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# Corporate Immigration 2020

A practical cross-border insight to corporate immigration law

**Seventh Edition**

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# Expert Chapters


1 **COVID-19 and the Global Immigration Shutdown: Why it is Time to Reimagine the Visa Application Process**
Nicolas Rollason, Kingsley Napley LLP

4 **Global Overview on Modern Slavery and Corporate Supply Chain Compliance**
Anne O'Donoghue, Taraneh Arianfar & Jenny Nguyen, Immigration Solutions Lawyers

14 **PERM Law in Viral America**
Joel Stewart, Fakhoury Global Immigration


# Q&A Chapters


19 **Australia**
BDO Migration Services: Maria Debra Jockel & Rebecca Thomson

31 **Austria**
Oberhammer Rechtsanwälte GmbH: Ewald Oberhammer & Valentina Arnez

40 **Canada**
BARTLAW LLP | Canadian Immigration: Jacqueline R. Bart & Carrie A. Wright

50 **China**
PKF Legal (Shanghai Demei Law Firm): Qin Chen & Matteo Cicero

57 **Colombia**
Tannus & Asociados: Rodrigo Tannus Serrano

63 **Cyprus**
A. KARITZIS & ASSOCIATES L.L.C: Elena Karitzis & Marios Christodoulou

71 **Egypt**
Youssry Saleh & Partners: Ingi Scandar & Mira Adly

78 **France**
Petrel & Associés: Pascal Petrel

86 **Germany**
michels.pmks Rechtsanwälte Partnerschaft mbB: Dr. Gunther Mävers

100 **Ghana**
Globetrotters Legal Africa: Paa Kwesi Hagan & Irene Ntarmah-Wilson

108 **Indonesia**
SANDIVA Legal Network: Arthur Wailan Sanger, S.H., Romy Jiwaperwira, S.H. & Raiyan Maulana, S.H.

114 **Italy**
De Luca & Partners: Vittorio De Luca

124 **Japan**
Nakai Immigration Services LPC: Masahito Nakai

131 **Luxembourg**
REAL Avocats à la Cour: Maria Ana Real Geraldo Dias

138 **Malaysia**
Rahmat Lim & Partners: Jack Yow

145 **Mexico**
De La Vega & Martínez Rojas, S.C.: Edgar Mayorga Compean

153 **Netherlands**
Everaert Advocaten Immigration Lawyers: Marcel A.G. Reurs

162 **Nigeria**
Famsville Solicitors: Dayo Adu & Blessing Oluwapamilerin Adepoju

168 **Peru**
AOV Abogados: Ariel Orrego-Villacorta Icochea

177 **Poland**
Raczkowski: Michał Kacprzyk

184 **Portugal**
SRS Advogados: Raquel Cuba Martins

190 **Russia**
ALRUD Law Firm: Irina Anyukhina & Margarita Egiazarova

197 **Singapore**
Magrath Sheldrick LLP: Ben Sheldrick

205 **Slovenia**
Law firm Šafar & Partners, Ltd: Martin Šafar & Polona Boršnak

212 **South Africa**
J Fetting Inc.: Jonty Fetting

222 **Spain**
Bojorge & Associates: Marla Vanessa Bojorge Zúñiga

228 **Sweden**
Advokatfirman Vinge: Jonas Lindblad & Anna Backman

235 **Switzerland**
VISCHER AG: Urs Haegi & Beatrice Leistner

242 **Tanzania**
Breakthrough Attorneys: Asha Hamisi Mgembe & Morren Ndunguru

248 **United Arab Emirates**
M-HQ Ltd (Dubai Branch): Yann Mrazek & Kath Zagatti

255 **United Kingdom**
Kingsley Napley LLP: Nicolas Rollason & Felicity Woof

267 **USA**
Green and Spiegel LLC: Dana K. Imperia & Ashley P. Hogan

# COVID-19 and the Global Immigration Shutdown: Why it is Time to Reimagine the Visa Application Process

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Nicolas Rollason

## Introduction

The COVID-19 pandemic has brought global mobility to a grinding halt. Around the world, travel restrictions, border closures, post-arrival quarantines for passengers, limitations on in-country movement and ongoing social distancing measures have restricted most forms of travel across international borders. International assignments, business travel and short-term cross-border service provisions have all but disappeared, as businesses and their employees follow the lockdown and work from home edicts issued around the world.

## Rethinking Mobility?

As Governments start to ease lockdown measures, as their countries go past the peak of infection, employers are now turning their minds as to how they will return to business as usual in the post-pandemic world of global mobility. The crisis is causing a fundamental rethink in the way in which global mobility operates, as business models which involve mobility at their core are being stress-tested to the extreme.

The first question to ask is whether these models and the policies which implement them can continue, or whether they need to be reshaped to the post-pandemic world. Businesses are shifting to focus on roles rather than locations and reviewing to what extent "portable" careers can continue without residence and work in the same location. As work from home has become the new normal, businesses can see that the productivity of mobile staff may not be very badly affected once people and systems are operating efficiently in their homes, and how much can be achieved (and enjoyed) through video calls. With this in mind, the need for global mobility (or even local mobility) looks more and more outdated. Combined with the personal health and safety concerns of employees in the medium term (until at least Q1 of 2021 on current projections for a vaccine) and longer term environmental concerns about travel, it does not look as though global mobility will be making a comeback in its current form anytime soon. Many are also predicting that the inevitable economic downturn may well see knee-jerk protectionist immigration measures which may restrict the availability of work visas in certain jurisdictions.

## Rethinking and Future-Proofing the Visa Application System

While the crisis gives businesses a unique opportunity to review their mobility policies and distributed workforce models, it has also exposed fundamental weaknesses in the global visa system that is supposed to facilitate (but often blocks) global mobility. Even if people want to travel and relocate for work, the total shutdown in the global visa infrastructure now means that this is simply not an option. While dealing with the immediate immigration consequences of the lockdown has been the first problem to be addressed by immigration policymakers, reopening the visa system is now top of the list. But Governments should also be taking this opportunity to think about how the visa system can be future-proofed against another pandemic or other global disaster.

The current crisis has exposed the fact that the existing visa operations of most countries are built around a "bricks and mortar" infrastructure, which requires applicants to travel into large cities to file their applications, attend visa interviews in person and/or to provide their biometrics (fingerprints and facial photographs). In many countries, migrants also have to register with the police on arrival. There are many policy reasons why physical attendance is often required – much of US immigration policy since 9/11 has been driven by national security and has seen all visa applicants interviewed in person in US Government operated Embassies and Consulates.

The UK has been collecting biometric data on visa applicants since 2007 and outsourced the operation of all global visa application centres (VACS) to commercial partners, including VFS Global (starting in 2003) and TLS Contact (from April 2014) for applications made outside the UK and to Sopra Steria for all in-country applications (since 2018). These commercial arrangements involve the provision of physical locations for biometrics to be taken and for key original documents to be provided (and more recently scanned). The commercial partners also provide a range of additional services including (amongst many others) priority services, premium lounges, courier deliveries, passport return services and more recently mobile biometric enrolment facilities. While 2019 saw a significant change to UK visa processing in that supporting application documents can now be scanned into the online system by applicants, the latter (other than a small number of wealthy applicants who can afford to use the expensive and very limited capacity for mobile enrolment at their homes) must still attend a physical location to provide biometrics.

## Leaving the Bricks and Mortar Infrastructure Behind?

Is there an alternative to the bricks and mortar approach to visa applications? A solution could well be found in the UK's EU Exit app, designed to assist the UK Government in processing around 3.5 million applications from EU nationals living in the UK as part of the post-Brexit transition away from EU free movement. The app was launched in January 2019 as a pilot and fully launched from 29 March 2019, the day on which the UK was originally due to leave the EU.


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The app makes applying very easy – it reads the biometric chip in an individual's passport (using Near Field Communication functionality found in most smartphones) and then validates and authenticates the chip biometrics against a facial verification of the applicant looking into the phone. Applicants (or customers as they are now referred to) using the app can apply for UK immigration from the comfort of their home or on the move without having to attend an appointment. They can also upload evidence of residence through the app and do not need to present their passport to an immigration official or commercial partner. It is exactly this self-service convenience which has enabled more than 3 million EU nationals to be granted status via the app so far.

Clearly, EU nationals already in the UK present a low immigration risk. There may be reluctance to deploy similar mobile solutions to first time visa applicants whom the UK authorities do not already know. At present, the EU Exit app does not take fingerprints, which are typically part of most visa-related identity verification, where checks can be run against existing national and international immigration and criminal databases, before visas are then issued. Technology currently exists for fingerprints to be taken using smartphones, and if the current features of the EU Exit app were combined with this technology, then this could provide a secure mobile solution to bypass the bricks and mortar routes.

## The Future Reimagined?

Policymakers tend to be cautious when looking at how innovation can improve immigration systems. National security issues tend to trump progress in many cases and the rise of "work from anywhere" may have made the need for physical relocation across borders less pressing. Countries such as the UK may be moving in a different direction to major immigration destinations such as the US in referring to the immigration application process as the "customer journey". Notwithstanding all of these issues, immigration policymakers who want to keep the wheels turning during global crises must think of better ways for individuals to apply for their visas. While it may not yet tick all of the security boxes, the EU Exit app provides a possible starting point for the design of a future UK visa application process that bypasses what visa applicants around the world take for granted – travel, queuing, waiting, cost and inconvenience. Moving applications away from visa application centres may future-proof the system against similar crises and enable global mobility to resume much more quickly.


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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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# Global Overview on Modern Slavery and Corporate Supply Chain Compliance

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## Introduction to Modern Slavery

Modern slavery presents the world with an ongoing challenge. Modern slavery is an umbrella term that is used to describe a range of slavery and slavery-like practices, including forced labour, labour bondage, involuntary servitude and human trafficking. A growing acknowledgment of human rights in business has exposed the labour violations and abusive practices that exist in many global supply chains.

The Walk Free Foundation refers to modern slavery as:

> *'Situations where one person has taken away another person's freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working – so that they can be exploited. Freedom is taken away by threats, violence, coercion, abuse of power and deception. The net result is that a person cannot refuse or leave the situation.'*[1]

The economic value through such exploitation is a major reason why slavery persists to flourish. It has been determined that US$150 billion in profits is generated annually from just forced labour.[2] Although slavery has existed for centuries, the globalisation of production has played a role in it becoming modern and refined and practised more widely than ever across the world. Modern slavery is one of the most extreme forms of injustice and an abhorrent crime against humanity.

Over the last two decades, the global community has benefited from an improved understanding of and response to human trafficking. Whether these initiatives and other global agreements are effective is mainly centred on whether they have introduced domestic legislation or an international treaty which compels mandatory due diligence and penalties for non-compliance.

### What is 'Modern Slavery'?

It is unusual to speak of slavery in the 21st century. We all thought it was abolished, that it is already illegal. The Crime Act includes seven offences of modern slavery and the Commonwealth Criminal Code Act lists 14 that are considered illegal. So why is it still happening?

Modern Slavery is the extreme exploitation of other people for personal or commercial advantage. It is around us but hidden. It is in clothes we wear, food we eat, tools we use and services we receive. Workers can face violence or threats in many forms. The most common forms of slavery are human trafficking, forced labour, debt bondage, descent-based slavery, slavery of children and forced and early marriage.

## The Global Nature of Modern Slavery in Global Supply Chains

International supply chains are driven by the principle of cost advantages which can ultimately increase the risk of labour exploitation and abuses.[3] The Global Estimates of Modern Slavery, published by the International Labour Organisation (ILO) and the Walk Free Foundation, reports that there are an estimated 40.3 million slaves trapped in modern slavery worldwide.[4] Two-thirds of these people were identified in the Asia-Pacific region, which includes Australia.[5] The focus here will be on the prevalence of modern slavery both within Australia and in our neighboring region, given that the estimates suggest the majority of victims are located in the Asia-Pacific.

To tackle modern slavery, several countries have implemented legislations that impose mandatory legal accountability on companies for their global operations and lessen the risk of modern slavery in their supply chains. California was the first to introduce compliance in supply chains, implementing the *California Transparency in Supply Chains Act* in 2012. The United Kingdom, France and Australia are the few nations in the world that have followed by introducing mandatory corporate social responsibility reporting requirements. The United Kingdom became the first country to adopt substantial anti-slavery legislation targeting modern slavery in supply chains by passing the *Modern Slavery Act 2015* (UK) in 2015.[6] More recently, Australia has passed the federal *Modern Slavery Act 2018*. These legislations require certain companies to publish an annual modern slavery statement outlining what they are doing to stop modern slavery in their own organisation and their supply chains. Additionally, the Australian state of New South Wales passed its own modern slavery law, making critical additions to the federal law by creating an independent anti-slavery commissioner to monitor implementation and promote action against modern slavery. The law also creates a range of monetary penalties for companies with employees in New South Wales that fail to comply with the modern slavery statement requirements.


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Although these laws have been critiqued,[7] they have heightened the drive and push for global companies to be liable and provide assurance for adherence to human and labour rights in their global supply chains.

## Overview of Modern Slavery in the Asia-Pacific Region

The Global Slavery Index reports that the Asia-Pacific region had the highest number of victims across all forms of modern slavery, accounting for 73 per cent of victims of forced sexual exploitation, 68 per cent of those forced to work by state authorities, 64 per cent of those in forced labour exploitation, and 42 per cent of all those in forced marriages.[8] Within the region, North Korea, Afghanistan, and Pakistan are the countries with the highest prevalence of modern slavery per 1,000 people in the population.[9] In addition, China, India and Pakistan were reported to have the highest total number of people living in modern slavery.[10]

To date, China, Taiwan and Australia are the only countries within the region to have in place measures to stop businesses sourcing goods or services connected to modern slavery.[11] Australia is however the only Asia-Pacific nation with a specific anti-slavery legislation requiring mandatory reporting for all large businesses with regard to the presence of modern slavery in their supply chains. This legislation can encourage companies to be part of global and domestic efforts to tackle modern slavery. Vanessa Zimmerman, CEO of Pillar Two, has expressed that such legislation can also be good for businesses, for example:

1. by helping them to meet the increasing expectations and commitment to greater transparency;
2. by promoting a more equal playing field between leaders and laggards; and
3. by providing guidance to managing the risks of modern slavery in their own supply chains.[12]

| Department of State's Trafficking in Persons Report – Tier Ranking | | |
|---|---|---|
| | 2019[13] | 2018[14] |
| Australia | Tier 1 | Tier 1 |
| China | Tier 3 | Tier 3 |
| Indonesia | Tier 2 | Tier 2 |
| Japan | Tier 1 | Tier 1 |
| Malaysia | Tier 2 | Tier 2 |
| North Korea | Tier 3 | Tier 3 |
| New Zealand | Tier 1 | Tier 1 |
| Thailand | Tier 2 | Tier 2 |
| Taiwan | Tier 1 | Tier 1 |
| Singapore | Tier 2 | Tier 2 |
| South Korea | Tier 1 | Tier 1 |

## Australia

Australia is not immune from the exposure of modern slavery. A number of countries known to have modern slavery taking place in parts of the labour market produce goods and services that are sold in the Australian market. The transparency of what is occurring in supply chains is limited due to its highly complex and multi-layered nature. This increases the risk that goods and services sold in Australia have been tainted by modern slavery. The Department of Foreign Affairs and Trade identifies that China, Singapore, Malaysia, Thailand and Korea are among Australia's top 15 trading partners.[15]

Similar to most other countries in the world, Australia has been hounded by a range of scandals and controversies regarding the gross exploitation of workers in its complex modern supply chains, both within the country and overseas, in the complex of modern supply chains. In 2015, a report published by the Fair Work Ombudsman exposed that young chicken plant workers employed by the major chicken processing company Baiada were forced to work up to 18 hours a day and were grossly underpaid at A$11.50 per hour while living in overcrowded and run-down housing. The report found a shady network of deceptive contracting arrangements and exploitation of thousands of foreign workers mostly from Taiwan and Hong Kong in Australia on 417 working holidays visas.[16] Every business has accountability for respecting human rights and therefore should play a role in tackling the issue of modern slavery in their supply chains.

Australia's legal and policy framework reflects its international obligations to address human trafficking and slavery. Australia has had a comprehensive, whole of government response to combating modern slavery in place since instituting the *Action Plan to Eradicate Trafficking in Persons* on 1 January 2004. The United States *2019 Trafficking in Persons Report – Australia* ('2019 TIP Report') acknowledged that Australia fully met the minimum standards for the elimination of trafficking and remained on Tier 1.[17] In 1999, slavery offences were inserted into Division 270 and 271 of the *Commonwealth Criminal Code*. These offences apply to all persons, regardless of whether the conduct occurs within or outside of Australia. These offences have a maximum penalty of 25 years' imprisonment.

The Australian Government has demonstrated continuous efforts including: adopting legislation which required businesses to disclose their efforts to tackle human trafficking in their supply chains; increasing staff recruitment in the Witness Assistance Service to deliver support to victims of trafficking testifying against their traffickers; increasing funding for their victim support programme; and detecting and referring victims to services.[18] Despite the concerning lack of prosecutions, the Australian criminal framework provides a solid foundation for the Australian legal framework and response to modern slavery.

### Modern Slavery Act (Cth)

In late 2018, the Australian Government passed the federal *Modern Slavery Act 2018* (Cth). A Modern Slavery Act is a very important piece of the puzzle in eliminating modern slavery and closing the governance gap that is inherent in global supply chains. The objective of the Act is to mitigate any risk of modern slavery by requiring Australian businesses to identify and take proactive actions to mitigate the risk of slavery practices occurring within the supply chains of goods and services produced in the Australian market.

The key provisions under the Act include:

- Australian entities with a minimum annual consolidated revenue of A$100 million will be required to report under the Commonwealth Act.
- Reporting entities will need to prepare an annual Modern Slavery Statement addressing mandatory criteria including the potential modern slavery risks in the entity's operations and supply chains and the actions which the entity has taken to assess and address those risks.
- Power is granted to the Minister of Home Affairs to establish a publicly available register of Modern Slavery Statements to promote transparency and allow consumers and others to make informed decisions about products.


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- The Minister of Home Affairs is to make written requests to an entity who has failed to give a modern slavery statement to provide an explanation as to why, or to undertake specific remedial action to address the non-compliance.
- The publication of an annual report by the Minister of Home Affairs each year regarding the implementation of the Act including an overview of compliance by entities and best practice modern slavery reporting under the Act.

Some of these new measures have been criticised for lacking teeth. There have been arguments that the A$100 million revenue threshold for attracting the reporting requirements is set too high to achieve the Act's stated aims.[19] The Law Council of Australia has supported a lower threshold closer to A$60 million, which is approximately equivalent to the UK *Modern Slavery Act 2015* (UK) threshold.[20] The legislation should also include penalties for non-compliance, which would overcome the inherent unreliability of leaving compliance incentives to the market and consumers.[21] This federal legislation is to be reviewed every three years.

Nevertheless, this legislation is a very important piece of human rights legislation for Australian business. The problem of modern slavery occurs mainly in global supply chains, which business has the power and influence to address.

Australia must continue to build on the considerable progress already made. Government leaders must prioritise the investigation and prosecution of modern slavery occurrences wherever they take place. Though it is unrealisatic to count on businesses to track down every product or service back to its origin, businesses can work towards achieving a better understanding of their supply chains and implement reasonable steps to respond to the risk of modern slavery.

## The proposed 12 goals in Australia's National Action Plan to Combat Modern Slavery 2020–2024

Australia is developing a new five-year National Action Plan to Combat Modern Slavery 2020–24 ('National Action Plan 2020–2024') to drive the strategic direction of Australia's response to tackle modern slavery. This plan will build on the achievements of the 2015–19 Plan and align with Australia's domestic laws and international obligations.

Through a National Roundtable on Human Trafficking and Slavery, the Government has identified 12 proposed goals for the 2020–24 Plan. These goals aim to 'address the full cycle of exploitation, from recruitment to reintegration, and aim to give equal weight to the critical areas of prevention, enforcement and victim support'.[22]

**Goal 1 – maintain and promote compliance with international standards on modern slavery**

The elimination of modern slavery is a global priority and is reflected in commitments set out in international instruments, including the following:

- the *Convention against Transnational Organised Crime*, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*;
- the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*;
- the *Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power*;
- the *International Covenant on Civil and Political Rights*;
- the *Convention on the Elimination of All Forms of Discrimination Against Women*; and
- the *Convention on the Rights of the Child* and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prosecution and Child Pornography*.

These international standards must guide and inform a human rights approach to addressing modern slavery both in and outside Australia.

**Goal 2 – engage the Australian community to understand and combat modern slavery**

All stakeholders, including governments, companies, civil society, victims and their communities, should play a vital role in eradicating modern slavery. The Government must continue to build capacity and provide guidance to companies about modern slavery reporting as well as on how companies can better identify, prevent and address modern slavery in their operations and supply chains.

**Goal 3 – promote an evidence-based response to modern slavery**

Further efforts are needed to improve the evidence base on modern slavery in order to inform and guide policy responses. The evidence base should consist of both quantitative and qualitative research and its objectives should include understanding the underlying causes of modern slavery in Australia and its surrounding regions.

**Goal 4 – maintain a robust and comprehensive legislative framework to combat modern slavery**

The Law Council of Australia had recently recommended that this goal be amended to include 'that is regularly reviewed against international and domestic standards and best practice'.[23] It should seek to not only maintain this legislative framework but to advance and strengthen this framework.

**Goal 5 – train frontline officials to support the identification of victims and effective investigations on modern slavery**

There needs to be a continued commitment to comprehensive training to ensure that frontline officials are competently knowledgeable and experienced to identify signs of potential victims of human trafficking and modern slavery. The US *2018 Trafficking in Persons Report – Australia* ('2018 TIP Report') observed that the Australian Government had funded and facilitated training on trafficking investigation, legal provisions and victim support for more than 500 law enforcement and immigration officials.[24] The Australian Border Force had also developed online training for frontline officers during the reporting period.[25] However, the 2018 TIP Report also included findings that the Government did not sufficiently screen for such indicators among vulnerable groups, and that its efforts required improvement to preemptively identify trafficking victims.[26]

**Goal 6 – progress effective prosecutions to secure convictions against offenders**

This goal introduces efforts to ensure that the criminal justice system effectively investigates and prosecutes alleged modern slavery crimes. The United States Department of State has recently called upon Australia to significantly strengthen its efforts to investigate and prosecute trafficking offences, in view of its low conviction rates.[27] The 2019 TIP Report identified that the Australian Government had decreased its law enforcement efforts. There were no convictions under the trafficking provisions of the criminal code in 2018. The Report subsequently recommended that the Australian Government 'significantly strengthen efforts to investigate and prosecute trafficking offenses, with increased focus on labour trafficking and sentence convicted traffickers to significant prison terms'.[28] This was in response to the concerns that the Government investigated 179 suspected cases of trafficking and initiated prosecutions against two defendants, one for forced labour and one for forced labour and sex trafficking in 2018.[29]


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**Goal 7 – enhance our response to combat forced marriage**
The Australian Government has recently announced that it will change eligibility requirements to give victims of forced marriage better access to victim support on a continuing basis.[30] It has been reported that referrals for suspected forced marriage to the AFP have significantly increased in recent years.[31] This rise could be attributed to the fact that forced marriage was criminalised in Australia in 2013 and the resulting increased awareness surrounding the practice.

**Goal 8 – enhance our response to combating serious forms of labour exploitation, including forced labour and deceptive recruiting**
In recent years, there have been a number of cases, particularly in the horticultural sector, suggesting that labour exploitation is prevalent in Australian businesses and operations associated through supply chains.[32] According to the Global Slavery Index, cases of forced labour and exploitation predominantly occur in high risk industries, including agriculture, construction, domestic work, meat processing, cleaning, hospitality, and food services.[33] It also uncovered that many of these industries employ a high percentage of migrant workers who enter Australia through its temporary visa scheme designed to fulfil Australia's labour shortages.[34] Assessing and eradicating labour exploitation therefore should be a significant focus for Australia.

**Goal 9 – promote transparency and accountability for combating modern slavery risks in global supply chains, including Government procurement**
The three-year review, provided for under the Modern Slavery Act, presents an important opportunity to consider how best to strengthen and enhance the current legislative approach in Australia.

**Goal 10 – provide appropriate support, protections and remedies to empower victims of modern slavery**
This awareness raising should include making clear that overseas nationals without a valid visa who are suspected of being victims of modern slavery may remain lawfully in Australia, both on a temporary and permanent basis, depending on the circumstances, under the Human Trafficking Visa Framework. Support from the Government will become increasingly important as growing numbers of victims are likely to be identified with a deeper and broader Australian response to modern slavery.

**Goal 11 – enhance our leadership and partnerships to promote regional and international cooperation on combating modern slavery**
This goal seeks to respond to the available estimates indicating that modern slavery is particularly prevalent in Asia-Pacific region, in which 62 per cent of all victims of modern slavery worldwide are located[35] and the prevalence of forced labour is the highest globally.[36] This acknowledges Australia's heightened responsibility to its home region. Emphasis should be placed on the Asia-Pacific to reflect the reality of extreme labour exploitation in Asian countries, with an estimated 2.5 million people living in modern slavery in Southeast Asia alone.[37]

**Goal 12 – work collaboratively across government, along with non-government stakeholders, to combat modern slavery**
The Australian Government has demonstrated a consistent commitment to work collaboratively with a wide variety of stakeholders. Collaboration between and among governments and with relevant international and regional organisations in areas such as labour law enforcement and criminal law enforcement is critical in preventing modern slavery abuses. The ILO has indicated that the majority of forced labour today exists in the private economy.[38] This underscores the importance of partnering with the business community to eradicate forced labour in supply chains and in the private economy more broadly.

## NSW Modern Slavery Act

The Modern Slavery Act 2018 (NSW) ('NSW Act') passed the Parliament in June 2018 but has not yet commenced.[39] Professor Jennifer Burn is the Interim Anti-Slavery Commissioner of NSW with responsibility for driving the execution of the NSW Modern Slavery Act in preparation for the commencement.

Similar to the federal legislation, it seeks to tackle modern slavery and afford victims assistance and support. However, there are several key distinctions of the NSW Act:

- Penalties of up to A$1.1 million for non-compliance.
- Reporting threshold of A$50 million turnover in a financial year.[40]

NSW was the first Australian jurisdiction to introduce this specific legislation which highlights NSW's assurance to confront modern slavery practices. In June 2019, the NSW Act was referred to the Committee for review. The Committee's report makes 17 recommendations, including the following key points:

- Amending the reporting threshold terminology of the *Modern Slavery Act 2018* to replace the term 'turnover' with 'consolidated revenue' (recommendation 3).
- Align the reporting threshold to be established across the NSW Act and Modern Slavery Act 2018 (Cth), ideally at A$50 million consolidated revenue (recommendation 5).
- A voluntary reporting mechanism to be introduced for businesses failing under the A$50 million reporting threshold (recommendation 10).
- Reporting obligations for local councils to be introduced equivalent to those imposed on NSW Government agencies (recommendation 11).[41]

The Committee's Report and its recommendations are now to be considered by the NSW Government. The Committee has recommended that the NSW Act commence on or before 1 January 2021.[42]

## Commonwealth Modern Slavery Statement – scoping paper

On 1 June 2020, the Australian Government released the scoping paper for the Commonwealth Modern Slavery Statement. The scoping paper summarises how the Government will approach preparing its initial Commonwealth Statement.[43] This Commonwealth Statement will cover the 2019–20 Australian Financial Year and must be published by 31 December 2020. It will centre on essential areas of modern slavery salary risk, various Commonwealth Government procurements and investments.

The Commonwealth Statement will cover the seven mandatory criteria:

- Mandatory criteria 1 and 2: Identify the reporting entity and describe its structure, operations and supply chains.
- Mandatory criteria 3: Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity.
- Mandatory criteria 4: Describe the actions taken by the reporting entity to assess and address modern slavery risks.
- Mandatory criteria 5: Describe how the reporting entity assesses the effectiveness of these actions
- Mandatory criteria 6: Describe the process of consultation with any entities the reporting entity owns or controls.
- Mandatory criteria 7: Provide any other relevant information.[44]


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This Commonwealth Modern Slavery Statement is one way in which the Government is demonstrating their commitment to eradicate modern slavery in our supply chains.

## China

China currently has the second largest economy[45] as well as being the second largest importer[46] in the world. Their rapid economic progression is partially attributed to the domestic economy specialising in the production of labour intensive, low-cost goods for exports.[47] The Global Slavery Index estimated 3,864,000 victims living in modern slavery in China.[48] China had one of the highest absolute numbers of people living in modern slavery in the region.

The 2019 TIP Report identified that China does not fully meet the minimum standards for the elimination of trafficking and therefore ranked China low at Tier 3 status.[49] To tackle the prevalence of modern slavery in China, the Government implemented the National Action Plan to Combat Human Trafficking for 2013–2020.

While China has not introduced legislation requiring mandatory modern slavery reporting and compliance, it has implemented laws to minimise the risk of modern slavery in public supply chains. China's Public Procurement Law lists a number of requirements that must be fulfilled by all suppliers whose goods or services the Government is seeking to purchase. However, the guidelines do not specifically focus on minimising the risk of modern slavery in Chinese Government supply chains. In China, there is no legal requirement for businesses to disclose cases of modern slavery that they identify in their supply chain. However, some businesses, particularly in the construction sector,[50] voluntarily publish written statements on their websites advertising their commitment to eradicating forced labour in their conduct.

Forced labour in China mainly occurs in the production of low-cost goods, including in the manufacturing and construction sectors, as well as in more informal industries. Labour intensive industries in China have created a demand for low-paid foreign labour. Factory towns in Southern China have been found to employ illegal workers from Vietnam on a widespread basis. These workers are often smuggled into the country by Chinese human smuggling syndicates who work together with Vietnamese gangs. The syndicates make their profits by claiming a portion of the workers' monthly wages while also charging factory owners a fee.[51]

## Cambodia

It is estimated that more than 260,000 of Cambodia's 16 million people are trapped in modern slavery, according to the Global Slavery Index by the Walk Free Foundation, often in farms, fisheries and construction, many of them children.[52]

The 2019 TIP Report noted that Cambodia provided continued commitment to prevention measures, including:

- Initiating a draft 2019–2023 national action plan coordinated by the interagency committee and its secretariat (although not yet approved by the Government).
- The Government continued to operate on a budget of $4.9 billion riels (US$1.19 million) allocated in the previous reporting period to fund this interagency committee.[53]

However, the 2019 TIP report states that Cambodia did not demonstrate increasing efforts compared to the previous reporting period. Specifically, Cambodia had:

- maintained insufficient law enforcement efforts, and the authorities wasted investigative and prosecutorial resources in the furtherance of spurious, politically motivated charges against opposition figures, journalists, and other individuals attempting to document trafficking in the country; and
- maintained insufficient government oversight and accountability measures as the authorities did not investigate credible reports of official complicity with unscrupulous business owners who subjected thousands of men, women and children throughout the country to human trafficking via debt-based coercion – particularly in brick kilns.[54]

Cambodia is reported to be one of the most vulnerable countries to climate change, with unseasonable drought and erratic rain increasingly forcing farmers to seek alternative jobs to make a living. The capital city, Phnom Penh, has also experienced an incredibly fast construction boom. These construction projects demand bricks in large quantities and has created a profitable domestic brick production and supply industry in Cambodia. These low-cost bricks go hand in hand with low-cost labour. Workers will generally be paid a quantity rate of approximately US$0.007 per brick as the industry depends on families and children workers trapped in debt bondage and working under horrific conditions.[55] This highlights that modern slavery can also be a fundamentally structural issue, deeply enmeshed in systems of global commerce and growth.

The lack of regulation in these industries has given rise to multigenerational families of adults and children from rural villages working in perilous factories.[56]

## Thailand

The Global Slavery Index estimated that about 8.9 per cent of the total population of Thailand live in conditions of modern slavery.[57] The main act of modern slavery is the prevalence of forced labour in the fishing industry which has earned a tarnished reputation for exposing a great number of Burmese and Cambodian migrants, through human trafficking rings, subjecting them to forced labour.[58] Due to the extensive periods of heavy labour and low pay characterised by fishing, the Thai fishing industry is highly dependent on a migrant workforce. These migrant workers are made to tolerate cruel working conditions, such as extreme working hours and sleep and food deprivation. The number of foreigners within Thailand has grown from an estimated 3.7 million in 2014 to 4.9 million in 2018.[59]

As highlighted in the 2019 TIP report, weaknesses in Thailand's labour laws preventing migrant workers from forming labour unions may have contributed to exploitation.[60]

Migrant workers in Thailand lack adequate labour rights as they are deemed temporary workers and are not permitted to become members of a labour union.[61] The Thailand Government has not specifically introduced legislative provisions on modern slavery compliance in supply chains.

The 2019 TIP report stated that while Thailand did not fully meet the minimum standards for the elimination of trafficking in several key areas, it has demonstrated overall increasing efforts compared to the previous reporting period.[62] The 2019 TIP Report stated that authorities in Thailand continued to be proactive in the identification and assistance of victims of trafficking, noting some of the support that had been provided, including:

- Sentencing convicted traffickers and complicit officials to significant prison terms.
- Developing several manuals in partnership with civil society to standardise anti-trafficking training and policies.
- Labour inspectors had for the first time identified and referred potential victims to multidisciplinary teams, resulting in the identification of labour trafficking victims.[63]

## Japan

The TIP Report identifies that Japan fully meets the minimum standards for the elimination of trafficking and therefore remained at Tier 1. It is estimated that about 0.3 per cent of


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the total population is living in modern slavery. Japan's efforts in the 2019 reporting period included increasing labour inspections of the Technical Intern Training Program and convicting and incarcerating more traffickers than in the previous reporting period.[64] Despite these efforts, it was noted that Japan failed to identify a single trafficking case in TITP, despite multiple reports of forced labour among migrant workers in Japan.

Japan has not yet implemented a law for ethical sourcing in public procurement. However, Japan has demonstrated commitment to safeguarding that its suppliers for the Tokyo 2020 Olympics and Paralympics (now rescheduled) do not use exploitative labour and has devised a Sustainable Sourcing Code for all its procurement activities concerning the Olympics.[65]

In relation to business supply chains, there is currently no mandatory corporate supply chain compliance legislation enacted by Japan. However, large businesses in Japan have shown leadership in their commitment to using sound human rights practices and incorporating the Sustainable Development Goals into their business processes.[66] The Japanese Government has also encouraged sustainable sourcing by sharing good practices among businesses, holding seminars to educate managers and incentivising businesses with awards and recognition.[67] Japanese businesses are placing increasing importance on the labour conditions of their overseas suppliers by taking action such as installing company-specific policies to identify ethical partners.[68]

## Migration and Modern Slavery

While migration contributes to the economy and social growth of a country, migration can also increase vulnerability to modern slavery and exploitation. As such, migrants can be exposed to labour exploitation, trafficking in persons, sexual abuse, extortion and physical violence. These groups of individuals are increasingly vulnerable to exploitation due to language barriers, challenges of social assimilation, and unethical employers who take advantage of their limited knowledge of local conditions and lack of bargaining power.

Many migrant workers are working in specific economic sectors such as domestic work, manufacturing, construction, hospitality and agriculture. Several reports have supported the links between human trafficking and migration. The United Nations Office on Drugs and Crime (UNODC) informs that an estimated 60 per cent of victims of trafficking in persons detected between 2012 and 2014 were from outside the country where they were exploited.[69]

Migrant workers may find themselves working under poor working conditions, being paid at below national wage standards, and are trapped in these conditions due to their immigration status and difficulties in changing employment linked to restrictive visa schemes. Migrants whose visas are tied to a single employer can create an environment of dependency beyond the common employer-employee relationship. This can consequently create an opportunity for exploitation.

### Issues with the Australian immigration regime

**Skilled worker visas**

With respect to a visa condition to skilled sponsored visas (subclass 482 and 457), the visa holder is currently only able to work for their sponsoring employer and in their approved role.[70] An exception to this is when they are changing employers; however, there is a strict 60-day time limit to find a new employer to sponsor and nominate them to continue working in Australia.[71] The consequences of this 60-day condition include a chilling effect on those who might otherwise make a complaint, such as about their lack of remuneration or work conditions. Many vulnerable workers may prefer to work for a very low wage than make a complaint and be forced to leave the country. Employers who are deceitful may take advantage of this situation to sponsor vulnerable workers and pay them very low rates of pay.

**Family violence provisions under migration law**

Existing family violence provisions in migration legislation allow certain persons to apply for permanent residence in Australia to continue with their application after the end of the relationship, if they or a member of their family experienced family violence by their partner.[72] To invoke this family violence provision, they must first prove the genuineness of the relationship. The inherent nature of a forced marriage consequently would not meet the requirement of a 'genuine relationship' as there was no consent to the marriage by the victim.[73] The Law Council of Australia has recently proposed that the provision is expanded to include circumstances where the marriage was forced, and there was no 'genuine relationship'.[74]

These provisions are also limited to holders of temporary partners visas (subclass 309 or 620) or prospective marriage visas (subclass 300). They do not extend to an applicant who was a dependent of a skilled employer-sponsored visa holder. The Law Council of Australia has proposed to cover other visa categories, such as skilled migration visas, to ensure consistency in the available protection to victims of forced marriage.[75]

### Human trafficking visa framework

**(a) Bridging Visa F (BVF):**

A person assessed by the Australian Federal Police as a suspected trafficked person may be eligible for a BVF for up to 45 days for an initial period of rest and recovery. There is also an option to grant a second BVF for a further 45 days. If a victim is required to remain in Australia to assist authorities with an investigation or prosecution, another longer-term BVF may be granted for the duration of the criminal justice process.

**(b) Referred Stay (Permanent) visa (RSV):**

A trafficked person may be eligible for a RSV if they have made a contribution to, and cooperated closely with, an investigation into a human trafficking, slavery or slavery-like offence, and would be in danger if they returned to their home country. This visa allows the victim to remain in Australia permanently. Immediate family members can also be included in this application.

## Impact of COVID-19 on Modern Slavery Risks

The COVID-19 pandemic has challenged how businesses globally combat modern slavery as they face major disruptions to their supply chains. The Australian Border Force (ABF) urges entities to consider how the impacts of COVID-19 may increase the exposure of workers in their global operations and supply chains to modern slavery risks.[76] The domino effect of the economic downturn from the Government's lockdown can threaten to hurt modern slavery victims even more than before.

The ABF states that there are various reasons why some workers may become more susceptible to modern slavery:

- Loss of income.
- Fear of loss of income.
- Low awareness of workplace risk.
- Requirements to work excessive overtime to cover capacity gaps.
- Increased demand due to supply chain shortages.
- Inability to safety return to home countries.[77]

The ABF has published three key steps which entities can take to protect and support workers in their operations and supply chains:


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1. Maintaining supplier relationships and fostering open communication with suppliers about COVID-19 risks.
2. Collaborating with suppliers, workers, business peers, investors, civil society and peak bodies.
3. Reviewing key international sources and implementing, where applicable, guidance to support decent work in supply chains.[78]

The ILO estimates that the economic and labour crisis created by COVID-19 may see global unemployment increase by almost 25 million.[79] The rise of job insecurity can leave people in desperation and in need of searching for more precarious and exploitative employment. In this risky environment, working conditions may often be undermined resulting in modern slavery instances including forced labour and human trafficking.

The Australian Government had announced a COVID-19 Procurement Policy note to help businesses undertaking procurements in the current COVID-19 environment or tackling contractual matters with affected suppliers.[80] In this procurement policy, the Australian Government expects entities to support suppliers at risk where possible, so they are better able to manage with the current pandemic and be in a state to recommence normal service delivery and fulfil their contractual obligations when the pandemic eases.[81]

To assist reporting entities impacted by COVID-19 to meet their responsibilities under the Modern Slavery Act, the Australian Government has announced an extension to the legislated deadline for reporting by an additional three months for entities whose reporting periods end on or before 30 June 2020.[82] The Government's extension recognises the effect of COVID-19 on modern slavery and seeks to provide entities with additional time to assess changing modern slavery risks related to COVID-19 and prepare their Modern Slavery Statements.

## Conclusion

A human rights approach should underpin each country's response to modern slavery. Tackling modern slavery requires a combination of efforts, which address a wide spectrum of issues that contribute to vulnerability and enable abuses. International cooperation in addressing modern slavery is essential given its global and cross-border dimensions.

Businesses can take important steps to eradicate forced labour and exploitative practices from their supply chains and operations. This may include improved training and implementing screening measures to help identify trafficking victims. The NSW Parliament's Standing Committee on Social Issues report on the NSW Modern Slavery Act recommends that the legislation (including the business reporting requirement) commence from 1 January 2021. This report and its 17 recommendations reflect the views of the Standing Committee and the NSW Government will now provide a formal response.

Australian's modern slavery law is an important and critical but initial step to safeguard compliance. In summary, national and state government can go further in establishing a system to monitor and enforce the Anti-Slavery Law.

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Immigration Solutions Lawyers has been a leading immigration law firm in Sydney for nearly two decades. Headed by the Managing Director and principal lawyer, Anne O'Donoghue, Immigration Solutions Lawyers has been assisting clients in navigating the different avenues of migration to Australia since 1993 by taking a very "hands-on" collaborative approach with all their clients. Our team of specialised immigration lawyers take care of your disputes and applications with a heavy focus on visa and citizenship applications.

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# PERM Law in Viral America

Fakhoury Global Immigration

Joel Stewart

## Introduction

Since the late 1970s, one of the tools available to protect U.S. workers from inexpensive foreign labor in the marketplace has been a process known as labor certification. PERM, an acronym for Program Electronic Review Management, is the term used for the 2004 revision of the U.S. Department of Labor (DOL) regulations governing labor certification and is also the foundation for foreign worker applications for permanent residency. The purpose of the PERM process is to test the job market for the availability of U.S labor before allowing employers to hire foreign workers for skilled and unskilled jobs. Using prescribed rules for recruitment in local or national job markets, employers may hire foreign workers only if no U.S. workers are able, willing, qualified, and available for the job opportunity.

The primary U.S. immigration statute, the Immigration and Naturalization Act (INA), says little about what U.S. employers must do to prove their need to hire foreign workers, so employers must look beyond the statute. The regulations (the PERM Rule) provide detailed instructions for the labor certification process and include the official PERM Form ETA 9089 and its instructions. Of course, federal court decisions on labor certification, whether issued at the District, Appellate, or Supreme Court levels, must always be followed.

In addition to the INA, DOL regulations, and the courts, a plethora of additional tools provide guidance to stakeholders: *En Banc* and Panel Decisions of the Board of Alien Labor Certification Appeals (BALCA); Decisions of the Administrative Review Board (ARB); general "administrative guidance" published in the *Federal Register*; Frequently Asked Questions (FAQs); minutes from stakeholder meetings; intra-agency memoranda; letters from DOL to stakeholders; opinions from sister agencies; speeches by government officials at public forums; DOL announcements made online; and even other occasional remarks. Practitioners and stakeholders must be prepared to keep themselves current on labor certification issues through many resources ancillary to the basic law and regulations.

In good times, with a booming economy and record low unemployment, PERM applications enjoyed a remarkably high approval rate with only occasional pockets of resistance from conservative groups that objected to the idea of the influx of foreign workers into the U.S. As the country has just begun to emerge from the lockdown and the paralysis of the economy due to the COVID-19 pandemic, the stage has been set for the introduction of more restrictive policies and practices regarding both PERM applicants and nonimmigrant "guest workers" whose visas allow them to remain in the U.S. for limited durations of time. Workers from abroad will not be as welcome as before in most industries, with exceptions already announced for agriculture, healthcare, and essential industries.

The delicate balance of PERM advocacy began to change when President Trump proclaimed the COVID-19 pandemic a national emergency and invoked executive authority to fight the virus with extraordinary powers. Coronavirus border restrictions apply categorically to nonimmigrants arriving from countries closed to U.S. travel (currently China, the United Kingdom, Ireland and the Schengen group comprising 26 European states: Austria; Belgium; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Netherlands; Norway; Poland; Portugal; Slovakia; Slovenia; Spain; Sweden; and Switzerland). Brazil was added to this list on May 24, 2020, and President Trump extended the closing of the U.S. northern and southern borders until June 22, 2020. Major airlines accordingly have limited or canceled international flights to and from these areas. These are fast moving developments as countries may be placed on or off the no-entry list on a daily basis.

On April 22, 2020, the President issued a proclamation that declared a "Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak." The suspension took precedence over existing laws by limiting the arrival of some foreign workers and visitors and, at the same time, providing exceptions for large-sum investors (known as EB-5 investors), agricultural workers, and healthcare workers, many of whom require approval of PERM applications, I-140 Immigrant Visa Petitions, and careful screening by consular officials at the Department of State (DOS).

Employers may expect PERM applications to proceed somewhat favorably for some jobs which still have indications of labor shortages across a range of industries, occupations, and skills. Depending on the availability of U.S. workers in specific job markets, PERM approvals should remain available for occupations with low skill levels or STEM professionals, while occupations in the middle of the spectrum will experience higher demand by U.S. job seekers. Foreign workers with special skills may also be welcome to provide solutions to improve skill enhancement, job creation, or training for laid-off Americans.

One important consideration for post-coronavirus PERM applications is the identification of occupations in demand which have a "Bright Outlook" according to DOL statistics. The agency uses that designation as an internet search identifier in its comprehensive occupational database, the Standard Occupational Code (SOC), available online at O*Net OnLine (https://www.onetonline.org). The "Bright Outlook" occupations are those expected to have a growing demand for labor. The list, which is surprisingly large, includes occupations characterized by advanced skills or by no skills at all.


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## Filing PERM Applications

A complex firewall of attestations, audits and on-site inspections by federal and state governments protects the wages, personal safety, and conditions of employment offered to foreign workers as well as to Americans.

Prior to visa issuance, skilled and unskilled foreign workers, both temporary and permanent, may require certification from DOL after testing the job market to determine the availability of U.S. workers, but only permanent labor applications are processed under the PERM Rule.

Although there is an expectation that jobs in the U.S. marketplace will be filled by U.S. workers, there are opportunities for foreign workers who will contribute substantially to critical needs, the recovery of economic prosperity, job creation or training for Americans.

After consulting the O*Net to predict employment prospects and demands in the U.S., one may consider the findings of the United States Chamber of Commerce Foundation (USCCF) on the economic future which underscore serious deficiencies in the U.S. labor force. A phenomenon known as the Great Divide describes the lack of availability to fill skilled positions:

> A Great Divide has emerged in the United States between the education and skills of the American workforce and the needs of the nation's employers. Many of those looking for work do not have the skills required by companies looking to hire – resulting in high unemployment even as businesses desperately seek new talent. If our nation fails to bridge this gap, we will risk our ability to compete effectively on the global stage.

The U.S. ranks 26th in the number of undergraduates receiving degrees in mathematics. Europe produces three times as many engineering graduates as the United States, while China produces five times as many. The Council on Competitiveness reports that the United States ranks 17th among developed nations in the proportion of college students receiving degrees in science or engineering, a fall from third place three decades ago.

In search of explanations, the USCCF examined America's standing in factors that job creators consider important when determining where to locate, invest, grow, and hire in a world of expanding alternatives:

1. The skills gap. 42.4 per cent of employers rate the overall preparation of workers who graduated from U.S. high school as deficient in basic skills such as reading, writing, and decision making.
2. Workforce deficiencies. The World Economic Forum Global Competitiveness Index placed the U.S. 26th worldwide in quality, while ranking the U.S. 51st in mathematics and science education.
3. Post-secondary education. While many Americans continue their education at the post-secondary level, 70 per cent of Americans do not complete college and lack skills necessary to compete for opportunities in technical middle-skilled jobs.
4. Lagging in STEM. Fewer Americans are specializing in science, mathematics, engineering, and technology.
5. Training deficiencies. The HR Policy Association warned, "The Federal Government's education and training programs lack focus and are not adequately meeting employer needs, particularly for large, multi-state employers. Only nine percent of Association members are satisfied with the government programs that they use."

According to Michelle Burns, an attorney who specializes in high tech sectors, the demand for skilled workers outstrips availability. In addition, the Forbes Technology Council has identified Artificial Intelligence (AI), mobile application development, and cybersecurity as three of the key areas where there is a lack of skilled U.S. workers. Matthew Morse, Chief Legal Officer at Fakhoury Global Immigration, forecasts skill deficits in the U.S. for the 2020s, including Python, JavaScript, cloud computing (e.g., Amazon Web Services, Google Cloud), and business intelligence. Given the very real shortage of skilled scientists and engineers in the U.S., approval of PERM applications will depend on corporate ability to prove to DOL that they have given U.S. workers every opportunity to be considered for such jobs, but that the workers are simply not available. Until the science and engineering skills of U.S. workers improve, U.S. firms will still need to rely upon skilled foreign labor to remain competitive.

## Standards for Labor Certification Determinations

The standards used in making labor certification determinations under PERM continue to be based on the lack of availability of U.S. workers who are able, willing, qualified and available, the adverse effect of the employment of foreign workers on the wages and working conditions of U.S. workers similarly employed, and the procedural requirements of the regulations.

Typographical errors on Form 9089, even when characterized as *de minimis* or harmless such as the entry of incorrect dates, result in denials by the computerized approval system. DOL does not permit corrections for any mistakes on the form because correspondence with employers would be time-consuming and result in a return to the system of lengthy processing delays that existed before the introduction of PERM. On rare occasions, employers have won appeals to BALCA by arguing that the online forms are not user-friendly. In response, DOL has remedied many but not all data-entry problems by adding some drop-down menus and warnings to guide employers to the proper responses.

A frequent basis for PERM denials occurs during the recruitment phase, when employers reject U.S. workers without lawful, job-related reasons. Some employers fail to understand that U.S. workers need only be minimally qualified. DOL rules state that employers must hire U.S. job applicants first, even if they are less qualified than foreign workers – except positions for college professors, who may be selected as best qualified. This rule is based on the policy that U.S. workers only need be minimally qualified, or even unqualified but trainable, to perform the job duties.

Educational standards in PERM applications are highly technical. Employers must understand the differences between academic, single source, undergraduate and advanced degrees, evaluating agencies like the U.S. Department of Education, UNESCO, NAFSA, the Electronic Database for Global Education (Edge), and guidelines from the United States Citizenship and Immigration Services (USCIS) on equivalencies. To complicate this area of law, both DOL and USCIS use different standards to determine visa eligibility based on diploma equivalencies.

The interpretation and maintenance of standards will continue to be vigorously enforced, and the rejection of errata in data or differences in interpretation will result in more denials than in the past.

## Important Tips for Post-COVID-19 PERM Processing

### Job requirements

Job requirements listed on the PERM form are a frequent source of difficulty. They must conform to DOL's catalogued profile of occupations as found in the O*Net and related agency


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publications. When descriptions of job duties and requirements expand beyond government interpretations, the regulations allow employers to provide special, probative documentation to DOL. These opportunities usually occur in response to requests for information or audits requiring proof of business necessity for education, experience, training, special skills, language requirements, licensing, travel, or combinations of occupations.

Alternative experience requirements also pose a challenge for employers wishing to file PERM applications because such requirements must be carefully drafted as reasonable substitutions for experience or training. Caveat: alternative requirements may serve as a basis for denial without audit or warning, even if the employer has not had an opportunity to provide justification with factual or legal arguments.

Travel requirements have been hotly debated for many years. DOL takes the point of view that travel includes non-travel episodes like telecommuting. Prior to the pandemic, many U.S. employers had already instituted work conditions favorable for telecommuting, but current popular video applications make virtual offices a new norm for many in the work force.

## The wage offer

In PERM applications, employers must pay at least the prevailing wage for the occupation in the proposed area of employment. Applications for Prevailing Wage Determinations (ETA Form 9141), filed with DOL, must precede or coincide with the period of recruitment for the job offered. It is important to note that prevailing wage determinations not only authenticate wage offers but also occupational titles, job duties, and minimum requirements which are used throughout the PERM process.

Prevailing wage determinations are calculated using a complex system of data analysis. Arguably, each DOL determination should take into consideration all the subtleties of the specific job opportunity. If jobs appear to overlap between two different occupations, the higher of the wages will be applied even if the percentage of time in the higher paying job is minimal.

Collective Bargaining Agreements in the industry are always the first and easiest source of prevailing wage determinations for an occupation. However, the most common source of wage data is the Occupational Employment Statistics (OES) program of the U.S. Bureau of Labor Statistics (BLS) that produces wage estimates annually. Employers and government officers can access OES wage data at the Foreign Labor Certification Wage Search Wizard (https://www.flcdatacenter.com/) by entering the occupational code and geographical area of employment.

The PERM Rule permits employer-provided wage information including alternative wage surveys and wage schedules that were specifically legislated to benefit federal workers (the Davis Bacon and McNamara-O'Hara Service Contract Acts). The latter may have unusually high wages, and employers may be required to offer those higher wages even if their job offers are not made in connection with federal contracts.

DOL makes initial prevailing wage determinations based on information provided by employers on the four corners of the prevailing wage request form and not by reference to documents which may have been uploaded. If employers disagree with the agency determinations and wish to provide evidence, they may provide a "Submission of Supplementary Information" which usually results in a prompt response in about 30 days to confirm or modify the wages.

Although employers often believe that wage determinations are incorrect, experience has shown that the discrepancies often result from BLS data upon which DOL's prevailing wage unit is obliged to match wages to occupations. In other cases, descriptions of job duties and requirements provided by employers on ETA Form 9141 may inadvertently include indicators of complex duties that justify wage levels higher than anticipated.

Prevailing wage disputes between employers and DOL are not uncommon in PERM and temporary work categories. There are several methods by which employers can challenge prevailing wage determinations. However, employers who envision lengthy processing periods for reconsideration and appeal do not usually pursue those challenges. Employers must take great care in the preparation and clarification of job offers to ensure correct wage levels in requests for prevailing wage determinations.

## Recruitment efforts

Sources of recruitment must utilize unemployment services of a State Workforce Agency (SWA) and newspaper advertisements. Three additional recruitment efforts are needed for professional occupations which are identified on a list of occupations provided by DOL. There are 10 recruitment sources for professional recruitment. Employers may choose any three from the list: (1) job fairs; (2) employer websites; (3) job search websites; (4) on-campus services; (5) trade or professional organizations; (6) private employment firms; (7) employee referral programs; (8) campus placement offices; (9) ethnic newspapers; and (10) radio and television advertisements.

Professional positions require more advertising than non-professional, and with high unemployment numbers, the selection of appropriate sources of recruitment should adhere to industry standards. Recruitment campaigns using employee referral programs with incentives, local and ethnic newspapers, and radio announcements may come under increasing scrutiny.

DOL has not used a heavy hand regarding choices of recruitment by employers, since employers are entitled to choose from the menu of options, but in some cases recruitment procedures were deemed improper. Because newspaper advertisements must be placed in publications most likely to attract U.S. workers in the area of proposed employment, PERM applications may be denied if the newspaper or journal chosen by the employer is not most appropriate for the occupation.

Each SWA has its own diverse method of flagging job opportunities to attract the attention of job seekers. Many limit visibility of job offers related to alien labor certification in the belief that employers only wish to hire pre-selected foreign workers. Under current federal policy, employers need not reach out to U.S. workers whose names are posted to job orders unless the workers initiate contact. More aggressive policies by state and federal authorities to confirm good faith recruitment may now be expected to foster a more robust dialogue between PERM employers and U.S. job seekers.

Employers are required to post details about PERM job offers in the form of a Notice of Filing at the workplace for 10 working days. While not considered to be part of advertising campaigns, the notices provide the U.S. workforce with opportunities to file complaints with DOL which must then rule whether these complaints provide reasons for denial. Complaints generated from Notices of Filing have been uncommon in the past but should now be expected to increase.

## Consideration of U.S. workers

Employers filing PERM applications in a pandemic economy should expect their rejection of U.S. applicants to be closely scrutinized. A particular area of controversy, where opinions may differ and denials may be more common, is the need to


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show why U.S. job applicants cannot be trained within a reasonable period of time to perform the job duties even though they do not possess the exact experience stipulated by employers. Denials based on the failure to offer training will become more prevalent as employers must offer training to all job applicants or prove why training is not reasonable.

Employers enjoy a great deal of authority to determine if U.S. job applicants are qualified, but DOL may also review résumés of U.S. workers and question employers as to whether the workers may be considered qualified to perform the job duties based on combinations of experience, education, and training. Conflicts may arise in the evaluations of a U.S. applicant where employers insist that years of experience may not be substituted as equivalencies for diplomas. To prevent tailoring, DOL has regulatory authority to perform *ex parte* evaluations when alternate requirements are offered and the foreign worker only qualifies for the job by virtue of the alternate requirements.

PERM applications are often denied because employers do not take adequate steps to investigate the qualifications of job applicants to determine why training would not be practicable and why U.S. workers could not be considered qualified based on a wide range of job-related criteria.

Methods of contacting U.S. workers are a corollary to the consideration of résumés. It has been held that certified mail with return receipts is the best way to communicate with U.S. job applicants although telephone calls and emails are also acceptable. When many workers appear, as may now be expected to occur more often than before, there are logistical difficulties in maintaining a clear record of communications. Some U.S. workers may not wish to accept certified mail. In other cases, the signature of the person on the certified mail receipt may be illegible or may not even be the signature of the job applicant. The best course of action is to use multiple means of communication with U.S. job applicants promptly to avoid any indication of impropriety.

### PERM ETA Form 9089

This 10-page form has not been updated since it first appeared in December 2004. There are many fields that can result in denial of certification if inappropriate answers are provided. One example is the use of the Kellogg language, also known as "the Magic Language," to state that "any suitable combination of education, training, or experience is acceptable." DOL added this section to the PERM Rule. It states that in situations where aliens are working for petitioning employers and only qualify based on alternative requirements, the Magic Language must be written on the application. Unfortunately, there is no place available on the printed form to write this special language. DOL advised employers to write the Magic Language in a free text box like item H-14. However, as this language often contradicts the statement of minimum requirements on the same form, denials may occur not only by DOL but also by USCIS during consideration of Form I-140 petitions, for alleged discrepancies between the plain meaning of the minimum requirements and the Magic Language.

## Supervised Recruitment

Prior to the enactment of the PERM Rule in 2005, employers had two paths for alien labor certification – applications for labor certification by means of regular processing or by Reduction in Recruitment (RIR). Regular processing involved lengthy bureaucratic recruitment procedures and review at state and federal levels resulting in long delays of up to five years or more in some busy states like New York and California. RIR was the practice of discretionary acceptance of unsupervised employer recruitment efforts to be sent in an expedited manner by each SWA for fast-track review at the federal level.

To carry the RIR program a step further, DOL introduced PERM, a new, electronic review of applications based on the RIR model. PERM processing was intended to eliminate delays, but DOL maintains discretionary authority to select specific cases for quality control. Applications may be subject to an order of strict oversight – hence the term "supervised recruitment."

To explain how applications are selected for supervised recruitment, the Atlanta Processing Center provided specific guidance about their criteria, including PERM applications for jobs in the trades, employment in public schools, jobs requiring degrees but no experience, resubmission of denied applications, and applications filed by mail instead of by electronic transmittal. However, the criteria are best understood as being based on two central issues: a general perception that, despite assertions by employers of unavailability, qualified workers are available; or upon a suspicion that PERM recruitment does not demonstrate *bona fide* efforts to find qualified or trainable U.S. workers.

When supervised recruitment is ordered, employers must conduct searches for qualified workers using additional, extensive rounds of advertising in media selected by DOL. Résumés are directed to DOL which monitors all communications between employers and U.S. workers. Deadlines are strictly enforced, and applications must be completed with mathematical certainty!

As record unemployment is now a reality in the U.S., supervised recruitment should become more common and must be viewed as an obstacle with special challenges. Mere opinions or conclusory statements by personnel officers and management regarding U.S. worker availability and selection will not suffice. Employers must be prepared to provide substantial documentation for rejection of U.S. workers who, although not technically qualified, may be trained or considered qualified based on alternate combinations of education, training, or experience.

## Conclusion

There will always be a need for some, *even many*, foreign workers who can make important contributions, whether in good times or bad, because they possess important skills. In the days ahead, DOL may be expected to scrutinize applications with a greater purpose to protect U.S. workers. Employers who file PERM applications must demonstrate the unavailability of qualified persons and job opportunities that help economic recovery and training of U.S. workers. Such applications should carefully describe job duties and requirements that will benefit the national interest of the United States.


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# Australia

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## 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.

The **Home Affairs Portfolio** brings together:

- **The Department of Home Affairs**, the lead Department for law enforcement and crime prevention initiatives and programmes.
- **The Australian Border Force**, the independent operational enforcement arm with responsibility across numerous areas of border force operations, compliance, investigations, removals and enforcement.
- **The Department of Immigration, Citizenship, Migration Services and Multicultural Affairs**, which includes visa operations and visa reforms, migration programme implementation, visa cancellations, ministerial intervention, citizenship and passenger processing services (Smart Gates passenger movement charges).
- **The Australian Federal Police**, which is responsible for preventing, disrupting and investigating Commonwealth and state offences (with a federal aspect) and contributing to combating organised crime and activity in Australia and overseas.
- **The Australian Criminal Intelligence Commission**, which gathers and shares criminal intelligence and leads or participates in joint investigations and intelligence operations, and provides national information systems and services to police and law enforcement agencies.
- **The Australian Transaction Reports & Analysis Centre (AUSTRAC)**, which is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit.
- **Australian Securities and Intelligence Organisation (ASIO)**, Australia's intelligence/counter-intelligence and foreign interference agency.

The Australian Border Force, under its Enforcement Command targets, detects, deters and disrupts operational and strategic border threats in relation to suspected breaches of the Customs Act 2001 and the Act in regard to:

- Trade Enforcement.
- Migration System.
- Border Protection.
- Border Management.

The Migration System includes:

- Visa and migration fraud.
- Community protection and removals.
- Safe, secure and sustainable detention.
- People smuggling.
- Foreign worker exploitation (which includes the monitoring of sponsors and approved sponsors to ensure that they meet their sponsorship obligations under the Subclass 482/457 Visa Program).

The Home Affairs Portfolio, which includes the Department of Home Affairs (**the Department**) and the Australian Border Force, is part of a whole-of-government approach including in the context of Payroll, Tax, Superannuation and Regulatory Compliance generally.

### 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:

(a) Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (**AANZFTA**).
(b) Australia-Chile Free Trade Agreement (**ACl-FTA**).
(c) Free Trade Agreement between Australia and Hong Kong, China (**A-HKFTA**).
(d) China-Australia Free Trade Agreement (**ChAFTA**).
(e) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**).
(f) Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**).
(g) Japan-Australia Economic Partnership Agreement (**JAEPA**).



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(h) Korea-Australia Free Trade Agreement (**KAFTA**).
(i) Malaysia-Australia Free Trade Agreement (**MAFTA**).
(j) Peru-Australia Free Trade Agreement (**PAFTA**).
(k) Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Trade Agreement (**ANZCERTA**).
(l) Singapore-Australia Free Trade Agreement (**SAFTA**).
(m) Thailand-Australia Free Trade Agreement (**TAFTA**).

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.

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.

**Definition of business visitor activity**

For the purposes of Condition 8115, the term '*business visitor activity*' is defined in the Regulations as:

"*(a) means any of the following activities undertaken by a person:*
*(i) Making a general business or employment enquiry;*
*(ii) Investigating, negotiating, entering into, or reviewing a business contract;*
*(iii) An activity carried out as part of an official government to government visit;*
*(iv) Participation in a conference, trade fair or seminar in Australia unless the person is being paid by an organiser for participation; but*
*(b) does not include either of the following activities:*
*(i) an activity that is, or includes, undertaking work for, or supplying services to, an organisation or other persons based in Australia;*
*(ii) an activity that is, or includes, the sale of goods or services directly to the general public.*"

For the purposes of Condition 8115, the Department's policy guidelines provide examples of relevant activities which may be permissible as a '*business visitor activity*':

"*1. General business or employment enquiries*
*(a) Identifying new business or employment opportunities;*
*(b) Purchasing goods from Australia;*
*(c) Establishing contact with Australian based people or organisations involved in the prospective employment or business;*
*(d) Attending business meetings including at an affiliated business in Australia but not if the visa holder is providing services to that business;*
*(e) Fact finding;*
*(f) Identifying new business or employment opportunities;*
*(g) Visiting an Australian company that provides goods or services to their visitor's business offshore to conduct quality assurance activities or ensure that certain required standards are met; and*
*(h) Attending a job interview.*
*2. Contract related activities*
*Investigating, negotiating, entering into, or reviewing a business contract means that the activity needs to be in relation to an actual or prospective contract relating to business rather than personal matters.*
*(a) Investigating or negotiating business contracts or trade agreements;*
*(b) Signing contracts for sale of goods or services;*
*(c) Review a contractual agreement;*
*(d) Providing legal advice on behalf of the overseas company involved in business contract negotiations relating to the contract and not providing legal advice/services to the general public or a business based in Australia;*
*(e) Buying real estate in Australia to add to a business investment portfolio;*
*(f) Visiting an Australian company that produces goods for their business to conduct quality assurance activities or ensure that certain required standards are met (contractual review); and*
*(g) A lawyer providing legal advice related to a contract to a person not based in Australia.*
*3. Government to government*
*…attending:*
*(a) Government to government meetings*
*(b) International government conferences; and*
*(c) Government-employed representatives undertaking inspections for the purposes of meeting bilateral obligations.*
*4. Conference, trade fairs and seminars*
*Participation in conferences, trade fairs and seminars on an unpaid basis is allowed under the definition but if the activity at a trade fair for example involved the sale of goods direct to the general public, that activity would be prohibited…*
*If a participant was paid by the organiser of a conference, trade fair or seminar to attend or appear then this would constitute undertaking work or supplying services and is not permitted…*"

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.


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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 the Australian Border Force and Fair Work Australia, has 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?

There are two categories of approved Business Sponsors, Standard Business Sponsors and Temporary Activity Sponsors:

1. Standard Business Sponsorship (**SBS**) is an agreement with the Australian government that allows certain Australian or Overseas businesses to sponsor overseas citizens to work in highly skilled occupations under the:
   - Temporary Skill Shortage (**TSS**) visa (Subclass 482); and
   - Skilled Employer Sponsored Regional (**SESR**) visa (Subclass 494) programme.
2. Temporary Activity Sponsorship allows a business to:
   - sponsor an applicant for a Temporary Activity visa (Subclass 408);
   - sponsor an applicant for a Temporary Work (International Relations) visa (Subclass 403), Seasonal Worker Program stream or Pacific Labour Scheme stream visa; or
   - nominate and sponsor an applicant for a Training visa (Subclass 407).

### 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.


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- 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 and SESR programme and the Subclass 186 Employer Nomination Scheme (**ENS**)/Subclass 187 Regional Sponsored Migration Scheme (**RSMS**) visa programmes. The amount of the levy depends on the turnover of the business. The levy does not apply to dependent visa applicants.

| 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 (unless an ENS nomination application was lodged before 12 August 2018).

### 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 approved as Standard Business Sponsors, 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?

Foreign workers must be nominated by an Australian employer to fill a position in an occupation that appears in the Medium and Long-term Strategic Skills List (**MLTSSL**) or the Short-term Skilled Occupation List (**STSOL**) or the Regional Occupation List (**ROL**). These Occupation Lists apply to the following visa programmes:

- Employer Nomination Scheme (**ENS**) visa (Subclass 186).
- Regional Sponsored Migration Scheme (**RSMS**) visa (Subclass 187).
- Skilled Independent visa (Subclass 189) – Points-tested stream.
- Skilled Nominated visa (Subclass 190).
- Training visa (Subclass 407).
- Temporary Skill Shortage (**TSS**) visa (Subclass 482).
- Temporary Graduate visa (Subclass 485) – Graduate Work.
- Skilled Regional (Provisional) visa (Subclass 489).
- Skilled Work Regional (Provisional) visa (Subclass 491).
- Skilled Employer Sponsored Regional (provisional) visa (Subclass 494).

The combined list specifies:

- The Australian and New Zealand Standard Classification of Occupations (**ANZSCO**) code for each occupation. The ANZSCO provides information on the skill level of jobs, qualifications and/or experience needed to work in occupations.
- Caveats which exclude the use of the occupation in certain circumstances (applies to the ENS and TSS visas only).
- Whether the occupation is included on the MLTSSL, STSOL, ROL or the Regional Sponsored Migration Scheme (**RSMS**) ROL List.
- The assessing authority for skills assessments.

An example of the use of the Skilled Occupation List can be seen in the TSS visa programme. This programme replaced the subclass 457 visa programme in March 2018. This visa enables Australian and overseas businesses to sponsor skilled overseas workers to fill prescribed positions on a temporary basis. There are three streams:

- Short-term stream – for occupations on the STSOL for a maximum of up to two years (or up to four years if an international trade obligation applies);
- Medium-term stream – for occupations on the 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.

### 4.7 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


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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.

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 and SESR visa programmes are demand-driven and are not subject to a quota.

The ENS and RSMS are 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 and SESR visa programmes 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;
- 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 that 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 and SESR visa programmes 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 and SESR programmes, 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).

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


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## 5 Highly Skilled Visas

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

The TSS and SESR visa programmes 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.

On Monday 4 November 2019, the Global Talent – Independent programme was launched which offers a streamlined, priority visa pathway for highly skilled and talented individuals to work and live permanently in Australia.

The programme is designed to attract migrants at the top future-focused fields to Australia. Target sectors are:

- AgTech.
- Space and Advanced Manufacturing.
- FinTech.
- Energy and Mining Technology.
- MedTech.
- Cyber Security.
- Quantum Information, Advanced Digital, Data Science and ICT.

## 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.
- Entrepreneur 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 $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 $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.
- Participate in a staff exchange programme with an Australian organisation.
- Participate in a community-based event, including sporting events.
- Observe or take part in a research project at a research or tertiary institution in Australia.
- Take part in an approved special programme, including youth exchange, cultural enrichment or community programmes, school language assistances or "gap year school volunteering".
- Participate in events which are endorsed by the Australian Government.


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

The Labour Agreement stream of the TSS allows 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.

## 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.

The SESR programme is as above, with the exception that the position must be on the combined occupation list and located in a designated regional area (which is all of Australia except Sydney, Melbourne and Brisbane).

The Temporary Activity visa (Subclass 408) (please see the answer to question 7.2 as to the Subclass 408 visa which allows for staff exchange programmes of up to two years).

### 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 and SESR visa programmes enable intra-company group employees to obtain a work permit to work for the associated entity in Australia for up to four years.

All TSS/SESR 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.

In addition, the SESR programme requires that the employer (and employee) be based in a designated regional area. Designated regional areas include all of Australia except for Sydney, Melbourne and Brisbane.

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

For the subclass Temporary Activity visa (Subclass 408) the employer must be a Temporary Activities Sponsor and provide the employee with a written agreement that sets out:

- the staff in Australia and overseas who will take part in the exchange;
- the skilled positions to be filled by the participants; and
- how long the exchange will last.

### 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.

In addition, Accredited Sponsors can access priority processing in some instances.


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The current indicative processing times in respect of applications under the TSS visa programme may range from 35 to 69 days for the Short-term stream and from 29 days to 59 days for the Medium-term stream.

The current indicative processing time for the SESR visa programme is currently unavailable due to the low volume of applications received by the Department.

The current indicative processing times for ENS applications range from seven to nine months for the Temporary Residence Transition stream and four to six months for the Direct Entry stream.

The current indicative processing times for RSMS applications range from five to eight months for the Temporary Residence Transition stream and from eight to 29 months for the Direct Entry stream (Note: Direct Entry Stream is closed to new applications).

The actual processing times are impacted each month by changes in application volumes, seasonal peaks, complex cases and incomplete applications. Processing times may also be impacted by global crises such as COVID-19.

### 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.

Under the SESR visa programme occupations on the Skilled Occupation List can be granted up to five years. This visa cannot be extended; however, if eligible the person can apply for permanent residence after three years.

### 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 programmes 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 (Note: This programme is closed to new applications under the RSMS programme).
- 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:

- Nomination Application: $330 per nominee.
- Visa Application:
  - Short-term stream: $1,265 for a primary applicant; $1,265 for additional applicant 18 years and over; and $320 for additional child applicant under 18.
  - Medium-term stream: $2,645 for a primary applicant; $2,645 for additional applicant 18 years and over; and $660 for additional child applicant under 18.

The SESR visa programme fees and charges for visas are:

- Nomination Application: nil.
- Visa Application: $4,045 for a primary applicant; $2,025 for additional applicant 18 years and over; and $1,010 for additional child applicant under 18.

The ENS visa programme fees and charges for visas are:

- Nomination Application: $540.
- Visa application: $4,045 for a primary applicant; $2,025 for additional applicants 18 years and over; and $1,010 for additional child applicants under 18 years.

The RSMS visa programme fees and charges for visas are:

- Nomination Application: nil.
- Visa application: $4,045 for a primary applicant; $2,025 for additional applicants 18 years and over; and $1,010 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 and SESR visa programmes and the ENS/RSMS visa programmes are the main visa programmes 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 and the SESR visa 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 $96,400. It is acceptable to publish a salary range; for example $80,000 to $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


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- 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.

In some circumstances employers can meet the alternate requirements in the form of a submission to evidence that they have met the LMT requirement. These include where:

- the occupant has to have an internationally recognised record of exceptional and outstanding achievement in a profession or in the field of sport, academia and research, or a top-talent chef;
- there is a new nomination for an existing TSS, SESR or Subclass 457 visa holder solely because:
  - the annual earnings that will apply to the nominee have changed; or
  - a change in business structure has resulted in the visa holder being no longer employed by the standard business sponsor even though they have not changed position;
- there is an intra-corporate transfer (**ICT**), the transfer of an existing employee of a company operating overseas to an associated entity of that company operating in Australia;
- the annual earnings will be equal to or greater than $250,000; or
- the nominees are within:
  - ANZSCO Minor Group 253 – Medical Practitioners (except General Practitioner (ANZSCO 253111) and Medical Practitioners nec (ANZSCO 253999)).
  - ANZSCO Unit Group 4111 – Ambulance Officers and Paramedics.

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

Please see the answers 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.

### 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.

### 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 answers 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 visa holders 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.

All primary SESR visa holders' visas are subject to condition 8607, 8578, 8579, 8580 and 8515 which means that the holder must:

- only work in the occupation for which the SESR visa was granted;
- work for the approved Sponsor;
- commence work within 90 days;
- not cease employment for more than 90 consecutive days;
- if required, hold the mandatory licence, registration or membership;
- advise the Department within 14 days of a change of the visa holder's or employer's contact details or work location;
- not marry or enter into a *de facto* relationship before entering Australia; and
- live, study and work in a designated regional area.


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### 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) of the Act 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 of the Regulations 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 be 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.

### 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 dependant 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, the person must:


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- 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 the 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 nine 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 frequently 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.

Under the TSS, clause 482.217 of the Regulations provides that 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 Debra 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* (2010–2020) and has been recognised in the peer reviewed *Best Lawyers* in the areas of Immigration law (2008–2021).

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 *International Comparative Legal Guide – Corporate Immigration* (2017–2020).

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.

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**Rebecca Thomson** has an outstanding track record of providing visa and migration related immigration and advisory services to a wide range of clients in all aspects of corporate migration and related matters.

Rebecca has significant technical expertise and ability to meet business needs, including to critically analyse business issues and achieve desired results.

Rebecca also brings her extensive experience in business operations, regulatory compliance, people and organisational management to assist clients to meet their global mobility and organisational needs.

Rebecca holds numerous qualifications and memberships, including:

- Master of Laws (*Juris Doctor*).
- Master of Business Administration.
- Graduate Diploma of Legal Practice.
- Graduate Certificate of Australian Migration Law and Practice.
- Graduate Diploma in Psychology.
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BDO Migration Services is part of BDO's global footprint, serving clients across all borders.

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# Austria

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## 1 Introduction

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

Immigration law in Austria is regulated through different Acts and Directives, 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 (labour) law in general is administered by municipal authorities (Magistrate or *Bezirkshauptmannschaften*), the Austrian consular missions as well as the Labour Market Authority (*Arbeitsmarktservice*, AMS). Further, a special authority exists in the form of the Financial Police, responsible for checking the compliance of foreigners working in Austria; a new authority shall be set up in fall 2020 controlling prevention of salary and social dumping.

### 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 a company seated in the EU, EEA or Switzerland. However, under these exemption rules, certain notifications need to be filed with the competent authorities in due time before the start of a posting. Such requirements have to be evaluated on a case-by-case basis. Furthermore, based on EU regulations a number of nationalities can enter on a visa-free status for 90 days within a 180-day period (or longer for some nationalities regarding bilateral agreements).

## 2 Business Visitors

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

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 questions 2.2 and 2.3 below).

"Business visitors", who are entitled to come to Austria for a very short period (maximum three to five days), may carry out the activity without a work permit or any posted worker notification. Visa nationals generally can enter with a regular visa C, which enables the holder to stay in Austria for up to 90 days within a 180-day period. Visa-free nationals do not need a visa.

It is not considered a "business visit" if an assignee periodically carries out activities for a few days within a period of weeks or months, or if the scope of the activities falls outside the work-permit exempted activities. In these cases, the third-country national needs a work visa in combination with a work permit, irrespective of whether he/she is a visa-free national or not.

### 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, but according to the case-law such an activity has to be shorter than one week, hence as a general guideline 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. 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. The law does not provide an exhaustive list. Further exemptions are applicable to foreigners posted from a company with its seat in the EU/EEA or Switzerland. 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.


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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?

No, the "Business visitor" status only allows for a very short-term stay, provided that the requirements mentioned in questions 2.2 and 2.3 are met. If the scope of the stay exceeds the short-term period (three to five days) or the scope of the activity (even if short-term) exceeds the permissible activity, the foreigner does not qualify as a business visitor any longer. In this case, the foreigner needs a work visa C or D as well alongside a work permit, irrespective of whether he/she is a visa-free national or not.

### 2.5 Can business visitors receive short-term training?

EU, EEA and Swiss nationals do not need a work permit to receive short-term training. However, Croatian nationals need a training permit (until June 30 2020) to receive training in Austria. Depending on the content of the training programme, the scope of the training and the duration of the training, posted worker notifications for employees posted from the EU, EEA and Switzerland may be necessary.

Third-country nationals need a training permit in order to receive short-term training, as well as work visa C or D or a residence permit (depending on the duration). A training permit is issued in the form of a Declaration by the Labour Market Authority 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; and foreign nationals seeking experience via an unpaid volunteer programme or who are studying at Austrian universities and undertaking a compulsory internship pursuant to their degree programme or who are enrolled at a University in a third-country (prior to graduation or within two years after the graduation) who have concluded a training agreement (related to the studies and the qualifications) for the duration of 91–180 days.

The training or education may only commence after the Declaration 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 or residence permit at the Austrian consular mission in the country of residence outside Austria. The visa will be issued based on this training permit.

Further, certain activities within international organisations may be exempted.

Third-country nationals acting as a trainer in Austria need to apply for a regular work permit and work visa C or D.

## 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 is no one system of compliance inspections in place regarding companies who employ foreigners, but the Austrian Financial Police is responsible for carrying out inspections in order to control compliance with immigration and anti-social dumping laws. The inspections are carried out irrespective of the duration or frequency of the employment of foreign nationals, but some businesses are more likely to be inspected than others (e.g. low-wage industries, such as construction, hospitality and transport & logistics). In the course of an inspection, 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 found to be non-compliant are subject to high fines, including fines for responsible company officers or managers. If these fines cannot be paid, there are alternative imprisonment charges. Foreign nationals can also face moderate fines and/or deportation with re-entry bans. In addition, if there is more than one infringement to relevant legislation in the 12 months beforehand, the labour market authority may reject further applications by a company based on the discretion of the labour authority. Furthermore, certain violations will be registered in a central register, and may lead to a prohibition from employing new foreign nationals for a certain period of time. In the case of severe and repeated violations of Austrian legislation, the authorities can also revoke the trade licence or prohibit business activities in Austria for a certain period of time.

Sanctions for employers include, but are not limited to, fines of EUR 1,000–10,000 per employee for working without work permission, minimum salary underpayment, breach of document retention requirements or failure to fulfil posted worker notification requirements. Higher fines often apply if more than three employees are involved and for repeat offences.

In a recent judgment the CJEU (C-64/18 Maksimovic *et al.*) ruled that the Austrian system of accumulated fines regarding each foreign employee (e.g. without a work permit) infringes the freedom to provide services, if no maximum fine is introduced. Consequently, the Austrian High Administrative Court has ruled that under the current Austrian penalty framework an accumulation of several fines is not permissible anymore. It is expected that the Austrian legislator will introduce a new sanction regime throughout 2020, ruling that the Austrian penalty system infringes the freedom to provide services. A new regime of sanctions is expected to be introduced shortly.

## 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 (holders of qualified residence) and Austrian nationals can be registered on the Austrian unemployment list, to which interested employers have access.


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

In general, the Austrian minimum salary requirements must be met during the whole employment period, as do the record-keeping requirements. In particular, work and residence 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 the case of an audit (e.g. time records, pay slips, bank transfer statements, etc.). Foreign nationals on local hire are obliged to be covered by the local social insurance. Foreign nationals on secondments need to be covered either by the local social insurance or an accepted foreign social insurance (i.e. the A1 certificate issued by EU/EEA or Switzerland, or the respective social insurance waiver certificates provided that a bilateral agreement exists, e.g. USA/A1 waiver certificates).

The Austrian employer or the Austrian receiving entity (in the case of secondments) needs to inform the Labour Authority within three days of the start and end date of work of a third-country national on local hire or an intra-company transfer.

Salary and allowance amounts, source of pay, payment frequency and other details declared in the application should match the pay-outs (i.e. the payslip). Authorities conduct a salary and social security compliance check after one month of work. Any salary changes (even small changes for highly paid staff) require a clear and detailed explanation.

### 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?

The general social system in Austria requires Austrian employers to contribute to the social system by paying taxes, charges and social security contributions, which 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 when seeking new employment.

### 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. Furthermore, the authority conducts salary and social security compliance checks after one month of work.

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

Yes, certain skilled occupations are considered to be of short supply in Austria. Foreigners qualified in these occupations may receive a specific residence and work permit, without the necessity to conduct a labour market test. Other permits are available for key employees and highly skilled employees.

### 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 publishes a list of certain occupations (e.g. roofers, welders, mechanical engineers, electrical engineers, qualified nurses, restaurant chefs, etc.) that are considered as shortage occupations in Austria. This list is published on an annual basis. Since 2020 this list also includes specific shortage occupations available only in specific regions of Austria.

There is a points-based criteria system, according to which the applicant for a shortage occupation gains points for the following skills/qualifications:

- University degree.
- German or English language skills.
- Previous job experience.
- Age (if younger than 30/40 years).

No labour market test is necessary.

Foreign nationals who want to work in one of the shortage occupations 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, seasonal workers, family reunification permits or holders of permanent residence permits of other EU Member States, 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, many work permits depend upon a labour market test.

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

In general, all individuals applying for long-term settlement permits have to prove German language skills at the time of application (level A1) or within two years of stay in Austria (level A2). 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. Some foreigners are exempt from providing language skills upon the first application (e.g. EU Blue Card applicants).

After five years of residence in Austria, B1-level German language skills are required for everyone seeking issuance of a Permanent Residence Permit for a period of five years.

### 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


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required. In the past some nationals of certain specific countries needed to submit health certificates in order to receive an Austrian Visa or a residence permit. This may be the case again going forward after the COVID-19 crisis, since entries during the COVID-19 crisis may only be permissible with a health certificate. Regional administrative authorities have the right to conduct tuberculosis tests for nationals of certain 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?**

Employees working on local hire have to be enrolled in the Austrian social and health insurance system.

For foreigners on short-term secondment on a work visa, only a travel insurance covering the following risks is necessary (minimum coverage amount: EUR 30,000): (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.

Foreigners on long-term secondments for more than six months need to obtain private medical insurance providing full coverage as 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 permit. In the case of an assignment from a third country to Austria, 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. A leasing of personnel would only be possible once the foreigner has reached a qualified residence permit status (Red-White-Red Card Plus).

## 5 Highly Skilled Visas

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

Highly skilled individuals can apply for a job-seeker visa D (with a validity of 180 days), which is granted on a points-based system, allocating high points to those with specific university degrees (mathematics, IT) or to those with a Ph.D. A job-seeker visa enables the holder to travel to Austria and to seek employment. If they find a job, they can exchange the visa for a Red-White-Red Card, which is a combined work and residence permit.

Candidates who have already found a job while still residing in their home country can apply directly for a Red-White-Red Card (for highly skilled).

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 (university degree) and earn a certain minimum salary above the average salary in Austria.

## 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 as self-employed persons or Start-Up Founders. The investor category is designed for high-net-worth individuals intending to make a substantial financial investment (approx. EUR 100,000 or EUR 50,000 in the case of start-ups) 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).

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

The Austrian Labour Ministry can issue regulations, listing certain industries that require specific workers for seasonal work, such as the hotel or agriculture industries. Workers in these industries can apply for a short term temporary work permit and the respective work visa.

Third-country nationals who shall carry out work based on a contractual engagement between the third-country company and the Austrian client can carry out these work activities based on a work permit and a work visa. This applies if the home entity is engaged and can be held liable for the work performance completed in Austria. The following categories apply: work permissions are granted as a (i) secondment permit for assignments of max. four months (regarding a project of max. six months), or as a (ii) (two-phase) work permit, both applied for at the Labour Market Authority. To get a real work permit, a so-called guarantee certificate is issued first, serving as a voucher to apply for the work visa (not necessary for secondment permits). Work visa applications are also necessary for visa-free nationals and are applied for at the Austrian consular post. If the assignment exceeds six months, the candidate has to apply for a residence permit instead of a work visa. Attention must be paid to the fact that Personnel Leasing ("Staffing") is not permissible under this category, as an additional Staffing Licence would be required.


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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?

- **For third-country nationals employed with a third-country employer and assigned to an Austrian receiving entity the following applies:**
  An intra-company transfer (ICT) is possible for managers, specialists and trainees (and also their dependants). Two different ICT Permits are applicable:
  The "ICT Permit" is a combined residence and work permit issued within eight weeks from the filing of the application for 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 Permit" is a combined residence and work permit for managers, specialists or trainees who are already holding an ICT permit issued by another EU Member State and who shall be assigned to an Austrian group company for more than 90 days. In such a case the applicant is allowed to start work in Austria 20 days after the submission of the application, even if the permit has not been issued yet, provided that the ICT Permit of the first EU Member State is valid throughout the entire assignment duration. The holder is entitled to work for client projects of the Austrian group company.
  If the ICT permit holder of another EU Member State is assigned to Austria for a period of up to 90 days, a posted worker notification (ZKO notification) has to be filed prior to the arrival in Austria.
  If the requirements of the ICT regime are not fulfilled, the secondment of an employee may be possible, if a Staffing Licence was obtained.
- **For third-country nationals as well as EU/EEA/Swiss nationals employed with an EU/EEA/Swiss company the following applies:**
  If an EU/EEA/Swiss national or third-country national employed with an EU/EEA or Swiss company shall be posted to the Austrian group company, a posted worker notification (so-called ZKO notification) is required to be submitted to the Federal Ministry of Finance. For third-country nationals, the Labour Market Authority issues an EU-Secondment or an EU-assignment Declaration after the posted worker notification.
- **Intra-company training of third-country nationals:**
  Junior executives of international groups of companies can also be assigned to Austrian group companies for intra-group training for a period of up to 24 months. Other trainees can be assigned for 50 weeks to the Austrian headquarters on this basis. No work permit is required, but the authorities have to be informed of the intended assignment two weeks in advance and will issue a Confirmation of Notification.

### 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 ICT Directive applicable to the ICT process, 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 sending entity and the Austrian receiving entity must exercise real operational business activities. The receiving entity must not be established for the purpose to facilitate assignments under the ICT regime. The Austrian employment, salary and social insurance conditions must be met. ICT Permits are possible for one year (in the case of trainees) or three years (in the case of managers and specialists). Then a cooling-off period of four months applies.

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

- **Under the ICT regime:**
  For an ICT Permit, the application and supporting documents can be filed directly in Austria to the immigration authority via the receiving entity. The labour documents are then forwarded to the Labour Market Authority, which needs to approve the application. In the case of approval, the application is returned to the immigration authority that issues the ICT Permit. An entry visa D needs to be filed and obtained for the applicant to enter Austria (if applicable). The whole process must not exceed eight weeks.
  For a mobile ICT Permit, the rules are basically the same, but approval may be reached quicker: the application shall be filed with the Austrian immigration authority at least 20 days prior to the intended arrival of the candidate. The candidate is allowed to start working with the Austrian group company after 20 days from filing, even if the permit was not issued.
  For holders of an ICT Permit of another EU Member State assigned to Austria for less than 90 days, a posted worker notification (ZKO notification) has to be filed. Then the Labour Market Authority issues an EU-Secondment Declaration, provided that the ICT Permit of the first EU Member State is valid throughout the entire assignment duration.
- **Under the EU posted-worker regime:**
  There are two different posted worker notifications, one for assignments (ZKO3 notification) and one for personnel leasing "staffing" (ZKO4 notification). The correct posted worker notification needs to be filed prior to the start of the working activities in Austria (at least one day prior). In the case of postings in the transport sector, the notification must be filed before the worker enters Austria. Additionally, the Labour Market Authority needs to issue


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an EU-Secondment or an EU-assignment Declaration for posted third-country nationals, who also need to obtain an Austrian work visa or a residence permit, if their stay exceeds 90 days within a 180-day period; their EU home country residence permit needs to be valid throughout the posting. All posted workers need to obtain an A1 social insurance confirmation valid throughout the posting.

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

The ICT Permit is available for a duration of 91 days up to one year (renewable for a further two years in the case of managers and specialists). Since this permit is a combined residence and work authorisation, it can be obtained in a one-stop-shop procedure, applied for directly at the immigration authority, which forwards the application to the Labour Market Authority. If both authorities approve, visa nationals will additionally apply for an Austrian visa D to enter Austria and collect the permit.

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

Regarding the ICT regime, the authority is granted an eight-week period to process the ICT permit or Mobile ICT Permit application. Afterwards visa nationals need to obtain the entry visa D which can take one to four weeks (depending on the consular post). Holders of an ICT Permit of another EU Member State who have applied for a Mobile ICT permit are entitled to start working 20 days after filing the application, irrespective of the issuance.

### 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 for trainees can be issued for a period of up to one year. ICT permits for managers or specialists can be issued for a period of up to one year, but can be extended for a further two years. After three years as an ICT employee, the holder needs to leave the EU Member States for four months, before reapplying for an ICT Permit in Austria. Mobile ICT Permits are limited to the validity of the original ICT Permit of the other EU Member State.

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

Yes, they can switch to a local hire permit (Red-White-Red Card or Blue Card EU) if they fulfil the requirements and have received a job offer from the Austria entity. It is not possible to transfer to a Permanent Residence Permit, as this permit is only available after five years of qualified residence in Austria. The years on an ICT Permit only count half towards a qualified residence.

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

Government fees for the ICT permits amount to approximately EUR 160 to EUR 250. Additionally if an entry visa D is necessary, the visa amounts to EUR 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?

Local hire work permits can be granted in different forms, depending mainly on the qualification and the salary amount.

EU, EEA and Swiss nationals employed directly in Austria do not need a work permit; until June 30 2020, Croatian nationals still need a work permit obtained prior to the start date of employment. All EU, EEA and Swiss nationals need to register their residence in Austria. The same applies to British nationals currently in Austria, but they will need to switch to a new registration procedure as of January 1 2021; for those lawfully resident in Austria prior to December 31 2020, their acquired residence rights will be protected under the Withdrawal Agreement. The residence status and procedure for those British nationals entering as of January 1 2021 is still subject to negotiations. The transition period which ends on December 31 2020 may also be extended further.

For all third-country nationals who shall be locally hired in Austria, the following main categories apply:

- Red-White-Red Card: this is a combined work and residence permit issued for an initial period of 24 months. The permit is issued based on a points-based system and applies to the following four categories of workers: very highly qualified workers; skilled workers in shortage occupations; key employees; and graduates of universities and colleges of higher education in Austria. The Red-White-Red Card is extendable and when extended after two years a Red-White-Red Card Plus can be issued, granting unlimited access to the labour market. To qualify for this permit the minimum points have to be reached, assessing the following criteria: qualifications; work experience; age; and German and English language skills. All applicants must at least meet the minimum salary stipulated by the applicable collective bargaining agreement. Furthermore key employees need to meet the minimum salary (at least EUR 2,685 for employees younger than 30 years and EUR 3,222 for employees aged 30 and above; at least EUR 2,416.50 for university graduates). These salary requirements are updated on an annual basis. These figures are to be paid out in 14 monthly salary payments per year (for most industries).
- EU Blue Card: this permit is a combined work and residence permit issued for an initial period of up to 24 months. Upon extension a Red-White-Red Card Plus can be issued. A EU Blue Card can be issued, if the applicant is meeting the minimum salary amounting to EUR 4,548 at least (this figure applies to 2020 and is to be paid out in 14 monthly salary payments per year) and if the applicant has obtained a three-year university degree.
- Settlement permit: for special executives of internationally active companies whose monthly gross salary amounts to approximately EUR 6,444 (this figure applies to 2020); certain scientists and researchers; and other work-permit exempted employees.
- Third-country nationals with a student permit in Austria may work for up to 20 hours per week, if a work permit has been 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?

In Austria, a labour market test is carried out regarding the


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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 unemployed 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 shortage occupation (see question 4.7) and university graduates in Austria.

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

If an individual has received a binding job offer and qualifies for a Red-White-Red Card or an EU Blue Card, the application along with the supporting documents signed by the employer regarding the basic employment conditions is submitted to the immigration authority which forwards the files to the Labour Market authority in a one-stop-shop procedure. If the Labour Market authority approves (and the labour market test – if applicable – was passed), the immigration authority invites the applicant to travel to Austria and collect the combined residence and work permit. Visa-free nationals are entitled to travel directly to Austria to collect the combined work and residence permit after fingerprints have been taken. Other third-country nationals will be granted an entry visa D by the respective Austrian consular post 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.

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

The application process to obtain the Red-White-Red Card or the EU Blue Card is a one-stop shop procedure. Only visa nationals need to obtain an additional entry visa D to collect the approved Red-White-Red Card or the EU Blue Card.

### 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 permit and can vary from one region to another. The combined residence and work permits are generally issued within two to three months as of the day of filing the application. This timeline does not include the document gathering time. In Austria no priority service is available.

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

Local hire combined residence and work permits are initially granted for 24 months, if the employment contract is not fixed-term with a shorter duration and as long as all supporting documents cover this period. Upon expiry, the permit can be extended and a Red-White-Red Card Plus can be granted under certain conditions, allowing complete access to the labour market.

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

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

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

Foreigners can apply for permanent residence only after five years of continuous and lawful residence in Austria; this requirement is met in the case of Red-White-Red Card or EU Blue Card holders who have then received a Red-White-Red Card Plus. German language skills at a level B1 need to be proven.

### 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. The government fees for a collection visa amount to EUR 150.

## 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 vary from one category to the other, but as a general guideline the candidate needs active employment, health insurance cover, secured accommodation and a clear criminal record. In the case of a significant changes of employment conditions after the approval of the permit, such changes have to be communicated to the authorities. Extension applications have to be submitted in due time before expiry; otherwise a new hire application would be necessary.

### 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 taking private accommodation in Austria. This also applies if there is a change of accommodation. Also, de-registration is required within three days of the end of residence in Austria. At the end of the stay in Austria, the Austrian residence permit 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.

EU/EEA/Swiss nationals additionally need to obtain the EU residence declaration.

## 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 underaged single child (children under the age of 18), including adopted and step-children.

In the case of EU/EEA/Swiss nationals the scope of who qualifies as a dependant is wider.


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### 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 (Red-White-Red Plus Card) in parallel, granting full access to the Austrian labour market without additional permission. Some dependants need to acquire German language skills (on an A1 level) when applying for family reunification.

Dependants of ICT permit holders can also apply for a family permit and receive automatic permission to carry out self-employed work; dependent employment can be granted if they obtain a binding job offer.

Dependants of short-term workers on work permits and work visas or residence permits have no right to family reunion.

### 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, allowing full access to the labour market. For the employment of children between the ages of 15 and 18, specific legal requirements have to be fulfilled. By law, children who are five years old are obliged to attend kindergarten and those between the ages of six and 15 are obliged to attend school.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

Foreigners 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. This permanent residence permit will be issued for a period of five years.

Not every year resident in Austria with a residence permit counts equally towards the five-year threshold, but only those granting qualified residence (e.g. Red-White-Red Card, EU Blue Card).

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

A switch from a short-term visa and work permit to another permit category is possible if all requirements of the new category are met. Work visas which lead to permanent residence are mostly those for newly hired employees, hence, local Austrian employment is key.

A switch in country to an ICT-Permit is currently not possible, as authorities require the applicant to be outside the EU Member States at the time of application.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

In general, the processing times as well as the type of documents (with diplomatic authentication or apostilles) for obtaining the work and residence permit have to be considered. This has to be taken into consideration when planning assignments to Austria.

Some permits also require proof of German (or English) language skills at the time of filing an application and salary thresholds are to be met in the case of a Red-White-Red Card or an EU Blue Card applicant. Furthermore, in a few cases long-term accommodation needs to be proven to the authority at the time of application; changes in this respect are currently debated.

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

All residence permit applicants (residence for more than six months) have to submit a clear criminal record issued in the 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 certificate shall not be older than three months at the day of the filing of the application. In the case of registered criminal convictions, the Austrian immigration authorities may refuse to issue permits.


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Oberhammer Rechtsanwälte GmbH is specialised in the fields of immigration and employment law, in particular related to foreign employment in Austria and international secondments to Austrian companies as well as private international clients wishing to set up businesses in Austria. This encompasses advising clients in labour law and corporate law issues, answering questions regarding immigration law, drafting employment/project/assignment agreements, applying for visas and many more related issues. Our clients trust in our expertise in the area of corporate migration. Furthermore, we offer all necessary ancillary services such as personal accompaniment to appointments with the relevant authorities and supporting clients on applying for subsidies and co- and health insurances. Our clients thus have the advantage of being serviced by a legal one-stop shop.

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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 will 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;
- meetings to standardise processes with Canadian staff;


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- 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 a 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 outline 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.

### 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:


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- 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; owners/operators; certain positions for a short duration; specialised service technicians and specialised service providers; and positions providing warranty work.

### 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.


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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?**

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 is being submitted; 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 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.

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,


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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 is 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 owners/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. Owners/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 refers to 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;
- 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 refers to:

- 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.


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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 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, for 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 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.


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### 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 10 to 12 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.

## 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.


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### 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.

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


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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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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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CANADIAN IMMIGRATION


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# China

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## 1 Introduction

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

As of the end of February 2020, China has not yet introduced a unified immigration law, but has issued several special laws and regulations on immigration, including but not limited to: 'Law of the People's Republic of China on Administration of Embarkation and Disembarkation' (hereinafter referred to as 'Embarkation and Disembarkation Law'); 'Administrative Regulations of the People's Republic of China on Embarkation and Disembarkation of Foreigners' (hereinafter referred to as 'Embarkation and Disembarkation Regulation'); 'Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China' (hereinafter referred to as 'PR Measures'); and Administrative Provisions on Employment of Foreigners in China (hereinafter referred to as 'Foreign Employment Rule').

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

The National Immigration Administration (Immigration Administration of the People's Republic of China, 'NIA') was established on April 2, 2018. It is a national bureau managed by the Ministry of Public Security and is a deputy-minister level institution. NIA leads the work of national immigration, border inspection and border management, and directs the work of immigration management in respect of public security in provinces, autonomous regions, and municipalities directly under the Central Government.

### 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?

China currently is not part of a multilateral agreement concerning the movement of people between countries for employment purposes. The work visa is subject to the approval of the relevant laws and regulations concerning work permits and visas.

## 2 Business Visitors

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

Per the Embarkation and Disembarkation Law, Article 22, foreigners who fall under any of the following circumstances may be exempted from application for a visa:

(1) foreigners who fall under a visa waiver programme pursuant to the visa waiver agreement executed between the Chinese Government and the government of another country;
(2) foreigners who hold a valid foreigner residence document;
(3) foreigners holding a through ticket on board an international voyage aircraft, vessel or train passing through China to a third country or region, who stay in China for less than 24 hours and do not leave the port, or who stay in a designated region approved by the State Council within the prescribed time limit; or
(4) any other circumstances for which the State Council stipulates that a visa is waived.

For example, if the visitors hold an Asia-Pacific Economic Cooperation Card under the APEC Business Travel Card Scheme, they can travel to China for business purposes. If the visitors hold a UAE passport, then according to the bilateral agreement signed between China and UAE, they can visit China without the requirement of a visa. Thus if China and other countries have signed a bilateral agreement on visa waiver, then the visitor from that country can enter China without a specific visa.

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

Per actual practice, for M visa holders, the period of stay ranges from 60–90 days, and the validity period of embarkation of an M visa can be from one year to 10 years subject to the status of the applicant.

### 2.3 What activities are business visitors able to undertake?

Per the Embarkation and Disembarkation Regulation, M visas shall be issued to persons who visit China for commercial and trade activities. An M visa holder can conduct a business visit, attend a business meeting and carry out other activities concerning business.

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

Per the Embarkation and Disembarkation Regulation, R visas shall be issued to high-level foreign talent and urgently needed specialised talent sought-after by China. Z visas shall be issued to persons working in China.


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### 2.5 Can business visitors receive short-term training?

Per the Embarkation and Disembarkation Regulation, an M visa is only for business activities. Holders cannot receive short-term training, and if holders are about to work in China, they must apply for a Z visa or an R 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?

NIA and its subsidiary authorities are entrusted by the laws and regulations to conduct inspections of employers who regularly employ foreign nationals.

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

Per the Embarkation and Disembarkation Law, the related parties of illegal working will be subject to legal liability and punishment.

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

Per the Embarkation and Disembarkation Law, "Persons arranging for foreigners to work illegally in China shall be subject to a fine of RMB5,000 for each illegally employed foreigner, subject to a total fine of not more than RMB50,000; organisations arranging for foreigners to work illegally in China shall be subject to a fine of RMB5,000 for each illegally employed foreigner, subject to a total fine of not more than RMB100,000; illegal income, if any, shall be confiscated. Persons who employ foreigners illegally shall be subject to a fine of RMB10,000 for each illegally employed foreigner, subject to a total fine of not more than RMB100,000; illegal income, if any, shall be confiscated."

## 4 Corporate Immigration – General

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

According to the Foreign Employment Rule, foreigners' employment with Chinese employers is conditional on obtaining the valid foreigners' work permit. The foreigners must satisfy the requirements for the Chinese foreign experts affairs authorities (hereinafter referred to as 'FEB') to issue the foreigners' work permit, and the employers must register with FEB to submit certain documents.

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

Per the Foreign Employment Rule, upon expiry of the term of the labour contract entered into between a foreign employee and his/her employer, his/her employment pass shall forthwith become void. Where there is a need for renewal, the employer shall submit an application for the extension of the employment period with the labour administrative authorities within 30 days before the expiry of the original contract, and complete the employment pass renewal formalities upon approval.

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

Currently there is no such requirement for employers. However, subject to the Foreign Employment Rule, the job positions to be filled by foreign employees must be due to unique needs, for which suitable candidates are lacking in China, and must not violate the relevant provisions of the State. Unless otherwise stipulated, employers must not employ foreigners to undertake cultural performances of a commercial nature.

### 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?

Currently there is no such requirement for employers.

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

NIA and its subsidiary authorities are entrusted by the laws and regulations to conduct inspections of employers who sponsor foreign nationals.

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

Currently there is no such list for employers. However, subject to the Foreign Employment Rule, the job positions to be filled by foreign employees must be due to unique needs, for which suitable candidates are lacking in China, and must not violate the relevant provisions of the State. Unless otherwise stipulated, employers must not employ foreigners to undertake cultural performances of a commercial nature.

### 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 there is no such recognition, but China welcomes foreign nationals to work in industries that are in short supply of talented individuals.

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

Currently there is no annual quota published by NIA. Considering that NIA can conduct comprehensive management on employment-related work permits and visas, NIA can adjust the number of foreign nationals working in China in accordance with the actual situation.


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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?**

Currently there is no such restriction; employers may sponsor foreign employees as appropriate.

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

Per the Foreign Employment Rule, foreigners employed in China shall satisfy the following criteria: (1) attained 18 years of age, and are healthy; (2) possess the requisite professional skill and the corresponding work experience for the work; (3) have no criminal record; (4) the employer is confirmed; and (5) hold a valid passport or any other international travel document which is passport equivalent (hereinafter referred to as the 'passport equivalent document'). There is no general language requirement.

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

Per the Foreign Employment Rule, employers hiring a foreigner shall provide proof of health status of the prospective foreign 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?**

Per the Social Security Law of the People's Republic of China (Revision 2018), Article 97, foreigners employed in China shall participate in social security with reference to the provisions of this Law. Per Article 4, employers and individuals in the People's Republic of China shall contribute social security premiums pursuant to the law, have the right to enquire into records of contributions and records of individuals' rights and interests, and request for social security agencies to provide the relevant services such as social security consultation, etc.

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

Currently there is no such stipulation.

## 5 Highly Skilled Visas

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

Per the Embarkation and Disembarkation Regulation, R visas shall be issued to high-level foreign talent and urgently needed specialised talent sought-after by China. Per the Measures for the Implementation of the Foreign Talent Visa System, R visas are issued to foreign high-level talent, specialised talent with urgently needed skills in national economic and social development, scientists, scientific and technological leaders, international entrepreneurs, and high-skilled talent that meet market demand due to a 'high-skill shortage'.

## 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?**

Per the 12 Measures issued by NIA for Facilitation of Immigration, Embarkation and Disembarkation (hereinafter referred to as 'IED Measures'), if the foreigner has obtained a bachelor's degree or above from the key universities of China and has engaged in innovation and entrepreneurship activities in China after graduation, he/she can apply for a residence permit with a valid period of two to five years. If the foreigner has obtained a bachelor's degree or above from internationally renowned universities and has come to China for innovation and entrepreneurship within two years after graduation, he/she may apply for a residence permit with a validity period of less than two years.

## 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 temporary work permits under the Embarkation and Disembarkation Regulation. However, if the foreigner studies in China as a student, he/she can have a temporary internship that is organised by the university.

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

There are no temporary work permits under the Embarkation and Disembarkation Regulation.

## 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 no specific work permits under the Embarkation and Disembarkation Regulation. Z visas shall be issued to foreigners working in China. Thus, the answers in this chapter are subject to the requirement for Z visas and work permits.

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

As indicated above, there are no Transfer Work Permits. As a result, there are no particular conditions.


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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?**

Per the Foreign Employment Rule, the job positions to be filled by foreign employees must be due to unique needs, for which suitable candidates are lacking in China, and must not violate the relevant provisions of the State.

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

Per the Foreign Employment Rule, foreign investment enterprises hiring foreigners may apply directly for an employment permit with the permit-issuing department of the labour administrative authorities. The employer shall present the contract, articles of association, approval certificate, business licence and required documents. Within 15 days from the prospective foreign employee's entry into China, the employer shall apply to the original permit- issuing department for an employment pass for the foreigner, and complete a "Registration Form for Employment of Foreigner". The employer shall present the employment permit, the labour contract entered into with the prospective foreign employee, and his/her valid passport or passport equivalent document.

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

Per the Foreign Employment Rule, "Foreigners approved to work in China shall present the approval certificate and their valid passport or passport equivalent document to apply for a Z visa from the foreign embassy or consulate of China."

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

Per information in the open channel, the process may last for two to 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?**

Per information on the website of Chinese Consulate (cs.mfa.gov.cn), an employee holding a Z visa must apply for a residence permit to the Exit-Entry Administration Bureau within 30 days after entering China. The residence permit can be extended. The Z visas and work permits generally shall be renewed per year if at that time the employee is still hired and working in China.

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

Per the PR Measures, employees may apply for a permanent stay visa if he/she has been holding the post of deputy general manager, deputy factory director or above or enjoying a comparable post, for at least four successive years, with a minimum period of residence in China of three cumulative years within four years and with a good tax paying record. Normal employees may not have an opportunity to apply for a permanent stay visa.

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

The main government fees include but are not limited to the fees for applying for a Z visa in the domestic country, and the fees for applying for an employment permit and a residence permit in China.

## 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?**

Per the Embarkation and Disembarkation Regulation, Z visas shall be issued to foreigners working in China. Z visas are the main immigration category used for employers.

**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?**

Per the Foreign Employment Rule, the job positions to be filled by foreign employees must be due to unique needs, for which suitable candidates are lacking in China, and must not violate the relevant provisions of the State. Before hiring the foreign employee, the employer must submit the application to the industry administrative authorities and must submit documents including a report on the reason for hiring a foreign employee. Nevertheless, according to our experience, the test is not very strict as China is open to talent.

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

Per the Foreign Employment Rule, if the employer is a foreign investment enterprise, it may not be required to undergo examination and approval by the industry administrative authorities.

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

Per the Foreign Employment Rule, foreign investment enterprises hiring foreigners may apply directly for an employment permit with the permit-issuing department of the labour administrative authorities. The employer shall present the contract, articles of association, approval certificate, business licence and required documents. Within 15 days from the prospective foreign employee's entry into China, the employer shall apply to the original permit-issuing department for an employment pass for the foreigner, and complete a "Registration Form for Employment of Foreigner". The employer shall present the employment permit, the labour contract entered into with the prospective foreign employee, and his/her valid passport or passport equivalent document.

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

Per the Foreign Employment Rule, "Foreigners approved to work in China shall present the approval certificate and their valid passport or passport equivalent document to apply for a Z visa from the foreign embassy or consulate of China."


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

Per our experience and knowledge, the whole process for the application may last for two to three months.

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

Per information on the website of Chinese Consulate (cs.mfa.gov.cn), an employee holding a Z visa must apply for a residence permit to the Exit-Entry Administration Bureau within 30 days after entering China. The residence permit can be extended. The Z visas and work permits generally shall be renewed per year if at that time the employee is still hired and working in China.

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

Currently there is no such stipulation.

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

Per the PR Measures, employees may apply for a permanent stay visa if he/she has been holding the post of deputy general manager, deputy factory director or above or enjoying a comparable post, for at least four successive years, with a minimum period of residence in China of three cumulative years within four years and with a good tax paying record. Normal employees may not have an opportunity to apply for a permanent stay visa. The requirement for PR is much higher than that of work permit.

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

The main government fees include but are not limited to the fees for applying for a Z visa in the domestic country, and the fees for applying for an employment permit and a residence permit in China.

## 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?

Per the Foreign Employment Rule, to keep the employee staying in China, the term of the labour contract entered into by and between the employer and employee must not have expired. Moreover, the employer must not violate Chinese laws and regulations.

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

Per the Foreign Employment Rule, the employer shall apply to the original permit-issuing department for an employment pass for the foreigner within 15 days from his/her entry into China, and complete a "Registration Form for Employment of Foreigner". The employee shall present the employment pass to apply to the public security authorities for a residence permit within 30 days from entering China.

## 11 Dependants

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

Per the Embarkation and Disembarkation Regulation, S visas are issued to qualified dependants. S1 visas shall be issued to: the spouse, parents and children under 18 years of age of a foreigner residing in China for work or study, etc.; the spouse's parents applying for a long-term relative visit; and any other persons who need to reside in China for personal reasons. S2 visas shall be issued to: family members of foreigners who stay or reside in China for work or study, etc., applying for a short-term relative visit; and persons who need to stay in China for personal reasons.

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

According to actual practice, civil/unmarried or same-sex partners generally will not be recognised as qualifying as family members.

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

Currently, spouses and partners have no access to the labour market as dependants. However, if an employer intends to hire them, they can apply for a work visa.

### 11.4 Do children have access to the labour market?

According to the Provisions on Prohibition of Child Labour, no State organs, social organisations, enterprises, institutions, private non-enterprise units, or individual industrial and commercial businesses (hereinafter referred to as 'employing units') may recruit and hire minors under the age of 16. All units and individuals are prohibited from providing job placement services to minors under the age of 16. Minors under the age of 16 are prohibited from starting businesses and engaging in individual business operation activities.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

Per the PR Measures, foreigners applying for permanent residence in China must abide by Chinese laws, be in good health and without any criminal record, and must meet at least one of the following requirements: (1) having made direct investment in China with a stable operation and a good tax paying record for three successive years; (2) having held the post of deputy general manager, deputy factory director or above, or of associate professor, associate research fellow or other associate senior titles of a professional post or above, or enjoying a comparable post, for at least four successive years, with a minimum period of residence in China of three cumulative years within four years and with a good tax paying record; (3) having made a great and outstanding contribution to and being specially needed by China; (4) being the spouse or unmarried child under 18 years old of a person with reference to items (1), (2) or (3) of this paragraph; (5) being the


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spouse of a Chinese citizen or of a foreigner with permanent residence status in China, in a marriage relationship for at least five years, with at least five successive years of residence in China and at least nine months of residence in China each year, and having a stable source of subsistence and a dwelling place; (6) being an unmarried person under 18 years old turning to his parent; or (7) being a person who is or is above 60 years old, who has no direct relative abroad and is to turn to any direct relative in China, and has stayed in China for at least five successive years with at least nine months of residence in China each year, and has a stable source of subsistence and a place of residence.

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

Per the Embarkation and Disembarkation Law, there is no category for a temporary work visa. Nevertheless, according to our experience, it is not uncommon for foreign nationals who hold the work visa/work permit for consecutive years to successfully apply for PR. Once foreign nationals who work in China meet the requirements for PR, they can apply for PR and switch from a work visa to PR.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

Per actual practice and our understanding of the labour market, the main bars are the cost of employment and the contribution that a foreign employee can provide. Because there will be millions of graduates entering the Chinese labour market each year, foreign employees must exhibit their values and ability to be hired in China.

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

Per the Foreign Employment Rule, foreigners applying to work in China must not have a criminal record.


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# Colombia

Tannus & Asociados

Rodrigo Tannus Serrano

## 1 Introduction

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

Immigration law in Colombia is governed by:
- The Political Constitution.
- International treaties.
- Decree 1067 2015.
- Decree 1743 2015.
- Resolution 6045 2017.

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

The authorities that regulate the corporate immigration system in Colombia are:
- Ministry of Foreign Affairs.
- Special Administrative Immigration Unit *Migración Colombia*.
- Ministry of Education.
- Professional Boards.

### 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, Colombia is part of the following multilateral agreements:
- Andean Community Nations (CAN).
- Mercosur.
- *Alianza del Pacifico*.

In the same way, Colombia is part of other agreements which facilitate employment, social security, and movement of people, i.e. North Triangle countries, South Korea, Canada, and Spain.

## 2 Business Visitors

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

Business travellers entering Colombia for up to 180 days per calendar year can enter with a Tourism Permit (PT). Tourism Permits are available to visa-exempt nationals and can be obtained upon arrival in Colombia. Countries mentioned in the previous answer are part of the visa-exempt regime.

Moreover, passport holders of Hong Kong, Malta, Taiwan and Nicaragua (who prove to be natural-born citizens from the Autonomous Region of the North Caribbean Coast or the Autonomous Region of the South Caribbean Coast) are also exempt from a visa before entering the country. Nationals from Cambodia, India, Myanmar, Nicaragua, the Peoples' Republic of China, Thailand and Vietnam, who hold a valid visa with a validity of more than six months, or residence status from a Schengen country or the United States, also qualify for the visa-free regime.

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

Visa waiver nationals entering Colombia under a Tourism Permit (PT) may stay initially for 90 days, extendable for an additional 90 days, for a maximum stay of 180 days per calendar year.

Visitor Visas (V) for business activities are issued for a validity of up to two years with an authorised stay of up to 180 cumulative days in a 365-day period.

### 2.3 What activities are business visitors able to undertake?

Business activities may be defined as:
- Conducting business negotiations.
- Performing market studies.
- Executing investment plans or procedures for the constitution of a commercial company.
- Concluding contracts or giving commercial representation.

It is important to note that foreign nationals that fall under this permit or visa category cannot receive any type of remuneration originating from a Colombian source, while in Colombia.

### 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 such special visitor category. The general rule is that business visitors are not permitted to undertake hands-on productive work or provide services in Colombia.

However, some Visitor (V) and Migrant (M) subcategories and Resident (R) visas allow foreign nationals to not only carry out business activities but also to undertake work and provide services.

### 2.5 Can business visitors receive short-term training?

Business visitors are permitted to receive training only if certain requirements are met, but it is essential to accurately identify the specific activities, to ensure that another permit or visa is not 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?

*Migración Colombia*, Professional Boards and the Ministry of Labor conduct various types of site visits and verification procedures to ensure that employers and foreign employees comply with the obligations set forth under Colombian legislation.

In the course of such inspections, visas, foreigners' ID cards, professional permits, registrations and de-registrations on SIRE and RUTEC are reviewed.

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

Colombian employers are required to verify the immigration and employment authorisations of any employee, including documents such as passports, visas, foreigners' ID cards and professional permits.

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

Failure to comply with Colombian immigration rules results in penalties, which will vary depending on the violation as dictated by the immigration authority. Economic penalties can oscillate between eight and 40 monthly minimum legal salaries (approx. $1,800 to $9,000 USD) per charge based on the liability of the offender.

Revocation of visas and deportation may also apply to foreign nationals.

## 4 Corporate Immigration – General

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

Yes, there are two online systems: from the Ministry of Labor called *Sistema Único de Registro de Trabajadores Extranjeros en Colombia* (RUTEC); and another from *Migración Colombia* called *Sistema de Información para el Reporte de Extranjeros* (SIRE).

By means of these two systems, employers will notify the registrations and de-registrations of aliens associated with the company.

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

Employers who are linked to foreign nationals have an obligation to comply with Colombian law including employment law and other regulations. Specifically, employers who admit foreign nationals must require the proper permit or visa for them to engage in activities in the country, maintain record-keeping, and report various situations to the immigration authorities, such as the employment registration and de-registration of the foreign national, changes in their position, among others.

In addition, depending on the visa, the employer has the responsibility to cover return expenses for the foreign national and his/her family when his/her employment relationship is terminated.

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

No. However, to issue temporary professional permits, some Professional Boards require the foreign national to show and prove that training will be given to local staff of the employer in order for him to receive the permit.

### 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 according to Colombia law.

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

Compliance visits are undertaken by *Migración Colombia*. These visits can be executed by arrangement with the employer or can be carried out on an unannounced basis.

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

No, there is not 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 not.

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

This is not the general rule. Nonetheless, to issue some temporary professional permits, some Professional Boards require a certain ratio of national and foreign workers, with foreign workers comprising a maximum of 20% of the workforce at the company.

### 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 such restriction.

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

Language proficiency is not required to hire foreign nationals in Colombia.


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

It is not a requirement to submit any type of medical certificate prior to visiting Colombia.

Nonetheless, foreign and national employees are required to undergo a medical examination before, during and at the end of the employment relationship according to employment laws in our 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?**

Before the COVID-19 pandemic, medical insurance was not required as a condition for work permits sponsored by a Colombian entity. However, the authorities are nowadays requesting proof of medical insurance for some foreign nationals in some visa applications.

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

According to Colombian laws, this is not prohibited nor expressly allowed. From an employment law perspective, it is possible to second employees who hold work permits. In practice, some companies carry out such secondments and include within the scope of the agreement that the foreign national will remain under an employment relationship with the local employer but may visit or assist a client.

## 5 Highly Skilled Visas

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

There is no highly skilled immigration category as such. However, some workers and particularly those who wish to perform activities as freelancers holding a Migrant visa (M-7) must provide sufficient credentials and qualifications to have this visa.

## 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?**

When a foreigner legally incorporates a company in Colombia where it evidenced an investment exceeding 100 monthly minimum legal salaries (approx. $23,000 USD), the foreigner may apply for a Migrant visa as an entrepreneur/businessman (M-6). Holders of this visa can only work at the corporation in which they invest.

An alternative is to make a direct investment exceeding 650 monthly minimum legal salaries (approx. $150,000 USD) by which they may qualify for an Investor Resident visa (R). Holders of this visa will have an open work permit that allows them to carry out any legal activity in the country.

## 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 visa that allows these activities. However, these activities can be done under different visa categories such as Visitor (V-9 internships, V-13 temporary services, V-14 intra-company transfer and V-16 work holiday programmes), and Migrant M-3 Mercosur, among others.

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

Yes, these categories are: Visitor visa for Crew members (V-7); Audio-visual production and digital content (V-11); Journalism (V-12); and artistic, technical and production personnel (V-5 courtesy). Nevertheless, it is important to confirm on a case-by-case analysis if these visas will apply or if other work visas will suit better.

## 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 Visitor V-14 visa. This will only be authorised when there are specific commitments regarding the entry or temporary presence of business people within the framework of international instruments in force between Colombia and other countries. Currently, this visa will apply to nationals from Canada, Chile, South Korea, Mexico, Honduras, Guatemala, El Salvador, Peru and the European Union.

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

The local company must be legally incorporated pursuant to Colombian laws and related to the foreign company as a subsidiary, parent, branch or affiliate in the countries mentioned in the previous answer.

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

The local company must provide: the certificate of good standing and due incorporation or an equivalent document issued by the local authorities, proving that the foreign company is duly incorporated in one of the jurisdictions mentioned in the answer to question 8.1; adequate financial capacity; and the employment contract of the transferred employee .

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

The Colombian company must file a petition with a Colombian


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consulate abroad or the Ministry of Foreign Affairs in Bogotá requesting the approval of the Visitor visa. In our jurisdiction, there is no need to obtain a work permit separate from the visa as the visa contains the work permit within it.

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

Please refer to the answer to question 8.4.

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

Visa processing takes between five to 15 days to be completed depending on where the applicant is applying.

**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?**

Visitor visas can be valid for up to two years and can be extended as many times as necessary.

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

No. Unlike visa holders in other categories, Intra-company Visitor visa holders cannot apply for a Resident visa due to time.

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

The 2020 fees associated with an Intra-company Visitor visa are: $52 USD for the application fee; and $245 USD for the visa fee.

## 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 categories are: Visitor visa for rendering services (V-13); and Migrant visa for work purposes (M-5).

**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?**

This does not apply in Colombia.

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

Visa applications for work in Colombia can be submitted at the Colombian Consulate abroad. Alternatively, visa-exempt nationals can apply for a post-arrival change of status at the Ministry of Foreign Affairs in Bogotá.

The employee or a third person duly authorised may request the visa, not the company. The application must contain: personal documents such as a copy of the bio page of his/her passport, a copy of his/her last entry or exit stamps to Colombia (if any) and a recent digital photograph; and corporate documents such as bank statements showing adequate financial capacity or a certificate of due incorporation and good standing, among others.

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

Please refer to the answer to question 9.4.

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

Please refer to the answer to question 8.6.

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

Migrant work visas (M-5) can be valid for up to three years.

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

Labour testing is not required in our jurisdiction.

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

Yes, foreigners are eligible for resident status after five years of continuous and uninterrupted residence in Colombia under a Migrant work visa (M-5).

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

The 2020 fees associated with a Migrant work visa are: $52 USD for the application fee; and $230 USD for the visa fee.

## 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 visa are expected to obey and abide by Colombian laws. They must remain employed by the sponsoring company under the same position specified in the visa. Any change in the position or sponsor shall require a new work visa. They must not remain outside Colombia for more than six consecutive months, otherwise the visa will expire. They must also notify *Migración Colombia* of any change of address within 15 calendar days.


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

Yes, if the visas have been granted for three months or longer, the foreign national must process the registration of the visa and the foreigner's ID card (*cedula de extranjería*) at *Migración Colombia* within 15 days of the approval of the visa.

## 11 Dependants

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

- Spouse.
- Unmarried partner.
- Children under 25 years old or children over 25 years old who are disabled.
- Parents who are economically dependent on the work visa holder.

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

Yes, civil/unmarried or same-sex partners are eligible for a dependant visa in Colombia.

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

If they decide to work, dependants must change their immigration status to access the labour market. However, please be aware that there are restrictions to changing immigration status according to the discretion of the immigration officers.

### 11.4 Do children have access to the labour market?

Please refer to the answer to question 11.3.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

A Resident visa (R) is granted to foreigners that wish to settle permanently in the country. It will continue to be granted for an indefinite term despite the fact that the new stamp only establishes a validity of five years, due to security and control issues.

Foreign nationals are eligible for resident status in the following cases:

- Colombians who have renounced their citizenship.
- Being a father or mother of a Colombian national by birth.
- Migrant visa (M) holders in subcategories M-1 to M-3 who have resided for a continuous and uninterrupted period of two years in the country.
- Migrant visa holders in subcategories M-4 to M-11 or dependents who have resided for a continuous and uninterrupted period of five years in the country.
- Direct investment of 650 times the minimum monthly wage in Colombia (approx. $150,000 USD).

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

Please refer to the answer to question 12.1 above.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

Foreigners who have a regulated profession in Colombia must comply with the rules governing the matter and this can be considered as a bar to admission to work. The Professional Boards, as well as *Migración Colombia*, can request a temporary licence, validation of title or professional registration, according to the profession and activities to be carried out in Colombia.

Companies that are not legally incorporated pursuant to Colombian laws can be also a bar, considering that work visas will need a local sponsor and in some cases a local contract as well.

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

A police clearance certificate is not a preliminary document required for obtaining a work visa in Colombia. However, in order to apply for a Migrant Mercosur visa, a certificate of criminal convictions must be presented and the visa application may be deemed inadmissible on this ground.


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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 Interior, 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 has been 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?

In general terms, it is necessary for a citizen of a third country to acquire a business visa for entering Cyprus. However, since Cyprus has been 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 to the citizens of Switzerland, Iceland, Liechtenstein, and Norway and the holders of UN and European Council *laissez-passer*; and also citizens of a number of third countries outside the EU, provided that their stay in Cyprus does not extend more than 90 days and that they are *bona fide* visitors. Holders of multiple-entry Schengen Visas, as well as holders of any residence permits issued by Schengen Member States, may travel to Cyprus without having a visa, upon presentation of a valid passport or identity card. Also, it is worth noting that a visa waiver program also applies to certain categories of persons, including – among others – holders of diplomatic, service and/or special passports from certain countries and eligible flight crew members, crew of vessels and aircraft and crew of ships sailing in international waters.

### 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 cannot 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 in and undertake several kinds of activities, that may qualify as business. In case a third-country business visitor may wish to apply for and obtain a


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business visa, he has to submit (within reasonable time prior to the proposed date of travelling), to a local Cyprus Embassy (at the place where he has his usual residence), 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.

**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, other than the business visa, 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 of Cap.105, 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?**

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 third-country national without the requisite permit or the employment of any third-country national 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 the 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 Interior), 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 LD 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 on 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-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 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.


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**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 implements policies according to the circumstances and the needs of the market. Generally, each application for employment of a 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 access to health services. On that basis, the LD and the CRMD require the submission of either the GHS registration or 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 employer 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 in February 2017 for two years and has 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


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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.

**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 been amended (relatively recently) 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 transfer 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 its 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 into the Republic of 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, for the purposes of review and certification, submit 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 employer undertaking. 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 approximately one-and-a-half months, while the whole 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 Cap.105, 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


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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 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 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 (local) district LD office, in order for an examination of the national and European labour market to be conducted. 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 national(s), 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 approximately three weeks, while the procedure for the issue of the main permit may, currently, take more than three months (which was the usual examination period).

### 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


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the work permit (if applicable). Ancillary costs with regards to, among others, the certification, legalisation and translation of documents may also apply.

## 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 the prescribed 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, while 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 those of the applicant and his/her ex-spouse for whom the applicant has the exclusive custody as well as those 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 a religious marriage or by way of a civil marriage or civil union. Although the religious and civil marriages 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?

Third-country nationals can obtain a permanent residence either via "investing" in a property in Cyprus, using the fast-track (Reg.6 (2)), or by following the 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 has been residing


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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.

## 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 records as well as 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 and certified 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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# Egypt

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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 are Labor Law No. 12 of 2003 and its Executive Regulation No. 185 of 2003 and amendments, and Minister of Manpower and Immigration Decree No. 146 of 2019 concerning the conditions and procedures of foreign employees. In addition, there are the Special Decrees concerning the specialised profession.

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

The relevant authorities are the Ministry of Interior (Department of Passports, Nationality and Immigration) and the Ministry of Manpower and Immigration. For certain work-positions, it may also be required to obtain permissions or approvals from entities such as professional syndicates or work unions.

### 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 bilateral cooperation agreement for labour matters signed in 1981 between Egypt and Greece. Other facilities in Egypt grant other countries access in order to facilitate the movement of people between certain countries, such as obtaining visas upon entry to Egypt and paying a lower fee in comparison to other countries when obtaining work permits.

## 2 Business Visitors

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

Yes, a business visitor may enter Egypt under a Business Visa. However, such visas are for attending meetings and conferences for a limited period of time.

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

The maximum period for which a business visitor may remain in Egypt is for 30 days in a single visit. Upon expiration of the visa the applicant may apply for a renewal for another 30 days.

### 2.3 What activities are business visitors able to undertake?

Permitted activities include meetings, conferences, training and seminars to investigate business opportunities and ventures. However, in order to work in Egypt, the applicant must apply for a work permit.

### 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 law provides an exception in Article 4 of Decree No. 146 of 2019 that states that "all foreigners willing to work in Egypt for a day or a few days shall pay 10% of their wage not less than 8,000 EGP total and a maximum of 50,000 EGP…".

### 2.5 Can business visitors receive short-term training?

Yes, business visitors are permitted to 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?

Yes, according to Article 3 of Decree No. 146 of 2019, all establishments employing foreign employees must notify the relevant authority during the first week of employment in the case that the employee has one of the exceptions mentioned in Article 2 of the abovementioned decree. The documents and information that must be submitted to the competent authority are as follows:

- Names of foreign employees employed, with their relevant nationalities and professions, the numbers and dates of the work permits granted to them and the names of their assistants, if any.
- Number of positions and employees of Egyptian nationality.
- In addition, the employees who have work permits are registered in the Social Insurance file of the company.
- Each company must provide a Social Insurance file to the relevant authorities, who register all the employees. Form number 2 is filed and is updated every six months.



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

In the case of illegal working (work without a work permit), Article 245 of the Labor Law No. 12 of 2003 that states that: "Whoever violates any of the provisions of subchapter Two of Chapter One of Book Two regarding organizing the work of foreigners and ministerial decisions shall be punished, with a fine of not less than five hundred pounds and not exceeding five thousand pounds. The fine shall be multiplied by the number of workers for whom the crime occurred, and the fine shall be doubled in case of recurrence." The Ministry of Manpower has the authority to perform a physical check of the companies and their foreign employees with regards to compliance to the immigration laws.

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

According to Article 245 of Law No.12 of 2003: "Any person who violates the provisions of the law on organization of the work of foreign employees is liable to a fine of not less than five hundred Egyptian Pounds and not exceeding five thousand Egyptian Pounds..."

## 4 Corporate Immigration – General

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

Yes, the employees must obtain work permits and register in the Ministries according to their jobs and qualifications. In addition to the Social Insurance file, the companies must have registration (open file) at the Social Insurance Authority.

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

Yes, all establishments employing foreign employees must notify the relevant authority during the first week of each of the months of January and July of each year of the following:

- Names of foreign employees employed, with their relevant nationalities and professions, the numbers and dates of the work permits granted to them and the names of their assistants, if any.
- Number of positions and employees of Egyptian nationality.
- Each company must provide a Social Insurance file to the relevant authorities, who register all the employees. Form number 2 is filed and is updated every six months.

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

Yes, one of the conditions to grant a work permit to a foreigner is for him/her to be a highly qualified employee to improve the business's performance and help in reducing risks and technical problems. The foreign national is required to develop, train and up-skill the local workers, as one of the conditions of granting a work permit is the appointment of two local assistants to a foreign employee.

### 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?

According to Decree No. 146 of 2019, in order to obtain a work permit the employees must pay a starting fee of 5,200 EGP for the first year. Additionally, in order to renew such permits various additional fees would be imposed.

Provisions concerning vocational training include the creation of a fund for financing this training, which is partially funded by 1% of the net profit of the establishments subject to this Law which employ more than 10 employees.

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

Yes, the competent Ministry inspects the compliance of the foreign nationals. In addition, all establishments must provide the following:

- Names of foreign employees employed, with their relevant nationalities and professions, the numbers and dates of the work permits granted to them and the names of their assistants, if any.
- Number of positions and employees of Egyptian nationality.
- Each company must provide a Social Insurance file to the relevant authorities, who register all the employees. Form number 2 is filed and is updated every six months.

### 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 a specific list. However, if the foreign national is highly skilled and experienced compared to any Egyptian national, then they may fill the occupation as a foreigner. This falls under a specific condition in order to obtain a work permit in Egypt. In addition, Article 16 of Decree No. 149 of 2019 prohibits the foreigner from working in certain occupations such as tourism, import and export, and customs.

### 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, some occupations are limited to Egyptians and foreigners are prohibited to work in them, according to Article 16 of Decree No. 149 of 2019 that prohibits foreigners from working in certain occupations such as tourism, import and export, and customs.

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

No, but there is a fixed quota for the number of foreign employees in a company. The foreign labour can constitute only 10% of the workforce and 90% of the company's employees must be Egyptians according to Article 5 of Decree No. 149 of 2019 concerning the conditions of foreign employees.

In addition, Article 8 of the Law No. 72 of 2017 increases the number of foreign employees to 20%. The Article states that: "The Investment Project shall have the right to appoint foreign workers in the amount of 10% maximum of the total number of workers in the Project. This rate may be increased to


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20% maximum of the total number of workers in the Projects, in case it is not possible to appoint national workers who have the required qualifications, in accordance with the controls and rules set forth by the Executive Regulations of this 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?**

According to Egyptian Companies Law, and its related decrees, foreign labour may not exceed 10% of the total labour force of an Egyptian company and the total compensation of foreign employees must not exceed 35% of the total payroll of the establishment.

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

No, there are no language requirements.

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

Yes, part of the application process requires foreign applicants to undergo an HIV test prior to being admitted. There are several companies which might require personalised tests which are not demanded by the law.

**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 must register the applicant with the relevant social insurance required by the law according to Law No. 179 of 1975 concerning social insurance.

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

No, as the foreign employee is not allowed to work for a company other than the company that granted him the work permit.

## 5 Highly Skilled Visas

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

No, there is no specific category for highly skilled 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 are investor visas provided to investors who want to invest in Egypt, according to Companies Law No. 159 of 1981 and Law No. 72 of 2007 Promulgating the Investment Law.

## 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 law exempts some categories from obtaining a work permit, such as the following:

- Administrative staff who work with the embassies and consulates of Arab and foreign countries, organisations and agencies, regional and international, in the Arab Republic of Egypt.
- Exemption to employees according to an explicit Article in the International treaty.
- Foreign correspondents who work in the Arab Republic of Egypt.
- Clerics who exercise their activity without pay.
- Foreign workers on Egyptian vessels in the high seas outside the territorial waters of the maritime labour sufficiency licence.
- Foreigners who work in the Commonwealth War Graves Commission.
- Foreigners who work in the Wafaa & Amal Association.
- Workers in the Hanns-Seidel-Stiftung Association in the State Information Service, unless they are not more than three.
- Members of the Swiss Institute for architectural and archaeological Research on ancient Egypt.

The above-mentioned categories are exempt from the work permit and can work in Egypt.

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

The law mentions an exception in Article 4 of Decree No. 146 of 2019 that states that "all foreigners willing to work in Egypt for a day or a few days shall pay 10% of their wage not less than 8,000 EGP total and a maximum of 50,000 EGP…".

## 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, in order to transfer employees to a company in Egypt, the company must obtain work permits for each employee according to the law.

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

The company that the employees will transfer to must be registered in Egypt; registration in Egypt is obtained through establishing a company or establishing a representative office in Egypt or a branch in order to be a part of a group of companies.

Each of the above-mentioned company registers has its own required documents and procedures.

The legal entity will register in the Tax Authority and the Social Insurance office. After the legal entity registers in such


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authorities, the company will apply for a work permit for the employees according to the conditions stated in the law, with the required documents and procedures.

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

The employer must establish a legal entity in Egypt in order to obtain a work permit for the employee; each type of legal entity has its own documents, procedures, and conditions according to the law. The legal entity in general must submit the following documents:

- Company's Commercial Register.
- Tax Card.
- Articles of Association.
- Investment prospectus.
- Social Insurance for Egyptians for the current year should be fulfilled, noting that the foreign employees must be 10% of the workforce only and the rest must be Egyptians. The foreigner's profession must comply with the vacancy applied for.
- Syndicate approval on professions if it is needed.
- Letter appointing two Egyptian assistants (from the company's staff) to the foreigner supported with their educational certificates.
- A declaration from the company that there are no foreign employees in the case of acquiring a work permit for the first time, or a recent foreign employee's sheet.
- Certified employment contract.
- Passport copies.
- Letter from the company addressed to the General Director of Foreigners Work Permit Department to obtain the work permit for the employee.

Please note that the above-mentioned documents may differ according to the type of the legal entity.

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

The obtainment of a work permit for an employee will pass through three stages. The first stage is to obtain a recommendation letter, which will take from one week to two weeks. The second stage is submitting the recommendation letter along with the other required documents (according to the type of legal entity) to the Ministry of Manpower and Immigration, which will take more than two weeks. The third stage is to submit and proceed in the Passports, Immigration and Nationality Administration Authority.

The timeline will be from one month to one-and-a-half months.

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

The employees are not permitted to work in Egypt through obtaining a visa. Foreign employees are only permitted to work in Egypt through work permits, according to Article 28 of Labor Law No. 12 of 2003 which states that: "foreigners shall not exercise work except after obtaining a permit thereof from the concerned Ministry. And shall be authorized to enter and reside in the country for the purpose of working…". In addition, Article 1 of Decree No. 146 of 2019 states: "Foreigners shall not work until they have obtained a license from the competent Ministry, its workforce departments, or the offices established by the Ministry for this purpose in other areas, and foreigners shall be authorized to enter the country and stay for business purposes."

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

Obtaining a work permit takes one to one-and-a-half months as mentioned above in question 8.4. The timeline for obtaining a visa is determined on a case-by-case basis.

### 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 are no initial intra-company transfer visas in Egypt. A regular Egyptian visa can be extended for a limited period of time according to its type, the country and the circumstances.

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

No, as there is no intra-company route transfer visa. In addition, foreigners must renew their residence.

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

This type of visa is not available in Egypt, as the employee can only work after obtaining a work permit according to the law.

## 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?

Work permits are obtained from the Ministry of Manpower and Immigration. The main reason for which foreigners migrate to Egypt is to obtain suitable jobs that are not available in their respective countries. The work permit must be submitted to the Passports, Immigration & Nationality Administration in order to obtain the residence in Egypt.

### 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 company must submit a request stating that the foreign employee is needed for a certain job as he is qualified and no suitable resident workers are qualified for this job. In addition, the company must appoint two Egyptian assistants to assist him and to learn from him. In addition, the employer must provide a Certificate of Education of the employee in order to prove his qualification.

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

The following categories are excluded from obtaining the work permit as stated in Decree No. 146 of 2019, and therefore, no residence labour market test is needed:


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1. Those who are exempted according to an express provision in the international conventions to which the Arab Republic of Egypt is a party, within the limits of such conventions.
2. Administrative Officers working in the embassies and consulates of Arab and Foreign States, and in the organisations and agencies of regional and international organisations in the Arab Republic of Egypt by virtue of decisions issued from the competent authority in their countries.
3. Foreign correspondents working in the Arab Republic of Egypt.
4. Foreign clerics practising their activities without pay.
5. Foreign employees working on Egyptian vessels in the high seas outside the territorial waters.
6. Foreign employees of the Commonwealth War Graves Commission.
7. Members and experts of institutes, centres and missions working in the field of architectural research and ancient Egyptian monuments.
8. A foreign investor who obtained an "investor's residence" to practise his business in the country in accordance with the provisions of the law governing such matters.

In addition, Article 6 of Decree No. 146 of 2018 mentions that an employee who applies for a work permit must have at least three years' experience.

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

First, the employer himself or through an agent must submit a request to obtain a recommendation letter, noting that the foreigner must be outside Egypt. Then, the employer must apply to the Ministry of Manpower and Immigration to obtain the work permit. The last step is to submit the passport and the work permit to the Passports, Immigration & Nationality Administration to obtain the residence.

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

It is illegal to work in Egypt with only a visa; therefore, the employee must obtain a work permit in order to work in Egypt. Article 28 of Labor Law No. 12 of 2003 states that: "foreigners shall not exercise work except after obtaining a permit thereof from the concerned Ministry. And shall be authorized to enter and reside in the country for the purpose of working…". In addition, Article 1 of Decree No. 146 of 2019 states: "Foreigners shall not work until they have obtained a license from the competent Ministry, its workforce departments, or the offices established by the Ministry for this purpose in other areas, and foreigners shall be authorized to enter the country and stay for business purposes."

### 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 takes from one to one-and-a-half months. The initial visa timeline is determined on a case by case basis depending on the country which the foreigner comes from.

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

The initial visa for new hires is granted for the purpose of work. The new employee submits the documents that prove that he will come to Egypt in order to work. However, the employee cannot work only with the visa, and he must resume obtaining the work permit in order to work in Egypt.

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

Market testing is required in the renewal process of the work permits. Once the work permit has been obtained, then the renewal process for the residency can begin. The market testing is only required when obtaining the work permit as that is the first step in gaining the residency.

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

No, the employee's residence must be renewed every year or every six months depending on the term of the work permit according to the law. Furthermore, the employee cannot obtain a permanent residence, as the residence is renewed after the renewal of the work permit.

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

First, the applicant must pay 1,500 EGP to obtain the recommendation letter. According to Decree No. 146 of 2019, in order to obtain a work permit the employees must pay a starting fee of 5,200 EGP for the first year. Additionally, in order to renew such permits various additional fees would be imposed.

## 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 the employee has obtained his work permit and the residence, there is no condition that the employee must abide by. He must renew his work permit every year or every six months depending on the term of the work permit, before its expiry date. Work and residence permits allow a foreigner to leave and re-enter Egypt with ease.

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

Yes, the work permit holder must register in the Passports, Immigration & Nationality Administration to stamp his passport. In addition, the competent ministries that are related to the foreign employee's work may have specific conditions and requirements to follow up with his work.

## 11 Dependants

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

The employee's spouse and/or children under the age of 21 years old qualify as dependants.


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

According to Egyptian Law, in order to qualify as a family member they must be legally married. They must abide by the laws of the country regarding same-sex partners as it is against the law and public order of Egypt.

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

No, spouses and partners are not allowed to work in Egypt. They obtain a residence permit only.

### 11.4 Do children have access to the labour market?

No, foreign children are not permitted to work in Egyptian labour market, as it is required to obtain a work permit to work in Egypt with specific conditions, one of which is to be an expert or qualified enough for the position.

In addition to the Labor Law No. 12 of 2003, Article No. 98, children aged 14 to 18 are governed by the child labour section.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

The foreigner shall obtain residence because of his work permit. Such residence must be renewed according to the law and the purpose of the residence.

The residence may be six months or one year. It can be renewed for other years and periods.

In addition, a residence is granted to investors in Egypt, according to Article 4 of the Executive Regulations of Law No. 72 of 2017 that states: "Subject to the provisions of the laws regulating residence in the Arab Republic of Egypt, the following conditions are required for granting residence to foreign investors:

1. To be a founder, shareholder, or partner in a company or an owner.
2. The residence period should not be less than a year, and not more than the duration of the project.

The competent Ministry may add other conditions after the approval of the Ministry of Interior.

The residence shall be canceled if the investor quits the company, erases the company's registration based on the liquidation, or erases the establishment from registration in the commercial register."

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

No, the employee must work with a work permit and not a work visa, and such permit must be renewed according to the law and the duration of the work permit.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

The bars are determined according to the occupation of the applicant.

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

Yes, the employee must have an approval on a security check before entering Egypt.


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Youssry Saleh & Partners Law Firm, established in 1985, is a full-service law firm in Egypt, which has gained a strong reputation for supporting businesses in a wide range of industries as well as helping individual clients.

Egypt is a central state in the African continent having a heavy business flow, both in and out. On this ground, Youssry Saleh & Partners Law Firm provides specialised counseling and servicing to such flow of business with respect to immigration matters.

Since the immigration procedures and their pertinent documents in Egypt are fairly lengthy, complicated and involve scrutiny procedures, hence we control each and every step, commencing with initial planning for foreigners intending to reside, work or learn in Egypt. Therefore, we monitor closely the continuously changing rules and regulations, as released by the competent governmental authorities. Our lawyers in Egypt render services with respect to procedures and documentation, whether prior, during or after arrival to Egypt, for the obtainment and maintenance of work and residence permits for foreigners. Where necessary, we assist with legalisation and authentication of documentations required to lodge the residence/work applications, before the competent governmental authorities and embassies. Hence, in all, we provide a full and comprehensive immigration service.

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# France

Petrel & Associés

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): 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) and right to asylum.
- The Labour Code: provides the legislative and regulatory texts that are applicable in the employment law field, mostly applying 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: integrates texts relating to the status of persons, property and relations between private parties. It integrates particular rules that govern nationality matters.

The laws integrated in these codes are supplemented by various circulars and 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 the consulates.
- The local labour authorities (DIRECCTE), which administer work permit applications and carry out the verification of labour and immigration compliance.
- The French Office of Immigration and Integration (OFII), which administers the various steps of the immigration process, working in liaison with DIRECCTE.
- The prefectures, which administer 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 EU 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 their 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 a maximum of 90 days or multiple entries of a total period of a maximum of 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 far 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 for 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 for the work permit exemption.

### 2.5 Can business visitors receive short-term training?

Business visitors may be granted short-term training. They must hold a training agreement approved by the French authorities, either by a notification to the DIRECCTE for nationals under a visa waiver, or by notifying 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 compliance with labour and immigration regulations, including regulations prohibiting illegal work and the employment of unauthorised foreign workers.

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

Various authorities regularly share the information they have. Moreover, a 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).
- 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.
- Publication of the conviction in the press or on the internet.
- Prohibition, for a period of five years, from receiving public funding.


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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.
- 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. **Civil sanctions:**
- Cancellation of exemptions from social contributions.
- Special contributions.
- Financial solidarity between the main contractor and the subcontractor.

## 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, it is only in the absence of a satisfactory candidate at the local level (French) that can he 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 must 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 their 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 the general commitment of employers to the training of employees is not specifically related to the employment of foreign nationals (as mentioned in question 4.3), the governmental taxes which employers must pay to participate in the financing of vocational training are for the employment of all their employees, whether foreign nationals or French nationals.

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

Yes, French authorities 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 conditional on the possession of French nationality or a French diploma. These occupations are: pharmacist; lawyer (except with agreement of reciprocity); tobacconist/bar owner; some civil service jobs; and some medical professions. However, some flexible measures are 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 which can, in fact, be directly offered to foreign nationals (without having to publish a job offer on the local labour market in advance).

However, in November 2019, the French Government announced that it intends to introduce quotas by the summer of 2020.

### 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, the French authorities will remain attentive to the high and increasing proportion of foreign workers: they ensure strict compliance with 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


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time have to sign an integration contract (CIR) with the French authorities, whereby they 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 for 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 the 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 is 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 from which the investment is being made; and
   - creating or protecting jobs within the 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 meeting 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;
   - investing 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 18,254.60 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 the 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 professional training in France 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 work-holiday or youth mobility agreements with other countries (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 en mission*"**, subject to the following conditions:
- having 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 of 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:
- having 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 of 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 up to a maximum of three years.

### 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 presented above in question 8.3 are not subject to obtaining a prior work permit authorisation. They must simply obtain the valid residence permit and 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 seconded 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 seconded employee" permit, the processing to get the visa takes a maximum of four months.

If the request is accepted, it shall be addressed in an official letter within four months.

However, 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 en 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).
- 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).
- The permit is valid for a maximum of three years and is 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" permit, visa, prefecture and OFII fees 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 National 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 that 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 the 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).

When submitting a renewal application, the foreign national will likewise 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.


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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?

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 the 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 to the OFII for a residence permit or to 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, 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 dependants 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 compliance with the 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 question 13.1, 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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# 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 laws in Germany are 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 the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heima*) 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 some details 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 Botschaften*) and/or Consulate Generals (*Generalkonsulate*) abroad, as well as the local Foreigners Offices (*Ausländerbehörden*) 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 the 28 Member States at present (Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, 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 information and supporting documents to the responsible


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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 alongside 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 21 June 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, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, 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 training);
- 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 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


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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 prevent illegal employment and do set out the conditions for the 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 legally condemned accordingly. This includes condemnations either of the applicant or his representative authorised to represent him by statute or by law to a fine of at least €2,500. Furthermore, the company may be subject to exclusion from subsidies (§ 98b German Residence Act) or exclusion from the award of public contracts (§ 98c German Residence Act) under certain conditions. In both cases exclusions may be made depending on the seriousness of the offence on which the fine, custodial sentence or monetary penalty is based, within a period of up to five years from the date on which the fine, custodial sentence or monetary penalty becomes final (in case of exclusion of the award of public contracts until proven restoration of good repute).

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. This form has been recently extended significantly and now covers the following:

- information with regard to the individual applicant and employee to-be;
- information with regard to the company sponsoring the application;
- beginning and duration of employment relationship;
- information on the intention to employ the individual as an employee to be leased out;
- job location;
- job description and job duties;
- information with regard to the professional qualification of the individual;
- information with regard to a professional permit;
- conditions of employment: working time; overtime as well as compensation of such overtime (if any); vacation entitlement; salary; and social security contributions; and
- other information with regard to the company sponsoring the application:


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- arrears of social security contributions or taxes;
- initiation of criminal or fine proceedings for breach of social security, tax or labour law obligations in the last five years;
- opening of insolvency proceedings or refusal to open insolvency proceedings for lack of assets within the last five years;
- year of foundation of the company;
- average number of employees in the last calendar year;
- information on any family relationship between the farmer or manager and the future farmer or manager of foreign employees; and
- if applicable, details of the commercial register/register of associations/register of craftsmen/court of jurisdiction/chamber of craftsmen/register number.

Moreover, the sponsoring company, according to § 4a par. sentence 2 no. 3 Residence Act, is obligated to inform the foreigners office of the premature termination of the training/employment within four weeks of becoming aware of it; this obligation is subject to an administrative fine of up to €30,000 (§ 98 par. 2a no. 2, par. 5 Residence Act).

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

No, there is usually no such requirement in Germany unless the residence permit has been granted with a view to obtain further training or professional qualifications within the country whilst being employed (the latter foreseen by § 16d Measures for the recognition of foreign professional qualifications, German Residence Act).

### 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.

### 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 for categories that facilitate the hiring of foreign nationals to face shortages in some occupations.

For instance, there are certain privileges under the EU Blue Card category. According to § 18b par. 2 German Residence Act, 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. €55,200) or 52% of said ceiling (e.g. €43,056) 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 difficult 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.

Further incentives are set with regard to applicants in the field of information and communications technology that have neither a degree nor a vocational qualification but certain professional experience. Section 19c Abs. 2 Residence Act for the first time creates the possibility of granting a residence permit to skilled workers with pronounced practical professional knowledge even independently of a formal qualification as a skilled worker if the Employment Regulation stipulates that the foreigner can be admitted to perform this employment. According to the revised provision of Section 6 Employment Regulation, this is provided for qualified employment in occupations in the field of information and communications technology, irrespective of qualification as a skilled worker, if:

- the foreign national has a comparable qualification attested by professional experience of at least three years acquired over the previous seven years;
- the amount of the salary is at least 60% of the annual assessment ceiling in general pension insurance; and
- the foreigner has sufficient knowledge of the language.

While the minimum salary is fixed annually (since 1 January 2020: €49,680) and is indispensable, proof of German language skills can be waived in justified individual cases. It would be possible to extend this possibility to other sectors.

Finally, in response to the Coronavirus pandemic, the Embassies and Consulates have recently been instructed to prioritise applications of skilled migrants under the new fast track process that has just been implemented effective 1 March 2020 and to prioritise applications of skilled migrants in the healthcare and care-worker 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?

*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 is the same for each applicant.


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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?**

No, there are no 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 a foreigner to participate in 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.

Moreover, there are temporary regulations in place in response to the Coronavirus pandemic. Since the beginning of the spread of the Coronavirus, the police and border control authorities have been entitled to carry out investigative measures in case of suspicion. If there are indications that a foreigner is infected with the Coronavirus in cross-border traffic to Germany, the Federal Police will immediately call in the locally responsible health authorities. These authorities will carry out the medical assessment in each individual case and decide on any treatment.

As of 10 April 2020, travellers entering Germany after a stay abroad of several days shall be quarantined for 14 days upon arrival. Persons wishing to enter Germany for the purpose of working for at least several weeks must have proof that a two-week quarantine period is ensured or that equivalent operational hygiene measures and contact avoidance measures are in place.

**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.

In addition, medical travel insurance meeting the requirements as set forth by Art. 15 EU Visa Code (i.e. with a minimum coverage of €30,000 covering any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death) is required and needs to be proven.

**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 at 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 § 19c par. 3 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:

1. scientists with special theoretical knowledge; or
2. teachers or professors of high standard 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:


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- 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 apply 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 which he or she is required to support is 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 has 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 executive and company specialist category;
- the academic category;
- the EU Blue Card category; and
- "any employment" category for some privileged nationals,

each of which has 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 recently been introduced effective 1 August 2017, §§ 19–19b German Residence Act. There are several options available:

- ICT card for stays of more than 90 days (§ 19 German Residence Act; § 10a Employment Regulation).
- Notification for short-term stays of no more than 90 days (§ 19a 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 (§ 19b 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 (§ 19 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:


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"§ 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.* (§ 19 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 respectively and the German stipulation implementing 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; and 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
- 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 especially 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-country 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


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third country; a mere presence in the third country to submit an application is not sufficient. However, to file for an extension from within Germany is possible, *cf.* § 39 no. 8 Ordinance Governing Residence.

### 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 four to six 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 the purpose of the stay changes including its extension, *cf.* § 45 Ordinance Governing Residence. 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 the 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 § 18b par. 2 German Residence Act, 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
- shall earn a salary of at least ⅔ of the social security contribution ceiling for the statutory pension scheme (e.g. €55,200), or 52% of said ceiling (e.g. €43,056) for certain job categories, e.g. such as natural scientists, mathematicians, engineers, doctors, or IT consultants.

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 difficult 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 and the authorities (unfortunately) interpret this in a way that the company sponsoring the application must be domiciled or at least branched in Germany.

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 an EU Blue Card shall have to seek the permission of the foreigners office that can be given if the requirements for an EU Blue Card are not met any more (subject to meeting the requirements of another category, of course).

Holders of an 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.


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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, or 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 the expiry of the initial 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 into consideration when moving to another EU Member State.

The processing time is no longer than usual, i.e. four to six weeks; it may even be shorter if there is no need to seek consent from the labour authorities as is the case for the EU Blue Card with standard salary.

### 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?

According to the principle of access to gainful employment regulated in § 4a par. 1 German Residence Act, foreigners who hold a residence title may engage in gainful employment unless a prohibition is provided for by law (permit subject to prohibition), whereby the gainful employment may be restricted by law and the pursuit of gainful employment beyond the prohibition or restriction requires a permit. Furthermore, the provision in paragraph 2 stipulates that if the exercise of employment is prohibited or restricted by law, the exercise of employment or employment exceeding the restriction requires permission and may be subject to the reservation of approval by the Federal Employment Agency in accordance with § 39 German Residence Act, which may also be granted on a restricted basis.

To employ skilled workers with an academic or vocational qualification shall in principle be possible if there is a concrete job offer, without a priority review and bottleneck analysis. All that is required is that the qualification acquired enables the applicant to carry out the intended employment. Further to this, qualified professionals with academic degrees can also work in jobs that do not require a tertiary education degree; they can also work in other occupations which are related to their qualification and which normally require a vocational, non-academic qualification.

The Federal Employment Agency examines whether this is the case within the scope of the approval (§ 39 Abs. 2 no. 2 German Residence Act). In contrast, the EU Blue Card adheres to the stricter criterion of the appropriateness of employment in relation to training; furthermore, a skilled worker with an academic qualification can be granted an EU Blue Card for the purpose of employment appropriate to the qualification under certain conditions without the approval of the Federal Employment Agency. Again, this only applies if the qualification is recognised or comparable to a German degree and this process may significantly delay the process.

As a rule, a residence title for the purpose of employment can only be granted with the approval of the Federal Employment Agency; exceptions may, however, arise on the basis of statutory orders, laws or intergovernmental agreements. 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 (§ 19c par. 3 No. 1 German Residence Act).
- EU Blue Card with standard salary (§ 18b par. 2 sentence 1 German Residence Act).
- 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).
- International agreements (§ 29 par. 3 sentence 1 Employment Regulation).

If consent is required, the Federal Employment Agency examines the following in accordance with § 39 par. 2 sentence 2 German Residence Act:

- the foreigner is not employed under less favourable working conditions than comparable German employees (No. 1);
- employment as a skilled worker, which their qualification enables them to do, or the exercise of employment appropriate to their qualification (No. 2);
- existence of a domestic employment relationship (No. 3); and
- existence of any other conditions of the Employment Regulation relating to the exercise of employment (No. 4).

### 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 (§ 18b par. 2 sentence 2 German Residence Act).
- Graduates of foreign universities (§ 18b par. 1 German Residence Act).
- Directors, senior executives and company specialists (§ 4 Employment Regulation).
- Employment in selected professions with extensive practical experience (§ 6 Employment Regulation).
- In-company initial and continuing vocational training; recognition of foreign professional qualifications (§ 8 Employment Regulation).
- International personnel exchange, foreign projects (§ 10 Employment Regulation).
- Employees transferred within the company: ICT card/ mobile ICT card (§§ 19, 19b German Residence Act; § 10a Employment Regulation).


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- Language teachers and speciality chefs (§ 11 Employment Regulation).
- Au-pair employment (§ 12 Employment Regulation).
- Domestic workers of assignees (§ 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 par. 3 sentence 2 Employment Regulation).

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

Unless nationals of privileged states that 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 Centre for the Recruitment of Foreign and Expert Staff (ZAV). There is generally 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).

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").

If consent from the labour authorities is required, the Centre for the Recruitment of Foreign and Expert Staff (ZAV) 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 four 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 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.

Alternatively, the employer may chose an expedited process for some categories that has been implemented effective 1 March 2020. The newly inserted provision of Section 81a German Residence Act implements an "accelerated specialist procedure" (*beschleunigtes Fachkräfteverfahren*) for skilled workers and other qualified employees who wish to enter the country for one of the following residence purposes:

- Section 16a German Residence Act (vocational training; further vocational training).
- Section 16d German Residence Act (measures for the recognition of foreign professional qualifications).
- Section 18a German Residence Act (skilled workers with vocational training).
- Section 18b German Residence Act (specialists with academic training).
- Section 18c par. 3 German Residence Act (highly qualified specialists with academic training).

In addition to the payment of an increased fee (of €411 – approx. three to four times the regular fee), this requires the conclusion of an agreement between the foreigners office and the employer on behalf of the applicant foreigner. According to Section 81a par. 2 Residence Act, this agreement should include the following:

- contact details of the foreigner, the employer and the authority;
- authorisation of the employer by the foreigner;
- obligation of the employer to work towards compliance with the foreigner's obligation to cooperate;
- evidence to be submitted;
- description of the procedures including the parties involved and deadlines for completion;
- the employer's duty to cooperate; and
- consequences in case of non-compliance with the agreement.

Pursuant to Section 81a par. 3 German Residence Act, the foreigners office, which is nevertheless responsible for the procedure, is to advise the employer on the procedure and the evidence to be submitted, initiate the examination of the recognition of a degree, obtain any necessary approval from the Federal Employment Agency, inform the competent mission abroad of the imminent submission of a visa application and approve the granting of a visa in advance without delay. All in all, this is a questionable involvement of the employer in the


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administrative procedure. The legal nature of this agreement is therefore as unclear as the question of who is ultimately liable for the administrative fee.

The filing of an application in the expedited procedure for qualified professionals leads to an acceleration of the procedure by means of time limit regulations. Thus, Section 31a Ordinance Governing Residence stipulates that, in the case of an application under section 81a German Residence Act in the accelerated procedure for skilled workers, the diplomatic mission or consular post shall set a deadline for the submission of the visa application within three weeks of the submission of the advance approval by the skilled worker and then decide within a further three weeks of the submission of the complete visa application. Furthermore, the so-called concealment period, according to which consent to the exercise of employment is deemed to have been granted if the Federal Employment Agency does not inform the competent authority within two weeks of the transmission of the request for consent that the information transmitted is not sufficient for the decision on consent or that the employer has not provided the necessary information or has not provided it in time, is reduced to one week (Section 36 par. 2 sentence 2 Employment Regulation). Regardless of this the company may file a pre-approval application directly with the Federal Employment Agency upfront (*Vorabprüfung*) to expedite matters. The latter is not new and always recommended.

Furthermore, in accordance with Section 81a par. 5 Residence Act, the family reunion of the spouse and minor children is also included if their visa applications are submitted at the same time (or within a period of no more than three to six months later based on practice experience).

Finally, a centralised agency may be competent for the visa processing. Section 71 par. 1 sentence 5 German Residence Act stipulates that the federal states "shall each set up at least one central foreigners authority, which shall be the competent foreigners authority in the case of visa applications pursuant to Section 6 Residence Act for purposes pursuant to Sections 16a, 16d, 17 (1), 18a, 18c (3), 18d, 18f, 19, 19b, 19c and 20 German Residence Act and in the case of visa applications of the spouse or minor unmarried children for the purpose of family reunion submitted in chronological order". However, this does not involve the introduction of central foreigners authorities which are (all) responsible for the entire procedure.

In total, a special accelerated procedure is introduced for visa applications in a specific area of educational and labour migration; international personnel exchange – one of the most common categories in terms of numbers – shall strangely not be included, however. The new regulation does not affect domestic competence after the entry visa has been issued. This is to be largely regretted, since the availability of appointments to visit the Embassies and Consulates abroad and the speed of processing leave much to be desired. This is also the case in Germany, particularly in large cities such as Berlin, Frankfurt and Munich. The accelerated specialist procedure does not help to solve this problem at all.

### 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, 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).

### 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 six to eight 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 four 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


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the permit needs to be altered because the purpose of the stay changes including its extension, *cf.* § 45 Ordinance Governing Residence. 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.

### 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 attending a meeting and 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?

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 an 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


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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 (§ 18c par. 3 German Residence Act).

- For holders of an EU Blue Card, if they have held a position of employment with an 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 (§ 18b par. 2 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).

If an employee meets the conditions for the grant of a settlement permit, he/she may remain in the country indefinitely and apply for 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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# Ghana

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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 Ghana are: Immigration Act, 2000 (ACT 573); and Immigration Regulations, 2001 (L.I 1691).

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

The relevant authorities are: the Ministry of Interior acting through the Ghana Immigration Service; the Ministry of Foreign Affairs acting through/with the various embassies; and the Ghana Investment Promotion Centre (GIPC) when it comes to matters regarding automatic immigrant quotas.

### 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, Ghana is a party to the following multilateral treaties which seek to, among others, facilitate the free movement of members of party states for the purposes of trade and investment:

1. Agreement Establishing the African Continental Free Trade Area which was adopted on 21st March 2018 and came into force on 30th May 2019. The treaty seeks to create a single liberalised market for trade in goods and services and also to foster free movement for the purposes of trade on the African continent.
2. Economic Community of West African States (ECOWAS) Protocol on the Free Movement of persons, the right of Residence and Establishment (PROTOCOL A/P1/5/79). The Protocol grants all citizens of the 15 West African Member States visa-free access to Ghana in the spirit of promoting free trade and regional integration.

## 2 Business Visitors

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

Yes, all persons, including business visitors, of the following categories are visa-exempt by virtue of a multilateral or bilateral agreement in force between Ghana and the relevant country:

1. ECOWAS nationals are visa-exempt for up to 90 days.
2. Nationals of the following commonwealth countries, East and Southern African countries are visa-exempt for 60 days: Botswana; Kenya; Lesotho; Malawi; Namibia; Swaziland; Tanzania; Uganda; and Zimbabwe.
3. Other countries enjoying visa-free access to Ghana for 60 days include Barbados, Jamaica, Mauritius, Singapore and Trinidad & Tobago. Diplomatic, official or service passport holders of Brazil, China, Colombia, Cuba, Germany, Hungary, Iran and Turkey do not require a visa to travel into Ghana for 90 days.
4. Gratis visas are granted to nationals of Egypt and Rwanda upon arrival for 60 days.
5. Officials of the African Union, Regional Economic Communities, United Nations and its specialised agencies are visa-exempt on their official passports for up to 60 days.
6. Nationals of the African Union who are not visa-exempt may be issued visas on arrival at the port of entry or at Ghana Missions abroad for a period of 30 or 60 days, respectively.

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

The maximum period for which business visitors can enter Ghana is 90 days.

### 2.3 What activities are business visitors able to undertake?

Business visitors may only engage in short-term business transactions while in Ghana. This may include:

- Consultation with business associates.
- Travel for scientific purposes.
- Education.
- Conventions and conferences.
- Negotiation of contracts.
- Training.
- Auditing.
- Settling an estate.

### 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 special visitor categories which will enable business visitors to undertake work or provide services for a temporary period.



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### 2.5 Can business visitors receive short-term training?

Yes. Business visitors can receive short-term training as it is one of the permitted activities on a business 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 Ghana Immigration Service has an enforcement division which runs a routine compliance inspection regime on employers to ensure that foreign employees carry out their business without undue restriction and to check and punish persons engaged in the illegal employment of foreign nationals.

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

First, all work permit applications are sponsored by the employer. The sponsor assumes the responsibility of ensuring that the necessary work authorisation is obtained on behalf of the prospective employee. The employer is obligated to produce evidence of the worker's employment in support of the application. Additionally, the sponsor ensures that the prospective employee is not an illegal immigrant and that they have the necessary and correct documentation to be able to work in Ghana.

Secondly, work/residence permits are not transferable from one employee to another or from one employment to another. An employee cannot acquire a work/residence permit from one sponsor and work for another employer on the same work/residence permit upon termination of the first employment.

Employers are under an obligation to notify the Ghana Immigration Service (GIS) of the termination of an expatriate's employment within seven days after the termination and are to make arrangements for the repatriation of the foreign employee and their dependants.

The law prescribes penalties in the form of monetary fines for illegal employment for both employers and employees found culpable.

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

Organisations found to have illegally employed a foreign national are liable to a fine of GHC 5,000.

## 4 Corporate Immigration – General

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

No, there is no special system of registration of employers who wish to hire foreign nationals.

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

Yes, employers of foreign nationals are under an obligation to file an Annual Return of employees with the Ghana Immigration Service (GIS) detailing the total number, type and duration of permits held as of 1st January each year. The annual return must be filed before 14th January.

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

Yes, there are sector-specific requirements to train local employees and localise positions held by foreign workers. Specifically in the Petroleum sector, for every position occupied by a foreigner, there must be at least one local employee being trained to occupy that position over a period, which is usually called the localisation period.

Employers are required to submit their annual local content and localisation plans including the employment and training plans to the Petroleum Commission and to remain committed to following the plan. The Petroleum Commission also ensures compliance and scrutinises each application for a work permit for a foreign national to ensure that it is in accordance with the general localisation plan of the employer.

Similarly, in the Power and Renewable Energy sector, employers are obligated to submit their local content and local participation plans which include the employment and training sub-plans to the Energy Commission prior to commencing activities in the Energy sector. Employers are also required to report to the Energy Commission quarterly on the progress of training of local employees.

Other sectors have various requirements that obligate the employer who hires foreign nationals to be committed to training 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?

The requirement of contributing towards the training or up-skilling of local workers is not one of general application. While certain sectors require said contributions, others do not. An example of a sector that insists on sector players contributing towards the training of locals is the Upstream Petroleum sector. Here, contractors (employers) per the Petroleum Agreement are required to pay an agreed amount to the Petroleum Commission annually towards training and technology support.

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

Yes, the immigration authorities undertake routine inspections to ensure immigration compliance.

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

There are general restrictions on the kinds of positions that a foreign national may occupy; these must be highly technical positions for which no Ghanaian has the requisite expertise. The immigration authorities do not maintain a list of skilled occupations which may be filled by foreign nationals; however, their decision to admit or otherwise a foreign national for work in Ghana is hinged on the broad consideration of whether the foreign national has a highly specialised/technical skill which is lacking in Ghana.


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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?**

Generally, the immigration authorities recognise that some occupations are in short supply and are open to grant exemptions where required.

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

No, 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?**

Generally, there are no restrictions specific to the number of foreign workers that an employer may sponsor. However, there are sector-specific thresholds/percentages of foreign employees that an employer must have at any given time. In the Upstream Petroleum sector where local content rules are more stringent, the following are the maximum percentages of foreign employees that a company in the sector may have over a period of time:

| Category | Start | Five years | 10 years |
|---|---|---|---|
| (a) Management staff | Up to 70% | Up to 50% | Up to 30% |
| (b) Technical core staff | Up to 80% | Up to 50% | Up to 30% |
| (c) Other staff | Up to 20% | Up to 10% | None |

In the Energy sector, the following are the maximum percentages of foreign employees that an employer may have over a period of time:

| Category | Start | Target level |
|---|---|---|
| (a) Management | Up to 40% | Up to 10% after five years |
| (b) Operations & Maintenance staff | Up to 40% | Up to 20% after five years |
| (c) All other staff | None | None |

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

No, there is no language proficiency requirement for foreign employees in Ghana.

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

Yes, employees sponsored to work in Ghana are required to undergo a medical examination at the Ghana Immigration Service medical centre 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?**

Generally, employees are not entitled to free public medical services. Their employer may choose to have private medical insurance for them or join Ghana's National Health Insurance Scheme (NHIS).

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

Ghana's work permit system does not expressly preclude employees from being seconded to a client site provided that the worker remains the employee of the sponsor and does not at any point transfer or become an employee of the client.

## 5 Highly Skilled Visas

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

No, there is no special immigration category for highly skilled 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. The Ghana Investment Promotion Centre (GIPC) Act, 2013 (ACT 865) provides automatic immigrant quotas for all entities who have invested foreign equity into Ghana. The number of immigrant quotas allocated to an entity depends on the amount of foreign investment made by the entity in Ghana. The following are the automatic quota allocations based on the entity's investment:

- A paid up capital of between US$ 50,000 and US$ 250,000: a quota of one person.
- A paid up capital of between US$ 250,000 and US$ 500,000: a quota of two persons.
- A paid up capital of between US$ 500,000 and US$ 750,000: a quota of up to three persons.
- A paid up capital of between US$ 750,000 and US$ 1,000,000: a quota of four persons.

## 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 special immigration category for workers on exchange, career development, internships or other non-economic programmes. One of the major conditions that qualifies an activity as 'work' is when the person receives remuneration/gets paid for doing said activity. Thus persons engaged in non-economic programmes such as exchanges, internships and the like may be excluded from obtaining a work permit if they are not being paid for engaging in said activities.


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

Yes, the Upstream Petroleum sector has a Rotator's Permit category for persons whose work activities do not extend beyond six months. This is modelled along the general short-term work permit category. It is renewable once unless otherwise under special circumstances.

## 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, a specific immigration category does not exist 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?**

There are no special requirements for employing from a company within the same group of companies. Thus no special conditions, from an immigration perspective, must be fulfilled in establishing that a company qualifies as part of a group of companies apart from the requirement that the holding entity must be a majority shareholder or 100% owner of the subsidiary.

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

An employer is obligated to fulfil no special conditions apart from that required generally for acquiring a work/residence permit.

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

No special process is required for an intra-company group work permit apart from that required in obtaining a work/residence permit generally.

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

There is no special process apart from that generally required in obtaining a business visa.

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

a. Short-term and long-term work/residence permit: Typically, a direct work/residence permit application (without any sector-specific requirement/recommendation) takes between four to eight weeks to be approved and issued. However, where a support/recommendation letter is required from a sector regulator, the processing time may increase by up to four weeks on average.
b. GIPC Automatic Immigrant Quota: The processing time is four to six 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?**

There are no special visa categories for intra company transfers. The maximum period of stay for persons on business visas is 90 days.

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

There is no special route for intra-company transfer. Generally, a person who seeks to apply for permanent residency must satisfy the following conditions:

- they have resided in Ghana for 12 consecutive months preceding the date of application;
- they have resided for an aggregate of five years within a period of seven years immediately preceding the date of application;
- they intend to stay permanently after they are issued with indefinite residence;
- they have made or intend to make a substantial contribution to the development of Ghana;
- they have not been sentenced to prison for a period of more than 12 months; and
- they have a valid residence permit at the time of application.

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

There is no special visa for intra-company transfers and as such no special fees for this category. Government fees for regular work/residence permit applications are US$ 500 for ECOWAS nationals and US$ 1,000 for other nationals.

Where the GIPC Automatic Quota route is taken, government fees for an automatic quota application at GIPC are GHC 3,150 (equivalent to about US$ 540) and those for the residence permit are US$ 300 for ECOWAS nationals and US$ 500 for other nationals.

## 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 categories are the work/residence permit category (short-term or long-term) or the GIPC Automatic Immigrant Quota category.

**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, generally labour market testing is required to demonstrate that there are no suitable Ghanaians before any hiring or transfer of foreign employees to occupy positions in Ghana.

Labour market testing is stricter in some sectors than others. Specifically, in the Oil & Gas sector, the Petroleum Commission (the regulator) has a strict requirement that all vacant positions are advertised in designated newspapers and evidence of such adverts is provided when applying for work permits.


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Furthermore, where no Ghanaian is found to occupy the position, a Ghanaian understudy must be recruited to understudy the prospective foreign employee.

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

Yes, employers will usually be exempted from submitting a labour market test when applying for short-term (six months) work permits.

GIPC Automatic Immigrant Quota cases do not require labour market testing as quotas are tied to the investments made by the sponsoring entity into the country.

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

**Short-term work/residence permit (six months):**
To obtain a short-term work permit, the sponsoring company is required to apply to the Ghana Immigration Service (GIS) requesting a short-term work permit for the new hire and provide sufficient justification for the request. Note that the sponsoring company must be one duly registered in Ghana.

The sponsoring company must demonstrate to GIS that it is compliant with the laws of Ghana by attaching, to the application, documents showing that: the company is duly registered in Ghana; is tax compliant; and has the relevant sector-specific licence(s) to operate.

In addition, the new hire must provide:

- a copy of their passport bio-data;
- confirmation that they have a valid assignment/employment agreement with the sponsor;
- confirmation they are medically fit to work in Ghana (medical examination to be done at the medical facility at GIS); and
- confirmation that they possess the relevant skills required for the position to be occupied.

All required documents including a completed work permit form are submitted to GIS for processing.

Note that for certain specialised sectors, such as the Petroleum and the Mining sectors, a recommendation/support letter from the regulator (Petroleum Commission/Minerals Commission respectively) is required in addition to all the above-mentioned documents.

After assessment of the application, GIS will issue a work permit to the employee. The employee, at this point, is not authorised to work until a residence permit is issued. GIS proceeds to issue a residence permit (usually coterminous with the work permit) to the employee after the company has submitted the necessary documentation, including the employee's original passport.

**Long-term work/residence permit:**
The general requirements are the same as for the short-term work permit.

Note that for certain specialised sectors, such as the Petroleum and the Mining sectors, a recommendation/support letter from the regulator (Petroleum Commission/Minerals Commission respectively) is required in addition to all the above mentioned documents when applying for a work/residence permit. Additional documents and information, usually to satisfy local content requirements, will also be required in obtaining the relevant recommendation/support letter from the regulators.

**GIPC Automatic Immigrant Quota:**
The Ghana Investment Promotion Centre (GIPC) Automatic Immigrant Quota is an indefinite work permit slot allocated to companies registered with the GIPC. The number of quotas that a company is entitled to is determined by the level of foreign equity or foreign capital invested into the company's operations in Ghana. This allocation is made on application by the company to the GIPC to utilise their quota once the company desires to employ a foreign national.

Once the application for the utilisation of the quota is approved, the GIPC writes to the Ghana Immigration Service requesting for a residence permit to be issued in favour of the employee in order to allow them utilise the quota.

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

The following is the process of obtaining a B1 entry visa as a new hire.

The application must be made to the Ghanaian consulate in the country of origin or the nearest embassy with jurisdiction. The specific requirements may differ for different embassies but they generally include the following:

- A recent passport photograph (not taken more than three months ago).
- A copy of the applicant's travel itinerary/return ticket.
- An international certificate of vaccination against yellow fever.
- The applicant's passport (must be valid for at least six months).
- An Employment Contract and a proof of Grant of Employment Quota (work permit) in Ghana.

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

The following are the timelines for the various permit categories:

a. Short-term and long-term work/residence permit: Typically, a direct work/residence permit application (without any sector-specific requirement/recommendation) takes between four to eight weeks to be approved and issued. However, where a support/recommendation letter is required from a sector regulator, the processing time may increase by up to four weeks on average.
b. GIPC Automatic Immigrant Quota: The processing time is four to six weeks.
c. Usually, an applicant travels into the country to apply for and obtain their residence permit after their work permit is approved. The visa application process takes between one and seven days depending on the embassy/consulate as well as the process category chosen. Some embassies offer fast-track services.

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

Entry visas are generally granted for between six months and five years. Work permits, however, are issued for six months if it is a short-term permit and a minimum of one year if it is a long-term work permit.

Short-term work/residence permits are renewable only once with justification. On the other hand, long-term work/residence permits do not have a cap on the number of times they are renewable.


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

No, labour market testing is not required where the employee renews their work/residence permit. Similarly, where it is just an extension of the employee's stay and not a renewal of their work/residence permit, labour market testing is not required.

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

No, employees coming as new hires cannot apply for permanent residence.

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

Government fees for regular work/residence permit applications are US$ 500 for ECOWAS nationals and US$ 1,000 for other nationals.

Where the GIPC Automatic Quota route is taken, government fees for an automatic quota application at GIPC are GHC 3,150 and those for the residence permit are US$ 300 for ECOWAS nationals and US$ 500 for other nationals.

## 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 include:

1. Work/residence permits are not transferable from one person to another.
2. Work/residence permits are sponsored by the employer and thus an employee cannot change jobs/employers and still continue to work with the previous work/residence permit.
3. Dependents of employees on work/residence permits are not allowed access to the labour market. They cannot work until they obtain work/residence permits themselves.
4. Employees are generally subject to the laws of Ghana and thus enjoy the rights as well as obligations prescribed by the Ghanaian law.

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

Yes, the Immigration Act requires all foreigners who remain in the country for more than three months to register with the nearest immigration office. If they fail to do this, the person is liable upon summary conviction to a fine and/or imprisonment not exceeding 12 months.

## 11 Dependants

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

A dependant is defined by the Immigration Act to include a child and a spouse. The inclusive definition of a dependant means that other categories of persons may qualify as dependants provided that a cogent case is made to the authorities as to why they should be classified as dependants.

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

Civil partners and persons in co-habitation may be recognised as dependants once proper documentation is provided in evidence of such partnerships.

Same-sex partners, however, will not be recognised as dependants since our laws do not recognise same-sex marriages.

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

No, spouses and partners do not have access to the labour market when they are admitted as dependants. They cannot work in their status as dependants unless a work/residence permit is obtained on their behalf by a sponsor/employer pursuant to their employment. Here, their dependant residence permit will be cancelled and a new residence permit issued in its place.

### 11.4 Do children have access to the labour market?

No, children do not have access to the labour market.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

A foreigner may qualify for permanent or indefinite residency if they satisfy the following conditions:

- they have resided in Ghana for 12 consecutive months preceding the date of application;
- they have resided for an aggregate of five years within a period of seven years immediately preceding the date of application;
- they intend to stay permanently after they are issued with indefinite residence;
- they have made or intend to make a substantial contribution to the development of Ghana;
- they have not been sentenced in prison for a period of more than 12 months; and
- they have a valid residence permit at the time 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 to switch from a temporary work visa to a permanent residency. Inasmuch as it is possible to switch from short-term work permits to long-term work permits and eventually to permanent residency, it must be noted that a permanent residency is not obtained merely by switching from a more temporary visa/permit category to a more permanent one. One must meet all the relevant conditions for obtaining permanent residency before one can obtain the same.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

The following are conditions that may bar one's admission for work in Ghana:


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- Medical Considerations: Where a person refuses to submit themselves to medical examination or is declared medically unfit to work after being examined by the Ghana Immigration Medical Centre.
- Crime: Convictions for minor crimes and misdemeanours may not bar a person's admission for work in Ghana; however, persons who have been sentenced in a foreign country for an extraditable offence or who have been declared as specified entities under Ghana's Anti-Terrorism Act, 2008 (ACT 762) will be barred from admission for work in Ghana.
- Fraud: Presenting fake and fraudulent documents as well as misrepresenting facts to the authorities in an attempt to secure a work permit may well be a bar to one's admission for work in Ghana.
- Unskilled employees and/or unspecialised roles: Where in the opinion of the authorities the skills required to fill the vacant position can be found here in Ghana or the position to be occupied is not highly technical or specialised, the same may be a bar to admission for work of a foreign national.

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

Not all criminal convictions are a bar to obtaining work permission or a visa. Convictions for minor offences and misdemeanours may not be a bar to obtaining work permission. However, convictions and sentencing in a foreign country for an extraditable offence or terrorism are a bar to obtaining work permission in Ghana as the person assumes the status of a prohibited immigrant.

Aside from the abovementioned offences, the decision as to whether or not a criminal conviction is a bar to obtaining work permission is at the sole discretion of the immigration authorities who assess the applicant's work permit application and make a determination as to whether the specific crime that the applicant has been convicted for is grave enough to attract a refusal to grant them a work/residence permit.


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Globetrotters Legal Africa (GT Legal) is a licensed law firm incorporated under the laws of Ghana.

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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 the 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 days.

### 2.3 What activities are business visitors able to undertake?

Under a 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, a short course or short-term training.
viii. Assisting/counselling for quality control for international marketing.
ix. Emergency job.
x. Journalistic activities (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 a Limited Stay Visa (Employment/Non-Employment Purposes), the following are the permitted activities and/or vocations that may enter Indonesia:

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.


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viii. After-sales services.
ix. Non-permanent work in construction.
x. To hold an art, music or sports event.
xi. Health treatment.
xii. Expertise trials (for Foreign Worker Candidates).
xiii. Foreign investing activities.
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 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 one year but not more than four years, and/or to be fined for at least IDR 100 million but not more than IDR 400 million.

## 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 are as mentioned below:

1. Register and sign up an account at 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.
5. 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 which 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 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 a Limited Stay Visa for Employment Purpose.

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

No, there are 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.

This chapter is being written at the time of the Coronavirus (COVID-19) outbreak. Therefore, in relation to the requirements for a Limited Stay Visa, any adjustments can be applied by the Government at any time depending on the national conditions and circumstances. At the time of writing this chapter, until further notice from the Indonesian Government, any foreigner from the People's Republic of China who wishes to obtain Indonesia's Limited Stay Visa by the Indonesian Foreign Services Officials in the People's Republic of China has to fulfil additional requirements, including, among others, health examination documents, etc.

### 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 are 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 utilisation 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. USD 150/person in one single submission.
2. On arrival (30 days of stay): IDR 700,000.

## 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 (under the condition that the foreign worker has stayed in Indonesia for more than 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 of 18 who have not been married may be given a Limited Stay Permit to join the foreign worker.

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

No, they do not.

### 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 permits from a dependant to a foreign worker.


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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?

A foreigner can be granted a permanent stay permit if he/she is a newborn child whose parents hold a limited stay permit or if he/she holds a limited stay permit and falls into one of the following categories:

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 are chief of a foreign representative office operating in Indonesia and who have 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 billion or its equivalent in foreign currency (and the foreigner must have 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 billion or its equivalent in foreign currency (and the foreigner must have stayed in Indonesia for three consecutive years).
4. Foreign tourists over 55 years old (and who have stayed in Indonesia for three consecutive years).
5. A spouse who joins 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 join their father and/or mother who holds a permanent stay permit.
7. Former Indonesian citizens.
8. A spouse who joins 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 who formerly possessed dual citizenship.
11. Unmarried children under 18 years old who join their father and/or mother who married an Indonesian citizen.

The following limited stay permit holders cannot be given a permanent stay permit:

1. Foreign workers in the maritime field.
2. Individuals who hold a 90-day limited stay permit.
3. Individuals who hold 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, they are not. A foreigner is not required to declare past convictions.


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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 law 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");
(iii) Presidential Decree 394 of 31 August 1999 (Implementation and enforcement of rules set forth by Legislative Decree 286/98);
(iv) 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; and
(v) Law Decree No. 53 of 14 June 2019 converted into Law No. 77 of 8 August 2019.

### 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 working holiday 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.

## 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,


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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 include:

(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.

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).


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### 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.
(3) 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 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


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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, any amendment to the employment relationship (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?

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?

Generally speaking, 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 the answer to 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 categories of employees, the quotas established by the law (see question 4.8 below) could be disrespected.

This happens in case of highly skilled workers, such as managers, university lecturers and professors, translators, domestic helpers, trainee employees and maritime workers. These categories of employees 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 annual 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 the Extra EU countries.

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 generally envisaged for all employees.

### 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 certificate 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.

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, a 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


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been hired by foreign or Italian employers) can perform their work at a client's site due to a staff supply contract or a posting contract (for the time strictly necessary).

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 *quater*, 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 out 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;

(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 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 internships 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;


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- 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, internships, 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?

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 qualifies 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. 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.

### 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 the answer to question 12.2 below.


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

See the 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 Presidential 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, and permission from the Police Office concerning the foreign worker and the employer.

According to Article 30 *quinquies*, pars. 2 and 3 of the Presidential Decree No. 394/1999, the Immigration Office, upon receipt of the application for a work permit, must send the application 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.

### 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.


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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 the 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 150, 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.

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 civil unions, even if with a same-sex partner, qualify the partner as a family member and therefore allow family reunification.

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


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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 foreign 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?

The main bars are the demonstration of the availability of adequate accommodation, the availability of adequate resources to stay in the nation's territory, and not having criminal convictions.

### 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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The law firm De Luca & Partners, founded in **1976** and at present composed of **24 collaborators**, is specialised in **employment law** and carries out its **consultation, assistance** activity, including for all **aspects of litigation management** for national and multinational companies from all commodity sectors. The studio's areas of expertise include **agency law** and **trade union law**.
Thanks to its in-depth knowledge of laws and practices, as well as its capacity to simply and clearly explain the rules (which are often complex) of Italian employment law, the Firm frequently handles cross-border transactions involving multiple jurisdictions and provides advice to headquarters, legal affairs directors and human resource managers working outside of Italy.
The decision to specialise in the **employment law field** has been a winning one and it remains the key point of the Firm's development strategy.

De Luca & Partners also invests in researching and disseminating Employment Law material and for this reason collaborates with ***Il Sole 24 Ore*** and with the main employment law journals. Its partners and associates are often invited as speakers at **training courses**, **workshops** and **seminars**.

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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 controls 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 visas 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 a bilateral visa exemption agreement with Japan can enter Japan without a visa. As of April 3, 2020, visa exemption measures were temporarily suspended for 85 countries in which the coronavirus (COVID-19) was spreading.

### 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.

### 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.



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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, 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 3 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 unless they are Technical Interns.

**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 is working for a certain organisation in Japan to help himself or herself to acquire academic credits from the university, the Cultural Activities visa is applicable only for non-economic purposes.

**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 are 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?

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, employee'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 for 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 are 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/her 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.

In the midst of the coronavirus outbreak, on April 3, 2020, Japan has set a temporary entry ban on foreign nationals who have stayed in 76 countries and regions within 14 days of arriving in 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.

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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 29th August 2008 on freedom of movement and immigration as modified by the Laws of 8th April 2019 and 4th December 2019 (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 90 days maximum over a 180 day-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 exhibitions.
- 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 borne 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. 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. 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 distinction 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. 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. 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 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.


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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?**

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 that 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 (please 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 applicable conditions 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 which the worker is being transferred to in Luxembourg ("host company").

**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.


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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 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 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,


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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?

Please 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, please see question 12.1.

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

Please 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.
- The non-registered partner with whom the EU citizen can duly demonstrate a long-term relationship, assessed according to links such as legal cohabitation or common children.

The following are considered dependants/family members of third-country nationals:

- The spouse or registered partner.
- The unmarried children under 18 of the third-country national and/or the spouse or partner for whom they have custody and where the children are dependent on them, or, in the case of shared custody, where the other party sharing custody has given his/her consent.

The Minister may widen the possibilities for family reunification provided that 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.


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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, please 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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# Malaysia

Rahmat Lim & Partners

Jack Yow

## 1 Introduction

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

The primary legislation governing Malaysian immigration law is the Immigration Act 1959/1963 ("**Act**") and the Passport Act 1966. Subsidiary legislation includes the Immigration Regulations 1963, Immigration (Administration and Management of Immigration Depots) Regulations 2003 and the Immigration (Compounding of Offences) Regulations 2003. Apart from that, anti-trafficking and anti-smuggling laws such as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 supplement existing Malaysian immigration law.

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

The Immigration Department of Malaysia is the government authority that regulates immigration matters in Malaysia. Immigration officers are accorded with wide enforcement powers under the Act. They have the powers to make inquiries, arrest, detain, and to remove illegal immigrants and persons unlawfully remaining in Malaysia. Additionally, the Immigration Department is also empowered under the Act to issue entry permits and various categories of immigration passes.

### 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?

Malaysia is a member and participant of the Asia-Pacific Economic Cooperation ("**APEC**") scheme. Business visitors to Malaysia may apply for an APEC Business Travel Card ("**ABTC**"), which facilitates pre-cleared and short-term entry into participating countries. ABTC holders also enjoy express immigration processing upon arrival and departure through designated access lanes. Countries fully participating in this scheme are: Brunei Darussalam; Chile; China; Hong Kong (China); Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Russia; the Philippines; Singapore; Taiwan; Thailand; and Vietnam. Canada and the United States are transitional members and do not offer reciprocal entry arrangements, but do provide fast track immigration processing at major international airports.

Malaysia is also a Member State of the Association of Southeast Asian Nations ("**ASEAN**"). ASEAN members are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Under the existing framework, there are ASEAN Mutual Recognition Arrangements ("**MRA**") which aim to facilitate the mobility of professionals/skilled labour in ASEAN. Sectors which are covered by the MRA include engineering, nursing, architectural services, dental practitioners, medical practitioners, tourism professionals, surveying, and accountancy.

## 2 Business Visitors

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

Generally, for business visitors from Commonwealth countries, there are no visa requirements with the exception of business visitors from Pakistan, Sri Lanka, Bangladesh, Ghana, Cameroon, Mozambique, Nigeria and Rwanda.

For ASEAN nationals, a visa is not required for a stay of less than one month, except for Myanmar nationals. ABTC cardholders from countries which are fully participating in the ABTC scheme (as mentioned in question 1.3) can use their ABTC cards to enter Malaysia *in lieu* of a visa.

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

The maximum period is dependent on the business visitor's nationality, which ranges from 14 to 90 days.

### 2.3 What activities are business visitors able to undertake?

Business visitors holding a social visit pass may only engage in limited activities, such as to attend meetings, conferences, business discussions or seminars, to inspect factories, to carry out surveys on investment opportunities, to audit company accounts, or to sign agreements.

Any form of paid employment business engagement is expressly prohibited without the relevant work permit.

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

A Professional Visit Pass ("**PVP**") can be granted to a foreign worker possessing the relevant professional qualifications or skills. Workers holding PVPs are allowed entry into the



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country to provide services or undergo practical training with a Malaysian company on behalf of an overseas company on a temporary basis, for a period of up to 12 months.

### 2.5 Can business visitors receive short-term training?

A business visitor with a PVP is permitted to undergo practical training with companies in Malaysia.

## 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 Immigration Department is vested with the power to perform operations and inspections to ensure compliance.

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

The rules on the prevention of illegal working are mainly found in the Act. The Act prohibits employers from employing persons who are not in possession of a valid pass to enter and remain temporarily in Malaysia. The Act also prevents occupiers from allowing any illegal immigrants to enter into or to remain at any premises. It is also an offence to harbour any person whom the employer knows or has reasonable grounds for believing to have acted in contravention of this Act.

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

The penalty for employing any person who is not in possession of a valid pass is a fine between RM10,000 to RM50,000, or imprisonment not exceeding 12 months or both for each of such employees.

If the employer employs more than five of such employees, the employer will be liable to imprisonment for between six months to five years and will also be liable to whipping of not more than six strokes. In the event that the offender is a body corporate, any person who at the time of the commission of the offence was a member of the board of directors, a manager, a secretary or a person holding a position similar to that of a manager or a secretary will be guilty of the offence and will be liable to the same punishment.

## 4 Corporate Immigration – General

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

Applications to hire foreign nationals may be broadly divided into two categories: applications to hire unskilled foreign workers; or applications to hire skilled workers/professionals (expatriates).

An employer who wishes to hire unskilled foreign workers must apply to the Foreign Workers Division of the Immigration Department for a visa with reference ("**VDR**"). The application for a VDR may be made via the foreign workers integrated management system ("**ePPAx**").

There is a separate system for registration for employers who wish to hire expatriates. Employers must register and submit their applications for employment passes/PVPs via the Expatriate Services Division ("**ESD**") portal.

For East Malaysia, the approval for employment of foreign workers and expatriates is governed by the State Government.

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

Employers who have hired foreign nationals have ongoing duties to ensure compliance with immigration laws. Employers must ensure that:

- the foreign workers are deported to their origin countries upon completion of their work or termination of employment;
- the work permits of the foreign workers are renewed accordingly before expiration; and
- they report to the Immigration Department in the event the foreign worker was to abscond.

### 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, but they are highly encouraged 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, the requirement to pay a levy towards the training or up-skilling of local workers is not dependent on the hiring of foreign nationals.

Under the Human Resources Development Act 2001, certain categories of employers are required to pay a mandatory levy in respect of each working local employee for the purpose of employee training and up-skilling.

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

Yes, the immigration authorities undertake routine inspections.

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

There is no specific list by reference to skilled occupations which may be filled by foreign nationals. However, foreign talent employed in the industries which form part of the National Key Economic Areas will be given preference as explained in question 5.1 below.

### 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 are no such exemptions for certain sectors and occupations.


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

No, 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?**

Yes. The quota for foreign workers must be obtained by the employer from the Ministry of Home Affairs, One Stop Centre ("**OSC**").

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

No. There is no formal requirement to demonstrate language proficiency.

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

For unskilled foreign workers, they are required to undergo a mandatory comprehensive health and medical examination at any medical centres registered with FOMEMA. The Visit Pass (Temporary Employment) ("**VP (TE)**") will only be issued to the foreign worker after he/she has passed the FOMEMA medical examination within 30 days upon first entry onto Malaysian soil for employment.

As for expatriates, there is no mandatory requirement for medical screening. However, the employer may require the expatriate to undergo certain medical examinations with its panel clinics or hospitals prior to commencement of 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?**

Employees sponsored to work in Malaysia are required to have medical insurance. They are not entitled to any free public medical services in Malaysia.

With effect from 1 January 2011, all foreign workers in Malaysia are required to be insured under the hospitalisation and surgical scheme for foreign workers which offers a total coverage of RM10,000 *per annum* with an insurance premium of RM120 *per annum*. Effective from 1 January 2019, all employers who hire foreign workers and expatriates must register their employees with the Social Security Organisation ("**SOSCO**"). The benefits covered by SOCSO include medical benefits as well as temporary and permanent disablement benefits. The requirement to register with and contribute to SOSCO is not applicable to foreign workers who are domestic helpers in Malaysia.

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

A foreign employee is only permitted to work at the address of the office stated on his or her employment pass and specifically for the employer stated on the same. As such, they are not allowed to be seconded.

## 5 Highly Skilled Visas

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

Yes, a highly skilled individual is eligible to apply for the Residence Pass-Talent ("**RP-T**"). The applicant must show that he/she:

(i) has worked in Malaysia for at least three years;
(ii) holds a valid employment pass with more than three months' validity at the time of application;
(iii) earns a basic monthly salary of RM15,000 which excludes any allowances and/or bonuses;
(iv) has a Malaysian income tax file number and has paid income tax for at least two years;
(v) holds a Ph.D./Master's/Bachelor's Degree or Diploma in any discipline from a recognised university or a professional/competency certificate from a recognised professional institute; and
(vi) possesses at least five years of total work experience.

Unlike the employment pass, the RP-T is not tied to an employer and is valid for 10 years. Preference will be given to foreign talent employed in the industries which form part of the National Key Economic Areas such as Oil, Gas and Energy, Palm Oil and Rubber, Financial Services, Tourism, Business Services, Electrical and Electronics, Wholesale and Retail, Education, Healthcare, Agriculture, Communications, and Content and Infrastructure. In addition, individuals employed in the Biotech, Aeronautics and IT sectors will also be given preference.

## 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 order to apply for an employment pass for an expatriate, the following are the pre-requisites: (i) the company must be registered with the Companies Commission of Malaysia, the Registry of Societies Malaysia, firms incorporated under specific acts, or international organisations certified by the Ministry of Foreign Affairs; and (ii) the company must fulfil the minimum paid-up capital requirement.

## 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 PVP is available for eligible expatriates wishing to undergo: (i) expertise transfer; (ii) research; (iii) training at ESD-registered companies; (iv) volunteers; (v) exhibitors under regulation of the Malaysia Convention & Exhibition Bureau; or (vi) student internships under foreign embassies, ESD-registered companies or hotels.

Any ESD-registered company that intends to undertake short-term placements of international students within their company may apply for a Social Visit Pass-Internship ("**SVP-I**") for their international students. The international student must currently be pursuing a degree programme or equivalent from a recognised university/institution abroad.


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There is also a special programme, *i.e.*, the "Work and Holiday" Visa, that provides opportunities to eligible youth (aged between 18 to 30 years at the time of the application) from Malaysia and Australia to work temporarily to cover daily expenses while travelling in Malaysia or Australia. The applicants must hold tertiary qualifications, or have successfully completed at least two years of undergraduate studies at a university and be able to communicate in English proficiently.

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

A VP (TE) is available to foreign workers working in the: (i) manufacturing sector; (ii) plantation sector; (iii) agriculture sector; (iv) construction sector; and (v) services sector. The foreign worker must be between 18 to 45 years of age and is allowed to work with the VP (TE) permit for a period of 12 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?**

There is no specific immigration category in existence for inter-company transfers within international groups of companies in Malaysia.

**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 Malaysia.

**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 Malaysia.

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

This is not applicable in Malaysia.

**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 Malaysia.

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

In the context of a group or intra-company transfer work permit, this is not applicable in Malaysia.

**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 Malaysia.

**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 Malaysia.

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

This is not applicable in Malaysia.

## 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 categories of work permit for new hires in Malaysia are as follows:

(1) Employment Pass (Category I to III), which covers the following expatriates and knowledge/skilled foreign workers:
   (a) Category I, applicants must earn a basic salary of a minimum of RM10,000 per month and have an employment contract of up to 60 months.
   (b) Category II, applicants must earn a basic salary of between RM5,000 to RM9,999 per month and have a valid employment contract of up to 24 months.
   (c) Category III, applicants must earn a basic salary of between RM3,000 to RM4,999 per month and have an employment contract with a maximum duration of 12 months.

(2) PVP, which is a short-term pass for professionals/skilled workers who are in the country to provide services for a period of 12 months or less.

(3) VP (TE), which is a temporary pass for unskilled foreign workers working in specific sectors.

**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 requirement for labour market testing before work permits may be issued to new hires. However, for employers who intend to hire expatriates, the ESD requires the employer to provide reasons to justify the need to hire expatriates. A typical justification to hire expatriates is that there are no suitably qualified locals with the necessary skills and qualifications to perform the work.

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

This is not applicable in Malaysia. Please see question 9.2 above.


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

The process for employers to obtain a work permit for a new hire varies in accordance to the work permit category of the foreign employee.

(1) Expatriates and Knowledge/Skilled Workers – Employment Pass
The employer must first register the company by submitting all related company information to the ESD at esd.imi.gov.my. The employer will then have to sign a letter of undertaking and receive further access to the ESD's portal service. Thereafter, the employer can then proceed to submit the applications for work permits via the ESD portal. The employer will have to pay the applicable fee, endorse the passport with the Employment Pass at MYXpats Centre and collect the passport once it is ready.

(2) Foreign Workers – VP (TE)
To employ foreign workers with VP (TE), employers will have to apply for an approval letter from the OSC. The OSC will specify, *inter alia*, the quota of foreign workers that the employer is allowed to take in. Thereafter, the employer may apply to the Immigration Department for a VDR approval.
After the foreign workers have arrived in Malaysia, the employers must also ensure that the foreign workers have passed the FOMEMA medical examination within 30 days before the VP (TE) is issued.

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

An employee who intends to enter Malaysia as a new hire is required to submit his/her application for a VDR at any Malaysian representative office abroad with all the supporting documents and payment of the visa fee.

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

The duration to process the work permit and visa applications differs depending on the pass which is being applied for and the completeness of the documents submitted. For example, an employment pass application will only be processed after 14 working days from the date of the company's registration with the ESD, once all the documents have been submitted. Thereafter, the employment pass application may be made via the ESD portal and the official timeline is that it will be processed within five working days from the completion of submission of all documents. The application for a VDR may be made together with the application for an employment pass.

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

A VDR has a six-month validity period. If the applicant does not enter Malaysia within the six-month period, the VDR will be cancelled and a new application will need to be made. The employee's length of stay in Malaysia will depend on the type of pass held by the employee. An employee on an employment pass can stay in Malaysia for up to a maximum of five years, and the pass may be extended. An employee under the PVP can only stay for up to a maximum of 12 months, and a PVP cannot be extended. A foreign worker with a VP (TE) can stay for up to a maximum of 12 months, and the permit may be extended.

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

No, labour market testing is not required when the employee extends their residence.

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

Employees coming as new hires may apply for permanent residence if they meet the requirement of Expert (A1) category. Please see question 12.1 below for the requirements.

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

The visa fees vary according to the employee's country of origin, ranging from RM0.50 up to RM50.

## 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?

Generally, work permit holders are required to comply with the laws of Malaysia and are not allowed to overstay the duration allowed under their work permit. Different permits have different requirements which must be observed and complied with.

Every employee who holds an employment pass issued under section 9(1) of the Immigration Regulations 1963 is subject to the condition that the employee must not, without the written consent of the Controller, engage in any form of paid employment or in any business or professional occupation in the Federation, other than such particular employment, business or professional occupation as specified in the pass throughout its validity.

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

Generally, every person authorised to enter Malaysia must appear before an immigration officer for examination. There is no requirement to register with municipal authorities or the police upon their arrival under the Act.

## 11 Dependants

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

A spouse and children (including legally adopted children) under 18 years of age may qualify as a dependant.

Dependant Passes are available only for employment pass holders of Category I and Category II. The expatriate may obtain long-term social visit passes for their children above 18 years of age, parents and parents-in-law.

Holders of PVPs and employment passes (Category III) may not bring in dependants.


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

No, they 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, unless the spouse's Dependant Pass is converted to an employment pass.

### 11.4 Do children have access to the labour market?

No, unless the child's Dependant Pass is converted to an employment pass.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

A Permanent Residency ("**PR**") may be obtained by applying for an entry permit if the individual falls within any of the following categories:

**i. Investors**
- Individuals holding a minimum of US$2 million in a Fixed Deposit account at any bank in Malaysia will only be allowed to make any withdrawals after five years.
- A spouse and child/children below the age of 18 years will also be eligible to be granted Permanent Residency after five years of stay in Malaysia.
- Requires one Malaysian sponsor.

**ii. Experts**
- Individual with expertise, talent and skill recognised as "World Class" by any international organisation.
- Requires recommendation by the relevant Agency in Malaysia.
- Requires a Certificate of Good Conduct from the Country of Origin.
- Requires one Malaysian sponsor.

**iii. Professionals**
- Professional in any field with outstanding skills.
- Requires recommendation by one of the relevant Agencies in Malaysia.
- Requires a Certificate of Good Conduct from the Country of Origin.
- Requires one Malaysian sponsor.
- Working in any Government Agency or Private Company in Malaysia for a minimum period of three years and certified by the one of the relevant Agencies in Malaysia.

**iv. Spouse or child of a Malaysian citizen**
- A spouse must be married to a Malaysian citizen, be issued with a long-term visit pass and have stayed continuously in Malaysia for a period of five years, with a valid marriage certificate and sponsored by his or her Malaysian spouse.
- A child under six years old must be sponsored by his or her parents.

**v. Points-based system**
- Applicants must score a minimum of 65 points under the immigration points system, assessed through the criteria of age, qualification, duration of stay in Malaysia, familiarity with the Malaysian institutes, value of investment, working experience in Malaysia and proficiency in the Malaysian language.

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

This is not possible. A separate application for permanent residence must be made.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

Prohibited immigrants are defined under section 8 of the Act, which includes, among other things:
- Persons suffering from a mental disorder or having a mental defect, or suffering from a contagious or infectious disease which makes his presence in Malaysia dangerous to the community.
- Persons who refuse to submit to a medical examination after being required to do so by an immigration officer under the officer's powers to make inquiries.
- Persons with criminal convictions with a prior imprisonment sentence and who have not received a free pardon.
- Anyone who believes in or advocates the overthrow of any government, constituted law or authority in Malaysia by force or violence, or who disbelieves in or is opposed to the established government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property.

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

Yes. Please see question 13.1.


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Jack is consistently recognised by legal publications including *Chambers Asia-Pacific* for his professionalism. The publication noted him as being "*very professional, ethical and really humble*" and he is described as "*very knowledgeable*". *The Legal 500 Asia Pacific* recognised that Jack "*gives sound advice*" and quoted him as giving "*pragmatic advice and out-of-the-box thinking*". Jack was also listed as a Local Disputes Star in *Benchmark Asia-Pacific*.

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# Mexico

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## 1 Introduction

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

Mexico's legal system is based on civil law.

The Mexican Immigration law is federal in nature and applies throughout the country to entities operational therein. It establishes the rights and obligations of foreigners and the various degrees of immigration rules permitting foreigners to enter Mexico for the purposes described in the respective immigration conditions.

The Law is enforced by the Migratory Law Regulations, the Guidelines for Immigration Procedures, the General Guidelines for the issue of Mexican visas by the Ministry of Foreign Affairs and the Federal Law of Administrative procedures.

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

The authorities who administer the corporate immigration system are the Ministry of the Interior, the National Immigration Institute (INM) and the Ministry of Foreign Affairs.

The principal activities of these authorities are as follows:

- The Ministry of Interior is responsible for formulating and conducting the immigration and humanitarian policies, as well as monitoring borders and the entry points to Mexico by land, sea or air, guaranteeing in terms of law freedom of transit in coordination with other federal authorities.
- The INM is the only authority who may grant employment authorisations and is responsible for the execution, control and supervision of all acts related to corporate immigration permits. The Ministry of Foreign Affairs through its different consulates provides assistance to the INM to receive, process and to grant visa applications in accordance with the Law.

### 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 different free trade agreements facilitating the temporary entry of business persons to conduct non-remunerated activities in Mexico for a maximum period of 180 days without requiring an employment permit to Mexico.

*The hiring of any new foreign employee must be requested through an admission permit*, since the new Rules for Immigration Procedures *do not permit the change of visitor condition* (those entering the country as visitors/tourists or business people cannot be granted work permits as temporary residents with paid activities unless the foreigner has a link with a national person).

## 2 Business Visitors

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

Yes, business visitors must bring documents to prove the reason of their visit (invitation letter issued by a Mexican company). They will be provided with a migratory format (FMM) in which they must check the box "Business". They will be interviewed by an immigration officer, who must state the reason for the visit as a business visitor without an income in Mexico.

According to the current immigration rules, there are certain nationalities that may be eligible for a business visitor category showing his/her passport at the port of entry into Mexico. The following link provides the list of the nationalities who require or do not require a Mexican visa to enter into Mexico: https://www.gob.mx/cms/uploads/attachment/file/8932/visasordinarios.pdf.

Nationals from different countries are exempted from a visa requirement under the following circumstances:

a) The foreign national has a document proving a lawful permanent residence in Canada, the United States of America, Japan, the United Kingdom of Great Britain and Northern Ireland, any of the countries that make up the Schengen Area or a country member of the Pacific Alliance (Chile, Colombia and Peru).
b) The foreign national is a holder of a valid US visa.
c) The foreign national is a holder of an ABTC visa under the APEC regime.

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

The Law establishes that a business visitor is authorised to transit and be in the country for a fixed period of 180 days, without authorisation to receive an income in Mexico.

### 2.3 What activities are business visitors able to undertake?

Foreigners may be eligible for business visitor entry if they will participate in business activities of a commercial or professional nature in the country which they are visiting, including, but not limited to:



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- Consulting with business associates.
- Travelling for a scientific, educational, professional or business convention, or a conference on specific dates.
- Settling an estate.
- Negotiating a contract.
- Participating in short-term training.
- Transiting through the foreign country.
- Intends to remain on the payroll of the company in the home country.

### 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 travellers enter into Mexico with the immigration condition as Visitors. For business people or technicians who travel to Mexico for a period of no longer than 180 days to hold business meetings or provide technical assistance to Mexican clients or to their Mexican subsidiary, on behalf of their foreign employer, such individuals must bring with them the documentation to enable them to demonstrate conclusively the reason for their trip to the country, since the immigration agent at the entry point will interview the foreigner and will check if he/she has the necessary documentation to motivate his/her visit to the country.

### 2.5 Can business visitors receive short-term training?

Yes, business visitors are permitted to stay in the country for short-term training. Since the current immigration law does not contemplate a minimum length of stay, the foreigner will be able to stay for a specific period of time in the country. The Mexican immigration agent will authorise the length of stay on the immigration form (FMM) received at the port of entry into Mexico.

## 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 INM has total discretion to inspect companies to certify that the information provided for the immigration permits is appropriate and that the company exists and is operational.

The Institute shall verify that foreign persons who are in the national territory comply with the obligations set forth in the laws. The immigration authorities will substantiate the corresponding procedures and apply the sanctions, without prejudice to the provisions of other federal regulations, observing at all times respect for human rights.

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

Mexico has been the first country to adopt the Global Compact for Immigration promoted by the United Nations to ensure a safe, orderly and regular flow of immigration. In accordance with the Global Pact, Mexico has stopped deporting Central American immigrants.

This administration has implemented a new immigration policy based on two pillars: the defence of immigrants' rights; and the promotion of economic development from a humanitarian perspective, in order to address the causes of immigration.

Mexico has granted legal status to some foreigners who entered the southern border to document their entry and facilitate their incorporation into the labour market. This is offering immigrants better protection of their human rights.

This new stage will work with the following premises:

- Regular, orderly and safe migration with respect for human rights.
- Assisted return of immigrants, with a human rights approach.
- Coordination with international agencies.
- Transparent efforts and the fight against corruption.

The general objectives of these plans are: to generate sustainable development and opportunities at the local level in an articulated manner, guaranteeing rights throughout the immigration cycle, improving economic performance, and generating investment conditions that facilitate trade in the region; to provide a first place of reception, to strengthen shelters, and to encourage the integration and participation of immigrants in the country's regional economy; and to develop a model of shelter, which includes medical care, immigrant-service modules, security, collection of supplies for their care and conditions of cleanliness.

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

The INM offices will impose penalties for organisations found employing foreign nationals without the proper immigration permit, within the limits indicated for each infraction, based on its severity and the degree of responsibility of the offender, taking into account the following aspects:

- the socio-economic circumstances of the offender;
- the external conditions, the background of the offender and the means of execution;
- recurrence in breach of obligations;
- the amount of the benefit, profit or loss or damage derived from the breach of obligations; and
- the hierarchical level of the offender and his seniority in the service.

## 4 Corporate Immigration – General

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

The immigration legislation binds companies to obtain a certificate of registration as an employer with the INM (basic record), an essential requirement to apply for a work permit for foreign staff to work in Mexico.

The proof of registration of the employer will allow them to prove their legal personality and faculties in such a way that in subsequent procedures in which they function as promoters or offer a job, they will only need to submit the updated proof for the purpose of accrediting legal personality and powers of attorney.

Mexican companies who hire foreign staff must be registered before the Mexican Tax authority and must also provide a copy of the registration before the Public Registry of Commerce and fulfil the requirements of the Law.

The following documents are necessary:

1. List of all company employees including name, nationality and job title in Spanish.
2. An original copy of the Mexican company's proof of address which must coincide with the fiscal address of the company, with the name of the Mexican company (*the document must not exceed 30 days of being issued*).


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3. Copy of the Tax ID and proof of the current tax situation of the Mexican company (namely "*constancia de situation fiscal*") and the latest tax return payments.
4. Certified copy of the articles of incorporation of the Mexican company and certified copy of the power of attorney of the legal representative and his/her ID.

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

Employers must annually update the latest tax return payments of the Mexican company. Companies are required to submit their annual tax return payments for the previous fiscal year during the month of March of each year, that is, during the following 30 calendar days, an effect of maintaining the validity of this registry of the company, to avoid the delay on the resolutions of the immigration cases at the INM.

Moreover, in the case that the Mexican company has a change of name of the legal representatives or any change of the tax domicile of the company, the company must update the information at the INM within the 30-day period.

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

There are no provisions for foreigners to train or up-skill local workers.

The Federal Labor Law (FLL) indicates that employers have the obligation to provide all workers with and they to receive training on the job that allows them to raise their level of life, labour competence and productivity.

### 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 employers are not required to pay 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?

Yes. The verification visit procedure will be subject to the following:

- The immigration authority must issue an agreement by which it establishes and motivates the origin of the verification visit.
- A written order must be issued with an autograph signature issued by the INM, which must specify the place or area to be verified, the purpose of the visit, the scope it should have, the legal provisions that support it, and the name, signature and position of the public officer who authorises the visit.
- In any verification visit, the INM officer will grant a commission document to the public officer who is designated to execute the procedure, which will state the purpose of the verification act, the place where it will be carried out, the name of the person to whom it is directed, the object of the visit, the scope that it should have, the legal provisions that support it, and the name, signature and position of the officer who authorises said visit and who will carry it out.
- During the discharge of the verification visit, the immigration authority may require the proper documents for the discharge of the diligence, stating this in the record.

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

No, according to the Law any applications for visa authorisation or condition of immigration stay, provided that the reason for the request is for an offer of employment, will be governed by the quota system. In cases where quotas are not determined, the visa authorisation or condition of stay for a job offer will depend on the existence of said offer. We are awaiting the official publication to implement these immigration rules for a quota system in Mexico.

To obtain any work permit as a Temporary Resident, the position must be classified according to the National Classification System for Occupations (SINCO) and a brief description must be provided of the activities to be carried out in Mexico in accordance with the position at the Mexican company.

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

According to the Law the quota system will be established under the **following criteria:**

I. **occupational groups** provided for in the SINCO or that which in time replaces it;
II. specific geographic regions;
III. immigration conditions of legal stay; or
IV. a combination of these criteria.

In the case that the position is not regulated at the SINCO, there are general items that may be used to classify the position.

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

The quotas will be established by the Ministry of Interior through general administrative provisions that will be published in the Official Gazette of the Federation and will be valid for one year from their publication. Additionally, administrative provisions may be published in the Official Gazette of the Federation to fill vacancies of difficult coverage that need to be filled within six months. Until today, we are waiting for the official publication to implement this new system in Mexico that is regulated by the 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?

According to Article 7 of the FLL, every company must employ Mexican workers for 90% of its workforce, at least. In the technical and professional categories, workers must be Mexican, unless they are in a specific specialty, in which case the employer may temporarily employ foreign workers, in a proportion not exceeding 10% of those in the specialty.


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

According to the current immigration rules and provisions, the employees are not required to speak Spanish for the position for which they will be hired in Mexico.

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

The employee is not required to undergo any medical examination and there are no mandatory vaccines that the employee must obtain before being admitted. The Mexican government recommends being vaccinated against Tetanus-diphtheria, Hepatitis A and Typhoid fever before travelling to Mexico.

Employers have the authority to require any medical exam for their employees (avoiding any discrimination practice).

**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?**

For the Mexican Social Security Institute (IMSS), companies, when it is necessary to hire one or more workers, acquire obligations including, among others, those established by the Social Security Law (LSS), since there is the possibility of suffering some type of accident, so, based on Article 15 of the Law, social security must be granted.

In the event that foreigners are paid by a sponsor company, they must also receive such social security, since they are providing their services at the facilities of the Mexican company and could suffer a job risk.

Independently and without obligation from the Mexican government, employers may contract medical expenses insurance, in order to access private hospitals.

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

Yes, foreign employees may only carry out the activities expressly authorised in their immigration document or permit; they must have an express authorisation to carry out any activities other than those authorised in their immigration document or permit. If the foreign employee will visit the client site, it will be convenient to show his/her immigration document to evidence his/her legal stay in Mexico.

## 5 Highly Skilled Visas

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

The points system for foreigners to acquire permanent residence will establish selection criteria to attract foreign investors or those with highly qualified skills in areas such as science, technology, sports, humanities and the arts, or those who will strengthen and promote development and competitiveness in the national territory.

The selection criteria may incorporate, among others, the following categories:

- Education level.
- Work experience in areas of interest to the country that are in high demand and low supply.
- Work experience in other areas.
- Investors.
- Science and technology skills.
- International recognition or awards.
- Fluency in the Spanish language.
- Knowledge of Mexican culture.

We are awaiting the official publication to implement this new system in Mexico.

## 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 Temporary Resident immigration condition applies to foreigners who intend to stay in the country for a maximum period of four years, receiving their pay in Mexico or abroad. These immigration permits to engage in lucrative activities in Mexico are granted by the INM. The Mexican Consulate is authorised to grant temporary resident visas without income activities in Mexico. The application must be requested by the foreign nationals on the grounds of an invitation by a Mexican legal entity (private or public), investors' real estate ownership, retirement, the preservation of a family unit, pursuing studies as a student or humanitarian reasons. The issuance of this kind of visa is at the total discretion of the Mexican Consulate according to the faculties duly granted and after complying with the requirements and rules provided by the Mexican Immigration guidelines.

## 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, the Temporary Resident student immigration condition allows the foreign nationals to remain in Mexico for the duration of their studies, internships or exchanges without income activities in Mexico.

This visa must be requested prior to his/her entry into Mexico at any Mexican Consulate abroad and the foreign national must provide the letter of invitation or acceptance of the corresponding educational institution. His/her immigration condition may be renewed annually.

The INM may authorise the foreign national to carry out lucrative activities if there is a letter of agreement from the corresponding educational institution and it will be subject to a job offer in activities related to the subject of their studies.

The student temporary resident will have the right to enter and leave the national territory as many times as they wish and will also have the right to the preservation of the family unit.

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

According to Article 35 of the FLL, work relationships can be for a specific job or time-period, a season or indefinite time and where appropriate may be subject to testing or initial training.


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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 specific category. The proper immigration condition to obtain for the employee to be assigned as an inter-company transfer will depend on the term of his/her assignment to Mexico and if he/she will remain on the foreign payroll or if he/she will be transferred to the Mexican company as a local worker.

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

For immigration purposes, it will be essential to define the terms of the assignment of the foreign employees to Mexico. If the foreign employees will remain on the foreign payroll, a letter from the foreign entity will be essential to obtain the proper immigration condition for workers. This letter must be duly notarised and apostilled, including the following information: the purpose of the assignment; the type of visa; and information about the holding office and the Mexican company, describing the structure of the company.

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

The term of the assignment will be essential to determine the proper immigration condition that the employees need to have. For less than 180 days, this may be as Visitors without income activities. For more than six months, the temporary resident immigration condition must be requested.

If the employees will remain on the foreign payroll, it will be necessary to request the temporary resident immigration condition without paid activities in Mexico as an employee of the foreign entity. An invitation letter from the Mexican company will be necessary.

If the employees will be transferred as employees of the Mexican legal entity, a work visa will be necessary. Provisions must be taken, the Mexican company must be registered at the INM and then the Mexican company may request the legal permit as temporary residents as employees of said entity.

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

One needs to follow the unique process to obtain a permit to work as temporary resident. The following is a brief explanation of this immigration procedure:

- The Temporary Resident – Remunerated Activities (local hire) applies to applicants who will be locally hired in Mexico for more than 180 days and less than four years.
- For the Temporary Resident – Remunerated Activities, the Mexican company must be registered before the National Migration Institute (INM).
- The Mexican company must request before the local immigration office the legal permit entry as a temporary resident for the employee prior to his/her entry into Mexico. After filing this application, the INM will grant the official communication in approximately 30–60 business days.
- An appointment must be scheduled at any Mexican Consulate within 30 business days. The foreign employee must go to the Mexican Consulate (with his/her passport, a copy of the official communication, photos and the respective application for the issue of his/her visa), and must pay the applicable government fees for the issuance of the visa.
- When the employee travels to Mexico, he/she will receive at the port of entry the multiple immigration form (FMM), and the immigration officer of the port of entry into Mexico will check the box "visa for issue of immigration document".
- When the employee arrives in Mexico, a period of 30 natural days is provided to request the issue of his/her immigration documents as a temporary resident before the local immigration office.

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

Please refer to our answer to question 8.4. The Mexican visa will be granted by the Mexican Consulate, and this visa is valid for six months and one entry into Mexico from the date of issue.

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

The process and timing to obtain a work visa is as follows:

- Entry Permit application filed at INM in Mexico (one to three months).
- Filing of visa application at the Mexican consulate (depending on the human and technical resources of each Consulate, this varies from three to 10 business days, but could take longer if an appointment is necessary).
- Consular visa collection (one to three days).
- Entry to Mexico (one day).
- Filing of Temporary Residence Card application at INM. (Note: this may vary considerably, depending on the specific location where the assignee will arrive in Mexico and the corresponding regional office of the INM. In Mexico City, this takes between three to four 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?

Please refer to our answer to question 8.6.

The extension of the temporary resident cards may be requested for one, two or for a maximum period of three years. Holders of the temporary resident condition are authorised to live in Mexico for a maximum period of four years. After completing four years in Mexico as temporary residents, a Permanent Immigration Condition must be requested.

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

Yes, after living in Mexico for four consecutive years with the temporary resident immigration condition, a permanent resident immigration can be requested.

The application must be requested 30 days before the expiration date of his/her temporary resident card, and the foreigner needs to be in Mexico to submit the application before the INM offices.


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

The payments of government immigration fees for specific immigration procedures for foreigners with the temporary or permanent resident immigration condition in Mexico are regulated by the Federal Law of Government Fees (LFD).

The following are the rates approved in Mexican currency by the LFD, and which were published by SEGOB to pay the government immigration fees (Mexican pesos):

(a) Temporary Resident – one year: $4,271.
(b) Permanent Resident: $5,206.
(c) Replacement Resident Card: $1,277.
(d) Change of Immigration Condition for study and reception: $1,365.
(e) US Consular fee: U$36.

These fees are updated every year on January 1st.

## 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 to obtain work permits (new hire) as employees of the Mexican company is the Temporary Resident immigration condition.

Please refer to our answer to question 8.4.

It is essential to know the position and the activities to be carried out in Mexico to classify the position according to the SINCO.

### 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, one must comply with the immigration provisions to request the legal permit as temporary residents.

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

No, there are no legal provisions to carry out a labour market test.

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

Please refer to our answer to question 8.4.

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

Please refer to our answer to question 9.1. The Mexican visa will be granted by the Mexican Consulate, and this visa is valid for six months and one entry into Mexico from the date of issue.

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

The complete immigration process is divided into three different stages: the authorisation duly granted by the INM (work permit); the issue of the Mexican visa to be granted by the Mexican Consulate (Mexican visa); and the issue of the temporary resident card before the local immigration INM.

Please also refer to our answer to question 8.6.

The complete immigration procedure will take between three to five months approximately.

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

The temporary resident cards will be renewable for one, two or for a maximum period of three years. Holders of the temporary resident condition are authorised to live in Mexico for a maximum period of four years.

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

No, one must evidence the permanence of the labour relation with the Mexican company to obtain the renewal of the immigration documents.

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

Yes, after living in Mexico for four consecutive years with the temporary resident immigration condition, a permanent resident immigration may be requested.

The application must be requested 30 days before of the expiration date of his/her temporary resident card, and the foreigner needs to be in Mexico to submit the application before the INM.

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

Please refer to our answer 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 three legal stay of immigration conditions, namely:

- Visitor: with or without permission to have remunerated activities in the country.
- Temporary Resident: receiving their pay in Mexico or abroad. This category includes students.
- Permanent Resident: applicable to foreigners who wish to stay in Mexico indefinitely.

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

All foreign workers who hold the temporary or permanent resident immigration condition receive a CURP number with the said registration granted by the Ministry of Interior. They may be requested to register before the IMSS and before the Mexican Tax authority. There is no need to be registered with the municipal authorities or the police.


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## 11 Dependants

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

Foreigners with the conditions of temporary and permanent residents will have the right to the preservation of the family unit, so they may enter with or subsequently request the entry of the following people:

- Father or mother.
- Spouse: they are considered to be a temporary resident for two years, after which they can obtain the status of permanent resident, as long as the marriage bond remains.
- Cohabiting partner: they will be granted the status of temporary resident for two years, after which they can obtain the status of permanent resident, as long as the cohabitation subsists.
- Children of the permanent resident and the children of the spouse or cohabiting partner, as long as they have not married and are under their guardianship or custody.

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

Yes, there are two ways to obtain an immigration permit for a spouse or same-sex partner and their relatives.

The first is to request the Mexican visa directly at the Mexican Consulate, when the principal applicant receives his/her Mexican visa as a temporary resident, as his/her economic dependents prior to his/her travel to Mexico.

The other alternative is to request a change of immigration condition for the spouse or partner, when he/she arrives in Mexico. For this purpose, the marriage certificate will be necessary (duly apostilled or legalised).

For non-married couples, it is necessary to demonstrate cohabitation ("*concubinato*"). This will depend on the jurisdiction where the couple has had a common residence.

It is recommended for non-married partners to apply for a Temporary Residency directly at the Mexican Consulate with jurisdiction over the couple's place of residence before entering Mexico, as the consulates are familiar with the general rules and practices that have become generally adopted through habit and common use.

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

Spouses and partners may access the labour market after they are admitted as dependants, and they must request a work permit before the INM. Provisions must be taken to obtain the proper immigration permit authorising the spouse or same-sex partner to work in Mexico.

### 11.4 Do children have access to the labour market?

According to Article 123 of the Constitution, which also derives the ratification of Convention 138 on the age to enter a job, the permitted age is 18 years, so foreigners at this age are authorised to work and they will have to meet this requirement.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

The status of permanent resident will be granted to a foreigner who meets any of the following assumptions:

- For reasons of political asylum, recognition of refugee status and complementary protection or by the determination of stateless person, after fulfilling the requirements established by the legal provisions.
- For the right to the preservation of the family unit.
- They are retirees or pensioners who receive, from a foreign government or international organisations or private companies for services provided abroad, an income that allows them to live in Mexico.
- By decision of the Institute, according to the points system established for this purpose (pending publication).
- After four years have passed since the foreigner obtained a permit for temporary residence.
- For having children of Mexican nationality by birth.
- For being an ascendant or descendant in a direct line to the second degree of a Mexican by birth.

Permanent residents may introduce their personal property, in the manner and terms according to the Mexican Customs Law.

Holders of the permanent resident immigration condition must inform within 90 natural days of any changes related to his/her immigration condition.

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

Holders of the temporary resident immigration condition are authorised to work in Mexico without any further requirements. They have the obligation to notify the INM within 90 natural days of any changes related to his/her domicile, change of employer, civil status or nationality.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

There are no bars to admission established by the Law or by the authority. Please refer to the answer to question 13.2.

It is advisable not to have criminal records, to have a valid and current immigration document, to have the skills required to perform the job, and to have an employer with an employer record in order before the INM.

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

Criminal convictions are not a bar to obtaining work permission or a visa. However, the immigration authority has the authority to review the foreigner's criminal records or mobility restriction ordered by law enforcement agencies if he is listed by any international authority as a person of interest in accordance with international treaties. The authorities, at their discretion, may reject the processes and deny entry into the country to an individual with such background.


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His experience includes matters related to corporate immigration of foreign personnel assigned to Mexico with more than 25 years of experience, being one of the leading lawyers in this sector. He has developed a significant level of knowledge regarding the management of visas and other types of immigration permits (temporary residence for work or for studies).
His advice has involved various transnational and international mobility companies in providing comprehensive legal services related to immigration, for various foreign employees and their families to Mexico.
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Founded in 2016, De La Vega & Martínez Rojas, S.C. is a Firm dedicated to the provision of legal services in labour, social security and corporate immigration, through a team of experts in their respective areas of practice.
As part of L&E Global, the international organisation that groups various legal Firms together in the world, we are a Firm with global capabilities in the provision of legal services in different jurisdictions.
The Firm has the purpose of creating added value in the legal services it provides, generating innovative ideas and practical solutions for our clients that enable the generation of a tangible benefit, preventing or solving costs issues for them.
The immigration practice at De La Vega & Martínez Rojas, S.C. specialises in the provision of customised legal and professional services. These services are customised, given that they are conducted working closely with the interested party, who is accompanied throughout the required administrative processes.

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# Netherlands

Everaert Advocaten Immigration Lawyers

Marcel A.G. Reurs

## 1 Introduction

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

The backbone of Dutch immigration law is in Acts of Parliament: the Immigration Act 2000 (*Vreemdelingenwet*); the Work by foreigners Act 1995 (*Wet arbeid vreemdelingen*); and the Nationality Act 2003 (*Rijkswet op het Nederlanderschap*). These acts provide decision-making power to the State Secretary of Justice and Security regarding immigration (Immigration Act) and naturalisation (Nationality Act) and to the Minister of Social Affairs and Employment regarding work permits and sanctions for illegal working (Work by foreigners Act). All these acts are implemented by secondary legislation, made by the government: the Immigration Decree (*Vreemdelingenbesluit*); the Decree on the Execution of the Work by foreigners Act (*Besluit uitvoering wet arbeid vreemdelingen*); and the Decree on acquisition and loss of Dutch nationality (*Besluit verkrijging en verlies Nederlanderschap*).

Of great practical importance are the legislations' hands and feet: the policy rules on how the competent government agencies (the Immigration and Naturalisation Service and the Employment Insurance Institute) must interpret the legislation and exercise discretionary powers; the Aliens Circular (*Vreemdelingencirculaire*); the Executive rules to the Work by foreigners Act (*Regeling uitvoering Wav*); the Penalty Scheme for the Work by Foreigners Act (*Beleidsregels boeteoplegging Wav*); and the Guidance to the Netherlands' Nationality Act (*Handleiding bij de toepassing van de RwN*).

It must be noted that the Netherlands is a Member State of the EU. This means that the rights provided for in the TFEU and EC Regulations are applicable automatically (e.g. the Schengen Border Code) and EC Directives are to be transposed into national law. Notable examples are: Directive 2004/38 (on the right of free movement); 2003/86 (on family reunion for third-country nationals); 2003/109 (on long-term residence for third-country nationals); 2009/50 (on highly skilled workers (European Blue Card)); and 2014/66 (on intra-corporate transfer). European law is increasingly becoming the head and the heart, the determining factor for our national immigration policies.

Finally, there are treaties that provide immigration rights, e.g., the Treaty of Friendship, Commerce and Navigation between the Netherlands and the US, the Treaty of Commerce and Navigation between the Netherlands and Japan and the EEC-Turkey Association Agreement.

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

The corporate immigration system is administered by the Immigration and Naturalisation Service, which is an agency of the Ministry for Justice and Security. The agency decides on applications for residence permits, entry visas and recognised sponsor status, maintains the public register of recognised sponsors and is authorised to issue penalties to sponsors who violate sponsor duties.

In addition, other government agencies are involved, often in an advisory capacity, such as the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland; RVO*) and the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen; UWV*), which advises on employability in applications in the Single Permit category. UWV also issues work permits. The Immigration Police and IND supervise the departure of illegal migrants, and the Inspectorate of the Ministry of Social Affairs and Employment (*Inspectie SZW*) issues penalties for illegal working.

### 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 Netherlands is a Member State of the European Union and part of the Schengen Area.

## 2 Business Visitors

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

The Netherlands is part of the 'Schengen Area'. This area of 22 EU States, four non-EU states and three European micro-states functions as a single area for international travel purposes. This means that there are no internal border controls within the Schengen Area, although, in exceptional cases, Member States may temporarily reintroduce internal border control. Visitors who require a Schengen visa will receive a visa for the area as a whole rather than for an individual Member State. In exceptional cases, Member States may issue a visa which is limited to a specific Member State. Citizens of the EU, EEA and Switzerland do not need a visa. For others, the EU has a common list of countries whose citizens must have a visa when crossing the external borders and a list of countries whose citizens are exempt from that requirement. These lists are set out in Regulation (EU) 2018/1806. Currently, the latter list consists of: Albania; Andorra; Antigua and Barbuda; Argentina; Australia; Bahamas; Barbados; Bosnia and Herzegovina; Brazil; Brunei; Canada; Chile; Colombia; Costa Rica; Dominica; El Salvador; former Yugoslav Republic of Macedonia; Georgia; Grenada;



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Guatemala; Honduras; Israel; Japan; Kiribati; Saint Kitts and Nevis; Saint Lucia; Marshall Islands; Malaysia; Mauritius; Mexico; Micronesia; Moldova; Monaco; Montenegro; Nauru; New Zealand; Nicaragua; Palau; Panama; Paraguay; Peru; Samoa; San Marino; Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)); Seychelles; Singapore; Solomon Islands; South Korea; Timor-Leste; Tonga; Trinidad and Tobago; Tuvalu; Ukraine; United Arab Emirates; United States; Uruguay; Holy See; Saint Vincent and the Grenadines; Vanuatu; and Venezuela.

In addition, individuals holding a long-stay visa or residence card issued by a Schengen Member State may enter without a Schengen visa.

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

Citizens of the EU, EEA and Switzerland are allowed to enter as a visitor for a period of three months without having to satisfy any specific conditions. They are able to prolong their stay provided that they meet certain conditions, and must then register as residents in the local Population Register. Others are subject to the conditions of the Schengen Border Code which allows a stay for a maximum period of 90 days within any given 180-day time window. 'Any given' implies a 'rolling' 180-day period. A visitor cannot be in the Schengen Area for more than 90 days, counting back 180 days from each day of the stay. This means that only an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days. Only days in Schengen on visitor status are relevant for the 90 days calculation. Days spent in a Schengen country on the basis of a residence permit or long-stay visa for that country are not included in this calculation, but days in other Schengen countries during that period (where the applicant does not hold a residence permit or long-stay visa) are included. The EC has developed a 'Schengen Calculator' tool enabling visitors to calculate their remaining visitor days in Schengen, available for the public at http://www.ec.europa.eu.

### 2.3 What activities are business visitors able to undertake?

Citizens of the EU, EEA and Switzerland are allowed to carry out any type of work.

Others will need a work permit, unless the work which they will be carrying out is exempt from this requirement. The following are only the most notable activities, common to general business visitors outside specific categories such as international transport, sports and entertainment, military, education and sciences:

- Business meetings (max. 13 weeks in 52 weeks; multiple entry):
  Business visitors are permitted to conduct or attend business meetings. Typically, this will be meetings and discussions regarding the company and its development. Productive activities in the context of the company's business activities are never considered business meetings.
- Hardware/software (max. 12 weeks in 36 weeks; single entry):
  Business visitors are permitted to assemble or repair equipment, machines or devices that were delivered by their home country employer, or to give instructions on how to operate them. Further, business visitors are allowed to install, implement or adjust software that was delivered by their home country employer or to give instructions on how to operate it.
- Exhibition or stand (max. 12 weeks in 36 weeks; single entry):
  Business visitors are permitted to prepare, decorate, build or dismantle an exhibition or stand on behalf of a foreign principal.
- Receiving training or instructions (max. 12 weeks in 36 weeks; single entry):
  Business visitors are permitted to receive training or to receive operational instructions regarding goods that were manufactured in the Netherlands or services that will be performed in the Netherlands. Training and receiving instructions must be limited to observation, getting accustomed to company culture and receiving instructions in a classroom or in a similar setting that is clearly for instructional purposes (and not for productive work) and under guidance of an instructor/teacher. It must be clear from the setting of the training that it is training and not a group of employees carrying out productive work. This means that the training should not take place at the work floor. Attending meetings for enhancement of the company culture is included in this waiver as well. Please note that the waiver only covers being a recipient of training. It does not cover being a conductor/trainer. Those activities require a work permit.
- Providing a service (max. 90 days; notification required):
  Business visitors who are legally residing and being employed in another EU Member State can travel to the Netherlands to perform a service with a customer on behalf of their employer, provided that the activity is properly notified to the authorities prior to arrival.
- ICT-Permit holder on short-term mobility (max. 90 days; notification required):
  Business visitors who are legally residing in another Member State on a residence permit as an intra-company transferee, issued under Directive EC 2014/66, are permitted to visit and work at a company in the Netherlands that is a subsidiary of their employer's group of undertakings, provided that the activity is properly notified to the UWV.
- Visitors under the International Trade Regulation (max. 90 days):
  Visitors who come to work on a project which has been accepted under the International Trade Regulation.

### 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 categories include 'providing a service', 'ICT-Permit holder' and 'visitors under the International Trade Regulation', mentioned under question 2.3.

### 2.5 Can business visitors receive short-term training?

Yes, please see question 2.3.

## 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?

Two government agencies are responsible for compliance inspections and are authorised to issue penalties for violations:


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- The Inspectorate of the Ministry of Social Affairs and Employment (*Inspectie SZW*) inspects on compliance with labour laws, including the Work by Foreigners Act (*Wet arbeid vreemdelingen*).
- The Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst; IND*) inspects on compliance with sponsor duties set out in the Immigration Act 2000 c.a.

The Inspectorate typically conducts visits, announced and unannounced, and the IND typically runs checks by cross-checking government databases and requesting disclosure of employee documents.

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

Employers are required to verify the identity of any candidate whom they seek to employ and whether he or she is allowed to work in the Netherlands on the basis of an appropriate identity document of which they must retain a copy. The Ministry of Social Affairs and Employment has published guidance on verification of identity. If the guidance is properly implemented and executed with the employer, this could mitigate a penalty for illegal working.

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

The following penalties can be imposed for illegal working and additional violations:

- Illegal working: €8,000.
- Failure to provide a copy of ID to enforcement agents within 48 hours: €8,000.
- Failure to notify work that must be notified: €1,500.
- Failure to provide the secondary employer with a copy of ID: €1,500.
- Failure of the secondary employer to verify ID: €1,500.
- Failure of the secondary employer to keep a copy of ID on record: €1,500.

Employers who are an individual or a foundation or non-profit association which has had work carried out outside a business scope will normally receive a penalty of 50% of the amount. 'Outside business scope' means that the work carried out must be non-profit by nature.

The Work by Foreigners Act and the penalty scheme allow the Labour Inspector to lower the amount by 25%, 50% or 75% if there are mitigating factors or to raise the amount by 50%, 100% or 200% in the case of recidivism, depending on the circumstances and the nature of the violation.

In addition, UWV can refuse work permit applications if the person or legal body applying for a work permit has been issued with a penalty in the five years prior to the application.

Further, UWV can advise the IND to refuse employment-based residence permits in the Single Permit category if the employing sponsor received a relevant penalty in the five years immediately prior to the application.

## 4 Corporate Immigration – General

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

Employers with recognised sponsor status are listed in a public register which is published on the website of the IND.

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

Sponsors must comply with sponsor duties. Certain sponsor duties apply to all sponsors, whilst others are specific to recognised sponsors.

Sponsor duties applying to all sponsors are:

- Reporting duties – sponsors must report certain events to the IND within two or four weeks, such as moving office, termination of employment, departure and if the migrant worker ceases to meet conditions for eligibility.
- Record keeping duties – sponsors must keep documents and information for up to five years after termination of sponsorship. For employment-related categories, this includes the employment contract or transfer letter and payslips.
- In addition, recognised sponsors must comply with a duty of care which means that they must ensure a careful recruitment and selection process of migrant workers in the HSMP or ICT categories, which process must include providing information to candidates about the conditions for admission and residence and their rights and duties as a migrant worker under the Immigration Act.

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

This is not a general requirement. Only work permits or residence permits in a Single Permit category issued after a resident labour market test or under the Asian Chef Scheme can be made conditional to such a commitment.

### 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 Netherlands does not require this.

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

The *Inspectie SZW* and the IND perform random checks which include site visits, announced and unannounced, and sponsors are required to cooperate with enforcement officials. We recommend that the sponsor designate a protocol and a response team for an immigration audit, similar to tax, competition and privacy related audits. The response team should be educated and trained to act on an unanticipated and unannounced audit. Besides the response team, employees who are most likely to come into contact with inspectors (e.g. receptionists) must be included in the protocol and educated on how to act and respond to questions.

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

The Netherlands does not maintain a skilled-occupations list. Whether a job qualifies as 'skilled' under the skilled-worker categories (HSMP and EBC) is mainly determined by a salary threshold scheme.


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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 Executive rules to the Work by foreigners Act lists a number of sectors and occupations which are exempt from the resident labour market test, including: athletes in the highest level of competition; professional soccer players; religious workers; teachers in international education; Asian chefs; trainees and interns; musicians; performing artists; and conservators and restorers working for a museum which is a member of the Association of Museums.

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

There are annual limits for Asian cuisine chefs and working-holidaymakers from Argentina, Hong Kong, Taiwan or Uruguay (100, divided between the countries), Japan (200) and South Korea (100).

**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?**

Only in the category of 'MBO-interns' can the number of sponsored interns not exceed 10% of the sponsor's workforce, with a minimum of two.

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

Applicants for an orientation year permit who are eligible under the graduate scheme due to completing a Master's or post-Master's programme or having obtained a Ph.D. at a designated international educational institution must demonstrate that they have achieved a minimum score of 6.0 for the International English Language Testing System (IELTS) or a comparable minimum score in another accepted English language test (TOEFL, TOEIC and Cambridge English grades & scale) set out in the Code of Conduct for international students in Dutch higher education. This does not apply if they can submit a diploma, certificate or document listed in the Civic Integration Decree or if the academic programme was taught in English or Dutch. Further, applicants for permanent residence who are not Turkish nationals need to pass a Civic Integration Test which includes a Dutch language test.

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

When arriving in the Netherlands after their first admission, applicants for a residence permit must undergo a TB-test unless they are from a country which is listed as exempt.

**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?**

All residents of the Netherlands are required to have valid Dutch health insurance unless they are legally waived.

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

This depends on the type and category of their work or residence permit.

Holders of a residence permit as a highly skilled migrant are allowed to be seconded to a client site to perform a service while remaining under the supervision and control of their employer. If they are made available to the client, i.e., will work under the supervision and control of the client, this is only allowed if the employing sponsor is registered with the SNA and has an appropriate registration in the Chamber of Commerce in accordance with the Act on Placement of Personnel (WAADI).

The same applies to holders of a European Blue Card with the exemption of the need for an SNA registration. This only applies if the employing sponsor is a recognised sponsor.

Holders of a Single Permit (GVVA) or work permit are allowed to be seconded to provide a service or to be made available if this is covered by the work permit or the work authorisation part of their GVVA. If they are made available, their employer must have an appropriate registration in the Chamber of Commerce in accordance with the WAADI.

Holders of an ICT-Permit are allowed to be seconded to provide a service but are not allowed to be made available to a client.

Holders of a residence permit which is not sponsored by their employer are allowed to be seconded to provide a service and can be made available to a client, provided that their employer has an appropriate registration in the Chamber of Commerce in accordance with the WAADI.

## 5 Highly Skilled Visas

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

The Netherlands has three schemes available for skilled workers which are exempt from the resident labour market test. These are:

(a) Highly skilled migrant (HSMP).
(b) European Blue Card.
(c) Intra-Company Transfer.

In addition, under the GVVA scheme, certain categories of workers and certain occupations are exempt from the resident labour market test on grounds that they require a certain capacity or skills which are scarce, such as athletes, performing artists and religious 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?**

Citizens of the EU, EEA and Switzerland are allowed to remain in the Netherlands and work in any capacity without any immigration permission being required.

Citizens of the United States, Japan and Bolivia are eligible for a residence permit to work as a self-employed if they incorporate a company, invest an amount of at least €4,500 and own at least 25% of the company. Citizens of Turkey are eligible for a residence permit as a self-employed if they meet specific criteria, related to making sufficient profit and to protecting the Dutch labour market.


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Others may be eligible for a residence permit as a self-employed if they score sufficient points under the points-based system for self-employed or if they qualify for a start-up visa.

Under the above-mentioned categories, applicants are not allowed to enter into employment although they can be employed with their own company as a Director-Major Shareholder (DGA). Dependents, however, are allowed to work in any capacity, without restrictions.

Foreign investors can be eligible under the investor category if they invest an amount of €1,250,000 in an innovative business or certain funds. They are allowed to work in any capacity without restrictions, as are their dependents.

## 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 Netherlands has multiple temporary worker schemes, which include:

- Working holidaymakers.
- Interns and trainees.
- Orientation year for graduates searching for a skilled job.
- Intra-company trainees.

Residence permits in these categories are valid for one year and cannot be extended.

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

Work permits and single permits can be issued for seasonal work for a period of up to 26 weeks to allow work in agriculture.

## 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 Netherlands has implemented EC Directive 2014/66 on intra-corporate transfer which is now the mandatory immigration category for intra-company transfers within an international group of companies.

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

To be eligible under the ICT-Scheme, the migrant worker:

- must be residing outside the EU at the time of the application;
- must have been employed within the international group for at least three months at the time of the transfer;
- must earn a salary at Dutch market level;
- must qualify as a 'manager', 'specialist' or 'trainee'; and
- must hold a Master's degree to qualify as a trainee.

The host entity must be economically active and be incorporated for the purpose of facilitating the entry of migrant workers. It must not have received any relevant penalties in the five years prior to the application.

A salary which meets the following thresholds is deemed to be at market level:

- 30 years or older: €4,981 gross per month (inclusive 8% holiday allowance).
- 29 years or younger: €3,562 gross per month (inclusive 8% holiday allowance).

These amounts are amended on 1 January of each year.

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

Please see question 8.2 for long-term transfers of more than three months.

For transfers or visits of less than 90 days, UWV can issue a work permit if the employee earns a salary in accordance with a threshold.

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

For long-term applicants (over 90 days), the procedure is as follows: recognised sponsors can file online with the IND. Others must file a paper application. The processing time is 90 days. If the sponsor is recognised, the IND makes an effort to decide within two weeks, which effort is met in the vast majority of applications. Applications from regular sponsors are typically processed in five to seven weeks.

Applications from ordinary sponsors are submitted to UWV for an advice whereas applications from recognised sponsors are adjudicated and decided without such an advice. Only in the case of doubt as to whether the conditions are met will the IND request an advice from UWV.

When decided, the IND will send a notice of decision to the sponsor. If the application is granted, the employee will be issued with a biometric residence card, valid for the duration of the assignment up to a maximum of three years. Citizens from certain countries need to visit a Dutch consulate to collect an entry visa (MVV) before entering the Netherlands.

For visitors (up to 90 days), applications are filed as a paper application with UWV. The processing time is five weeks. When decided, UWV will send a paper work permit to the host company. Visa-nationals will need to apply for a Schengen visa in addition to the work permit.

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

Please see question 8.4.

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

Please see question 8.4.

### 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?

Residence permits under the ICT can be issued for a maximum period of three years or extended to a maximum of three years. Upon completion of the three-year period, the applicant must leave the EU for at least six months before he is able to re-apply


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under the ICT category. Alternatively, the applicant can choose to stay in the Netherlands, converting to another immigration category, such as HSMP or EBC. An EBC will require a local contract. For an HSMP after a three-year ICT, this is not necessary according to the current IND practices.

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

Yes, this is possible in the Netherlands.

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

The amounts per April 2020 are: €290 for the employee; €174 for a partner or spouse; and €58 for a minor child. Please note that government filing fees are amended periodically.

## 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 most common categories for skilled workers are the highly-skilled migrant scheme (HSMP) and the European Blue Card (EBC).

**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?**

Work permits and Single Permits (GVVA) are subject to a resident labour market test. The skilled-worker categories (HSMP, EBC and ICT) are exempt from the labour market test.

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

The skilled-worker categories (HSMP, EBC and ICT) are exempt from the resident labour market test. In addition, certain categories of workers and occupations are exempt, such as: athletes in the highest level of competition; professional soccer players; religious workers; teachers in international education; Asian chefs; trainees and interns; musicians; performing artists; and conservators and restorers working for a museum which is a member of the Association of Museums.

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

The HSMP is the most common and popular scheme for sponsoring skilled workers. The HSMP is only available to recognised sponsors. The key requirement is that the migrant worker:

- must be employed with the sponsor on a local employment contract;
- must earn a salary which meets the relevant threshold; and
- must be able to demonstrate that the salary is in line with Dutch market level.

These are the salary requirements for 2020:

- 30 years or older: €4,612 gross per month (exclusive 8% holiday allowance).
- 29 years or younger: €3,381 gross per month (exclusive 8% holiday allowance).
- Graduate scheme: €2,423 gross per month, regardless of age.

These amounts are amended on 1 January of each year.

The application must be filed by the employing sponsor, exclusively, either online or on paper. The processing time is 90 days but the IND makes an effort to decide within two weeks, which effort is met in the vast majority of applications. When decided, the IND will send a notice of the decision to the sponsor. If the application is granted, the employee will be issued with a biometric residence card, valid for the duration of the assignment up to a maximum of three years. Citizens from certain countries need to visit a Dutch consulate to collect an entry visa (MVV) before entering the Netherlands. The residence permit is issued for the duration of the employment contract and is extendable and allows the holder to be eligible for permanent residence and citizenship after five years.

The European Blue Card is a less common category and would typically be used for sponsoring skilled workers if the sponsor does not hold recognised sponsor status. The requirements are that the migrant worker:

- must be employed with the sponsor on a local employment contract which is valid for at least 12 months;
- must earn a salary which meets the relevant threshold (for 2020: €5,403 gross per month (exclusive 8% holiday allowance)); and
- must have a diploma of post-secondary education (e.g. Bachelor or Master) which was obtained after an education programme of at least three years and which is positively evaluated by IDW.

In addition, the sponsor may not have received any relevant penalties in the five years prior to the application.

The procedure is the same as for an HSMP. The processing time is 90 days. If the employing sponsor is a recognised sponsor, the IND will make an effort to decide within two weeks.

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

Please see question 9.4.

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

Please see question 9.4.

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

Under the HSMP, the residence permit is issued for the duration of the employment contract, to a maximum of five years and is extendable for such periods.

Under the EBC, the residence permit is issued for the duration of the contract for at least three months to a maximum of four years and can be extended.

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

When a Single Permit (GVVA) or work permit is issued after a labour market test, this test will be required as a prerequisite for the extension as well until the employee has completed a non-interrupted stay on an employment-related residence permit for at least five years.


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

The HSMP, EBC and Single Permit (GVVA) provide an avenue to permanent residence in the category of EU Long Term Resident and the category of Permanent Residence on National Grounds.

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

The amounts per April 2020 are: €290 for the employee; €174 for a partner or spouse; and €58 for a minor child. Please note that government filing fees are amended periodically.

## 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?

Holders of an employment-based residence permit must remain employees to continue their residence. If they cease to work for their sponsor, the sponsor must inform the IND and this will normally result in a withdrawal of the residence permit. Holders of an HSMP and EBC who lose their job are granted a three-month search period to find a new skilled job, provided that their residence permit is still valid for at least three more months counting from termination of employment.

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

Everyone who enters the Netherlands for a stay of four months in a six-month time window is legally required to report at the Population Register of their municipality to register as a resident. This equally applies to citizens of the Netherlands, the EU, EEA, Switzerland and others.

## 11 Dependants

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

The spouse, the registered partner, the unmarried and unregistered partner and children below the age of 18 qualify as dependents. A child between the ages of 18 and 25 is considered eligible under a dependent category if he or she is younger than 25, still lives with his or her parents in the core family, does not provide for him or herself and has not started a family of his or her own. Others, notably parents of the applicant, are not considered eligible and would normally be refused unless they can demonstrate very exceptional parent-child ties with their children, involving an exceptional dependency.

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

Yes. Civil/unmarried and same-sex partners qualify as family members and are treated in the same way as heterosexual married couples.

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

Under the HSMP, EBC and ICT, spouses and partners who are dependents have full access to labour, without restrictions.

### 11.4 Do children have access to the labour market?

Under the HSMP, EBC and ICT, children who are dependents have full access to labour. However, they must observe and comply with employment laws.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

The Netherlands has two categories of permanent residence:

- EU long-term resident.
- Permanent residence on national grounds.

To be eligible under the category of EU long-term resident, the applicant must:

- have been residing in the Netherlands for a continuous period of five years on a valid residence permit without being away from the Netherlands for more than six consecutive months, or more than 10 months in total;
- hold a residence permit for a non-temporary purpose at the time of the application for permanent residence;
- have passed the civic integration exam;
- have sufficient and durable income; and
- have had a residence permit for a non-temporary purpose throughout the five-year period. Student permits count for 50%. For example, if you held a residence permit for studies for four years, two years would count towards the five-year period.

To be eligible under the category of permanent residence on national grounds, the applicant must:

- have been living in the Netherlands for a continuous period of five years on a valid residence permit without being away for any continuous period of more than six months or more than eight months in any 12-month period;
- have a valid residence permit for a non-temporary purpose at the time of the application for permanent residence;
- have passed the civic integration exam; and
- have sufficient and durable income.

### 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 convert to another category while in-country. The conversion must be filed in a timely manner to ensure that the legal residence remains uninterrupted to count towards the required five years of continuous stay.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

Besides the criminal antecedents mentioned under question 13.2, the application can be refused if the employee or the sponsor submitted any incorrect information or withheld relevant information in the context of the application or during previous immigration procedures.


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

Criminal convictions are grounds to refuse any residence permit for first admission if they entail a sanction for a criminal violation which qualifies as a crime (as opposed to a misdemeanour) under Dutch penal law.

Sanctions can be:

- imprisonment;
- a custodial measure;
- community service;
- an unconditional fee;
- accepting an out-of-court settlement; or
- a penalty order by the public prosecutor.

Without a criminal conviction or even prosecution or indictment, an application can be refused if the IND suspects the applicant of committing any act referred to in Article 1F of the 1951 Refugee Convention (a crime against peace, a war crime, a crime against humanity, a serious non-political crime (for example, murder or terrorism), or acts contrary to the purposes and principles of the United Nations (for example, terrorist acts)).

First-time offenders are able to reapply after five years from the antecedent, provided that, at that time, they have not received any of the above sanctions for committing another crime.


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**Marcel A.G. Reurs** is an immigration attorney with over 24 years of experience. His practice encompasses a broad range of business immigration work for corporate clients across the globe. Marcel is a frequent lecturer, a contributing co-editor to the leading commentary on the Dutch Immigration Act, the previous editor-in-chief of the *Journal on Dutch Immigration Law*, and chief of the editorial board of *Jurisprudence on Immigration Law*, the Dutch immigration jurisprudence series. He teaches and examines the Dutch National Bar Association's course on immigration law in the mandatory professional education programme for trainee attorneys and he served the Ministry of Justice as an expert adviser in the immigration policy reform, Modern Migration Policies. Marcel is a member of the IBA and the Dutch specialist associations for immigration lawyers, SVMA and WRV. He is an international associate to AILA and a member of the Steering Committee of AILA's Global Migration Section. Marcel is annually listed in *WWL: Corporate Immigration* as a leading individual and was recognised as a 'thought leader' in the recent editions.

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Everaert was founded in 1982 as the first Dutch law firm exclusively dedicated to immigration law. The firm's lawyers are at the forefront of immigration law and policymaking and have litigated landmark cases before the national courts and the European Court of Justice, including *Jany and Others* (2001), *S. and G.* (2014) and *Essent* (2014). The firm's practice continues to cover the whole field of immigration law, but with an emphasis on business immigration, nationality, and arts & entertainment.

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# Nigeria

Dayo Adu

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Famsville Solicitors

## 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; the Immigration Regulations, 2017; and the Nigeria Visa Policy 2020. The secondary sources are 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 the ECOWAS (Economic Community of West Africa States) Protocol on the free movement of persons within the ECOWAS community. Provided for in the Nigeria Visa Policy 2020 is the bilateral agreement (Visa Abolition Agreement) between Cameroon and Chad, as well as the Reciprocity Visa Waiver Agreement for holders of diplomatic/official passports with some countries. Please note that these agreements are subject to updates.

## 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. The recently launched Nigeria Visa Policy 2020 provides for waivers or exemptions for ECOWAS Countries, some international organisations and some countries. Please note that these agreements are subject to updates.

### 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 30 days 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.


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**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 that they obtain regulatory approval (expatriate quota/temporary work permit), and 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/validity 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, made to bear the cost of the deportation of the affected foreign nationals and lose any immigration facilities/approvals previously granted to it.

## 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 with immigration authorities stating information about the location, status, permits and visa details of foreign employees in their employment.

**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 grant and renewal of expatriate quota positions. For every foreign employee, an employer must hire and train at least two Nigerians to understudy the foreign employee.

**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 million 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. The Nigeria Visa Policy 2020 also provides for a category of visa for highly skilled immigrants. Nevertheless, no special exemption applies to them, and 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. An 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


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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.

**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 in the current administration. However, the Nigeria Visa Policy 2020 makes provision for this category of visa. The visa will allow the holder to work and reside provided all requirements are met.

## 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 none.

## 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 for this. The Temporary Work Permit (TWP) applies to temporary workers on projects for up to 60 days. The Nigeria Visa Policy 2020 provides for TWPs valid for six months and two years.

**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?**

No, there is none.

**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 days.

Once in Nigeria, the employer must, within 90 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 visa fees, which are determined by the applicant's nationality, and 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 does not 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 days.

Once in Nigeria, the employer must, within 90 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 Immigration 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 days.

**9.6 How long does the process of obtaining the work permit and initial visa for a new hire 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 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 visa fees, which are determined by the applicant's nationality, and 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 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 it 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. It is important to note that the Nigeria Visa Policy 2020 has been released and it makes provision for the minimum capital threshold. The nation awaits further guidelines for the implementation of the policy.

### 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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# 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). After the COVID-19 episode finishes, taking into consideration the temporary measures adopted in the country in this regard, and the future regarding the management of immigration procedures and mandatory immigration steps, new requirements should be established to comply with them. Therefore, an update of this text shall be required to match the changes to the rules on immigration legislation which have been issued and the new rules to be enacted.
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 concerning 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 from the requirement 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, on the basis of 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 non-resident foreigner 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 is 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 the 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 a Worker immigration 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 that 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.
- Non-compliance with the limiting percentages of the hiring of foreign nationals, as established by law.


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**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 the 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 2020, the UIT is PEN 4,300 – equivalent to approximately USD 1,285). Thus, e.g., in cases where one to 10 foreign employees are involved, the penalty could be UIT 2.63 as a minimum (equivalent to approximately USD 3,375), and in cases of 1,000 or more foreign employees, it could reach UIT 52.53 as a maximum (equivalent to approximately USD 67,425), according to Article 1° of the Supreme Decree N° 008-2020-TR.

Likewise, the amount of the penalty should be less significant in the 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 Worker immigration 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 circumstance through a corresponding guideline.

As is stated in Section 28, numeral 28.2 of the Law of MIGRACIONES, the immigration status is the condition granted by the Peruvian State to the foreigner in connection to his/her personal situation or for the activities that the foreigner will perform in Peruvian territory.

Additionally, numeral 28.4 establishes that the immigration statuses authorise for the exercise of a specific activity and others that are not incompatible and are in accordance with the regulations of the cited Act.

There are also infractions involving the imposition of fines on foreign persons. Foreigners are liable to a fine if they incur the following infringement:

- For carrying out activities that do not correspond to the immigration status, Visa or assigned permission, or to denaturalise it. The applicable fine will be equivalent to 10% of the Tax Unit (UIT) (approximately USD 130).

## 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 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 must 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 legislation.

### 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.


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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?**

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.

**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?**

After the COVID-19 episode finishes, taking into account this pandemic and its effects worldwide regarding the management of immigration procedures and mandatory immigration steps, in the near future, sanitary protocols shall be implemented.

At present, undergoing medical examinations prior to admission into Peru is not currently mandatory for foreign workers, in general terms. However, this may be necessary depending on the working area within Peru where the foreign worker will render services effectively (e.g. mining or oil & gas companies, etc., or 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 within 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 the 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 149,250 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. The foreigner is not included in the quotas of the payroll established in the Legislative Decree N° 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 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.


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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, 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 in 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, and includes foreigners from student exchanges, pre-professional or professional, cultural practices, and other training modalities recognised by Peru).

Neither the temporary nor Resident Training immigration status allows foreigners to work or to perform remunerated or lucrative activities, barring the previous emission of an Extraordinary Work Permit granted by MIGRACIONES.

### 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 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?

Based on 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 a 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?

Regarding workers under a subordinated working relationship with a local company, applying either for a Temporary Worker status (granted for 183 days extendable for the same period, although, less than a year) or a 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. An online website for this stage should be implemented soon. The second stage of the Visa process may take up to 60 working days, according to Peruvian immigration rules, if an in-country proceeding post-arrival 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 when the proceeding is initiated with MIGRACIONES and while it is ongoing, it will take up to 30 working days for the approval.

### 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


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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 it is renewable.

### 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 for the change of their status to permanent residency after three years of residing in Peru, consecutively.

### 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 approx.).
- Interpol Fee: PEN 80.50 (USD 24 approx.) in the case of Resident Workers.
- Employment Contract Approval Government Fee: PEN 21.60 (USD 6.50).

## 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 the 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 the answer to question 9.2.

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

This Visa process has two phases:

1. Labour phase: 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 phase: (i) gathering all the documentation required, such as notarial legalisation of the approved employment contract, payment of government rates, etc; (ii) coordination with the foreign employee for starting the submission of the dossier before MIGRACIONES for the approval of the visa; and (iii) registration of the foreign employee on the local company's payroll once he has obtained the work permit 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 the appointment at INTERPOL's offices and at MIGRACIONES' offices as well for the corresponding check of his/her background, and to go through the necessary steps with the immigration authority (taking a photo, registration at RIM and obtainment of the foreign card, in the case of residents).

### 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 the 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.


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### 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.

## 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 for 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 a person who is a member of a "*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 nuclear 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 them to carry out lucrative activities of subordinate form or independently.

### 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 consecutive years in Peru with a valid Visa.


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### 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?

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 for which they were hired 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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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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# Poland



Raczkowski

Michał Kacprzyk

## 1 Introduction

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

The main sources of immigration law in Poland are:

- The Act on Foreigners: sets out the rules and conditions for foreigners' entry into, stay in and exit from the territory of Poland, as well as the procedure and the authorities competent in these matters.
- The Act on employment promotion and labour market institutions: the act, *inter alia*, regulates the issue of the possibility to perform work by foreigners in Poland, determines the rules for obtaining relevant work permits for foreigners and specifies the responsibility of entities employing foreigners illegally.

The main acts which determine legal relations between foreigners and employers in Poland are the Labour Code and the Civil Code.

An additional source of immigration law in Poland is the Act on special arrangements for the prevention, counteraction and combating of COVID-19, other infectious diseases and the resulting emergencies. The Act refers to essential matters related to foreigners' residence and employment in the territory of Poland during the COVID-19 pandemic.

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

The authorities which administer the immigration system are:

- The competent *Voivode*: the first instance in the procedures concerning the issuance of the relevant work permits and residence permits.
- The Head of the Office for Foreigners: the second instance in the procedures concerning the issuance of the relevant work permits and residence permits.
- The competent District Governor: responsible for the issuance of seasonal work permits and the registration of the declarations on entrusting work which – when registered – entitle citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine to work in Poland for six months during 12 consecutive months without the need to obtain a work permit.
- Consuls: obtaining 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?

Poland is a Member State of the European Union (EU) in which one of the basic principles is the free movement of people within the Union.

Furthermore, Poland is a party to the Schengen Agreement under which border controls between the Schengen States have been abolished. As a consequence of the Visa Code in force in the EU Member States, citizens of the countries belonging to the Schengen Area as well as third-country foreigners who enter the Area with a relevant visa can benefit from the Schengen Agreement.

## 2 Business Visitors

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

Poland, as a Member State of the EU, applies the provision of the Regulation (EU) 2018/1806 of the European Parliament and the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempted from that requirement.

The countries whose nationals are exempted from the requirement are indicated in the annex II of the Regulation.

Poland is also a party of bilateral agreements on visa waiver programmes concluded before Poland's accession to the EU with the following countries: Argentina; Chile; Costa Rica; Honduras; Israel; Japan; Malaysia; Mexico; Nicaragua; Panama; Singapore; South Korea; Uruguay; and USA.

The agreements set out more beneficial rules for the countries' nationals to stay in Poland.

Additionally, the foreigners who hold a visa or a residence permit issued by another Member State are allowed to enter Poland for a certain period on the basis of the document.

Considering the state of epidemic being in force in Poland, related to the COVID-19 pandemic, the possibility to enter Poland has been limited to foreigners on professional business or with family relations in Poland. Every person entering Poland is obliged to undergo 14-day quarantine.

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

The period depends on the basis of the visitor's stay in Poland:



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- A visa or a residence permit issued by the Polish authorities: the period for which the document was issued.
- A national visa (type "D") or a residence permit issued by another Schengen State: a maximum of 90 days in any 180-day period during the validity of the document (period of stay in other Schengen States, excluding the country issuing the relevant document, is taken under consideration).
- A Schengen visa (type "C") issued by another Schengen State: a maximum of 90 days' stay during the validity of the document (period of stay in other Schengen States, including the country issuing the document, is taken under consideration).
- Visa waiver programme: in general the period is 90 days in any 180-day period. Nationals of the countries listed in question 2.1 are allowed to enter Poland again for the next 90 days if they had an interruption of at least one day in their stay in Poland.

In the face of the COVID-19 pandemic, Polish authorities have decided to extend the validity of the indicated basis of visitors' stay in Poland until the 30th day following the date of the recall of the state of epidemic emergency or state of epidemic, depending on which will be the last in force. The Act concerns only the basis of a foreigner's stay in Poland which expires during the period of the state of epidemic emergency or state of epidemic. In any other case, a foreigner's residence in Poland without a valid basis of stay is considered illegal.

### 2.3 What activities are business visitors able to undertake?

Nationals of the EU, Iceland, Norway, Liechtenstein and Switzerland are entitled to undertake any business activities like Polish citizens.

Citizens of third countries who enter Poland as business visitors can undertake only such activities which are not a form of a paid activity, e.g. participation in training or business events and meetings with clients. If the visitor wants to undertake a paid activity, in general a work permit is required.

It is also possible for a third-country citizen to visit Poland in order to establish a limited partnership, limited joint-stock partnership, joint stock company or limited liability company or to join or leave such partnerships as well as buy or sell shares.

### 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 some special categories which enable business visitors to undertake work or provide services for a temporary period. A work permit is not required in the case of:

- General partners of limited partnerships or limited joint-stock partnerships, board members and proxies of companies based in Poland if their stay in Poland does not exceed six months during 12 consecutive months.
- Foreign nationals providing training, taking part in professional internships, performing advisory or supervisory functions or requiring specific qualifications and skills in programmes implemented under the activities of the EU or other international aid programmes.
- Foreigners giving, up to 30 days per calendar year, occasional lectures, speeches or presentations of particular scientific or artistic value.
- Posted workers – foreign nationals, having a right to reside in a Member State and being employed by an entity established in that Member State, posted to Poland for a temporary period.
- Foreign nationals using short-term or long-term mobility within intra-corporate transfer (ICT).

The indicated visitor categories are exempted from the obligation of having a work permit in Poland, but are still obliged to hold a legal basis of entry and stay in Poland, e.g. visa or a residence permit.

### 2.5 Can business visitors receive short-term training?

Yes, business visitors 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?

There are two main authorities who control compliance of foreign nationals' employment in Poland:

- National Labour Inspection – controls compliance with employment regulations.
- Border guard – controls compliance with immigration regulations.

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

There are no specific rules on the prevention of illegal working. However, penalties provided for employers or foreigners in the case of illegal working may indirectly prevent law infringement.

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

Entities found to be employing foreign nationals illegally are liable to a fine, a freedom restriction or an imprisonment for up to three years in some specific cases.

Whereby, a foreign national worker is considered illegal not only in the case of a lack of a relevant work permit, but also when a foreigner does not have a basis of legal residence in Poland.

An entity entrusting work to a foreigner does so in accordance with the law if the foreigner has both – legal basis of work and legal basis of residence in Poland.

## 4 Corporate Immigration – General

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

There is no such registration system in Poland.

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

Employers who hire foreign nationals are obliged to:

- Verify a future employee's basis of legal residence in Poland and right to perform work and keep copies of documents confirming these entitlements during the employment period.


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- Conclude a written contract with a foreign national.
- Fulfil information duties towards competent authorities, e.g. providing information about starting or terminating work by a foreigner.

**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 in Poland.

**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 in Poland.

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

The authorities which verify immigration compliance take under their consideration the compliance of the employment with the foreigner's permits, including the period for which the work contract has been concluded and the remuneration.

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

There is no such list. However, Polish authorities run a list of occupations for which a market research test is not required to obtain a work permit. The list includes some skilled occupations, for example, industrial and production engineer, application developer, database designer and administrator.

**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 two kinds of solution that respond to the short supply of some occupations.

First of all, Polish authorities run a list of occupations for which a market research test is not required to obtain a work permit. The list is being updated due to labour market demand.

Furthermore, in the case of the agriculture, forestry, hunting and fishing, or accommodation and food services sectors, it is possible to obtain a seasonal work permit for foreign employees. The permission is being issued in a simplified procedure.

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

Currently there are no annual quotas, but Polish authorities can, for example, limit the number of issued work permits or temporary residence permits issued for the purpose of work.

**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 limitations.

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

Polish language proficiency is generally not required to obtain permits for foreigners. The only exemption is the EU long-term resident's residence permit in the case of which a foreigner must know Polish at least at B1 level to receive the permit.

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

Every employee, including foreign nationals, hired on the basis of the Labour Code is obliged to undergo medical examinations prior to admission to 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 general, every foreign national who visits or resides in Poland is obliged to have medical insurance.

In the case that a foreign national works in Poland on the basis of an employment contract or any other type of contract, the person is covered with public health insurance.

When a foreign national is not entitled to public health insurance, e.g. in the case of a management board member, the person is required to have private medical insurance.

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

In the case of a change of employers, the employee is required to obtain a new work permit unless the provision of services is regulated by way of outsourcing.

## 5 Highly Skilled Visas

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

There is no separate category of visas for highly skilled individuals. However, foreign nationals can be granted a temporary residence permit for a highly qualified employee (EU Blue Card), which gives an employee certain flexibility, e.g. to change an employer or a job 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?**

A foreigner willing to incorporate a company (and remain a shareholder) does not require a work permit. However, a work permit is required in the case of foreigners who hold corporate functions in a company.

Foreigners can obtain a temporary residence permit for the purpose of running a business activity in the form of a company in Poland.


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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?

There are types of temporary residence permits for students, research scientists, internships and volunteers.

Additionally it is possible for the following categories of foreigners to work in Poland without obtaining a work permit:

- students directed by organisations that are members of international student associations to professional traineeships;
- students who work in cooperation with public employment services and their foreign partners; and
- participants of cultural or educational exchange programmes, humanitarian or development aid programmes or student holiday work programmes organised in cooperation with a labour minister.

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

There are two types of a short-term temporary work permits:

- a seasonal work permit – can be issued for a maximum of nine months per calendar year and only if the employment is connected with one of the following sectors: agriculture; forestry; hunting and fishing; or accommodation and food services; and
- a declaration on entrusting work to a foreigner – can be registered for six months during 12 consecutive months; it is not limited to certain sectors, but this type of permit is applicable only to citizens of the following countries: Armenia; Belarus; Georgia; Moldova; Russia; and Ukraine.

## 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 matter of inter-company transfers within international groups of companies has been regulated by the EU in the Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The provisions of the Directive have been implemented in the national legal system.

According to the regulation, a foreigner can:

- Use a short-term and a long-term mobility of a manager, specialist or trainee, under the intra-corporate transfer.
- Receive a temporary residence permit for the purpose of work under the 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?

A group of companies is defined as a structure where one company can determine the activities of the other, subject to more detailed regulation stipulated in the Code of Commercial Companies.

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

There is no such category as a work permit for an intra-company group employee in Poland, but there is a residence permit due to such circumstances.

The employer (host company) has to be a branch or representative of the parent employer established outside the EU who employs the transferred employee or belongs to the same group of companies as the parent employer. The relation has to be proven by relevant documents during the process of granting the permit.

To obtain the permit, it is also essential that the transferred employee:

- stays outside the EU when the employer applies for the permit; and
- has been employed by the parent employer for at least 12 months as a manager or specialist or six months as an intern.

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

The host company applies for a residence permit for an intra-company group employee by submitting an application to the competent *Voivode*. The authority should decide on obtaining the permit within 90 days.

After receiving the authority's decision, the host company sends the document to the transferred employee so he can apply for a relevant visa in order to enter Poland.

When arriving in Poland, the transferred employee can apply for a plastic residence card with the annotation "ICT".

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

Please see question 8.4.

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

The residence permit should be issued in 90 days from the submission of the application.

The visa should be granted in seven days from the submission 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?

In the case of:

- A manager or a specialist – up to three years.
- An intern – up to one year.

It is possible to extend the permit by submitting a relevant application at the latest on the last day of validity of the employee's permit. The same periods of validity as indicated above apply in the case of the extended permits.

Considering the state of epidemic in Poland, introduced in connection with the COVID-19 pandemic, a residence permit of an intra-company group employee who stays in Poland is extended by law until the 30th day following the date of the


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recall of the state of epidemic emergency or state of epidemic, depending on which will be the last in force. It only concerns the residence permits that expire during the state of epidemic.

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

They can apply for permanent residence on the same basis as other foreigners' categories.

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

- Visa: about 80 EUR.
- Temporary residence permit for an intra-company group employee: 440 PLN plus 50 PLN for issuing a plastic residence card.

## 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 six types of work permits which can be issued, mostly depending on the legal relation between the employee and employer.

The main work permit category used for new hires is the work permit "type A", obtained for a foreign national who will perform work in the territory of Poland on the basis of an agreement with an entity whose registered office or place of residence, or a branch, plant or other form of organised activity, is located in the territory of Poland.

### 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 general labour market testing is required before a work permit can be issued to new hires.

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

The test is not required in the case of:

- Occupations included in the list of occupations for which a market research test is not required to obtain a work permit.
- Members of board or proxies of companies incorporated in Poland.
- Seconded employees.
- Foreigners authorised to represent a foreign company in its branch or representative office located in the territory of the Republic of Poland.
- Foreigners who, in the period of three years preceding the submission of an application for a work permit, completed studies at a university based in Poland or another state of the European Economic Area or Switzerland or are studying at a postgraduate school run by an entity based in Poland.
- Foreigners who legally stayed in Poland for at least three years before the submission of an application for a work permit.

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

The process of obtaining a work permit for a new hire begins with a labour market test – if it is required. When the test is done, an employer can submit an application for a work permit to the competent authority. The permit is issued in two copies, one for the employer and one for the employee.

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

After receiving the work permit document from the employer, a foreign employee can apply for a Polish national visa (type "D") for the purpose of work in a Polish Consulate in the country of the applicant's residence. The visa entitles him to enter and to stay in Poland during the employment.

Holding a visa for the purpose of work, an employee can additionally apply for a temporary residence permit in connection with employment when arriving to Poland.

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

The work permit and visa processes together should take about two to four months, depending on the traffic.

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

Visas for the purpose of work are issued for a period of up to one year, regardless of the applicant's status. They can be extended only in the case of emergencies that prevent a foreigner from leaving Poland.

However, a foreign national, who stays in Poland, can apply for a temporary residence permit for the purpose of work during the validity of a previously obtained visa. Such a permit would allow the foreigner not only to reside in Poland, but also to work under the conditions included in the permit.

A temporary residence permit can be issued for a period of up to three years and can be extended for as long as the foreigner's purpose of stay in Poland remains valid.

Considering the state of epidemic in Poland, introduced in connection with the COVID-19 pandemic, a visa for the purpose of work or a temporary residence permit for the purpose of work residence of a foreigner who stays in Poland is extended by law until the 30th day following the date of the recall of the state of epidemic emergency or state of epidemic, depending on which will be the last in force. It only concerns such visas and temporary residence permits that expire during the state of epidemic.

The same rule applies to work permits which would expire during the state of epidemic emergency or state of epidemic.

The provisions are intended to enable foreigners to continue their legal residence and employment in the territory of Poland during the pandemic.

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

Testing is not required if there is no change in the work conditions under which the previous work permit or a temporary residence permit for the purpose of work was issued.


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

Applying for permanent residence is not possible for new hires.

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

- Visa: about 80 EUR.
- Temporary residence permit for the purpose of work: 440 PLN plus 50 PLN for issuing a plastic residence card.

## 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 permit holders, when applying for a relevant visa, declare a specific purpose of stay in Poland. It is necessary that they fulfil that declared purpose.

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

Foreigners whose stay in Poland exceeds 30 days are obliged to register with municipal authorities.

Registration with the tax authority and social security is done by an employer.

## 11 Dependants

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

The persons qualified as dependants are a spouse and a minor child and also a minor child of the worker's spouse.

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

Generally speaking, no. Such partners would not be automatically recognised as family members. However, if they proved that they have a family life together, they could apply for a special temporary residence permit issued due to circumstances different from those of any other type of temporary residence permit.

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

Spouses have access to the labour market when admitted as dependants. Partners do not qualify as dependants; therefore, they are required to obtain a work permit.

### 11.4 Do children have access to the labour market?

Children admitted as dependants have access to the labour market, subject to detailed regulation stipulated in the Labour Code.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

There are two types of permanent residence in Poland: the permanent residence permit; and the EU long-term resident's residence permit.

The permanent residence permit can be obtained by foreigners who are family members of Polish citizens, have Polish roots or have stayed in Poland in connection with the protection granted to them.

The EU long-term resident's residence permit is accessible for all foreign nationals who have legally stayed in Poland for at least five years, continue to have a stable and regular source of income and have a proven proficiency in Polish at least at B1 level.

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

It is possible, but permanent residence is a separate immigration category. Therefore, there is a separate set of requirements which have to be met by the foreigner who applies for such a permit.

A foreign national who meets the conditions to obtain a permanent residence permit should submit a relevant application first.

In the case of the EU long-term resident's residence permit, it is irrelevant if the applicant stayed in Poland for the five years before applying for the permit on the basis of a national visa due to work or a temporary residence permit due to work.

In the case of the permanent residence permit, the basis of stay which a foreigner should have held before applying for the permit depends on the circumstances under which the application is submitted.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

The main bars to admission for work are:

- Non-compliance with the requirements to obtain a visa, a work permit or a residence permit.
- An employer's criminal conviction in connection with entrusting illegal work to a foreigner.

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

Certain convictions may be an obstacle to obtaining a work permit, e.g.: reconviction for entrusting illegal work to a foreigner within two years from the first conviction; conviction for entrusting work to a foreigner who does not have a legal basis of stay in Poland; and conviction for document forgery.


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# Portugal

SRS Advogados

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, Law no. 37/2006, of 9th August 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 Portuguese Labour Law and with the Immigration Law, which includes executing inspections in companies.


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

Although there are no specific rules on the prevention of illegal working, employers need to execute the following procedures: confirming that the employee holds a valid work permit; and notifying the authorities in the case of illegal stay.

### 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?

There will be no quotas in 2020.

### 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.

### 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.


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## 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 €1,320 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 €1,752 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 (intra-corporate 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, hold the majority of the share capital; control the majority of the votes; are 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.
(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 the case that the individual is not exempted from obtaining a visa to enter into Portugal.


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In that case, the visa request must be filed at the Portuguese Consulate or through the E-Visa platform 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 or through the E-Visa platform (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 in the case of managers or specialist workers 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.

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

The government charges are the following: an initial fee of €83.30 to analyse the application; and €194.20 for the issuance of the residence permit.

In the case that 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 categories 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 or 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 his 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 or through the E-Visa platform 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 the case that 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 €1,320 per month; and professional certificates/diplomas adequate for carrying out a high-skilled activity.

### 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. During 2020, holders of work visas will apply for a work permit valid for two years which can be renewed for periods of three years.


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### 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 the following 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 a border other than that of Portugal 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 work 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.

## 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 exceeding one year.


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# Russia

Irina Anyukhina

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## 1 Introduction

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

The main sources of migration law in Russia are the Constitution of the Russian Federation, the Federal Law "On the Procedure for Departure from the Russian Federation and Entry into the Russian Federation", the Federal Law "On the Legal Status of Foreign Nationals in the Russian Federation" and the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation".

The aforementioned laws establish basic rules; the detailed procedures are described in a number of regulations issued by the Russian Government.

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

All the issues relating to the Russian migration system are monitored and regulated by the Ministry of Internal Affairs, the Government of the Russian Federation, Border Services and the Federal Security Service.

### 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?

Russia is a part of the Eurasian Economic Union ('EAEU'). The EAEU Founding Treaty includes, among other forms of cooperation, the creation of a common border-free labour market and migration management in the context of the free movement of goods, services, employees in the common economic space. EAEU nationals are visa-free in Russia.

Russia also is a member of the Community of the Independent States ('CIS'). CIS members have the right to visa-free entry into Russia as well as to social and medical assistance on certain conditions in accordance with bilateral agreements in this area. CIS nationals must apply for a migration patent (instead of work permit).

Migration issues are one of the important areas in BRICS in which Russia is one of the members. Countries formulate coherent common policies regulating various types of legal labour migration flows and preventing illegal migration.

## 2 Business Visitors

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

Russia provides such a programme for citizens of CIS and Eurasian Economic Union countries, as well as some other countries according to international treaties with relevant countries.

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

Business visas can be single or multiple entry, and are valid from 30 days to one year (in exceptional cases up to five years) and cannot be extended. Business visas allow foreign nationals to stay in Russia for up to 90 days within every 180 days.

### 2.3 What activities are business visitors able to undertake?

The foreign nationals who enter Russia for business purposes, according to which they are granted business visas, can perform any activity strictly related to business visits (such as negotiations, meetings, etc.) that does not lead to receiving payment (e.g. represent the interests of a company, participation in seminars, conferences, conduct meetings, sign contracts). Business visas do not grant the right to work in Russia.

### 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 not allowed to undertake work or provide services. Foreign nationals who will work in Russia, rather than travel to Russia on business, need to have valid migration permissions allowing work.

### 2.5 Can business visitors receive short-term training?

In order to receive training, as well as short-term education, in Russia, foreign nationals should have the relevant type of visa. The purpose of a business visa does not permit a foreign national to receive education.


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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?

State control is carried out by the Ministry of Internal Affairs in the form of inspections. There is an approved checklist, which is used to verify compliance with the requirements of the Russian migration legislation.

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

The key measure is that foreign employees can legally work in the Russian Federation only if they have migration documents. Besides, Russian law introduces obligations for inviting parties, aimed at preventing the violation of Russian immigration laws by foreign nationals. The inviting party shall take measures to ensure the timely departure of an invited individual from Russia upon expiry of his/her stay (as per the issued visa).

Moreover, according to Russian law, the inviting party must also take measures to ensure that the invited person complies with the declared purpose of his/her entry into Russia.

The employer violating required obligations may be subject to administrative liability. If foreign nationals violate Russian migration rules while staying in Russia, they may be subject to administrative liability and even be deported.

In addition, criminal liability is provided for fictitious registration at the place of stay in the Russian Federation.

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

If a foreign national works without permissive documents, both the company and the foreign employee may be subject to administrative fines (valid as of May 2020):

- for individuals: from RUB 2,000 (approx. EUR 25) to RUB 5,000 (approx. EUR 62);
- for officers of companies (e.g., a CEO): from RUB 25,000 (approx. EUR 313) to RUB 50,000 (approx. EUR 626); and
- for companies: from RUB 250,000 (approx. EUR 3,131) to RUB 800,000 (approx. EUR 10,000) (to RUB 1 million (approx. EUR 12,525) in Moscow, St. Petersburg and respective regions).

In addition, the company's activity can be suspended for up to 90 days and it can be forbidden from hiring foreign nationals for a certain period.

## 4 Corporate Immigration – General

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

Yes, employers are required to obtain permission from the State Employment Centre to hire foreign employees. An application must be also made to the Ministry of Internal Affairs in order to obtain permission.

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

Under Russian law, employers hiring foreign nationals must notify the migration authorities within three days of concluding and terminating an employment agreement. Employers hiring highly qualified foreign national specialists ('HQS') must quarterly notify the migration authorities of the fulfillment of the obligation to pay a salary to HQS within the established minimum.

The companies which obtain/issue the invitation letters for work or business visas for foreign nationals shall track the compliance of the purposes of arrival/period of stay in Russia of these foreign nationals, as well as ensure their timely departure from Russia, etc.

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

Under Russian law, there are no obligations for the employer to provide training for local employees, and there is no penalty for the failure 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?

There is no specific regulation of such cases if the employer hires foreign nationals.

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

The State Labour Inspectorate and the Ministry of Foreign Affairs carry out regular labour law and immigration compliance checks. Currently, there is a tendency towards tightening control over compliance with migration legislation.

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

There is a list of professions (positions) of foreign nationals – qualified specialists, to whom quotas for issuing work permits do not apply.

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

A work permit can only be secured within the quotas that are established by the Russian Government each year. However, the Ministry of Labour and Social Protection of Russia is entitled to adopt a list of those professions, positions and qualifications that are given a quota exemption in a given year. These professions, positions and qualifications may vary from year to year, or may not be adopted at all.

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

The Government of the Russian Federation is entitled to establish


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annually the permissible quotas of foreign national employees employed by companies in various sectors of the economy. Exception is made for highly qualified foreign national specialists.

**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?**

An employer is required to obtain permission to hire foreign employees. A work permit can only be secured within the quotas that are established by the Russian Government. Exception is made for highly qualified foreign national specialists.

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

A foreign national must confirm his/her knowledge of the Russian language, the history of Russia, and the basics of Russian legislation. A foreign national must pass the examinations and provide relevant certificates. Exception is made for highly qualified foreign national specialists.

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

As a rule, in order to obtain a work permit, foreign nationals should undergo a medical examination. Exception is made for highly qualified foreign national specialists.

**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?**

Each foreign employee must have a voluntary medical insurance policy valid in the Russian Federation and a certificate confirming that he/she does not have HIV. Employers shall pay social insurance contributions with respect to those foreign employees who have a long-term or temporary residence permit in Russia.

There is also obligatory accident insurance in Russia. All individuals (including foreign nationals) working under employment agreements are subject to this insurance irrespective of their immigration status. The insurance covers cases of temporary or permanent injury to the health of employees (including death) that occur within the course of performing employment duties (as a result of a professional illness or work-related accident).

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

In accordance with Russian law, a foreigner can work in Russia only in that company and in that position that are reflected in his work permit and work visa.

## 5 Highly Skilled Visas

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

There is a category of foreign nationals who are HQS. The main criteria for engaging a foreign employee as a HQS are that he/she has the experience, skills, and achievements in the sphere in which he/she is to be employed. In addition, the salary should not be less than RUB 167,000 (approx. EUR 2,200) per month under the contract.

## 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 temporary residence permit for foreign nationals making investments in the Russian Federation in the amount established by the Government of the Russian Federation may be issued without taking into account the established quota. According to Russian law, a foreign national with a temporary residence permit has the right to work and no additional documents are required.

## 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, Russian law stipulates the specific immigration regime for some categories of temporary workers:

- Currently, foreign students can be hired without the need of a work permit if (i) they work in their universities or in the entities established by their universities, or (ii) work during their holidays.
- However, as of August 5, 2020, employers may hire without a work permit foreign students who study full-time the main professional programme in professional educational organisations and universities with state accreditation. The foreign students will be able to work in their free time.
- Foreign nationals who arrived in Russia on a guest visit or to carry out scientific or cultural relations and contacts and who are also engaged by state cultural and art organisations to carry out creative, educational, research, etc. activities can work without a work permit for a period not exceeding 30 days.
- There are different Russian visas available for volunteering and training purposes. The humanitarian visa can be used for charity trips or the delivery of humanitarian aid, as well as for visits made for cultural, political, scientific or sporting purposes. The business visa can be used for both official or private business purposes, including attending training or seminars or unpaid work for private organisations.

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

No, there are not any sector-specific temporary work permits.

However, Russian migration law stipulates different types of visas depending on the purpose and length of visit.


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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. In order to work in Russia, foreign nationals should have valid work permissions.

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

Only officially registered representative/branch offices of foreign companies or their subsidiaries in Russia can involve foreign nationals in their work.

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

The Russian registered legal entities (members of the international group) can hire seconded employees according to the general procedure.

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

Please 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?

Please see questions 8.2 and 8.3 above.

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

Please see questions 8.2 and 8.3 above.

### 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 see questions 8.2 and 8.3 above.

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

Please see questions 8.2 and 8.3 above.

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

Please see questions 8.2 and 8.3 above.

## 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 immigration category depends on certain initial conditions such as: whether a foreigner comes from a visa-free or from a visa-required country; whether the job role falls within the highly qualified specialist category; and whether a foreigner can confirm knowledge of the Russian language, knowledge of the history of Russia and the basics of the legislation of the Russian Federation. Hence, employers may apply for highly qualified foreign national specialist work permits, regular work permits, or migration patents when hiring new foreign employees.

### 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, no, except for certain fields of industries where the hiring of foreign nationals is limited.

### 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, and 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?

There are two main procedures for obtaining the work visa and work permit for new hires from visa-required countries, namely: (i) the standard procedure; and (ii) the simplified procedure for the HQS.

**The standard procedure** is very formalistic and multistage. Foreign nationals applying for a work permit under the standard procedure shall confirm their knowledge of Russian language, the history of Russia and the basics of Russian laws by passing a respective test.

**The simplified procedure** is applicable to foreign HQS (a foreign national with experience, skills and achievements in a particular area). However, the main qualification requirement to use this procedure is an amount of salary that should not be less than RUB 167,000 (approx. EUR 2,200) per month under the contract.

The process is as follows:

- Preparation and signing of employment/service contract with the foreign national.
- Registration of the company with the migration authorities to obtain an invitation letter for a work visa.
- Preparation and submission of the required set of documents to obtain the work permit and the invitation letter for a work visa for the foreign national.
- Obtaining a work visa by the foreign national in the Russian Consulate in the country of his/her permanent residence.
- Obtaining a work permit in person by the foreign national after his/her arrival in Russia.


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- Migration registration of the foreign national (registration at the address of stay in Russia).
- Preparation and submission of the notification on the hiring of a foreign employee (conclusion of the employment contract).

Additional steps apply for the standard procedure, such as obtaining permission for the company to hire foreign nationals within the quota.

In order to hire a foreign national from a visa-free country, it is necessary to confirm that the foreign national has a valid migration patent. The key difference between a work permit and a migration patent if that the latter should be obtained by the foreign national personally.

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

Please see 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 standard procedure takes three to four months to complete. The simplified procedure takes one to two months to complete.

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

The work permit and the work visa issued under the standard procedure are valid for up to one year and may be extended.

The work permit issued for HQS is valid for up to three years. The work visa for HQS is issued for the term of validity of the work permit, i.e. for a maximum of three years, and such work visa is multiple entry from the date of issuance. Both documents may be extended.

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

This is not applicable in Russia.

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

Yes, subject to the procedure described below.

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

The state fees under the standard procedure for obtaining a set of migration work permissions are RUB 10,000 (approx. EUR 125) for the company's permission to hire foreign nationals, RUB 3,500 (approx. EUR 43) for the work permit, RUB 800 (approx. EUR 10) for the work invitation and RUB 1,600 (approx. EUR 20) for the work visa. Additional fees are subject to the internal rules of the relevant Russian Consulate in a foreign state.

The state fees under the simplified procedure for obtaining a set of migration work permissions are RUB 3,500 (approx. EUR 43) for the work permit, RUB 800 (approx. EUR 10) for the work invitation and RUB 1,600 (approx. EUR 20) for the work visa. Additional fees are subject to the internal rules of the relevant Russian Consulate in a foreign state.

The state fees for migration patents depend on the region where they are obtained. For instance, in Moscow, the monthly state fee for the migration patent payable by a foreign national is RUB 5,350 (approx. EUR 65) per month. Please note that the state fees may be amended.

## 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 period of temporary stay of foreigners in the Russian Federation cannot exceed 90 days in total during each period of 180 days. Moreover, the continuous period of their temporary stay in the Russian Federation cannot be more than 90 days. Exceptions are foreigners who have valid migration work permissions (work permits and migration patents). Such foreigners may stay in Russia for the duration of the relevant migration permits.

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

Yes. The work permit holders, as well as any other foreign nationals visiting Russia, are required to register with the Ministry of Internal Affairs and confirm their place of residence in Russia.

The general term for registration is seven working days upon arrival at the place of residence in Russia. The maximum term for registration is 90 days applicable to the HQS and their family members.

Foreigners may not be registered at the address of their employing company. The only exception to this rule applies where a foreigner actually resides at the registered office address of the employer. Now only landlords of the premises where foreigners actually live are entitled to confirm the registration for them.

## 11 Dependants

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

According to Russian law, accompanying members of the HQS's family include spouses, children and their spouses, parents and their spouses, grandchildren and grandparents.

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

No, they do not qualify as family members.

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

The HQS's family members can study and work (if they have a work permit) in Russia.

### 11.4 Do children have access to the labour market?

The general principle is that is it prohibited to employ or allow foreign nationals under the age of 18 to work.


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## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

As a general rule, before obtaining a permanent residence permit ('RPR'), a foreign national must live in the Russian Federation for at least one year on the basis of a temporary residence permit ('TPR'). In order to apply for RPR, a foreign national must confirm knowledge of the Russian language, knowledge of the history of Russia and the basics of the legislation of the Russian Federation, the existence of a legitimate source of livelihood within the subsistence level (for example, an income statement), as well as the fact that the applicant does not have HIV infection, etc.

However, there are some foreign nationals who may obtain a permanent residence permit without a temporary residence permit. Such foreign nationals, in particular, include those who:

- were born in the Russian Soviet Federated Socialist Republic and held citizenship of the USSR;
- are recognised as a native speaker of the Russian language;
- successfully graduated from a Russian state-accredited higher education programme in full-time education and received a certificate of education and qualification with honours; or
- have a work permit as a HQS or are the family members of such person, etc.

From November 1, 2019, the permanent residence permit in Russia is granted to foreign nationals for an indefinite term. However, the new amendments are not applied to HQS and members of their families.

A foreign national permanently residing in Russia is obliged to notify the Ministry of Internal Affairs within two months from the date of expiration of every next year from the date of obtaining of his/her residence permit about the fact that he/she still lives in Russia.

### 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 a work visa. An individual shall submit a relevant application in order to obtain at first a temporary residence permit and then the permanent residence permit. However, the time spent on the work visa can be taken into account in the determination of whether the applicant is eligible for a permanent residence permit. Foreign nationals must stay for at least a year on the temporary residence permit before they can secure a permanent residence permit.

## 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 Russian Federation will very likely be subject to a long-term ban from entering the Russian Federation and consequently from working in Russia. Other bars to admission to work also include not having the required migration permissions, as well as medical certificates. In some cases, the current capacity of the labour market can be considered as a bar to admission to work.

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

A certificate of criminal record is not a mandatory document required for obtaining a work visa; however, the authorities can deny a work visa to a person who has criminal convictions.


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ALRUD's Labour & Employment team is widely recognised as one of Russia's premier practices. Our team has unrivalled expertise in working on multi-jurisdictional matters, advising domestic and multinational corporations with workforces and investments spread across the world. One of our major strengths is our expertise in advising on contentious matters and our reputation means that we are the go-to firm for many clients seeking to resolve labour disputes arising in the Russian market. We defend their interests in complex, often cross-border disputes, conduct major workplace investigations and advise on a wide range of employee non-compliance issues. We also have a leading non-contentious practice, advising on incentive plans and remuneration structures, Russian migration law and expat employment contracts, tax planning and data protection. Another major element of our practice is supporting the labour and employment aspects of our clients' M&A activity.

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# Singapore

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## 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 Asia-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; a temporary passport issued by the United Arab Emirates; 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 of 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 of 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. 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.


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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?**

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 into the Skills Development Fund (SDF) and administrated by the Skills Future 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 into 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 shipyard, 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 have 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 quota numbers in force in relation to an S Pass for mid-level skilled foreigners is currently capped at 13% in the services sector (and with effect from 1 January 2021 will reduce to 10% of the total workforce), and 20% in other sectors, namely manufacturing, construction, process and marine shipyard (to be reduced to 18% on 1 January 2021, and to 15% on 1 January 2023 for the construction, process and marine shipyard 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 their Employment Pass holders.

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.


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**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 include 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 include 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 have passed since last holding the pass. The capacity of places is 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 include 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. The capacity of places is limited to 500 in Singapore at any one time.

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 MyCareersFuture.sg (formerly 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, 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.


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### 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 MyCareersFuture.sg 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 MyCareersFuture.sg 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 MyCareersFuture.sg advertising requirement where one of the following criteria is met:

- The company has fewer than 10 employees.
- The fixed monthly salary of the job position is S$20,000 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 MyCareersFuture.sg 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.

### 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,


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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 on MyCareersFuture.sg does not apply when applying to renew an existing pass for a foreign employee. However, where an Employment Pass holder decides to change jobs and apply for a new position with a different employer in Singapore, such a job would be subject to the MyCareersFuture.sg 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 Singapore. Applications for Permanent Residence


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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 likely result in an application rejection.


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**Ben Sheldrick** has been recognised for many years as a leading UK Immigration expert by the legal community and he is ranked for his expertise in Immigration Law by the main professional directories; *The Legal 500* and *Chambers and Partners*. He also appears in *Legal Experts* and he is rated by *Global Law Experts*. He is recognised in *Who's Who Legal* as a thought leader on Brexit. Ben has acted as immigration counsel to many household name multinational companies. He has experience in strategic immigration planning for large organisations and he assists international assignment departments and human resource managers in developing compliance and Legal Right to Work policies. Ben is Co-Editor of the *Corporate Immigration Review*, an annual publication that identifies trends in Global Immigration Law issues attracting contributions from leading immigration and nationality practitioners around the world. He is listed in *The Legal 500 Hall of Fame* for Immigration.

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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).

**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


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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.

**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.


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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?

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 Unit 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 Employment Service differ 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


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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.

### 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.


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## 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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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.
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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 main sources of immigration law are: 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. Some of its immigration and administrative functions are performed at the South African Diplomatic Missions around the world and are 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 presenting 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


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specified under the visa 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 tend 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 grounds 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 has 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/her behalf in connection with his/her business, 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 regulations have 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 workforce. 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 the 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


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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.

**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 healthcare 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 R5,000,000 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 the issuance of the visa.

Further undertakings regarding registration with various South African statutory 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


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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.

Similar requirements apply to a foreign national investing in a business which is already established in South Africa; however, considering that 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 for a maximum period of up to 12 months, provided that 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 the 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/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 an 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 the application. These documents are provided to the foreign national for inclusion in his/her ICT Work Visa application. Additional personal supporting 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 a late spouse, passport photographs, etc. These are annexed to the required government application


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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 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 or 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 though 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 Visa 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. Moreover, it will 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 R1,520, 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 is 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, translated by a sworn translator (if applicable) into one of the official languages of South Africa, is also recommended as part of a 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 a 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 accredited professional body, board or council and obtain 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 lead 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 it 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 four or more 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.

### 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


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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 R1,520, 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 specified employer in the specified occupation/capacity 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 that their relationship has existed for at least two years prior to the date of the 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 aforementioned 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 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.

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


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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 facilitating 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 skilled 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 that 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 that 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 a corporate immigration compliance specialist with a wealth of knowledge and experience in South African immigration legal compliance, advisory and process solutions gained through over 20 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

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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 are 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 authority that administers the corporate immigration system is 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 also has the following bilateral agreements: on the mobility of young people with Australia, Canada, Japan, Korea and New Zealand; on Labour Mobility with Colombia, the Dominican Republic, Ecuador, Mauritania, Morocco and Ukraine; on Cooperation on Immigration with Cape Verde, the Gambia, Guinea Bissau, Guinea Conakry, Mali and Niger; and on the issue of readmission of persons in an irregular situation with Algeria, Bulgaria, Estonia, the Former Yugoslav Republic of Macedonia, France, Guinea Bissau, Italy, Mauritania, Morocco, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia and Switzerland. 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. The VISAR 2020 programme that allows people to come to Spain to seek employment for the children and grandchildren of Spaniards of origin residing in Argentina is suspended. The programme "hiring in the foreign country in 2020" is also suspended until further notice.

## 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 or 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 for the category 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, and you can end it and not continue. However, if you continue with this professional project and find that 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. The law contemplates revisions without prior notice.

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

The rules on the prevention of illegal working are those contained in the law on foreigners and relating to them, as well as the Penal Code, in addition to the compliance policies 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.

A system for the programme "contracting in the foreign country 2020" is suspended on the occasion of COVID-19 until the end of the special alarm status in Spain and new indications on it are approved. This allowed the employer to include the interview in person by phone, but the selection is made in the country of origin. The entrepreneur will be responsible for the travel expenses, accommodation and stay, and the foreign employee has a return commitment, among other conditions. This only refers to the following countries: Colombia; Ecuador; Morocco; Mauritania; Ukraine; Dominican Republic; the Gambia; Guinea; Guinea Bissau; Cape Verde; Senegal; Mali; Niger; Mexico; El Salvador; the Philippines; Honduras; Paraguay; and Argentina. In terms of contracting for agriculture, temporary regulations have been introduced to facilitate the recruitment of Spaniards and foreigners and thus also satisfy the demand for agricultural products during the state of alarm in Spain. Regulations have also been approved to facilitate the hiring of foreign doctors and nurses who are living in Spain.

### 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 programmes with Social Security for workers to participate in refresher courses in subjects such as risk prevention, etc. In the case of hiring in the country of origin, the employer can train workers 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?

Employers are only required to pay 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. The authorities verify if the employers 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 demonstrating skills that are necessary for their company.

While the state of alarm is in force in Spain, the Ministry of Employment publishes the essential activities for which workers are allowed to leave home and travel to their jobs as long as they cannot carry out their work electronically from home. The essential activities, among others, are the following: "Those of financial services companies, including banking, insurance and investment, payment infrastructures and financial markets; those of telecommunications and audiovisual companies and essential computer services, as well as those networks and facilities that support them and the sectors or subsectors necessary


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for their proper functioning; those of health centers, services and establishments, as well as people who care for the elderly, minors, dependents or people with disabilities, and people who work in companies, R&D and biotechnology centers linked to COVID-19, and the veterinarian centers..."

**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. Individuals exempted from obtaining a work permit are as follows:

- 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.
- 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.

During the state of alarm caused by COVID-19, temporary regulations have been approved to facilitate the hiring of Spanish and foreign workers to satisfy the needs of agriculture.

**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, the foreigner 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. In some cases, the individual is only required to answer some questions from the Human Resources Department of the company that hires him.

**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. Employees 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. The category 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, the category is called an "intra-company transfer". For internships, there is a specific "internships" category, and it requires 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.


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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?

Yes. The category 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 Spanish 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?

The employer must provide an employment contract, salary and health insurance to the employee, among other details.

### 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?

The process is the same as for other types of visas. The only difference 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 for the work permit. If it takes longer to resolve, it is considered to be approved. In addition, it takes 10 days to obtain the visa. However, 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 an "*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?

Exemptions include 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?

Employers must 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 must be completed by the company. Once obtained, the employee should fill in 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.


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### 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, the fee is 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.

## 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 public services.

### 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 following qualify as dependents: 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.

During the state of alarm caused by COVID-19, entry to Spain is not allowed except for European citizens residing in Spain, their partners, their relatives, ancestors, or those returning to their Member State and those living in Andorra or Gibraltar.

### 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 the application is through the 2013 law, the spouse or the domestic partner will receive 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 the type of permit 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 number 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 not to 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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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 practise immigration law and assist with Spain visas and travel, but we are diverse in capacity.

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# Sweden

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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 Sweden are the Aliens Act (Sw. *utlänningslagen*), the Aliens Ordinance Act (Sw. *utlänningsförordningen*) and the Posting of Workers Act (Sw. *utstationeringslagen*) as well as case law from Swedish Migration Courts.

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

The main authority administrating the corporate immigration system is the Swedish Migration Agency (Sw. *Migrationsverket*), which, *inter alia*, processes all types of residence and work permit applications.

The Swedish Work Environment Authority is the contact authority regarding postings of workers and is, *inter alia*, responsible for the national posting registry as well as for providing information regarding laws and collective bargaining agreements applicable for posted workers.

### 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?

Sweden is a member of the European Union (the "EU") which entails a right of free movement for employees within the EU.

Sweden is also party to the Schengen agreement, which aims to create an area covering the Member States without border controls and, *inter alia*, entails a right of free movement for employees.

Further, the Nordic countries (including Sweden) have entered into multilateral agreements entailing that citizens of the Nordic countries may enter into, reside and work in Sweden without applying for a visa or residence permit.

In addition, there are a number of other multilateral agreements, e.g. regarding working holiday visas for young people.

## 2 Business Visitors

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

EU and EEA nationals are able to come and work in Sweden without applying for a work or residence permit. As for non-EU citizens, most non-EU citizens need to apply for a work and residence permit in order to be permitted to work and reside in Sweden. Most citizens of non-EU countries are also required to apply for a visa in order to enter Sweden.

Thus, in order for a citizen of a non-EU country to be able to work and reside in Sweden, a *work permit* and a *residence permit* are generally required. A residence permit is automatically obtained if a work permit is granted and the period of employment exceeds three months.

A work permit is required regardless of the position the employee is to hold. There are, however, some exemptions, which quite often are applicable to business visitors. Whether an employee is exempted from the general work permit requirement or not should, however, always be assessed on a case-by-case basis.

It should be pointed out that even if an employee does not require a work permit, a visa and/or residence permit may nonetheless be required. The requirement to hold a visa is dependent on the citizenship of the employee, and citizens of some countries may enter Sweden for a period of 90 days without obtaining a visa.

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

Non-EU/EEA citizens who want to visit Sweden for business or a conference may need to apply for a permit. Which permit is required, *inter alia*, depends on how long the stay in Sweden will be and what work will be performed. If the stay in Sweden will be less than 90 days, the visitor may need to apply for a visa. If the stay in Sweden will be longer than 90 days, the visitor needs to apply for a visitor's residence permit. The need to apply for a work permit must be assessed on a case-by-case basis. Hence, the maximum period depends on the legal ground for stay and work in Sweden.

### 2.3 What activities are business visitors able to undertake?

There is no clear definition of "business visitor" or what activities are permitted during a business trip in Sweden. However, under a visa for business or conferences, or for visa-free individuals, typically the only activities permitted are attending conferences, fairs or meetings, visiting customers or negotiating contracts, etc. More hands-on work normally requires a work permit (unless exempted from the work permit requirement). Whether a work permit is required or not should be assessed on a case-by-case basis. Both employers and employees may be subject to sanctions if an employee performs work in Sweden without holding a required permit.


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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?**

The main rule is that anyone who intends to perform work in Sweden is required to obtain a work permit. However, business visitors who will undertake work or provide services for a temporary period are often exempted from the general work permit requirement, either through an explicit exemption or in his/her capacity as an EU/EEA citizen. The exemptions are, for example, applicable to:

- Specialists in an international corporation who work temporarily in Sweden for the corporation for a total of less than one year. The exception does not apply to specialists who are subject to the ICT regulations, which implies that specialists residing outside the EU are exempted from the work permit requirement if they work in Sweden for less than 90 days.
- Employees who participate in practical experience, internal training or other skills development at a company in an international group for up to three months altogether over a period of 12 months.
- People who participate in training, testing, preparation or completion of deliveries, or similar activities within the framework of a business transaction for up to three months altogether over a period of 12 months.
- Fitters or technical instructors in connection with the urgent installation or repair of machinery for up to two months.
- People who work temporarily in Sweden as a contractor or the equivalent.

**2.5 Can business visitors receive short-term training?**

The main rule is that anyone who intends to perform work in Sweden is required to obtain a work permit. However, employees who participate in practical experience, internal training or other skills development at a company in an international group for up to three months altogether over a period of 12 months are exempted from the general work permit requirement. Whether the exemption applies should be 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?**

Please see question 4.5.

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

Before a foreign national commences employment in Sweden, the Swedish employer is required to check documentation showing that the foreign national has the right to stay and work in Sweden or is exempted from the work permit requirement. The employer's obligation to ensure that the employee has a right to stay and work in Sweden remains throughout the employment period.

The employer is required to keep a copy of the documents showing the employee's right to be and work in Sweden or that the employee is exempted from the work permit requirement throughout the period of the employment and for 12 months after the end of the employment. However, the requirement to check the right to be and work in Sweden does not apply when a company employs persons who are citizens of a country in the EU or EEA or Switzerland. Nor does it apply to their family members, whatever nationality the family member has. It is important to notice that the permit to stay in Sweden and the permit to work in Sweden are sometimes granted separately. If that is the case, both types of documentation have to be saved.

Further, an employer employing a foreign national must notify the Swedish Tax Agency of the employment. Such notification should not be made later than the 12th of the month after the calendar month when the employment commenced. The requirement to inform the Swedish Tax Agency does not apply when an employer hires persons who are citizens of a country in the EU or EEA or Switzerland. Nor does it apply to their family members, whatever nationality the family member has.

In addition, there are several different provisions regulating an employer's obligation to inform relevant authorities about changes in the employment/assignment or working conditions.

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

A natural or legal person who intentionally or through negligence has a foreign national in his/her employment even though the foreign national does not have the prescribed work permit may be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year. Such person may also be obliged to pay a special charge.

## 4 Corporate Immigration – General

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

No, there is no specific system for registration of employers who wish to hire foreign nationals.

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

Employers are obliged to comply with Swedish law, including Swedish immigration law.

Please also see question 3.2.

**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.

**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.

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

The Swedish Migration Agency may carry out inspections


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during the period when a work permit is in effect. Under such inspections, the Migration Agency checks to ensure that an employee has received the wages and insurance coverage that served as a basis for the permit, and the employer may therefore be requested to provide information on wage payments and insurance coverage. The Migration Agency may further check that anyone who has obtained a work permit has started to work in accordance with the permit within four months from the first day of the permit period.

If the Migration Agency discovers that the terms of employment are not being complied with, the Migration Agency may revoke the permit.

Further, in branches of industry identified as risk sectors, e.g. hotels and restaurants, motor vehicle services and commercial sectors, the Swedish Police Authority has the right to carry out workplace controls in order to investigate whether a company has hired any foreign national that does not have the right to reside in Sweden or does not have the required work permit. During such workplace controls, the company is required to provide the documents and information required for the control. The employer may also be obliged to hand out documentation regarding former employees during these inspections.

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

No, there is no such 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. There are a number of exemptions to the general work permit requirement, but the exemptions are generally not tied to certain occupations recognised as deficit professions.

**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 no such restrictions.

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

No, employees are not required to demonstrate language proficiency in order to be granted a regular work permit.

**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?**

It depends on the length of stay and work in Sweden as well as the legal ground for residing and working in Sweden.

With regard to regular work permits, an employer is generally required to offer insurance covering health, life, occupational injury and pension in order for a foreign national to be granted a work permit in Sweden.

If a foreign national is granted a work permit for less than a year, the foreign national will not be registered in the national population register and will not have access to unlimited and free public healthcare.

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

During the first 24 months, a regular work permit is limited to the specific employer and occupation stated in the decision from the Migration Agency. If an employee wants to change employer or occupation during this period, he/she must apply for a new work permit.

If a foreign national has had a work permit for 24 months and has obtained an extension of the work permit, the foreign national is permitted to change employer without applying for a new work permit, provided that he/she works within the same occupation.

Having noted the above, an employee may thus be seconded to a client site provided that the company stated in the work permit decision remains the employer during the secondment, that secondment falls within the scope of the occupation stated in the work permit and that the conditions of the work permit are otherwise fulfilled.

## 5 Highly Skilled Visas

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

Yes, non-EU citizens who have received an offer of employment for high-qualified work may apply for a so-called EU Blue Card. In order to be granted such a permit, the employee must, *inter alia*, have the equivalent of 180 credits of tertiary education or five years of relevant professional experience. Further, the employee should receive a salary of at least one-and-a-half times the average salary in Sweden (currently SEK 51,900 per month). Further, highly skilled individuals may, if the requirements are fulfilled, be qualified for an ICT-permit (please see section 8).

## 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, a foreign citizen who is going to start up and run his/her business, or become part-owner of a company, may apply for a residence permit for self-employed persons. In order to be granted such a permit, such citizen must, *inter alia*:

- show that he/she has considerable experience in the industry and previous experience of running one's own business;


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- prove that he/she is the person running the company, has executive responsibility and owns at least 50 per cent of the company;
- show that he/she has enough money to provide for himself/herself and any family members for the first two years;
- present plausible supporting documentation for the budget; and
- show that he/she has created customer contacts and/or a network in Sweden.

## 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, certain rules apply for, *inter alia*, au pairs, trainees (international exchanges or higher education) and volunteers.

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

Yes, for example berry pickers and other seasonal workers.

## 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 specific permit type, the Intra-Corporate Transfer ("ICT") permit, applicable to non-EU/EEA/Switzerland citizens, who are employed at a company outside the EU/EEA, who are to work in Sweden at a company that is established in Sweden within the same corporate group as the host company, and will work as a manager or specialist or are to get practical training with the company. If the employee is not eligible for an ICT permit, the employee must apply for a regular work permit, unless an exemption of the work permit requirement applies. With regard to specialists, there is an exemption that is applicable to specialists within an established group of companies who will work for the corporation for a total of less than one year. The exception, however, does not apply to specialists who are subject to the ICT regulations, implying that specialists residing outside the EU are exempted from the work permit requirement if they work in Sweden for less than 90 days.

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

In relation to ICT permits, a group of undertakings/companies means two or more undertakings recognised as linked in the following ways: an undertaking, in relation to another undertaking directly or indirectly, 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 employer must:

- create an employment offer;
- offer compensation that is at least on the same level as the Swedish collective bargaining agreements or what is customary in the profession or industry;
- offer terms of employment that are at least on the same level as for employees who are posted in Sweden; and
- offer employment that gives the employee the possibility to support himself/herself.

In order to obtain a regular work permit, please see section 9.

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

It depends on what type of permit the employee is required to obtain. For ICT permits, the process is initiated by the employer registering an offer of employment and sending it to the relevant union for its opinion. Once an opinion is obtained (or the union has stated that they will not give an opinion), the employee should submit an application together with the required attachments. The application should preferably be submitted through the Migration Agency's website and should be granted prior to entering and commencing work in Sweden. For regular work permits, please see section 9.

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

If the employee is granted an ICT permit or a regular work permit, he/she must visit a Swedish embassy or general consulate abroad in order to obtain a residence permit card prior to entering Sweden. Once the employee has received the residence permit card, he/she may enter Sweden without obtaining a visa. If an exemption from the work permit requirement applies, he/she must obtain a regular visa in order to enter Sweden, i.e. 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?

The Migration Agency is required to make a decision regarding ICT permit applications within 90 days from the day on which the application was submitted. If the application is not complete, the processing time may be prolonged. In addition to the actual processing time, it normally takes one or a few months to register the offer of employment, receive an opinion from the relevant union and submit the application. With regard to regular work permits, please see section 9.

### 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?

An ICT permit will not be granted for a longer period than the assignment period, but can be extended for up to three years for managers and/or specialists, or up to one year for trainees.


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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?

A foreign national who has had a work permit as an employee and has been working in Sweden for a total of four years over the last seven years may be granted a permanent residence permit. An ICT permit may form the basis for a permanent residence permit. However, since an ICT permit can only be valid for three years at the most, an employee who has had an ICT permit needs to have had some other type of work permit in order to reach the time period of four years.

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

The application fee for an ICT permit is SEK 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?

The main immigration categories are EU/EEA citizens and non-EU/EEA citizens who require a regular work 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?

No, there are no labour market tests. The individual employers are free to decide whether they need employees and from which country. However, when recruiting new employees, an employer must generally first advertise the position so that all residents in Sweden, the EU/EEA and Switzerland can apply for the job.

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

There are no labour market tests in Sweden.

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

In order for a foreign national to obtain a work permit, the employer must:

- Have advertised the position in Sweden and within the EU/EEA and Switzerland for at least 10 days (mainly applies to new recruitment and if the recruitment is from outside the company group). The employer is, however, fully entitled to choose whom to employ.
- Offer terms of employment (including salary) that are at least equal to those of a Swedish collective bargaining agreement or what is customary within the profession or sector (the employee should, for example, be covered by similar work injury insurance, life insurance, health insurance and pension insurance).
- Allow the relevant trade union the opportunity to express an opinion on the terms of employment in the offer of employment.

Newly established companies and employers in certain industries considered as risk industries are subject to more stringent requirements.

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

The process of obtaining a work permit is initiated by the employer registering an offer of employment and sending it to the relevant trade union for its opinion. Once the opinion is received, or the trade union has stated that it refrains from stating an opinion, the employee may submit the application for a work permit together with the required attachments. The application should preferably be submitted online through the Migration Agency's website as doing so will shorten the processing time significantly.

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

According to information provided by the Migration Agency, the processing time may be up to a year. The waiting time is generally longer if the application is incomplete. In addition to the processing time, it generally takes one or a few months to advertise the position (if required), register the offer of employment, obtain an opinion from the relevant union and submit the application.

However, the Migration Agency can appoint a company to be a certified firm, provided that the Swedish company fulfils the Migration Agency's requirements, e.g. in terms of financial stability. The certification allows much faster processing, i.e. a 10-day turnaround time for complete first-time applications and a 20-day turnaround time for applications regarding the extension of existing permits. Regarding matters where the concerned trade union does not give its opinion or the union opposes due to the fact that the company does not have any collective bargaining agreement, certified companies are entitled to a 60-day turnaround time.

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

A work permit can be granted for at most two years at a time (but never longer than the period which the passport is valid for). If an employee plans to continue working in Sweden after the first permit has expired, it is possible to apply for an extension.

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

No, it is not.

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

An employee who has had a work permit for 48 months may be granted a permanent residence permit. The Swedish Migration Agency will determine whether the employee is entitled to a permanent permit when the application for an extended permit is processed.


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

The application fee for a work permit is normally SEK 2,000. However, there are special fees for certain occupations and Japanese citizens may apply for a work permit without paying a fee.

## 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 main condition of stay is to continuously fulfil the conditions of the work and residence permit, e.g. to work for the employer and within the occupation stated in the decision from the Migration Agency. If the conditions are not fulfilled, the permit may be withdrawn.

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

Employees who intend to stay in Sweden for more than one year will have to register in the national population register (Sw. *folkbokföringsregistret*). An application to be registered should be submitted in person at the nearest service office of the Swedish Tax Agency.

## 11 Dependants

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

A non-EU/EEA citizen who is a *family member* of a person who has a work permit may be granted a residence permit for the same period.

The following qualify as family members: wife; husband; cohabiting partner; registered partner; and unmarried children under the age of 21.

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

Yes, cohabiting partners and registered partners (same-sex marriage partners) are counted as family members.

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

A non-EU/EEA citizen who is a family member of someone who has been granted a work permit can get a residence permit for the same period. If the permit is for more than six months, a work permit may also be granted.

### 11.4 Do children have access to the labour market?

No, children under the age of 13 are generally not allowed to work in Sweden. For children under 18, special rules apply.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

A person may be granted a permanent residence permit when he/she has had a work permit as an employee and worked for a total of four years over the last seven years. The person must have worked for the employer or employers and in the profession or professions for which he/she had the work permit.

The Migration Agency will check to ensure that the person has been staying and working in Sweden during the period for which he/she has had a work permit and that the conditions of the work permit(s) have been met during the permit period(s), *inter alia*, by checking income statements and pay slips and that the person has been covered by the required insurances during the permit period(s).

The Migration Agency makes an overall assessment over time, and if there are deficiencies, they investigate why there are and if they have been rectified.

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

A foreign national is entitled to obtain permanent residency if the requirements for permanent residency are fulfilled, regardless of whether they have been employed for several fixed-term employments or have been employed until further notice.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

In order to obtain a work permit, the requirements for obtaining a work permit must be fulfilled. In order to be granted an extension, the conditions of the first permit must have been fulfilled during the permit period in Sweden.

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

There are no questions regarding criminal convictions in work permit or visa applications. However, a non-EU/EEA citizen or his/her family member may be refused entry if it can be assumed, on the basis of previous imprisonment or some other particular circumstance, that he/she will commit a criminal offence in Sweden. Further, such a foreign national may, *inter alia*, be expelled from Sweden if he/she is convicted of an offence that is punishable by imprisonment. EU/EEA citizens may also be refused entry if it can be assumed that he/she will commit a criminal offence in Sweden, but only if the refusal is made for the sake of public order and safety. A court decision on expulsion due to a criminal offence will contain a refusal of entry for a certain time or without limitation in time.


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# Switzerland

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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 ("**FNIA**"); the Ordinance on Admission, Residence and Gainful Employment ("**OARG**"); the Ordinance on Foreign Nationals and Integration ("**OFNI**"); the Federal Act on Posted Workers ("**FAPW**"); the Ordinance on Posted Workers to Switzerland ("**OPW**"); the Federal Labour Act ("**FLA**"); the Federal Act on Illegal Work ("**FAIW**"); the Federal Act on Employment Services ("**FAES**"); the Agreement on Free Movement of Persons ("**AFMP**") between the European Union ("**EU**") and Switzerland; the Ordinance on the Agreement on Free Movement of Persons; the European Free Trade Association ("**EFTA**") Convention; the Schengen Agreement; and the General Agreement on Trade in Services ("**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: cantonal and federal. In principle, applications for work and residence permits are examined at both levels.

Each canton determines autonomously its organisation and the administration of its immigration authorities.

In the canton of Zurich, the cantonal Migration Office is the competent authority regarding the aspects strictly related to immigration, such as a foreign national's personal compliance with Swiss immigration law. The Office for Economy and Labour is the competent cantonal 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 and the EFTA. The AFMP gives nationals of Member States the rights to circulate freely, to work and to establish themselves within the other Member States' territories.

However, it should be noted that Croatian nationals, despite being part of the EU, are subject to specific regulations until 2023. In particular, the Swiss/EU/EFTA workforce may be given priority over Croatian nationals and permits in this case are subject to quotas set by the Federal Government (see questions 4.8 and 9.2).

Furthermore, it should be noted that the United Kingdom ("**UK**") left the EU on January 31, 2020. Nevertheless, the AFMP will continue to apply to the UK during a transitional period until at least the end of 2020. The UK, Switzerland and the EU are currently endeavouring to negotiate a similar agreement for after the transitional period. In the event that no agreement is reached, Switzerland will be able to fall back on an earlier agreement which basically ensures mutual admission to the labour market.

As a member of the EFTA, Switzerland is also involved in negotiations on an agreement with MERCOSUR. One of the aims of the agreement is to provide simplified market access for service providers. However, it is not expected to come into force until 2021 at the earliest.

## 2 Business Visitors

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

It is important to note that Swiss visas only entitle the holder to enter the country but not to work. Switzerland does not have business visas as such.

Foreigners can, in principle, work for up to eight days per civil year without a special permit. Any work beyond eight days requires a work permit or, in the case of EU/EFTA nationals posted for up to 90 days per calendar year, a notification to the immigration authorities (see questions 2.3 and 2.4).

### 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 allowed to engage in non-gainful employment, such as:



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- business meetings;
- theoretical and technical courses without any involvement in work processes;
- scientific, economic, cultural, religious or sporting events; or
- professional conferences, seminars or meetings, including invitations of international organisations, NGOs or associations.

Furthermore and according to Article 14 OARG, business visitors are allowed to pursue gainful employment for a non-Swiss employer for eight days per calendar year without a work permit. If the period of gainful employment is longer than eight days, non EU/EFTA nationals in particular need a work permit to stay in Switzerland (for EU/EFTA nationals and posted non-EU/EFTA nationals, see question 2.4).

Due to the considerable discretion of the migration authorities, however, it is advisable to verify on a case-by-case basis whether the activities are classified as gainful or non-gainful employment.

**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 the AFMP, employees of the EU/EFTA labour market who are taking up employment, providing services or being posted to Switzerland for a maximum period of 90 days per calendar year do not need work permits, but can instead benefit from an online registration procedure where companies only need to inform the immigration authorities of the employment or secondment by completing an online form ("**90-day online authorisation**"). Non-EU/EFTA nationals can benefit from the 90-day online authorisation if they are posted to Switzerland if they have worked in the EU for at least one year before coming to Switzerland.

**2.5 Can business visitors receive short-term training?**

As explained in question 2.3, business visitors can receive short-term business training, although it must be verified on a case-by-case basis that the training does not constitute gainful activity or that the gainful activity does not last longer than eight days.

## 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 immigration authorities have inspectors who ensure that foreign nationals working in their canton have the adequate immigration status and documents. The controlling authorities receive notifications concerning undeclared work and verify whether companies and employees comply with the reporting and permission requirements under social security, immigration and withholding tax law. If violations are detected, they inform the immigration, social security and tax authorities.

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

The main sources governing illegal working in Switzerland are: the FNIA; FAIW; OARG; FAES; FAPW; and FLA.

The cantons are responsible for ensuring that the illegal work rules are complied with (Article 4 FAIW).

Employers are responsible for declaring their employees for the purposes of social security and unemployment insurance. Employers must also comply with certain requirements of Swiss law concerning the minimum wage, holidays, working hours, security, hygiene and health standards and must provide 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?**

Any employer who intentionally employs foreign nationals who are not entitled to work in Switzerland, or who uses a cross-border service in Switzerland for which the service provider does not have a permit, will be punished with a fine or imprisonment for up to one year. In more serious cases, prison sentences can reach three years. If prison sentences are ordered, they are combined with a fine (Article 117 FNIA).

Employees who work in Switzerland without a permit can be fined, imprisoned or banned (up to five years) from entering all Schengen countries (Article 115 FNIA).

## 4 Corporate Immigration – General

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

There is no particular Swiss system for such registration. EURES (European Employment Services) is, however, a European platform for job advertising in the EU and EFTA, which is also used 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 wage and working hours according to the applicable law, the collective labour agreements (if applicable) and the local customs are complied with (Article 1 FAPW). Furthermore, employers must always ensure that employees have a valid work permit.

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

No, there is no obligation for employers who hire foreign nationals 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 government charge or fee.

**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. Rather, 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 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 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 types of work permits to be issued in favour of non-EU/EFTA nationals. The quotas only apply for the first granting of a work permit, not for any extension. For the year 2020, these quotas amount to 4,000 for short-term 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 types of work permits to be issued in favour of EU/EFTA nationals hired by Swiss companies. However, specific quotas are applicable to posted workers who work for more than 90 days per calendar year in Switzerland, as well as for Croatian nationals. In 2020, with respect to posted workers, quotas amount to 3,000 for L-permits and 500 for B-permits; with respect to Croatian nationals, quotas amount to 1,158 for L-permits and 133 for B-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?**

In the case of non-EU/EFTA nationals and posted EU/EFTA nationals, the authorities, within their discretionary powers when granting permits, supervise the companies to ensure that they do not have predominantly foreign employees. 120-day work permits are only granted if the workforce of the company applying does not consist of more than 25% foreigners. There is no restriction with regard to EU/EFTA nationals with a Swiss employer.

**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.

Language skills are required when applying for a permanent residence permit (C-permit), which may be applied for after holding a B-permit for a certain number of years. In this case, foreigners will be required to demonstrate 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 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, anyone residing in Switzerland must take out a Swiss health insurance policy. This applies in particular to foreigners working in Switzerland for more than three months without proving equal coverage in their home country. Foreign employees who are allowed to work for three months or less in Switzerland are usually not required to have Swiss health insurance. In addition, special provisions apply to cross-border commuters and to posted employees.

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

Depending on the type of work permit, employees may be allowed to be posted to a client site within or outside Switzerland.

## 5 Highly Skilled Visas

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

There is no specific category which covers highly skilled individuals: all non-EU/EFTA nationals must be highly skilled to obtain work permits in Switzerland (Article 23 FNIA). There is also no such category for EU/EFTA nationals as they are generally allowed to work in Switzerland based on the AFMP.

## 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 rule, there are no specific work permits in Switzerland based on investments in a particular sector.

However, according to the FNIA, non-EU/EFTA nationals may apply for a self-employed work permit, which is granted if the Swiss authorities can establish that the self-employed activity may lead, among other things, to "substantial investments" and/or the creation of new workplaces for the benefit of the Swiss economy and the applicant has sufficient financial resources to carry out his activity.

## 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?**

Switzerland has concluded bilateral agreements with around 30


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countries (including the USA and Canada) which enable young people to gain work experience in other countries through internship programmes. The requirements are in general a completed apprenticeship or University degree and an age limit of – depending on the agreement – 30 to 35 years. The permit is usually issued for a maximum of 18 months. *Stagiaire* permits are particularly suitable for the employment of trainees in international corporations.

In addition to these specific agreements, the FNIA allows non-EU/EFTA nationals to stay in Switzerland for education and training purposes (Article 27 FNIA). To obtain such a permit, specific training, adequate accommodation and sufficient financial means as well as adequate language skills must be proven.

EU/EFTA nationals may also stay in Switzerland for training and education purposes if they have sufficient financial means, health insurance and a certificate of enrolment from a recognised educational institution. A permit is only required for stays of more than 90 days in any six-month period.

Regarding short-term work permits, Switzerland issues the following types 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.

### 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 is no sector-specific temporary work permit category. However, special rules may apply to artists in the fields of music, literature or art.

## 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/EFTA and posted EU/EFTA nationals are possible for executive employees and highly qualified specialists, if the foreign service provider has an entity or a branch in Switzerland. Executive employees are persons who are responsible for the management of the company or one of its divisions and who are subject only to the general supervision or direction of senior management, the board of directors or the shareholders of the company. Highly qualified specialists are persons who are indispensable within a company for the provision of a certain service due to their knowledge and advanced experience in the field of services, research, technology or management of the company. In such cases, executive employees and highly qualified specialists are entitled to a permit for up to four years.

### 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, the company 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/EFTA 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 company or group, 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 (see question 4.8) and minimum wages.

The main advantage of intra-company transfers is that employers are not subject to the local market test condition (see question 9.2).

### 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 of non-EU/EFTA nationals must file a work permit application with the competent cantonal authority. The application process usually requires the approval of the cantonal and federal authorities.

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

Non-EU/EFTA nationals must file for a travel visa with the Swiss authorities' representation of their residence abroad (e.g. an embassy or consulate).

Based on the Schengen Agreement, EU/EFTA 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 whole process for non-EU/EFTA nationals and posted EU/EFTA nationals usually takes about eight to 12 weeks after the work permit application is filed. Moreover, non-EU/EFTA nationals are not allowed to work until they have received their work permit and have registered with the local residents authority.

For EU/EFTA nationals hired by a Swiss company, the issuance of a work permit usually takes about two to three weeks after the registration. In addition, EU/EFTA nationals are basically entitled to work in Switzerland from the moment they enter Switzerland but they are obliged to register within 14 days of arrival.


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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?**

According to the GATS, international groups of companies can transfer non-EU/EFTA nationals to Switzerland for up to a maximum of four years.

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

There is no specific procedure for employees under the intra-company route. To obtain an "unlimited" B-permit, the process mentioned under question 9.4 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 fees for the work permit and the travel visa amount to a total of approximately CHF 500–900.

## 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 permits 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 more than two years). Unless it is subject to specific conditions, the renewal of the B-permit is usually a formality.
- G-permit: this is a work permit for cross-border commuters.

**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/EFTA or posted EU/EFTA nationals, they must demonstrate beforehand that there were no suitable candidates on the local (Swiss/EU/EFTA) market to fill the position.

Employers can prove that adequate recruiting endeavours have been conducted by publishing job announcements on specialised websites and by sending the job description to the local authorities. This procedure can take up to three months. If no suitable candidate has been found, employers may file a work permit application (Article 21 FNIA).

**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/EFTA or posted EU/EFTA nationals (see question 8.3).

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

The process for non-EU/EFTA nationals comprises three approval stages: the Office for Economy and Labour issues the labour market approval; the SEM verifies the other requirements; and the cantonal Migration Office issues the work permit.

EU/EFTA nationals who work for a Swiss company are entitled to a work permit. The cantonal Migration Office is the only authority that issues the work permit.

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

Please see question 8.5.

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

Please see question 8.6.

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

In connection with work permits, initial visas are usually issued for three months and are only needed to enter the country. An extension of the visa is only permitted for restrictive reasons (e.g. *force majeure* or serious personal reasons). However, it is possible to apply for a new visa.

**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/EFTA nationals' work permits.

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

No, permanent residence permits cannot be granted to new hires (see question 12.1).

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

Please 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?**

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/EFTA nationals may be subject to conditions; they may, in particular, be restricted to a specific employer or the achievement of certain targets.


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The renewal of permits granted for the establishment of new companies can be linked to the achievement of the objectives stated in the business plan.

Work and residence permits of all nationals can also be revoked if the person concerned has been sentenced to a long-term imprisonment, repeatedly violates public safety or provides false information during the authorisation procedure (Article 62 FNIA).

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

All work permit holders must notify their arrival to the competent residents authority of their place of residence in Switzerland within 14 days.

## 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 or the child 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/EFTA 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 and the lodging conditions are appropriate.

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

As a general rule, only registered or married (same-sex) partners have a right to come to Switzerland if their partner was admitted to Switzerland. However, the migration authority may also qualify stable (same-sex) partners as family members at its discretion.

### 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, who have an L- or 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 FNIA provides specific individual requirements in the 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 Swiss 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 – however, note that most EU/EFTA nationals as well as nationals of certain non-EU/EFTA states which have special agreements with Switzerland (such as Canada or USA), and in some cases, other nationals with an exceptional level of integration in Switzerland can obtain a C-permit after five years of uninterrupted residence in Switzerland;
- the applicant must have 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).

### 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 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 strongly needs the employee 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 for non-EU/EFTA nationals can be considered a bar to admission for work (see question 9.2).

Moreover, both EU/EFTA and non-EU/EFTA nationals can be barred from being admitted to Switzerland or can have their work permit revoked under certain circumstances (e.g. false information during the work permit issuance procedure, threat to the internal or external security of Switzerland or dependence 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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VISCHER's immigration team has an excellent international reputation and was therefore for the second time in a row honoured to have been awarded Law Firm of the Year 2020 for Corporate Immigration by *Who's Who Legal*. VISCHER's immigration team supports national and international companies in bringing highly qualified workers to Switzerland. The focus is on giving comprehensive and holistic advice to companies and senior employees. The members of the team have extensive expertise in all relevant legal areas as well as excellent relations with the authorities in order to achieve the best solutions in the interests of the client. VISCHER's services include support in all legal matters relating to immigration, visas, work and residence permits, as well as in social security and tax matters in the area of business immigration.

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# Tanzania

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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 Tanzania are: the Immigration Act Cap 54 R.E 2016; the Immigration Regulations 1997; the Immigration (Visa) Regulations 2016; the Immigration (Amendment) Act 2015; the Non-Citizens (Employment Regulation) Act 2015; and the Non-Citizens (Employment Regulation) Regulations 2016.

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

The relevant authorities are the Ministry of Labour, Employment, Youths and People with Disabilities and the Immigration Department under the Ministry of Home 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. Tanzania is not a member in any multilateral agreement in respect to the EU, NAFTA and MERCOSUR that facilitates the free movement of people between countries for employment purposes.

## 2 Business Visitors

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

No, there is no visa waiver programme in Tanzania but there are nationals that do not require a visa for entry into Tanzania. These nationals are entitled to an automatic authorisation to stay in Tanzania for up to 90 days. For example, nationals of South Africa, Kenya, Uganda, Rwanda, etc.

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

The maximum period is three months.

### 2.3 What activities are business visitors able to undertake?

Business visitors are permitted to undertake any business of a temporary nature, i.e. which does not exceed three months. These business activities may include engaging in a profession such as consultation, attending business meetings, 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 is no special visitor category for business visitors but a business visa caters for business visitors that undertake to work and provide services for a temporary period not exceeding three months.

### 2.5 Can business visitors receive short-term training?

Yes, they can as training is among the activities authorised under a business 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, they do. Under the Non-Citizens (Employment Regulation) Act, 2015, Labour officers are sanctioned to conduct operations in employers' premises to check compliance to the Immigration laws as well as Labour laws.

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

a) Not to engage in any employment without both having work and residence permits.
b) Not to engage in work with an employer who is not indicated in the work permit.
c) Not to engage in employment with a visa rather than a work permit, as a business visa is for short-term assignments only.


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

The penalties include a fine of not more than 10 million Tanzanian shillings or imprisonment of the organisation's responsible officers for two years or both.

## 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 for registration.

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

Yes, employers are obliged to submit returns of employment of non-citizens at the Ministry of Labour, Employment, Youths and People with Disabilities after every six months, have a Succession Plan in place for Tanzanian employees to take over from foreign employees upon the full exhaustion of the work permit periods, surrender work and residence permits when a foreign employee ceases to be employed, not hire or engage foreigners without work and residence permits or visas and not exceed a local and non-local employees' ratio of 10:1 when bulk recruiting or when the business has many local employees and is in full operation.

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

Yes, such employers are obliged to have in line Succession Plans for locals to take over from the foreign employees upon the full exhaustion of the permits' renewal life span. The maximum permit's duration including renewals must not exceed five years.

**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?**

Yes, the Vocational Education Training Act, 2006 requires employers to pay Skills Development Levy (SDL). The Law requires any employer who employs four or more employees to pay SDL. Currently the levy is 4.5% on the gross pay of all payments (salaries, wages, payments *in lieu* of leave, fees, commissions, bonuses, gratuity, any subsistence travelling, entertainment or other allowance received by employees in respect of employment or service rendered) made by the employer at the end of every month.

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

Yes, they do. The Immigration Act and the Non-Citizens (Employment Regulation) Act grant powers to immigration officers to conduct inspections at employers' premises to check compliance of immigration laws.

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

Yes, they do. The Ministry of Labour, Employment, Youths and People with Disabilities has a list of occupations plus the minimum qualifications and experience for the same for foreigners. The Labour Commissioner has discretion to amend the list via government notices and by virtue of his power vested from the Non-Citizens (Employment Regulation) Act.

**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. The Ministry of Labour, Employment, Youths and People with Disabilities has specified some sectors and occupations based on their importance and issues exemptions by reducing work and residence permit fees. For example, experts in the oil and gas sectors and lecturers in science and mathematics pay lesser government fees.

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

Generally, no, but an employer is required to maintain a ratio of 10:1 regarding the number of Tanzanian to foreign employees.

**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 Non-Citizens (Employment Regulation) Regulations 2016 has set a ratio of 10 local employees to one foreign employee. This means that the employer is not restricted from hiring foreigners as long as the number of foreigners in relation to the local employees is at a ratio of 10:1.

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

No, employees are not required to demonstrate language proficiency.

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

Generally, all foreigners who come to Tanzania are required to be vaccinated for yellow fever, but there is no other immigration requirement for a foreigner who wants to work in Tanzania to undergo medical examinations. This notwithstanding, some employers impose this condition in their work policies.

**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, having medical insurance is not one of the conditions for a foreigner to work in Tanzania. Medical insurance may be part


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of the benefits availed by the employer to the employee. The medical insurance may be processed off- or on-shore.

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

Yes, it does, depending on the nature of the employer's business. For example, service provider businesses or businesses that issue technical support can second an employee with a work permit to a client's site to render services like IT expats, mechanic engineer expats and so forth.

## 5 Highly Skilled Visas

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

Yes, there is. The Ministry of Labour, Employment, Youths and People with Disabilities has a category B work permit which is specific for highly skilled foreign employees in oil and gas and lecturers in mathematics and science.

## 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, work permit Category B is issued to foreign experts in the oil and gas sector and foreign lecturers in mathematics and science.

## 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 immigration category permitting the hiring of temporary workers, but in all categories of work permits, a work permit may be issued for a shorter period than two years.

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

Pursuant to our answer to question 7.1 above, short-term work permits cater for short-term work or assignments and the same is 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?**

No. Immigration categories are based on the sector, the nature of the organisation, professions and the duration of the assignments. Both the long-term work permit (two years subject to renewal) and short-term work permit (six months but non-renewable) cater for inter-company transfers of foreign expats.

**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 Tanzania. Please see our answers to the questions above.

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

The conditions are the same as the conditions for a non-group company employer as long as the employer company has corporate documents such as a Registration certificate or certificate of Compliance, Tax Identification certificate, Memorandum and Articles of Association, valid Business licence and other permits from relevant ministries (if applicable) and proof of engagement of the foreign employee, i.e. Employment or Assignment Contract.

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

The process is the same as for an application of a non-group company which is the submission of application documents, i.e. Work permit application form, cover letter, proof of qualifications of the applicant and corporate documents, to the Ministry of Labour and Employment, Youths and People with Disabilities. Once the application is submitted, the same will be deliberated on by the Labour Commissioner and a decision for either issuance or denial of a work permit will be made in two to three weeks.

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

Pursuant to the answers in the foregoing discussion, no specific intra-company group transfer permit category exists in Tanzania.

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

Long-term and short-term work permits take two to three weeks to obtain. If the visa is applied for on arrival, the visa is acquired on the very same day. If applied for prior to entry into Tanzania, the visa takes five to seven days to acquire.

**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 are no intra-company transfer visas in Tanzania, but visas are categorised based on the purpose of the visit in Tanzania as well as the nationality of an applicant. Generally, visas are issued for a maximum of three months.

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

Pursuant to the foregoing there is no intra-company transfer


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visa in Tanzania, but visas cater for the transfer of temporary consultants or visitors to Tanzania to engage in short-term assignments and not employment not exceeding three months. However, a holder of a visa can apply for a long-term work permit whilst in Tanzania but he or she must switch to a Special pass when a work permit is issued and before an application for a residence permit is made.

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

There is no special intra-company transfer visa in Tanzania.

## 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 no immigration category for new hires but immigration categories are based on the profession, the type of organisation, whether the applicant is an investor or employee and the duration of the assignment in Tanzania.

### 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?

For restricted occupations which are restricted to be occupied by Tanzanians only, it is mandatory to demonstrate and provide proof to the Labour Commissioner during the work permit application that efforts were made by the employer to search for suitable Tanzanians for the position to no avail and that the employer had no better option other than hiring a foreigner.

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

There is no exemption *per se*, but for unrestricted professions or positions for foreigners an employer is not obliged to carry out labour market testing as long as the foreign employee complies to the minimum qualifications as specified by the Labour Commissioner from time to time.

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

There are three stages as follows:

a) Completion of the online work permit application form. The form is completed via the Ministry of Labour, Employment, Youths and People with Disabilities, where details of the applicant and the employer are entered.
b) Compilation of the required documents which include the applicant's passport, academic certificates, CV, job description, employment contract and corporate documents of the employer like certificate of registration, Tax Identification Number Certificate, Value Added Tax Certificate, Workers Compensation Fund Certificate, Social Security Fund certificate, Business Licence, Memorandum and Articles of Association, or Statutes, duly signed work permit application form and application letter.
c) Submission of the work permit application at the Ministry of Labour and Employment and follow up on the final decision of the Labour Commissioner.

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

It should be noted that an employer cannot hire a foreign employee with a visa. Visas are strictly for short-term assignments and not for hiring. Hiring under a visa is prohibited by the Non-Citizens (Employment Regulation) Act, 2015.

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

The timeline for getting a work permit is two to three weeks. However, hiring under a visa is prohibited.

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

Business visas, Ordinary/Tourist visas and Referral visas are issued for three months. However, the same may be issued for a shorter period depending on the duration of the visit as indicated during the application. Multiple Entry visas are issued for six months up to one year but on condition that a single stay in the country does not exceed three months. Business, Ordinary and Referral visas are extendable prior to their expiry. Once a visa expires it should be freshly applied for.

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

This requirement is at the discretion of the Labour Commissioner to demand, depending on whether the occupation is amongst the restricted occupations for Tanzanians only such as marketing and sales.

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

There is no permanent residence unless one applies for Tanzanian citizenship which has different conditions to be complied with prior to getting the citizenship. Residence permits are for the period of two years and can be renewed for a further two years.

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

a) The government fees for work permit class B which is for specified professions are USD 500. The fees for work permit Class C for all other professions are USD 1,000. For work permit class D which is for NGOs and religious institutions with charitable status granted by the Commissioner of the Tanzania Revenue Authority, the fees are USD 500. If the organisation has not acquired a charitable status, then the fee is USD 1,000. Work permit class E which is for refugees is free of charge.
b) Residence permit class B for all professions including specified professions is USD 2,050. The fee for nationals from East African countries is USD 550. The fee for residence permit class C which is for NGOs and religious institutions is USD 550. Residence permit class D for refugees is free of charge.


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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?

A holder of a work and residence permit must adhere to the conditions of the permits which include the following:

a) Not to be engaged in any position or profession which is different from the one indicated in his permits.
b) Not to work for any other employer except for the one indicated in his permits.
c) To be registered with the National Identification Authority for a Foreigner ID.
d) Not to transfer his work and residence permit to anyone.
e) Generally, to comply with the laws of Tanzania.

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

Work permit holders are required to register with the National Identification (NIDA) for an ID. The holder is obliged to register with the Tanzania Revenue Authority for a Tax Identification Number (TIN).

## 11 Dependants

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

The following qualify as dependants: a wife; children under five years old; and an elderly parent who needs care from the holder of a permit.

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

No. They 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 have access to the labour market as Dependant status prohibits one from engaging in employment or short-term assignments.

### 11.4 Do children have access to the labour market?

No. Foreign children have no access to the labour market. A dependant pass or student pass prohibits one from being employed or engaging in any assignment apart from studies or being a dependant only.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

There is no permanent residence permit unless one applies for Tanzanian citizenship of which the conditions differ depending on the type of citizenship applied for. The three types of citizenship are citizenship by birth, citizenship by descent and citizenship by naturalisation.

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

Yes. One can switch from a business visa to a long-term work permit valid for two years upon following the work permit application procedures as discussed above.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

The main bars to admission are academic underqualification, non-experience in the position applied for and a criminal record.

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

Generally, criminal convictions do not act as a bar, **but** the same can **highly** influence the Labour Commissioner's decision not to grant the respective work permit if the Commissioner is of the view that the applicant's presence in Tanzania will jeopardise public safety and interests.


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**Asha Hamisi Mgembe**, Senior Associate and Head of the Immigration and Relocation Department, has over seven years of experience in legal practice. She has proven to be a solid advisor in her field of practice and has been instrumental in solving countless expat movements into Tanzania. Her knowledge in the areas of labour and immigration is vastly unmatched. Additionally, Asha has steered the Firm's Immigration and Relocation Department from strength to strength over the years. Equally, Asha acts as Company Secretary in a number of reputable companies in which her vast corporate, legal and management knowledge is widely in play.

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# United Arab Emirates

Yann Mrazek

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## 1 Introduction

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

Immigration law is governed through ministerial resolutions and decrees issued by the Ministry of Interior. These resolutions and decrees apply at a federal level whereas each Emirate appoints a government body known as the General Directorate of Residency and Foreign Affairs (GDRFA). This government body appointed by each Emirate regulates the residency of foreign nationals as well as the entry and exit of international tourists and travellers within the specific Emirate.

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

The General Directorate of Residency and Foreign Affairs (GDRFA) and the Ministry of Human Resources and Emiratisation (MoHRE) are the two main authorities that govern corporate immigration within the UAE.

### 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, but only for nationals of member countries of the Gulf Cooperation Council (GCC). The United Arab Emirates is part of the Gulf Cooperation Council (GCC), consisting of Saudi Arabia, Bahrain, Kuwait, Oman, Qatar and the UAE, and other multilateral agreements. The GCC was established on 25 May 1981 with one of its core tenets being the free movement of nationals within the region.

The United Arab Emirates is part of other multilateral treaties – e.g. GAFTA – but none of these provide for facilitated movement of people between countries.

## 2 Business Visitors

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

The UAE has an established "Visa on arrival" system that allows business visitors to enter the UAE without prior approval. The criterion to avail this visa waiver programme is that the visitor must be a passport holder from certain countries, to wit: 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 that 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; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; the Russian Federation; San Marino; Seychelles; Singapore; Slovakia; Slovenia; South Korea; Spain; Sweden; Switzerland; Ukraine; United Kingdom; United States; Uruguay; and Vatican City.

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

The following passport holders can enter the UAE for a period of 90 days within a 180-day period: Austria; Belgium; Bulgaria; Croatia; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Netherlands; Norway; Poland; Portugal; Romania; Seychelles; Slovakia; Slovenia; South Korea; Spain; Sweden; Switzerland; and Uruguay.

The following passport holders can obtain multiple entry 30-day visas upon arrival which can be extended for up to 60 days within the UAE: 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; United Kingdom; United States; and Vatican City.

Having a valid UK or EU Visa or a US Green Card makes an Indian Passport holder eligible for a 14-day visa on arrival which can then be extended by an additional 14 days.

### 2.3 What activities are business visitors able to undertake?

Business visitors are usually limited to carrying out tasks that do not involve the actual engagement of work. However, there is no clear definition of "work" within the UAE laws. This leaves a business visitor with the ability to carry out a limited scope of activities while within the UAE, such as attending meetings, conferences, carrying out administrative tasks or attending seminars and/or classes.



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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?**

There are currently no such visitor classifications or categories that allow a business visitor to carry out/undertake work or provide services.

**2.5 Can business visitors receive short-term training?**

Business visitors can receive training provided that the correct methods and venue requirements are adhered to; for example, receiving training/seminars in an office space or designated 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 UAE Authorities, including Free Zone Authorities, undertake checks at companies/establishments on a regular basis. Sanctions can be put in place on the employer ranging from AED 10,000–50,000 per illegally employed employee.

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

The UAE has a stringent policy and approach when it comes to illegal employment. It begins with the Authorities making records of all individuals entering the country and creating a database with information ranging from generic details to more detailed aspects of the employees such as biometrics. This allows the Authorities to comprehensively maintain a database of the working population of the country and also make sure that offenders are barred from re-entering the country. The UAE Government has also put in place an amnesty period allowing illegal workers to return to their respective countries voluntarily without being penalised.

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

Organisations may face sanctions ranging from AED 50,000 per employee found to be working illegally. For onshore employers, the Ministry of Human Resources and Emiratisation (MoHRE) can issue a further fine of AED 50,000 per employee. Free Zone entities will be held accountable by their relevant Free Zone Authorities with the fine varying from one Free Zone to another. Repeat offenders may face an imprisonment sentence of up to six months after the initial warning has been issued by the Courts.

## 4 Corporate Immigration – General

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

The registration system varies depending on where the entity employing the foreign national is located (i.e. onshore or offshore). An onshore entity will be required to register the foreign national with MoHRE; whereas offshore entities will be required to register the foreign national workers with the relevant Free Zone Authority.

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

Yes. Employers must ensure that the employee's status as a worker as well as the employee's work permit and visa remain up to date and valid. In addition, the employer also has the duty to cancel the employee's work permit and visa upon the termination of the employee's employment.

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

No, this commitment is discretionary. It is up to the employer to decide whether or not it wishes to carry out or show 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 is no legal obligation to do so.

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

Yes. Please refer to question 3.1. The UAE Authorities, including Free Zone Authorities, carry out checks at companies/establishments on a regular basis.

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

Yes. MoHRE maintains a list of skilled occupations according to job titles and skills levels required for every job available. This allows the employer as well as MoHRE to request higher education qualifications in order to issue certain visas or work permits.

**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 UAE Government does keep a note on the occupations that are in short supply and offers incentives to companies that fill those roles.

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

Yes, there are specific quotas allowed for employment related work permits. This is applicable as per the entity and the number of foreign nationals in its employment. Onshore companies must register their interest in employing a foreign national. The MoHRE is the registration authority for onshore companies and will approve or reject the quota based on the entities' size or growth as well as the nature of the business activity.


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Ministerial Orders 41, 42 and 43 of 2005 impose a quota system on private sector employers, whereby every company with more than 100 employees is obliged to recruit (and retain on the payroll) the stipulated number of UAE Nationals to ensure the minimum percentage of participation of Emiratis in the workforce.

Companies with a lower grading are required to file mandatory financial guarantees, the amount of which will depend on the category of the employer (as set out in the relevant Order).

An entity that is offshore shall be subject to the relevant Free Zone Authority's employment quotas and approval. Approval is usually granted based on office size.

**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 as per the labour laws; however, for the last few years, the UAE has seen a shift towards Emiratisation that has taken the form of hiring local employees upon reaching/meeting a certain criterion within the entity. This also benefits the entity itself through various incentives if more local employees are hired. At present, every company with more than 100 employees is obliged to recruit and retain on the payroll a fixed percentage of UAE Nationals.

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

No. There is no set language proficiency to be met; however, employers are allowed to list language requirements as per their employment requirements. Business transactions take place in English as well as Arabic.

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

Yes. Prior to granting work permits and work visas, all employees are required to undergo a medical examination in order to ensure that the employee is free from contagious diseases such as HIV-Aids, hepatitis B and C, tuberculosis (TB), leprosy, and syphilis.

**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?**

It is mandatory for all employers to cover medical expenses through medical insurance coverage for their foreign national employees.

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

For onshore companies, the MoHRE may issue a temporary work permit allowing the employee to temporarily work for another onshore company (different from its sponsor). This temporary work permit is valid for up to 180 days and renewable for an additional 180 days.

In cases of Free Zone companies, provided that there is a contractual agreement in place, a Temporary Access Card can be issued to allow the employee to be validly seconded.

The employee also has the opportunity to work part-time for a company (secondary employer) after getting a work permit from the MoHRE. In such cases, the primary employers are responsible for annual leaves, end of service benefits, and other financial obligations in proportion to the number of actual working hours and wages stipulated in the employment contract.

As per Federal Decree Law No. 2 of 2007, if an expatriate is caught working for another company without an official permit from the MoHRE or the relevant Free Zone Authority, a fine of AED 50,000 will be applied to the hiring company, in addition to other penalties in the case of repeating the offence.

## 5 Highly Skilled Visas

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

- **Specialised talents:** Researchers in the field of culture and the arts may obtain 10-year visas on the condition that they obtain a patent of value and accreditation from the Ministry of Culture and Knowledge Development Inventors in the UAE. Only spouses and children can be sponsored in this case.
- **Doctors and specialists:** Holders of a Ph.D. degree from the top 500 universities in the world who have at least 10 years of professional experience, have won awards, and/or have contributed to major publications and projects in the field of science may be granted 10-year visas. Only spouses and children can be sponsored in this case.

## 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, foreign individuals can be granted a residency visa based on investment into or setting up a subsidiary or corporate presence in the UAE. Two types of visas can be granted in this category of investment into a corporate entity in the UAE:

1) Two- or three-year residence visa in the UAE:
   Investors, with a capital not reaching AED 10 million in a UAE company, can obtain a two- or three-year residency permit, provided that they appoint themselves as an officer of the company, such as a director, general manager, etc.
2) 10-year residence visa in the UAE:
   Investors, in the case of public investments of at least AED 10 million in the UAE, can obtain a 10-year residency permit. The investment may take many forms such as:
   - A deposit of at least AED 10 million in an investment fund inside the country.
   - Establishing a company in the UAE with a capital of not less than AED 10 million.
   - Partnering in an existing or a new company with a share value of not less than AED 10 million.
   - Having a total investment of not less than AED 10 million in all the areas mentioned, on the condition that the investment in sectors other than real estate is not less than 60 per cent of the total investment.


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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 MoHRE has issued three temporary work permits for temporary workers, to wit: Temporary Work Permit; Part Time Work Permit; and Juvenile Work Permit. These permits are valid for a maximum of six months.

Additionally, subject to approval from the MoHRE, foreign nationals can apply to obtain a Mission Work Permit. This permit acts as a non-extendable single-entry permit valid for a maximum period of 90 days allowing the individual to undertake work. These permits are only applicable to onshore entities.

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

No, there are not currently any sector-specific temporary work 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 not currently a specific immigration category for transfers of employees working for international groups of companies. Foreign employees from the same group of companies will be subject to the UAE immigration laws.

**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 to be met as there is no specific immigration category for transfers of employees working for international groups of companies.

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

There are no conditions to be met as there is no specific immigration category for transfers of employees working for international groups of companies. Foreign employees from the same group of companies will be subject to the UAE immigration laws and the standard process in order to obtain a work permit.

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

There is no specific procedure for an intra-company group employee. Please see question 9.4 on the generic procedure for obtaining a work permit.

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

There is no specific procedure for an intra-company group employee. Please see question 9.4 on the generic procedure for obtaining a residency visa.

**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.

**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?**

There is only one group called the Occupational Category. This category is further divided into the Skilled and Unskilled Categories. This division is placed by MoHRE.

**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 in the UAE is referred to as Tawteen Gate. This is a portal only for UAE Nationals to access available jobs in the market. Across the board, senior positions, such as a CEO, CFO or GM, are first offered to UAE Nationals before foreign nationals.

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

Companies are required to initially advertise a role through the portal by providing specific information on the role using the MoHRE's standard template before being able to recruit externally. Once advertised, the role will remain open for up to five days, at which point any potential candidates will be highlighted to the company through an automated system. At that stage, the company is obliged to either accept or reject each applicant.


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By accepting, the company is inviting the applicant to an interview at which point the applicant has the opportunity to also accept or reject the company. Any rejections by the company or the candidate will have to be accompanied with a reason by choosing one of the pre-determined reasons from a drop-down menu.

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

**Step 1: Registration of company credentials with MoHRE (Labour) and GDRFA (Immigration)**
On issuance of the trade licence, the company information needs to be registered with both the GDRFA and MoHRE with details of the local sponsor.

**Step 2: Apply for a Quota for the new employee**
An application needs to be submitted to MoHRE with personal information (gender, position, salary, residency address, etc.) for the required applicant.

The MoHRE will visit the office premises to ensure that the company/employer has the required space to apply for a work-permit and visa.

The number of visas that a company/employer can apply for is dependent on the space available as per the *Ejari* (the Authority responsible for the attestation of a tenancy contract): one visa = eight square metres/80 square feet.

**Step 3: Apply for a Work Permit with MoHRE**
Once the quota is approved, MoHRE issues a job offer contract. This needs to be signed by the employee and is then submitted to MoHRE for the approval of the Work Permit.

**Step 4: On approval of the Work Permit, apply for a Visa with GDRFA**
On approval of the Work Permit, an application for an Entry Permit is submitted to GDRFA (Labour).

**Step 5: Enter the country or apply for a Change of Status**
If the employee is outside the UAE, he/she can enter the country on an Entry Permit. The employee's passport and Entry Permit must be stamped at the time of entry.

If the employee is inside the UAE on a cancelled or visit visa, a Change of Status is applied for with GDRFA.

**Step 6: Complete Medical and EID Biometrics**
Once the Change of Status is completed or the applicant has entered the country, the employee will need to complete a medical exam at a Dubai Health Authority approved clinic and submit biometrics for Emirates ID registration.

**Step 7: Apply for Health insurance**
It is mandatory for all UAE visa holders to obtain medical health insurance.

**Step 8: Stamping of Visa in passport**
On receipt of the medical report, the Emirates ID application, a copy of the health insurance, and the passport of the employee are submitted to GDRFA for visa stamping.

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

Please refer to question 9.4.

The employee must provide a super-legalised education certificate for positions such as Supervisor, Manager, Executive, Technical Roles, etc. The employee is also required to complete the Medical and EID Biometrics.

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

- Issuance of Work Permit: 12–15 working days (subject to government approvals).
- Issuance of Visa: 12–15 working days (subject to government approvals).

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

The initial visas, also known as Employment Entry Permits, are valid for 60 days from the date of being issued.

Once all employment formalities have been completed, a new Employment Residence Visa is issued for a period of two years for onshore companies and three years for Free Zone companies.

The Employment Residence Visa cannot be extended, but only renewed. However, the renewal process can start from the 18th month onwards.

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

Only if the position has been reserved for UAE Nationals will the renewal application be reviewed before approval is granted.

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

The UAE does not offer Permanent Residence.

The Golden Card visa, although marketed in some instances as a permanent residency visa, is a visa that is renewable every five to 10 years similar to the employment visa, subject to certain criteria being met.

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

- Inside country visa application fees – AED 7,500.
- Outside country visa application fees – AED 5,200.

## 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?

Holders of Work Permits and Residence Visas are required to ensure that they enter the UAE once every 180 days to keep their residency active. This is applicable to all UAE visa holders.

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

Work permit holders must, upon arrival in the UAE, register themselves with the Emirates ID Authority as this is a mandatory requirement to obtain a residence permit.


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## 11 Dependants

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

The following qualify as dependants: wife/husband (husband for some categories only, such as nurses, teachers); siblings; children and step children; parents; and parents-in-law.

Super-legalised birth and marriage certificates will need to be provided for the application and the sponsor must have a UAE registered residency address.

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

Civil/unmarried partners, same-sex partners, cohabitees and children from unmarried parents (unless holding adoption letters/affidavit, or married to the parent of the child) are not recognised by the UAE as dependants.

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

Yes, a spouse can apply to the labour market with a NOC from the sponsor/spouse.

### 11.4 Do children have access to the labour market?

The Ministry of Human Resources and Emiratisation (MoHRE) may permit youth between the ages of 15 and 18 years to work, after ensuring that the following conditions are met and documents are obtained:

- written consent from the parent or the legal guardian of the minor;
- birth certificate or a certificate estimating the age of the minor issued by the competent medical authorities;
- physical fitness certificate for the requested work issued by the competent medical authorities;
- expatriate minors and their parents have a valid residence visa;
- minors are not being recruited to do a type of work prohibited under the UAE's law;
- the employer has a valid work licence; and
- work permit fees are paid.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

The UAE does not offer Permanent Residence. The Golden Card visa, although marketed in some instances as a Permanent Residency Visa, is a visa that is renewable every five to 10 years similar to the employment visa, subject to certain criteria being met.

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

No. The Temporary Work Visa will need to be formally cancelled in order for the employee to apply for a Work Visa.

The UAE does not offer Permanent Residence.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

The main bars to obtaining employment visas/permits is the medical examination undertaken by the Authorities as part of the visa issuing process. Any individual that is found to be infected with communicable diseases such as HIV-Aids, hepatitis B and C, tuberculosis (TB), leprosy, and syphilis shall be denied entry into the country and subsequently also denied the Work Permit.

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

Yes, criminal convictions are a bar to admission to work within the UAE. All individuals are screened prior to entry within the country. The UAE conducts these checks in order to judge a candidate's past and ensure that by employing the candidate, it does not endanger the security of the country, employer and employees that the candidate will be integrating into.


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**Yann Mrazek** has vast experience advising successful individuals and entrepreneurial families with Middle Eastern exposure on implementing intergenerational wealth transfer strategies and structuring their operational assets and global wealth. He also has expertise in devising and implementing family and corporate governance. He is regularly involved in the ongoing management of family holding structures – as a board member, council member, guardian or protector. In addition, he has experience of working with regulators, as well as strong practical experience in managing companies at all stages of their development.

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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 was a member of the European Union from 1973 until 31 January 2020. When the United Kingdom left the Union in January it entered into a transition period. The transition period is due to end on 31 December 2020 and a new version of a points-based immigration system is due to be implemented, which will apply to EU and non-EU nationals from 1 January 2021.

Given the preparation required to draft and implement new legislation, the deadline of 31 December 2020 seems ambitious. The United Kingdom may have to apply for an extension due to time constraints, despite the government advising that they do not want to do this. Further, the unprecedented COVID-19 crisis has, understandably, meant that preparation time and resources have been diverted to deal with the pandemic.

Until the end of the transition period the UK will continue to give 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.

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



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from requiring a visa where they have obtained an EVW. Since May 2019, nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States have been 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 ongoing 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.
- 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.


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- 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 that 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 that 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.

## 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


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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"). The Immigration Skills Charge (paid by the sponsor when the certificate of sponsorship is assigned) is £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".

### 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 hold 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. 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.

### 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.


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**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.

**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. This figure is due to increase to £624 per year from 1 October 2020.

**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 Global Talent visa, which was until recently known as Tier 1 (Exceptional Talent). The category was re-branded in February 2020 with some small changes. The quota of 2,000 visas per year has been removed and some additional fast track routes have been introduced; if the individual is a digital technology specialist or holds a peer-reviewed fellowship, for example, it may be possible to receive an endorsement sooner. This is a 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 of Engineering, Tech Nation and the Royal Society. There are specific "eligibility assessment" criteria for endorsement, depending on each endorsing body. Endorsement in the arts and culture or digital technology can be given to those who have demonstrated promise in their chosen field.

## 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 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


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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.

- Start-up visa – this category replaced the Tier 1 (Graduate Entrepreneur) category and enables those at the beginning of their careers to set up a business. Typically students are endorsed by UK universities. The visa is only temporary and is granted for two years and cannot be extended.
- Innovator visa – 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 Innovator category. 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. Since its launch very few applications have been made under this category.
- Tier 1 (Investor) visa – for those with £2 million 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 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.

### 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


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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 uploads their supporting documents online prior to their booked appointment. Original supporting documents are not usually required for the appointment.
- The employee attends an appointment at the VAC with their appointment confirmation sheet and original passport(s), and provides their biometrics (fingerprints and photographs).
- The VAC will scan the application documents, if they have not been uploaded online, and will send the application documents electronically to UKVI in Sheffield, UK, for processing. The original passport is retained for endorsement.
- UKVI in the UK will decide the application and communicate the decision to the VAC who will endorse a 30-day entry visa inside the original passport. 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 (if the employee is not a national of the country of application, additional evidence of legal residence is required).
4. 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.

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:


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- 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 2020–2021 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 (due to increase to £624 per year from 1 October 2020)

The fees usually increase 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, or 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.

### 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


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(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 Resident Labour Market Test. 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, transcript, medium of instruction letter and an official statement from UK NARIC confirming that the degree 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 for 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 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


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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 the 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.

## 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".


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- 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, is disclosed in visa applications and applications for leave to remain and indefinite leave, as failure to mention them may result in the 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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# USA

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## 1 Introduction

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

The Immigration and Nationality Act (INA) of 1952 is the primary source of law governing the U.S. immigration system. Subsequent amendments are codified in the United States Code (U.S.C.) Title 8.

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

The corporate immigration system is administered by four authorities: the U.S. Citizenship and Immigration Services (USCIS), a department within the Department of Homeland Security (DHS), which processes immigrant and nonimmigrant benefits from within the U.S.; U.S. Customs and Border Protection (CBP), which carries out immigration and customs controls on people and goods entering the U.S.; the U.S. Department of Labor (DOL), which ensures that employers abide by federal employment laws and do not discriminate because of national origin against U.S. citizens; and the U.S. Department of State (DOS), which processes immigrant and nonimmigrant benefits outside the U.S.

### 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 has several bilateral and multilateral agreements:

- The North American Free Trade Agreement (NAFTA) between the U.S., Canada and Mexico is a trilateral agreement that allows citizens of Canada and Mexico to obtain visas, TN1 and TN2.
- Free Trade Agreements (FTAs) with Singapore and Chile, authorising citizens of Singapore and Chile to apply for an H-1B1 visa to enter and work in the United States.
- Eighty-two countries have treaties of commerce and navigation with the U.S. that are eligible for treaty trader (E-1) and treaty investor visas (E2).
- Australian citizens are eligible for an E-3 visa to perform in a specialty occupation.

## 2 Business Visitors

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

The Visa Waiver Program (VWP) enables nationals of 35 participating countries to travel to the United States for tourism or business for 90 days or less without obtaining a visa. Nationals of VWP countries must meet certain eligibility requirements to travel, namely filing for pre-approval through the Electronic System for Travel Authorization (ESTA) system. VWP travellers are required to have a valid authorisation through ESTA prior to travel. Travellers are screened at the port of entry into the United States and are enrolled in the Department of Homeland Security's US-VISIT programme.

Individuals may apply for approval for a 90-day entry into the United States with ESTA approval being granted for two years. Participating countries can be found here: https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html.

There are limitations for nationals who have travelled to or been present in the Democratic People's Republic of Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country). Moreover, nationals of VWP countries who are also nationals of these countries may be barred entry into the United States.

### 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. A business visitor who is not a citizen of the VWP eligible country must apply for a B-1 business visitor visa with an initial period of stay of six months, which may be extended in six-month increments.

### 2.3 What activities are business visitors able to undertake?

Business visitors may participate in "business activities of a commercial or professional nature" including but not limited to: consulting with business associates; travelling for scientific, educational, professional or business conventions; settling estate matters; negotiating contracts; participating in short-term training; and other business-related matters.


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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?

There are a variety of business visas available for individuals seeking admission. The common forms of business visas include:

- B *in lieu* of H-1B: For B-1 Business Visitors entering the U.S. to temporarily work for a foreign employer on a discrete project (through a U.S. Embassy application).
- H-1B, Specialty Occupation Visa: For work in a specialty occupation that normally requires a higher education degree or its equivalent.
- H-2A, Temporary Agricultural Worker: For temporary and seasonal agricultural work if determined to be in the best interest of the United States.
- H-2B, Temporary Non-Agricultural Worker: For temporary and seasonal non-agricultural work if determined to be in the best interest of the United States.
- H-1B1, Free Trade Agreement Professional: For work in a specialty occupation which requires a post-secondary degree involving at least four years of study in the field of specialisation (only applicable to Chile and Singapore through a truncated U.S. Embassy application).
- L, Intracompany Transferee: For transferring employees in a managerial or executive position or a position of specialised knowledge from their foreign employer to a U.S. entity with a qualifying corporate relationship, including affiliate, subsidiary or branch. The employee must have been employed by the company abroad for at least one year prior to applying.
- H-3, Trainee or Special Education Visitor: For training, other than graduate medical or academic, that is otherwise unavailable in the applicant's home country, or practical educational training programmes for children with physical, mental or emotional disabilities.
- O, Individual with Extraordinary Ability or Achievement: For those with extraordinary ability in the arts, sciences, business, education, athletics or television and film who can demonstrate sustained national or international acclaim in their field of expertise.
- P-1, Athletes or Entertainers: For employment with a specific athletic organisation or entertainment group.
- P-2, Artist or Entertainer: For employment under a reciprocal exchange programme between an artistic group in the United States and its foreign counterpart.
- P-3, Artist or Entertainer: For teaching, coaching or training in the United States which is culturally unique or for providing essential support therein.
- Q-1, Participant in an International Cultural Exchange Program: For training and employment to encourage the sharing of information on the history, culture and traditions of an applicant's home country through cultural exchange.

### 2.5 Can business visitors receive short-term training?

Business visitors are allowed to engage in short-term training related to the commercial nature of their business. They cannot be paid by a U.S. source beyond incidental allowance or reimbursement expenses.

## 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 Immigration Reform and Control Act of 1986 (IRCA) prohibits employers from knowingly hiring unauthorised aliens and hiring individuals without completing an employment eligibility verification process, known as I-9 Verification. Employers must verify each employee's identity and employment eligibility within three business days of hire. Employers must confirm that employees are U.S. citizens, lawful permanent residents or immigrants authorised to work. Failure of an employer to adequately complete the I-9 verification may result in civil sanctions or criminal charges.

Immigration and Customs Enforcement (ICE) is the federal agency that conducts compliance of foreign workers. The process begins with the service of a Notice of Inspection seeking access to evidence of I-9 compliance by a company. ICE agents may conduct an audit of the documentation provided to ensure compliance, and may issue the following findings:

- Notice of Inspection Results: Notifies that a business was found to be in compliance, and no further action is required.
- Notice of Suspect Documents: Notifies that the audit found an employee who is unauthorised to work and advises of the possible criminal and civil penalties for continuing to employ that individual. The employer and employee have an opportunity to present additional documentation to demonstrate work authorisation if they believe the finding is in error.
- Notice of Discrepancies: Notifies that the results of the audit were inconclusive as to work authorisation. The employer and employee have an opportunity to present additional documentation to demonstrate work authorisation if they believe the finding is in error.
- Notice of Technical or Procedural Failures: Notifies of technical violations identified during the inspection, such as incomplete documents or lack of signatures, and gives the employer 10 business days to correct the forms.
- Warning Notice: Notifies of substantive compliance failures, such as the identification of an unauthorised employee, but does not rise to the level of civil penalties. This notice outlines expectations for future compliance by the employer to avoid civil penalties.
- Notice of Intent to Fine (NIF): Notifies of substantive violations, generally the knowing employment of unauthorised employees, or continued employment of unauthorised employees after a prior audit. The employer will be advised of each specific violation, and be notified of their right to negotiate a settlement with ICE or enter administrative hearings before an Administrative Law Judge. The administrative law process requires the submission of a formal complaint as to the allegations by ICE and allows substantive response and presentation of evidence by the employer. Employers may be subject to monetary penalties of up to $22,363 for each violation, disqualification from future federal contracts or government benefits and criminal prosecution.


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In addition, the USCIS via the Fraud Detection and National Security (FDNS) division conducts on-site inspections for employers who have sponsored foreign workers (i.e. H-1B and L-1). These inspections are used to verify the information provided in the original petition for the foreign worker, such as work location, and to ensure compliance with other employment terms. Violations can result in denial of future petitions or revocation of the current approved petition.

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

IRCA requires employers to verify each employee's identity and authorisation to work through the I-9 verification process within three days of hire, which may be completed on a web-based system operated by the USCIS named E-verify. Employers must confirm that employees are U.S. citizens, lawful permanent residents or nonimmigrants authorised to work. Failure of an employer to adequately complete the I-9 verification may result in civil sanctions or criminal charges.

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

Violations of IRCA may result in civil monetary fines for relatively minor violations, and criminal violations for more serious, repeated violations:

- Civil Penalties: Up to $22,363 per violation may result for employers who engage in the following: knowingly recruiting, hiring and continuing to employ an unauthorised employee; failing to comply with I-9 Verification; engaging in the production or presentation of knowingly fraudulent documents in support of an unauthorised employee; or failing to respond to a Notice of Intent to Fine.
- Criminal Penalties: Criminal indictments may be brought against employers for a pattern and practice of "regular, repeated and intentional activities" and "serious and repeat offenders" who have demonstrated intent to evade the law. Criminal penalties include up to six months in confinement.

## 4 Corporate Immigration – General

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

U.S. employers who wish to hire a foreign national are not required to register within a formal system. However, there are visa specific registrations that an employer may have to adhere to:

- Employers that are subject to the annual H-1B Cap must register with the electronic registration process implemented by the USCIS.
- Employers that wish to employ F-1 students seeking an extension of their optional practical training (OPT) under the Science, Technology, Engineering and Mathematics (STEM)-designated degree programme must enrol in E-Verify.

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

U.S. immigration laws have ongoing compliance requirements. U.S. employers must ensure that they adhere to the obligations proffered in the immigrant and nonimmigrant visa petitions filed to USCIS, such as wage and job responsibilities. Some employer compliance requirements are visa specific, such as the H-1B and E-3 visa classifications which require employers to maintain a Public Access File (PAF).

U.S. employers must also verify employer identity and work authorisation through the I-9 verification process, and if the employer has enrolled in E-verify they must register all employees into the E-verify system.

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

The U.S. system has no training requirement.

### 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?

U.S. sponsoring employers who wish to hire an H-1B worker are required to pay the American Competitiveness and Workforce Improvement Act (ACWIA) training fee of $750 for companies with one to 25 workers and $1,500 for companies with 26 workers or more. The fees are applied to scholarships, on-the-job training, and U.S. DOL enforcement of ACWIA programmes.

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

The main federal agencies which conduct unscheduled inspections are USCIS and the DOL, but U.S. Immigration and Customs Enforcement (ICE) has the lead in domestic investigations and DOS has the lead in investigations involving visas issued abroad.

### 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. One exception is under the employment-based immigrant visa petition category for Schedule A which contains a list of shortage occupations that are in the nation's interest to fill, including professional nurses and physical therapists.

The U.S. Bureau of Labor Statistics publishes the Occupational Outlook Handbook (OOH). This publication includes information about the nature of work, working conditions, training and education, earnings, and job outlooks. The OOH is used both by the DOL and the USCIS when those agencies determine eligibility for nonimmigrant visas, i.e. H-1B visa.

### 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 addition to exemptions for employment-based immigrant visa petition categories under Schedule A for shortage occupations, such as professional nurses and physical therapists, the USCIS does not require a test of the labour market for individuals applying for immigrant visas under the first preference immigrant visa category that includes:


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- individuals of extraordinary ability;
- outstanding professors and researchers; and
- multinational executives and managers.

USCIS also recognises an exemption of the requirement to test the labour market for the second preference (EB-2) immigrant visa category for individuals holding an advanced degree or for individuals of exceptional ability in the arts, science or business who can demonstrate that their work is in the national interest of the United States.

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

U.S. immigration law sets annual quotas for employment-based immigrant visas and caps which are placed on some nonimmigrant visa classifications such as the H-1B. For employment-based immigrant (i.e. green cards) visas, the quota is set to 140,000 per year. In addition to an overall limit on green cards issued per year, the INA also limits the number of green cards issued based on an individual's country of birth. Under this annual "country cap", no single country of origin can account for more than 7% of the green cards in any particular category. Thus the DOS publishes the availability of each affected visa category in a monthly "Visa Bulletin".

For employment-based nonimmigrant visas, the following caps exist per year:

- H-1B visas are capped at 65,000 with an additional 20,000 available to those who have a U.S. Master's degree from a public university;
- H-2B visas are capped at 66,000;
- E-3 visas are capped at 10,500; and
- H-1B1 visas are capped at 6,800: 1,400 for Chilean nationals; and 5,400 for Singapore nationals.

### 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 that an employer may sponsor. However, "H-1B dependent employers" that hire a larger number of H-1B employees than what is deemed the normal standard must document that they are not displacing qualified U.S. workers. An employer is considered H-1B dependent if they have: (1) 25 or fewer full-time employees and at least eight H-1B workers; (2) 26 to 50 full-time employees of whom at least 13 are H-1B workers; or (3) 50 or more full-time employees of whom 15% are H-1B workers. While there is no set limit on the number of petitions that a company can file, H-1B dependent employers must verify their dependence on foreign labour with each Labor Condition Application filed. They are subject to a higher government filing fee ($4,000) if they have more than 50 employees and more than 50% of their workforce is in H-1B status.

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

U.S. immigration laws do not require English language proficiency in the petition or visa application processes, except that certain healthcare workers are required to demonstrate competency in oral and written English based on passing scores from the Test of English as a Foreign Language (TOEFL) which is issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS). The DHS has authorised the CGFNS to validate English proficiency for foreign healthcare professions.

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

Nonimmigrant visa applicants are not required to undergo a medical examination. If consular officers have concerns that an applicant is inadmissible due to health-related grounds, they can require a medical examination. However, immigrant visa applicants seeking permanent residence must undergo a medical exam.

### 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?

U.S. employers must offer benefits, including health insurance, to nonimmigrant H-1B workers on the same basis provided to similarly employed U.S. workers. J-1 cultural and educational exchange nonimmigrants and their dependents must also have medical insurance coverage for the duration of their exchange visitor programme. Additionally, applicants for immigrant visas must have insurance which meets the Patient Protection and Affordable Care Act (ACA).

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

U.S. immigration laws permit secondment of foreign workers in certain visa classifications, such as the H-1B and L-1 visa categories, but the U.S. employer must demonstrate that a legitimate employer-employee relationship exists. Additionally, under the H-1B classification, the employer is only authorised for employment locations as specified in the Labor Condition Application so all secondment locations must be documented within the LCA.

## 5 Highly Skilled Visas

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

Individuals who possess extraordinary ability may enter the U.S. for a temporary period in the O-1 nonimmigrant visa category or remain permanently in the U.S. by the employment-based, first preference (EB-1) immigrant visa category.

To qualify for the temporary O-1 nonimmigrant status, one must demonstrate sustained national or international acclaim in an area of extraordinary ability in the sciences, arts, education, business or athletics. A person may also qualify for the nonimmigrant status by demonstrating a record of extraordinary achievement above that ordinarily encountered in the motion picture or television industry.

The employment-based, first preference category for permanent residence in the U.S. is reserved for: persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers.


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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?**

There are both immigrant and nonimmigrant visa options for investors:

(1) E-2 nonimmigrant visas which are for nonimmigrants who are nationals of treaty countries that are making a significant investment in a U.S. business.

(2) L-1A nonimmigrant visas can be utilised for a U.S.-based startup entity which is known as a "new office" petition. This provides opportunities for entrepreneurs who have successfully sustained business abroad that now seek to open operations in the United States.

(3) EB-5 immigrant visas are available for applicants who will invest $900,000 in a project within a Targeted Employment Area (high unemployment or rural); or who will invest $1.8 million in a cash 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?**

The J-1 classification is available for those who intend to participate in an approved Exchange Visitor Program run by a public or private entity designated by the DOS for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.

The Q-1 classification is for participants of international cultural exchange programmes, designated by the USCIS, which are aimed at providing practical training and employment, and sharing the history, culture and traditions of one's home country.

The H-3 classification allows a foreign national to temporarily enter the U.S. as a trainee, to receive training in any field of endeavour that is not available in their home country.

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

The H-2A visa classification is available to bring foreign nationals to the U.S. to fill temporary agricultural jobs. The job offer must be of a temporary or seasonal nature and employers must demonstrate that there are not enough U.S. workers who are able, willing, qualified and available to do the temporary work and that the employment of these foreign nationals will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Another visa classification available for short-term temporary work is the H-2B visa classification, which is for foreign nationals who seek to come to the U.S. to fill temporary nonagricultural jobs. Employers must establish: that there are not enough U.S. workers able, willing, qualified and available to do the temporary work; that employing these H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and that the need for the workers' services or labour is temporary. This need can either be a one-time occurrence or a seasonal need.

## 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 L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager to one of its U.S. offices from one of its affiliated foreign offices. The L-1B nonimmigrant classification enables a U.S. employer to transfer a professional employee with specialised knowledge relating to the organisation's interests to temporarily work in its U.S. office from one of its affiliated foreign offices.

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

In order to sponsor employees as an intracompany transferee, the U.S. company must evidence a qualifying relationship with the foreign company, such as being a parent company, branch, subsidiary, or affiliate. Furthermore, the U.S. company must currently be, or will be, doing business as an employer in the U.S. and in at least one other country directly or through a qualifying organisation for the duration of the employee's transfer to the U.S.

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

The U.S. employer must first file a Petition for a Nonimmigrant Worker (Form I-129) with the USCIS, demonstrating that the employer and employee meet the requirements for the L-1 nonimmigrant visa category, obtain an approval for the foreign worker to receive a visa stamp and enter the U.S. in the classification and obtain a valid I-94 record of admission that will authorise their employment in the U.S.

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

Employers seeking to transfer employees to the U.S. through the intra-company visa classification must first file a Form I-129, Petition for a Nonimmigrant Worker, along with the appropriate filing fees, on behalf of the employee to the USCIS. Once an approval of the Form I-129 petition is received from the USCIS, the employer will provide the employee with the approval notice so that the employee may use this in support of their visa application at a U.S. Consulate or Embassy. After obtaining the visa stamp, the employee may enter the U.S. where they will be issued an I-94 record of admission authorising their work in the U.S. for that specific employer. This record also contains the end date of their intra-company nonimmigrant status.

Some U.S. companies may be eligible to establish the required intra-company relationship in advance of filing individual L-1 petitions by filing a blanket petition. A company is eligible for blanket L certification if it can obtain preapproval with the USCIS by qualifying for a number of requirements.


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

After the L-1 visa petition is approved by the USCIS, employees must attend a visa interview at a U.S. Consulate or Embassy. Generally, the process for obtaining a visa under the intra-company transfer category is as follows:

- Submit an online visa application form (DS-160), which requests full personal details and confirmation of the intended employment.
- Attend the appointment and bring all relevant documentation, including confirmation of submission of the Form DS-160, a valid passport, passport photographs, and documents supporting the intended employment as outlined on the country specific U.S. Embassy website.
- Once the visa application is approved, the visa will be issued within two or three business days and the applicant's passport will be mailed to the pick up location where it will be available for collection a few days later.

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

The visa processing may take anywhere from 15 calendar days to several months depending on where the applicant is applying and whether paid-for premium processing 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?

Sponsoring employers may request a three-year validity period for the initial request of an intra-company visa classification and two years for subsequent extensions. Managers and executives may hold this visa classification (L-1A) for a maximum period of seven years and employees possessing specialised knowledge may hold this visa classification (L-1B) for a maximum period of five years. The visa stamp is valid for five years or less depending on the country of nationality's reciprocity rules with the U.S.

### 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 are eligible to apply for permanent residency through first, second and third preference employment-based categories.

The first preference employment-based immigrant petition (EB-1C classification) is designed for the most proficient and skilled foreign multinational managers and executives. An employee must receive an offer for permanent and full-time employment with the qualifying U.S. employer. The employer must file an I-140 Immigrant Petition for Alien Worker and once the petition has been approved, the employee may apply for an adjustment of status within the U.S. or apply for outside consular processing to become a permanent resident once the employee's priority date is current, meaning that a visa is available for the employee.

The second preference employment-based immigrant petition (EB-2 classification) is for professionals holding an advanced degree or its equivalent as well as foreign nationals who have exceptional ability. The third preference employment-based immigrant petition (EB-3 classification) encompasses skilled workers, whose jobs require a minimum of two years of training/experience, and professionals, whose jobs require at least a U.S. baccalaureate or foreign equivalent degree, which an intra-company employee may qualify under. These preference categories require the employer to file a Program Electronic Management Review (PERM) Labor Certification with the DOL after conducting a recruitment effort to document that there are no qualified U.S. workers available for the full time position at the prevailing wage to test the labour market. Once the PERM Certification is received, the employer must then file an I-140 Immigrant Petition for Alien Worker, and once the petition has been approved, the employee may apply for an adjustment of status within the U.S. or apply for outside consular processing to become a permanent resident once the employee's priority date is current, meaning that a visa is available for the employee.

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

The 2020 fees associated with the L-1 nonimmigrant petition for a foreign worker are as follows:

- $500 Fraud Prevention and Detection Fee for employers seeking initial L-1 status.
- $4,500 fee for employers that employ 50 or more employees in the U.S. with more than 50% of these employees in H-1B, L-1A, or L-1B nonimmigrant status.
- $460 filing fee for the base fee.
- $1,440 filing fee for premium processing service.

The 2020 fees associated with applying for a L-1 nonimmigrant application through the DOS at a U.S. Consulate or Embassy located outside the U.S. based on an approved Blanket L Petition are as follows:

- $500 Fraud Prevention and Detection Fee for employers seeking initial L-1 nonimmigrant status.
- $190 fee to issue a visa stamp.
- Reciprocity fees may apply depending on the country of nationality.

## 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 highest number of employment-based visas issued were for H-2A Temporary Agricultural Workers reaching 204,801. However, the H-1B and L-1 visa categories are the most popular categories used by employers seeking to obtain work permits for new foreign hires in professional positions, but only 188,123 visas were issued for H-1B 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?

There are specific nonimmigrant work visas that require testing the labour market. These include: the H-2A, temporary agricultural workers; H-2B, temporary non-agricultural workers; and H-1B dependent employers.

It is important to note that a testing of the labour market is also required for immigrant visa petitions which are predicated on a successful Program Electronic Review Management (PERM) filing. PERM is managed by the DOL and provides certification


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that bringing the immigrant worker to the United States will not displace a U.S. worker who is "able, willing, qualified, and available" to provide those services. A company meets its PERM obligations through advertising the job and documenting the recruitment process which failed to result in a U.S. hire.

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

There are no exemptions for testing the labour market for H-2A, H-2B or H-1B dependent employers nonimmigrant visas.

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

For most nonimmigrant visa classifications for employment, such as the H-1B and L-1, a Petition for Nonimmigrant Worker (Form I-129) must be filed by the employer and approved by the USCIS before the foreign national can apply for the corresponding visa at a U.S. Consulate or Embassy outside the United States.

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

Once a Petition for Nonimmigrant Worker (Form I-129) is approved by the USCIS, the foreign national can apply for a visa through the DOS at a U.S. Embassy or Consulate, or, if in the United States, can simply begin working on their new status. Others, like the E1/E2 treaty trader/investor or TN1/TN2 Canadian/Mexican, do not require an approved petition and the applicant can file directly for their visa abroad or apply for status at a port of entry to the U.S.

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

The length of the process varies depending on visa classification and can fluctuate depending on appointment availability at a foreign U.S. Consulate or Embassy. If premium processing service is available through the USCIS, approval can take 15 days or less. If the applicant applies through regular processing, it can take on average four to six months.

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

U.S. immigration law and regulations recognise a distinction between visa validity and period of admission. Visa validity is the period during which a visa remains valid for entry to the United States. Period of admission is how long someone is permitted to remain in the U.S. after admission. The period of admission is limited by the visa category and may be narrowed by Customs and Border Protection (CBP) at the time of admission, or the expiration date on the visa petition approval notice issued by the USCIS.

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

Labour market testing is required when an employee extends their nonimmigrant H-2A, H-2B and H-1B dependent employers.

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

Employees can apply for permanent residence as long as they are the beneficiary of an approved I-140 Immigrant Visa Petition.

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

Most nonimmigrant work visa petitions are filed on Form I-129, Petition for Nonimmigrant Worker. The base fee for this form is $460. Additional government fees can apply based on the visa classification sought. For example, the H-1B visa will have additional fees including a $500 Fraud Prevention and Detection fee, a $750 or $1,500 ACWIA training fee and $1,440 for premium processing service. The current filing fee for the I-140 immigrant visa petition is $700.

## 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?

Nonimmigrant workers are required to work for the petitioning U.S. employer under the terms and conditions articulated in the documents filed with the government. Collaterally, employers are required to compensate foreign national workers in accordance with that agreement and in line with similarly situated workers. Additionally, certain criminal convictions and unauthorised employment can result in the initiation of removal proceedings.

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

The United States and its constituent local and state authorities do not require registration with municipal authorities. However, Designated School Officials (DSOs) are required to report F-1 students in the Student and Exchange Visitor Information System (SEVIS) which is a system regulated by the DHS for Student and Exchange Visitor Program (SEVP)-certified schools. All nonimmigrant and immigrant visa holders are required to report a change of address within 10 days of moving by completing Form AR-11, Alien's Change of Address, which is submitted to the USCIS.

## 11 Dependants

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

Dependants include the spouse and unmarried children under 21 years of age of the foreign national employee. The parent-child relationship is further subject to the following definitions of a child:

- genetic child born in wedlock;
- a genetic child born out of wedlock. If petitioned by the natural mother, there is no legitimation required; however, if petitioned by the natural father, proof of legitimation based on the rules of the child's or father's country of residence is required;


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- a child born through Assisted Reproductive Technology to a non-genetic gestational mother as the child's legal mother at the time of birth;
- a stepchild, as long as the marital relationship creating the step-relationship takes place before the child turns 18 years old; or
- a child lawfully adopted before the age of 16 years old and who has resided in the legal and physical custody for at least two years.

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

Same sex partners do qualify as family members; however, same-sex marriage is only lawful in certain states in the United States. In order for a same-sex marriage partner to be recognised as a family member, the marriage must have taken place in a formal civil ceremony in a state or country where same-sex marriage is formally recognised. U.S. immigration authorities will review the marriage laws in the jurisdiction where a same-sex marriage is solemnised to determine the validity of the marriage.

Unmarried partners do not qualify as dependent family members under U.S. immigration law, but cohabiting domestic partners may enter the U.S. on a B-2 nonimmigrant visa to accompany their partner.

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

Dependent spouses may have the right to employment authorisation in the United States, but only under the following visa categories:

- E-3D, spouse of an E-1, E-2, and E-3 visa holder;
- H-4, spouse of an H-1B visa holder who has an approved Immigrant Visa Petition;
- L-2, spouse of an L-1 visa holder; and
- J-2, spouse of a J-1 visa holder only if additional income is needed to support the J-2 and not the J-1.

### 11.4 Do children have access to the labour market?

If a foreign national child has authorisation to work in the U.S., they do have access to the labour market, but the schedule of work and the type of work they can perform are regulated by both federal and state law. On the federal level, the Fair Labor Standards Act (FLSA) establishes the age of 14 as the minimum age for employment, and regulates employment for children until they reach 18 years of age. The FLSA prohibits employment of children in hazardous work; however, there are generous exceptions for agricultural work or work completed by a minor for his or her parents.

Each individual state also maintains its own laws related to employing children. When state laws and the federal FLSA regulations overlap, employers are required to apply the law that provides the most protection to minors.

## 12 Permanent Residence

### 12.1 What are the conditions for obtaining permanent residence?

For one to obtain permanent residence in the United States, one must demonstrate:

- approval of an Immigrant Visa Petition;
- an immigrant visa is available; and
- be admissible to the United States.

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

A person can switch from a temporary work visa to permanent residence so long as he or she is in a nonimmigrant visa category that recognises the doctrine of dual intent, such as H-1B or L-1. This allows a foreign national to have the intent to be in the U.S. temporarily as a nonimmigrant and at the same time have the intent to be an immigrant.

## 13 Bars to Admission

### 13.1 What are the main bars to admission for work?

Grounds of inadmissibility do not permit certain individuals to enter the United States, including:

- Health: For a communicable disease of public health significance, e.g. gonorrhoea, leprosy, or active tuberculosis; failure to obtain necessary vaccinations or failure to present evidence of vaccinations against vaccine-preventable diseases; being diagnosed with a physical or mental disorder associated with harmful behaviour likely to reoccur; and for ongoing or past drug addiction.
- Criminal: For having committed a "crime involving moral turpitude"; violation of any controlled substance law, either foreign or domestic; multiple criminal convictions with imprisonment of over five years; any drug trafficking crime; prostitution; human trafficking; money laundering; or the commission of a serious crime.
- National Security: For those for whom the U.S. government has reasonable grounds to believe are entering the United States to engage in espionage, in the overthrow of the U.S. government or in any unlawful activity; for those whom the U.S. government believes to have participated in any terrorist activity or provided material support to a terrorist organisation; for membership in a totalitarian political party; and for those who are members of the Nazi party and participated in persecution. National Security grounds are further explained in question 13.2 below.
- Public Charge: For those who are likely to be primarily dependent on the government for economic subsistence, based on their age, education, assets, income and health.
- Lack of Labor Certification: For those who intend to enter the United States as permanent immigrants when the U.S. Department of Labor has failed to certify that their entry and employment will not adversely affect the wages and working conditions of U.S. workers similarly employed, and that there are not enough workers in that same field to meet employers' demands.
- Fraud: For those who have fraudulently or wilfully misrepresented a material fact when seeking an immigration benefit.
- Prior Removal: For those with prior immigration violations including remaining in the United States for more than 180 days without lawful status, and those ordered to be removed previously by judicial process.
- Miscellaneous: For those who have falsely claimed to be a United States citizen; practising polygamists; those acting as smugglers and stowaways; student visa abusers; and other offences.


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

Individuals who commit certain crimes may be ineligible to enter the United States and obtain work permission. Pursuant to INA § 212(a)(2), a foreign conviction for a "crime involving moral turpitude", controlled substance violations, multiple criminal convictions, drug trafficking, prostitution, serious criminal activity, human trafficking and money laundering constitute bars to admission to the United States.

While the latter of these crimes are recognisable, the term "crimes involving moral turpitude" can encompass a wide range of crimes, but are generally crimes with "malicious intent" and actions which are "inherently base, vile, or depraved, and contrary to the accepted rules of morality" in society. Indeed, crimes of moral turpitude are those "contrary to justice, honesty, principle, or good morals". While federal courts are generally responsible for defining "crimes involving moral turpitude", the DOS makes the determination when individuals apply for visas from abroad. Challenging a denial based on the prior commission of such an act can be challenging.

U.S. immigration authorities offer a waiver for crimes involving moral turpitude when only one such crime was committed and the maximum criminal penalty does not exceed one year in confinement. However, the waiver is unavailable to most individuals seeking entry into the United States on a business visa.

Serious crimes of murder, rape, sexual abuse of a minor, burglary, ransom, child pornography, forgery, trafficking in firearms, tax evasion of more than $10,000, alien smuggling, and aggravated crimes of violence will prevent admission without the potential option of a waiver.

Similarly, individuals will be denied admission to the United States if they are believed to have been a current or former member of a terrorist organisation, or if they have provided material support, recruitment or any financial support to a terrorist organisation. The United States will also deny entry to individuals who intend to engage in espionage, demonstrate violent opposition to the U.S. government, have interests adverse to the U.S. government, or maintain current membership in the Communist party or former membership in the Nazi party.


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**Dana K. Imperia** is a Partner in Green and Spiegel's Philadelphia office. Exclusively working in the field of immigration law since 2005, Dana has gained extensive experience across various tracts of complex nonimmigrant and immigrant visa acquisition within employment-based immigration law, representing multinational corporations, domestic entities, major league sports organisations, eSports teams and leagues, universities and colleges, research institutions, hospitals, and nonprofits, among others. Dana is also well-known in the immigration law community for her unique expertise in sports immigration, regularly representing professional teams in major league sports, eSports teams and leagues, elite athletes at the professional and amateur levels, coaches, professional staff, and sports agents. Dana also leads the firm's outbound/global immigration, providing a strategic partnership to companies in global immigration matters, from short-duration visas for the global executive to business visas, residence permits and work permits for countries around the world.

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**Ashley P. Hogan** is an Associate Attorney in Green and Spiegel's Philadelphia Office. She has an array of experience with nonimmigrant and immigrant employment-based cases, marriage and family-based cases, and naturalisation applications. She has prepared complex responses to Requests for Evidence, particularly related to H-1B, L-1, and I-140 filings, covering specialty occupation, right to control, maintenance of status, ability to pay and more.
Prior to joining Green and Spiegel, Ashley worked as a Law Clerk for three years assisting multinational and domestic corporations, as well as individuals, from several industries including Information Technology, Marketing, Athletics, Academia, Business, Transport, and Health. She helped these clients prepare filings with the U.S. Citizenship and Immigration Services as well as navigate Consular Processing with U.S. Consulates and Embassies around the world.

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Green and Spiegel, LLC is a law firm specialising in North American immigration law. The U.S. headquarters is located in Philadelphia, Pennsylvania with additional offices in Colorado, Ohio, and Rhode Island. From large corporate employee transfers to difficult family sponsorships and humanitarian applications for permanent residence, Green and Spiegel can help. With top legal minds in corporate employee transfers, removal/deportation, immigrant investment, family immigration, immigration compliance, and resolving inadmissibility issues, the professionals at Green and Spiegel have been recognised as industry leaders.

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