an employee will be transferred for an extended period, careful consideration is given to the most appropriate category of entry under Tier 2. There are special situations where those admitted as temporary workers may switch – this includes footballers admitted under the Tier 5 (Creative and Sporting) route (usually because they may not meet the Tier 2 (General) language requirements) who can then switch to the long-term category once they can speak English to the appropriate level.

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13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission to the UK (other than criminal convictions which are set out below) are contained in the General Grounds for Refusal in the UK Immigration Rules, which contains the provisions on mandatory refusals (visa bans) and discretionary refusals. The main grounds are:

- The person is subject to a UK deportation order.
- The person's exclusion is, or has been, personally directed by the UK Secretary of State as being "conducive to the public good".
- Medical grounds − where the person's medical condition is a significant risk to public health.
- The person has made false representations, submitted false documents or failed to disclose material facts in relation to the current application.

There are also a number of mandatory visa "bans" which exclude a person from returning to the UK for certain periods. These are where:

- The person has overstayed their previous visa for more than 30 days (or 90 days if the overstaying began before 6 April 2017).
- The person used deception in an application.
- The person breached a condition of their previous stay or entered illegally.

Where the above situations occur, the period of the visa ban will depend on when and how they left the UK. The bans will apply for:

- One year if they left the UK voluntarily (not at public expense).
- Two years if they left the UK voluntarily, at public expense, no more than six months after the date on which they were given notice of their removal decision, or no more than six months after the date on which they exhausted their appeal rights against that decision, whichever is the later.
- Five years if they left the UK voluntarily, at public expense, more than six months after their removal decision or more than six months after they exhausted their appeal rights against that decision.
- 10 years if they were removed from the UK at public expense.
- 10 years if they used deception (which includes using false documentation) in support of a previous application for entry clearance. In addition to the above bars, it should be remembered that an employee who has previously been sponsored in the UK under the Tier 2 route may be subject to a "cooling off" period which may prevent them from returning to the UK under Tier 2.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal convictions may be a bar to obtaining a visa to work in the UK. In particular, it is important to note that there are discretionary and mandatory grounds for refusal.

The mandatory grounds, under which an immigration application must be refused where they have received a custodial sentence, are that the person:

- has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least four years − visas or entry will normally always be denied;
- has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than four years − visa or entry will be denied for 10 years from the end of the sentence; or
- has been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months − visa or entry will be denied for five years from the end of the sentence.

It is important to note that although the application must be refused, there is scope for making representations in defined circumstances; for example, where the offence happened a significant time ago and there have been significant changes, or where a person is making a significant investment into the UK.

The discretionary grounds for refusing entry based on criminal convictions are where the person:

- has received a non-custodial sentence − they may be refused entry or a visa if the person was convicted within the last 12 months; or
- where a person's offending has caused serious harm or where the person is a persistent offender who has shown particular disregard for the law. Criminal convictions will also affect a person's ability to obtain extensions of leave to remain and indefinite leave to remain (permanent residence) in the UK.

Those applying for indefinite leave (permanent residence) will be prevented from applying if:

- they have been convicted of an offence for which they have been sentenced to imprisonment for at least four years − they will not be able to apply;
- they have been convicted of an offence for which they have been sentenced to imprisonment for between 12 months but less than four years − they will be prevented from applying for 15 years from the end of the sentence;
- they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months − they will not be able to apply for seven years from the end of the sentence; or
- they have been convicted of, or admitted, an offence for which they have received a non-custodial sentence or other out-of-court disposal that is recorded on their criminal record − they will be prevented from applying unless 24 months have elapsed between the conviction and the date their application is decided.

For the first three points above, these will rarely come into play as the individual would normally be refused entry to the UK in any event or, if convicted in the UK, with a custodial sentence of 12 months or more, would be subject to the UK's automatic deportation provisions. However, the issue of non-out-of-court disposals is an issue, as this can include a range of "sentences" which are included in a person's criminal record, including cautions − these are often issued by the police in the street in place of a formal charge and conviction by a court. It is important that any criminal offence, including drink driving and traffic offences and cautions, are disclosed in visa applications and applications for leave to remain and indefinite leave, as failure to mention them may result in refusal of the application, a significant visa ban on the grounds of deception or failure to disclose material factors where applying for a visa, and possible criminal prosecution for providing false information in an immigration application.

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Kingsley Napley

Kingsley Napley's immigration team is recognised as one of the best in the UK with over 15 years in the top tier of *Chambers UK* and *The Legal 500*. The team has an established reputation for providing clear strategic immigration advice tailored to each situation and client. The business immigration team supports global clients in all their immigration needs, ranging from companies setting up in the UK to multinationals transferring high volumes of staff into the UK and across the world. The team's excellent relationships with the UK immigration authorities and its high-level policy work, as well as its focus on client care, enable it to deliver a service underpinned by excellence, integrity and providing added value.

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Chapter 37

USA

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

In the United States, the Immigration and Nationality Act of 1952 (the "INA") is the primary source of law governing the immigration system. The INA, as amended, can be found in Title 8 of the U.S. Code. Federal agency regulations from the U.S. Department of Homeland Security ("DHS"), the U.S. Department of Labor ("DOL"), and the U.S. Department of State ("DOS") are located in Title 8, 20, and 22 of the Code of Federal Regulations ("CFR").

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system is primarily administered by the United States Citizenship and Immigration Service ("USCIS"), a department within the DHS.

In certain circumstances, employment/corporate immigrant and non-immigrant visas are administered by DOL or DOS.

The United States also has an appellate system in place for adversely adjudicated petitions. If a petitioner's application is adversely decided by USCIS, the petitioner often has the ability to appeal the decision to the Administrative Appeals Office ("AAO"). If the AAO adversely decides the petitioner's appeal, it can be further appealed in certain circumstances through the United States' Federal Court system.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

The United States is party to many multilateral and bilateral trade agreements and treaties that facilitate the movement of people between countries for employment purposes.

The North American Free Trade Agreement ("NAFTA") is a multilateral agreement that created the Trade NAFTA ("TN") visa. The TN visa facilitates the entry of Mexican and Canadian citizens to the United States for employment on a temporary basis (up to six years at a time, with extensions), provided that the applicant (1) is a Mexican or Canadian citizen, (2) whose profession is named on the NAFTA list, (3) the position in the U.S. requires a NAFTA professional, (4) the applicant is to work in a pre-arranged full-time or part-time job for a U.S. employer, and (5) the applicant is qualified for the espoused profession. The list of qualifying professionals may be found at Appendix 1603.D.1 to Annex 1603 of the NAFTA or at 8 C.F.R. § 214.6.

The Singapore–United States and Chile–United States Free Trade Agreements gave birth to the H-1B1 visa, a variant of the H-1B visa in the United States, but specifically for nationals of Singapore and Chile. Pursuant to these agreements with Singapore and Chile, of the 65,000 H-1B visas allotted each year, 1,400 are reserved for Chilean professionals and 5,400 are reserved for Singaporean professionals under the H-1B1 non-immigrant visa category.

The United States is also party to numerous bilateral treaties, a list of which can be found on the DOS website at https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html. Subject to regulatory requirements, and depending on the treaty, nations party to these treaties with the United States may be eligible for admission as a Treaty Trader ("E-1") or a Treaty Investor ("E-2"). In addition, Australian "specialty occupation workers" may be eligible for an "E-3" visa.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Citizens of 38 select countries may travel to the United States for business or travel without a visa under the Visa Waiver Program ("VWP"), which is administered by DHS in consultation with DOS. In return, those 38 countries permit U.S. citizens and nationals to travel to their countries for a similar length of time without a visa for business or tourism purposes. VWP visitors may not change to another immigration status while in the United States, and they waive their right to a removal hearing if they remain beyond their authorised period of stay. The list of VWP countries can be found at https://www.dhs.gov/visa-waiver-program-requirements.

To take advantage of the VWP, business visitors must first obtain authorisation through the Electronic System for Travel Authorization ("ESTA"). Ultimate admissibility is determined by the U.S. Customs and Border Protection ("CBP") officers upon the individual's arrival.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Under the VWP, visitors may stay for up to 90 days without a visa. A business visitor who is not a citizen of one of the VWP eligible

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countries will need to apply for a business related ("B-1") visa. Initially, B-1 visa holders are granted temporary stay of up to six months, which can be extended.

2.3 What activities are business visitors able to undertake?

Qualifying business activities include, *inter alia*, consultation with business associates, attending conventions or conferences on specific dates, settling an estate, negotiating a contract, and participating in short-term training. Activities not permitted on a B-1 visa or under the VWP include skilled or unskilled employment, study, paid performances, work as foreign press or media, and permanent residence in the United States.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

In the DOS Foreign Affairs Manual ("FAM"), the department acknowledges some cases in which aliens who qualify for H1 or H3 visas may more appropriately be classified as B-1 visa applicants. In such cases, although services may be offered by the business visitor, the applicant for this "B-1 in lieu of H" visa must not receive any salary or other remuneration from a "U.S. source" other than an expense allowance, and the status typically may not extend beyond a six-month period.

2.5 Can business visitors receive short-term training?

Short-term training under the VWP or a B-1 visa is permissible, as long as it does not include anything that could be considered skilled or unskilled labour (or other impermissible activities), and as long as they are not paid by a U.S. source beyond incidental expense allowances or reimbursement programs.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

USCIS' Fraud Detection and National Security ("FDNS") officers conduct randomly selected and unannounced visits of employers. FDNS also conducts compliance-review site visits on Religious worker petitions (before and after adjudication), H-1B petitions (after adjudication), and L-1 petitions (after adjudication).

DOL also conducts audits to ensure compliance with H-1B requirements.

3.2 What are the rules on the prevention of illegal working?

In an effort to prevent illegal working, U.S. employers are required to submit I-9 Employment Eligibility Verification forms. In some states, use of the E-Verify program is also required, which allows businesses to determine the eligibility of employees to work in the United States.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Pursuant to the INA, as amended, employers found to be violating immigration laws may be subject to civil fines, debarment from receiving government contracts, and possibly criminal penalties if a pattern of illegal hiring is discovered.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No system for registration of employers who wish to hire foreign nationals exists in the United States.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

By law, employers must ensure that they are meeting the obligations proffered in the immigrant and non-immigrant visa petitions, such as wages and job responsibilities. The employer must also verify employee identity and work authorisation, as well as keep adequate Public Access Files and ensure timely extension of its workers' visas where applicable.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Employers that hire foreign nationals are not required by law to show a commitment to train local workers. However, certain visa categories may require the workers to train locals. With E-1 and E-2 visas, employers must show how the E visa applicant will eventually train U.S. workers to perform the specialised skills.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Many visa categories have fees associated that are supposed to contribute towards the training of local workers, such as the $750–$1500 "Education and Training Fee" associated with the H1B visa.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Both DHS and DOL conduct onsite visits and audits of employers that sponsor foreign nationals to verify immigration compliance.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

U.S. immigration authorities do not maintain a list of skilled occupations that may be filled by foreign nationals. However, for the employment-based second preference ("EB-2") visa category, Schedule A contains a list of shortage occupations that are categorically in the nation's interest to fill. NAFTA also contains a list of professional occupations for TN visa applicants.

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4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes. In addition to the Schedule A list of shortage occupations, several employment-based visa categories can only be filled if there is a proven shortage of U.S. workers in the given field.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

The INA sets the quota for employment-based immigrant (green card) visas to 140,000 per year. The INA further specifies a "per-country ceiling" or cap limiting the number of employment-based immigrants from a single country to 7% of the limit in each preference category. Congress has also mandated that available H-1B visas be capped at 65,000 with an additional 20,000 H-1B visas available for U.S. Master's degree (from a public university) holders, H-2B visas are capped at 66,000 (effective May 8, 2019 to September 30, 2019, USCIS will issue up to 30,000 additional H-2B visas for previous H-2B recipients from 2016, 2017, and 2018), and E-3 visas for Australian nationals are limited to 10,500 visas per year.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

"H-1B Dependent Employers" that hire a higher amount of H-1B employees than the normal standard are at a greater risk for audits and denials because the employer must provide evidence that qualified American workers are not having their jobs outsourced to foreign labour. An employer is considered H-1B dependent if it has 25 or less full-time employees and at least 8 H-1B workers, if it has 26 to 50 full-time employees of whom at least 13 are H-1B workers, or if it has more than 50 full-time employees of whom 15% or more are H-1B workers. H-1B dependent employers are required to verify their dependence on foreign labour with each Labor Condition Application filed on every H-1B application or extension. H-1B dependent employers may also be subject to a higher filing fee ($4,000) if they have more than 50 employees and more than 50% of their work force have H-1B status.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Employees with intent to immigrate to the United States must undergo a medical examination. Temporary non-immigrant workers are not required to undergo such an examination.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employees sponsored to work in the United States are not required to have medical insurance to obtain immigration benefits. Employers who sponsor H-1B employees have a burden to provide benefits, which may include medical insurance, to visa holders comparable to those provided to its U.S. employees. Free public medical services are of limited availability in the United States, and entitlement to the same is typically reserved for U.S. citizens and lawful permanent residents.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

U.S. immigration law allows for secondment in the H-1B category, but sponsoring employers in the H-1B category must continue to directly supervise the seconded employee's day-to-day activities. In addition, USCIS requires additional documentation from the sponsor and client site (or "third-party worksite") to ensure the foreign national will work in the approved specialty occupation for the duration of the permitted stay.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Yes, several. The non-immigrant H-1B and O-1 visas are reserved for individuals performing "specialty occupations" and for individuals of extraordinary ability in their field, respectively.

Immigrant visas for highly skilled individuals also exist. The EB-1 category, a visa for applicants who are leaders in their respective fields, is divided into three subcategories to include: applicants possessing "extraordinary ability" and are in the top percentile of their field (EB-1A); applicants that can demonstrate international recognition for outstanding achievements in a particular academic field with at least three years' experience in teaching or research (EB-1B); and applicants employed in managerial or executive capacities outside of the U.S. for the same employer (or affiliate/subsidiary) for three years preceding the petition (EB-1C).

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes. Non-immigrants who are (1) nationals of one of the 83 treaty countries with the U.S., and (2) are making a significant investment in a business in the U.S. are eligible for E-2 visas.

EB-5 immigrant visas are available for applicants investing $1,000,000 (or $500,000 in "targeted employment areas") in a "new commercial enterprise" that will create at least 10 permanent, full-time positions for U.S. workers. The applicant whose investment is approved by USCIS is initially granted conditional permanent residency. If two years later, it is shown that the 10 jobs were actually created, unconditional permanent residence is granted.

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7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Yes. J-1 exchange visitor non-immigrant visas are provided to trainees or interns seeking to participate in training programs in the U.S. If the visa recipient was sponsored by the U.S. government or the visa holder's government, a two-year home residency requirement is typically imposed before the visa holder can return to the U.S., or to apply for other visas. The Q non-immigrant visa is also available for international cultural exchange programs designated by USCIS. The H-3 visa also allows non-immigrants to come to the U.S. to receive training not otherwise available to them.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Yes. These include A visas for diplomats and foreign officials, B visas for athletes, J visas for exchange visitors, I visas for foreign media, and P visas for performers, athletes, artists, and entertainers.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Yes. The L-1 non-immigrant visa allows overseas companies to transfer executives and managers (including business owners) for up to seven years (L-1A), and employees with "specialised knowledge" for up to five years (L-1B) to a new or existing U.S. office.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The U.S. employing company must be related to the foreign company as parent, subsidiary, affiliate, or branch company.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

The foreign national employee must have worked abroad for at least one continuous year within the last three years for a related business entity (parent, subsidiary, or affiliate) in an executive, managerial, or specialised knowledge capacity. Companies must generally demonstrate they have been doing business in the U.S. and (at least) one foreign jurisdiction for one year or more.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The employer must first submit a petition with USCIS seeking the relevant transfer. Upon approval, the individual may apply for an L-1 visa at a U.S. Consulate or Embassy abroad. Companies that transfer a larger number of employees annually may receive approval of a "blanket L" petition, which allows the employee to apply directly to the U.S. Consulate/Embassy abroad without filing an individual petition with USCIS.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

After approval of the petition, the visa applicant can apply online with the DOS, and schedule an appointment for a visa interview at the relevant U.S. Consulate or Embassy.

8.6 How long does the process of obtaining the work permit and initial visa take?

For L-1 petitions, premium processing is available, which ensures that the petition will be processed within 15 days for an extra fee. Petitions filed without premium processing can take several months. Blanket L applications generally take a week, depending on the wait-time at the U.S. Consulate or Embassy.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

The initial L-1 visa is issued for a period of up to three years and can be extended. The extension length depends on whether the visa recipient is a manager or executive, which can be extended to a total of seven years, or if the visa recipient is an individual with "specialised knowledge", which can be extended to a total of five years.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes. Managers/executives who have worked in this capacity abroad can seek permanent residence without conducting a labour market test to identify qualified and available U.S. employees who could instead fill the position. Individuals with specialised knowledge, however, must conduct the labour market test and request DOL certification attesting to the unavailability of qualified U.S. workers before proceeding further.

8.9 What are the main government fees associated with this type of visa?

USCIS charges a filing fee of $460 for filing the L-1 visa petition. Dependents of the L-1 visa applicant also have filing fees of $370 per dependent. USCIS also charges an additional "Fraud Prevention and Detection Fee" of $500. Premium processing costs $1,410. There is an additional $190 per applicant fee to file for the L-1 visa with DOS. If the employer is H-1B or L-1 dependent, a special fee of $4,500 may be required.

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9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The H-1B visa category is the main immigration category used for employers seeking to obtain permits for new hires.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There is no labour market testing for H-1B visas.

9.3 Are there any exemptions to carrying out a resident labour market test?

This is not applicable as there is no resident labour market test required for H-1B visas.

9.4 What is the process for employers obtaining a work permit for a new hire?

To obtain an H-1B visa, with the exception of "cap-exempt" applicants, the employer must apply during the one-week period starting in April, which has an October start date. As part of the application, the employer must submit a labour condition application ("LCA") to DOL, and have it certified.

9.5 What is the process for the employee to obtain a visa as a new hire?

Once the H-1B petition is approved, the employee will apply for the visa at their local U.S. Consulate or Embassy.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Premium processed H-1B petitions take 15 days, while non-premium processed H-1B petitions can take several months.

9.7 How long are initial visas for new hires granted for and can they be extended?

H-1B visas initially have a three year stay, which can be extended for an additional three years. Further extension is possible if the visa holder is being sponsored for permanent residence before their fifth year of H-1B status.

9.8 Is labour market testing required when the employee extends their residence?

No, labour market testing is not required in this instance.

9.9 Can employees coming as new hires apply for permanent residence?

Yes. H-1B recipients may be sponsored for permanent residence.

9.10 What are the main government fees associated with this type of visa?

The base filing fee is $460. There is also a $750–$1500 U.S. worker training fee. The petitioner must also pay a $500 Fraud Prevention and Detection fee. Premium processing is $1,410.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The employee must remain employed by the sponsoring employer. If the employee is terminated, the employee's H-1B status is deemed to have expired and they must leave the country unless they are eligible to change their status.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Dependents of sponsored employees include spouses, and unmarried children under the age of 21.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The dependent partner must be married to obtain a derivative visa.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Spouses with an L-2 and E-2 dependent status may apply for employment authorisation in the U.S. However, spouses with an H-4 are presently ineligible for employment authorisation unless their H-1B primary spouse is the beneficiary of an approved I-140 petition or has been granted H-1B status beyond six years based on the American Competitiveness in the Twenty-First Century Act (AC21).

11.4 Do children have access to the labour market?

No, unless the children are applying for permanent residence and otherwise comply with age-based work restrictions in the U.S.

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12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Unless the applicant can demonstrate "extraordinary ability" or is applying for a "national interest waiver", a sponsoring employer must test the U.S. labour market for qualified and available U.S. workers to fill the position and obtain certification from DOL.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, provided that the prior non-immigrant visa was a dual intent visa.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The INA sets forth various grounds of inadmissibility including bars due to health, criminal records, national security, likelihood of becoming a public charge, lack of labour certification, prior fraud or misrepresentation, prior removals or unlawful presence, etc.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

It depends on the criminal conviction. Crimes constituting a bar on admission include crimes involving "moral turpitude", violations of any controlled substance law or drug trafficking, being convicted of two or more crimes with five or more total years in prison, prostitution, "commercialised vice", violations of religious freedom, human trafficking, and money laundering.

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Kuck | Baxter Immigration LLC is the premier immigration law firm in Atlanta. Our clients are the foundation of our firm. We use our decades of experience in Immigration Law to work on each case in a collaborative, team approach. We ensure that our case preparation, process and even our communications with our clients are focused on ensuring that you know and understand what we are doing for you, why we are doing it, and when it will be done.

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