



THE GLOBAL EMPLOYER:
FOCUS ON GLOBAL
IMMIGRATION & MOBILITY

2019/2020



The Global Employer: Focus on Global Immigration and Mobility

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Editor's Note

On behalf of Baker McKenzie's Global Immigration and Mobility practice group, I am thrilled to share with you the newest edition of *The Global Employer: Focus on Global Immigration and Mobility*. This handbook is a product of the efforts of numerous lawyers throughout Baker McKenzie and selected local professionals at other firms. With more than 150 immigration professionals in over 40 countries, Baker McKenzie's Global Immigration and Mobility practice group is uniquely positioned to provide a full suite of legal services to clients. This handbook, which provides an overview of the business and legal considerations associated with global mobility assignments, is one of the many valuable resources made available to multinational companies that move employees around the world. The product of over 60 years of experience, the information found on the following pages is tailored to the feedback we have received from our clients who move employees globally. We are thankful for this input and invite you to let us know what we can do to make this tool more useful to you and your colleagues. As you would expect, we would be happy to be contacted directly. Contact information for our authors is just a few pages farther in this book.



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- **Workplace compliance**, including counseling, trainings, audits and litigation defense related to worksite enforcement and related employer initiatives
- **Advocacy** on legislative reforms and regulatory changes, and agency practices around the world
- **Design and implementation** of programs to accept immigrant investors, and schools and training programs to accept foreign students
- **Coordination** among members of our global team to obtain visas, residence and work permits from consular offices or to execute transfers to the countries where you do business
- **Transfers of staff** to existing and new multinational operations, including employees with specialist and technical skills, executives and managers and new employees hired from overseas
- **Large-scale transfers**, including managing the immigration consequences of reorganizations, mergers, acquisitions, RIFs, redundancies, and related restructuring
- **Transfer-related immigration matters**, including permanent residence, citizenship and relocation of spouses and other dependents

- **Case management**, including maintaining employee records for visa renewals, provision of status reports, and planning and coordination of global immigration requirements
- **Employment, employee benefits and tax advice** in relation to the transfer of staff, including structuring and auditing the employment relationship to ensure compliance with legal and tax obligations and to prevent obligations to prevent unauthorized employment
- **Ancillary transfer issues**, working with a range of professionals in relation to shipping of personal belongings and customs and excise duties
- **Establishment of new business operations abroad**, including the transfer of senior personnel to establish operations and related corporate and securities and taxation advice

Further Information

ASEANmobilityguide.bakermckenzie.com gives an overview of employment laws and regulations in the region in an interactive platform that lets you compare and contrast the differences among jurisdictions.

Bakermckenzie.com/globalimmigration provides links to current articles, practice group members, subscriptions to publications, and other resources for global mobility professionals.

Global Immigration and Mobility Update is a quarterly publication focused on global mobility issues.

Global Immigration and Mobility Alert is a periodic publication that provides timely information on new developments in the global mobility arena.

Global Equity Services Alert is a periodic publication with global coverage of employment benefits, equity compensation and taxation.

The Global Employer news magazine is published three times a year and provides timely updates to employment laws in various jurisdictions. Based on current global employment trends, there are also special issues on topics such as managing global business change, pensions, discrimination, reducing employment costs, and more.

The Global Employer Monthly eAlert is an email newsletter that provides timely employment law articles, spots trends and highlights current and potential hot button issues from around the globe.

Structuring International Transfers of Executives is our publication providing an in-depth discussion of compensation issues for expatriates.

The Global Employer: Focus on US Business Immigration

The Global Employer: Focus on Termination, Employment Discrimination & Workplace Harassment Laws

The Global Employer: Focus on Trade Unions & Works Councils

Bakermckenzie.com/Employment provides links to the publications and resources for Baker McKenzie's Global Employment practice, including employment compensation and counseling, global equity services, international executive mobility, and immigration.

Table of Contents

Section 1 Introduction	1
Section 2 Major Issues	7
Immigration	9
Employment	14
Compensation and Employee Benefits	26
Income Tax and Social Insurance	46
Global Equity Compensation	70
Section 3 Country Guide	87
Argentina	89
Australia	100
Austria	119
Belgium	138
Brazil	161
Canada	169
Chile	184
The People's Republic of China	193
Colombia	204
Czech Republic	217
France	231
Germany	245
Hong Kong	256
Hungary	269
Republic of Indonesia	284
Italy	306
Japan	318
Kazakhstan	339
Luxembourg	360
Malaysia	377
Mexico	388
Myanmar	395
The Netherlands	403
Peru	416

Philippines.....	428
Poland.....	438
Russian Federation	456
Singapore.....	478
Spain.....	499
Sweden	513
Switzerland	527
Taiwan, Republic of China	543
Republic of Turkey	557
Ukraine.....	582
United Kingdom.....	599
United States of America	623
Venezuela	642
Socialist Republic of Vietnam.....	650

Section 1

Introduction

Introduction



The global movement of employees is essential to multinational organizations doing business in different countries. Getting the right people to the right places at the right time with proper support in a lawful manner is critical to the success of global businesses. Human resources professionals and corporate counsel are confronted with a maze of legal issues that must be considered before moving employees across borders.

When can they go? How long can they stay? What can they do while there? How can they be paid? What happens to their employment benefits during the trip? Who will be the employer while abroad? Which country's laws will apply? What are the tax consequences to the employer and the employee? What are the employer's responsibilities for accompanying family members?

These issues confront employers dealing with both short-term business travelers, as well employees on long-term assignments. This is a global mobility handbook to help guide you.

The Global Employer: Focus on Global Immigration and Mobility

The next section of this handbook identifies the key global immigration and mobility issues to consider, regardless of the destination countries involved. Although the issues are inevitably intertwined, the chapters separately deal with immigration, employment, compensation and employee benefits, income taxes and social insurance, and global equity compensation. The final section is organized by country. For each country, this handbook provides an executive summary, identifies key government agencies, and explains current trends before going into detail on visas appropriate for short-term business travel, training, and employment assignments. Other comments of interest to global human resources staff are also provided.

Global Labor, Employment and Employee Benefits

There is often a gap between business necessity and practical reality when it comes to moving executives and other personnel to new countries. Employers have to anticipate and deal effectively with a host of interconnected legal issues and individual concerns.

Baker McKenzie offers comprehensive legal advice related to global immigration — delivered locally around the world. We help employers

plan and implement global transfers and provide on-site legal support to companies and employees in most major business communities around the globe.

Our network of Global Immigration, Employment, International Executive Mobility, Global Equity Services, and other lawyers in other disciplines (eg, tax and corporate) can assist you both pre- and post-transfer to ensure that: (i) employment structures and contracts are properly documented and enforceable; (ii) employee benefits meet both the employee's and the employer's needs and comply with all relevant legal requirements; and (iii) tax planning is sound and defensible. Our knowledgeable professionals are qualified and experienced in the countries where you do business.

Baker McKenzie has the unique ability to develop and implement comprehensive global immigration strategies and solutions to address the many needs of moving your employees globally.

Section 2

Major Issues

Immigration

Immigration laws vary from country to country. Although the specific names for visas and the associated requirements differ, there are common patterns and trends — especially for countries balancing the interest of engaging in global commerce against protecting local labor markets and national security.

Treaties and bi-lateral agreements often give special privileges to citizens from specific countries (eg, benefits for European Union and European Economic Area citizens within the EU/EEA region; benefits for citizens of Canada, Mexico and the United States under the North American Free Trade Agreement). Be careful not to overlook these sometimes hidden gems when considering alternative visa strategies.

This chapter identifies the common patterns and trends. In the Country Guide Section, there is more specific, country-by-country information.

Current Trends

It invariably takes longer than expected to secure all of the authorizations required before an employee can travel abroad for business.

The best laid plans go often awry. Sometimes short-term business travel is the only way to meet an immediate need. But the visas that are quickly available for such trips generally are not intended for productive work or long-term assignments.

In the interest of national security and with concerns of protecting local workers, many countries more actively enforce prohibitions against unlawful employment. Penalties against employers are as common as penalties against foreign national employees. And these penalties are increasingly including criminal, rather than just civil, punishments. The potential damage to an employer's reputation with government agencies, impact on future visa requests, and potential bad publicity

make it especially important to obey the spirit, as well as the letter, of the law in this area.

With these points in mind, the employer should plan ahead and not rely on what may have seemed like quick solutions in the past. The use of tourist visas for business travel is not a solution. Problems only increase when family members accompany the employee on a holiday visa and then try to enroll children locally in schools, or get a local driver's license. Shipping of household possessions and pets is also ill-advised at this stage. Many countries will require the foreign national ultimately to depart and apply for the proper visa at a consular post outside the country — often in the country where the foreign national last resided, or their country of nationality.

Business Travel

Visitor Visas

Multinational corporations routinely send employees to visit colleagues and customers in different countries. How easily this can be accomplished often depends as much on the passport carried by the employee as it does the country being visited. The length of the trip and the scope of activities undertaken can be key, with visa solutions for short trips under 90 days generally more readily available.

Travel for tourism and travel for short-term business visits is often authorized by the same visa. But that is generally true only when the scope of the intended business activity does not rise to the level of productive employment in the country being visited.

Sourcing compensation locally during the visit is routinely prohibited, but the focus usually extends beyond the duration of the trip or the source of wages. Visiting customers, attending meetings, and negotiating contracts, are commonly permitted. Providing training, and handling installation or post-sales service are commonly prohibited.

Visa Waiver

Many countries have provisions that waive the normal visa requirement for tourists and short-term business visitors. These visa waiver benefits tend to be reciprocal and are limited to citizens of specific countries (ie, those that extend similar benefits to local citizens). Additional requirements (eg, departure ticket) are sometimes imposed. Further, the countries that enjoy visa waiver privileges frequently change, making it important to check for updated information with a country's consular post before making travel arrangements.

Training

Companies with experienced staff in one country invariably want to bring newer staff from abroad for training. This is especially true when the research and development work happens in one country, the manufacturing is undertaken in another, post-sales installation and support are handled by regional centers, and the ultimate users are spread around the world.

Many countries offer specific visas designed for training assignments (eg, Brazil, Japan). Some of these authorize on-the-job training that involves productive work. Others are limited to classroom-type training and limit or prohibit productive work. Visas designed for employment assignments can often be used in training situations, if on-the-job training involving productive work is desired and not otherwise permitted by a pure training visa.

Employment Assignments

Visas for employment assignments are invariably authorized, but the specific requirements vary widely.

Work Permits

Most countries are keen to protect their local labor market. A recurring solution is to impose some kind of labor market check as a

prerequisite to issuance of a visa for an employment assignment (eg, Malaysia). These are often handled by a Ministry of Labor or equivalent government labor agency, as distinct from the Foreign Affairs governmental agency that issues visas at consular posts. In many countries, the labor agency's authority is framed in the context of a work permit.

A work permit or equivalent document is a requirement generally imposed for employment assignments. But it is also common for countries to have visas that are exempted from the work permit requirement (eg, Belgium). The number of exemptions greatly exceeds the general rule.

Just who is exempted depends on the country. Most countries exempt employees that are transferred within multinational companies. Most countries exempt business investors and high-level/key employees.

Education, especially higher level education in sought after fields, can often be used to qualify for employment assignments. Academic transcripts showing studies completed are frequently required. Letters verifying employment experience can be similarly useful.

Residence Permits

Increasingly common is concern over national security. Background clearance checks and the collection of biometric data for identification purposes is common today. A number of countries have long addressed this concern with a reporting requirement. Sometimes this is done in the form of a residence permit, usually handled by a Ministry of Justice, Ministry of Interior, or equivalent agency. In other cases or in combination with the above, there is a requirement to report to local police authorities after arrival in the country (eg, France, Italy). These requirements are every bit as important to maintaining the status to lawfully live and work abroad as obtaining the proper visa.

Other Concerns

An increasing number of countries are requiring medical or physical examinations with the goal of limiting the spread of contagious diseases (eg, Saudi Arabia, People's Republic of China, Russian Federation).

Most countries offer derivative visa benefits to accompanying family members, however, what constitutes a family member varies a great deal. The spouse and unmarried, minor children are commonly included. An increasing, but still minority, number of countries offer derivative benefits to different-sex life partners, with same-sex partners benefiting in some other countries (eg, Canada, the Netherlands). A few countries include more distant relatives (eg, parents in Colombia) or older offspring, generally if such relatives are dependents of the principal visa applicant's household.

Documents submitted in support of the immigration process generally need to be translated into the local language. Many countries require that public documents (eg, articles of incorporation, company registration, birth certificate, marriage certificate) be authenticated by the attachment of an internationally recognized form of authentication or "apostille" (eg, Spain). This cumbersome process generally involves first obtaining an authentic copy from the government agency that retains the official record. The second step is sending that document to the government agency responsible for verifying that the document is, in fact, authentic. An additional step of consular legalization of the authenticated document is required by certain countries (eg, Brazil, Italy).

Further Information

See the Country Guide Section of this publication for more specific information regarding specific country's visa requirements. Please contact your Baker McKenzie attorney for specific guidance on current legal requirements and how they apply to your company's needs.

Employment

Integral to mobility planning is identifying and establishing the appropriate employment structure for an employee being sent to work in another jurisdiction. For planning purposes, it is important to keep in mind the laws of the jurisdictions involved, the business goals related to the foreign assignment and the individual's situation.

Employment Structures for International Transfers

The primary question to ask is, who will be the employer? That is, who will have the right to direct and control the activities of the employee while working abroad? In general, multinational companies typically use one of the five following employment structures to answer this question:

- Secondment – the employee remains employed by the home country employer and is loaned or seconded to work for an entity in the host country.
- Secondment “Plus” – a hybrid structure combining “Secondment” and “Dual Employment,” in which the secondment structure has been chosen and the employee remains employed by the home country employer, but the host country also requires direct employment by a local entity for immigration, tax and/or employment purposes.
- Transfer of Employment – the employee is terminated by the home country employer and is rehired by a new employer in the host country.
- Global Employment Company – the employee is terminated by the home country employer and transferred to the employment of a global employment company (“GEC”). The GEC, in turn, seconds the employee to work for an entity in a host country.

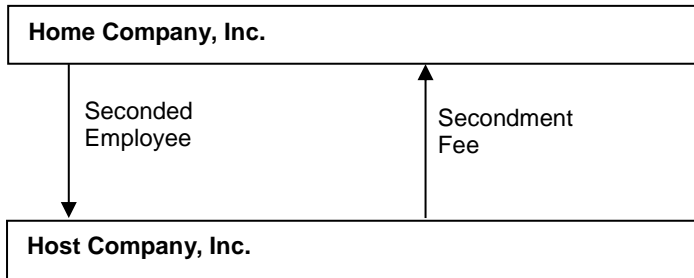
- Dual Employment – the employee actively maintains more than one employment relationship simultaneously during the course of the assignment (the employee works for two or more employers).

In addition to these five main structures, multinational companies sometimes use other, less-popular structures. For example, in several European countries it is possible to use a “dormant contract” approach, whereby the employee’s existing employment relationship is suspended for the duration of the foreign assignment, the employee is formally transferred to and becomes an employee of another company for the duration of the assignment, and then the employee’s dormant contract is “revived” upon termination of the assignment and the employee’s return to the original employer. Other possible structures include commuters, extended business travelers, putting the employee on a “leave of absence” for the duration of the assignment, or terminating the employee and then re-hiring the employee as an independent contractor.

Secondment

In the typical secondment scenario, the employee remains an employee of the home country employer (“Home Company”) and is sent to the foreign jurisdiction to provide services for the benefit of the host country employer (“Host Company”). Secondments under this scenario are sometimes referred to as “assignments” by some companies, although in principle the term “assignment” can refer to any period of time the expatriate works outside of the home country under any employment structure.

Typical Secondment Structure



The employee continues under the home country employment contract, except to the extent modified by the terms of the employee's letter of assignment and duties in the host country. In exchange for receiving the services of the seconded employee, the Host Company typically pays a fee to the Home Company, usually equal to the costs of compensating the seconded employee and sending him on secondment. Sometimes there is a profit mark-up on the secondment fee, as determined in consultation with tax advisors and based on transfer pricing principles.

In documenting a secondment, great effort should be taken to expressly continue the Home Company employment relationship (and especially the "at-will" status of the employee when the home country is the United States, for example) so as to provide a contractual argument against the application of host country termination protections and entitlements. As a practical matter, however, it is likely that an employee working in a host country will be eligible for the benefits of the employment laws of the host country during the course of the secondment and upon termination.

Assignment letters for secondments typically include the following provisions:

- confirmation that the employee remains employed by the Home Company (e.g., at-will status for US outbound secondees)

- details of the role, reporting relationship and anticipated duration of the assignment
- details on salary and benefits, including specific expat benefits such as housing allowances, relocation expense reimbursement or cost of living differential
- tax equalization/protection language where applicable, or language requiring the employee to be responsible for any additional tax triggered by the secondment
- compliance language (such as compliance with the US Foreign Corrupt Practices Act)
- provisions addressing what happens upon termination of the assignment and also upon termination of employment
- anti “double dip” language, preventing the expat from enjoying benefits under the laws of both the home and host jurisdictions (e.g., severance pay under the laws of both home and host jurisdictions in the event of termination)
- choice of law and choice of forum provisions (which could be very important in the event of a dispute with the expatriate over the terms or benefits under the secondment)
- compliance with data privacy laws

Another concern created by use of the secondment approach is the potential permanent establishment (“PE”)/ taxable presence issue created if an employee of one country is sent to work in another. Since an employee is deemed to be an extension of his employer, the mere presence of an employee in a foreign jurisdiction could allow the host country to tax the employee’s employer (that is, the Home Company). To mitigate the corporate tax risks for the Home Company associated with PE, the assignment letter should expressly provide that the individual does not have the authority to conclude contracts on behalf of the Home Company while on secondment. In many

cases, this covenant will be extremely helpful to defeat a PE in those situations where the employee is seconded to a host country that has an income tax treaty with the home country. There are exceptions, however, and so consultation with tax counsel about this issue is recommended. Note that in the case of secondments to certain jurisdictions (e.g., Canada, China and India) the covenant not to conclude contracts will unfortunately not be sufficient by itself to mitigate the PE risk.

Secondments remain the most common employment structure for expatriates. Secondment is particularly desirable where the employee wishes to remain in home country employee benefit plans, such as a retirement or pension plan, while working in the host country. Many US expatriates, for example, like to remain covered by their US-tax qualified retirement plans and other US benefits while working abroad, so the secondment structure facilitates this extended participation. See the chapter “Compensation and Employee Benefits.”

Secondment “Plus”

A common issue presented by the typical secondment structure is that it sometimes will be challenging to implement where the employee, as a matter of local employment, immigration and/or tax law (or as a matter of common practice), is required to be employed by a local entity to work in the host country. For example, it may be a condition precedent that the employee execute an employment contract with the Host Company to receive proper immigration papers and a work permit to enter the host country. This has become, very common for Latin American, Middle Eastern and African jurisdictions (e.g., Argentina, Brazil, Colombia, Bahrain Saudi Arabia, the UAE, Algeria, Angola and Equatorial Guinea), and has also become a growing trend in certain European and Asia Pacific jurisdictions (e.g., Denmark, Russia, China, Indonesia, South Korea and Vietnam). Furthermore, in some countries, an individual with a certain title (e.g., CEO) must, as a matter of local employment law, be employed by a local entity in that jurisdiction.

Notwithstanding the local legal requirement for the individual to be employed locally by the Host Company to work in the host jurisdiction, it is possible to combine the secondment approach with local law employment requirements and still preserve the benefits of the secondment approach. This will work where the individual can be considered an employee of the Home Company for home country purposes, and an employee of the Host Company for host country purposes. The Home Company employment governs the terms and conditions of the assignment, and the assignment letter directs the individual to enter into an employment relationship with the Host Company to meet the legal requirements of the host country. Sometimes, a written employment contract with the Host Company can be streamlined, including only the terms and conditions strictly required by law, or may not even be required if it is sufficient merely to reflect in the assignment letter that the Host Company will supervise the activities of the individual while working in the host country.

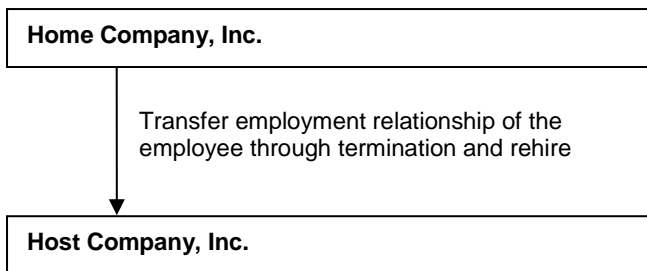
Transfer of Employment

In the transfer of employment structure, the employee's employment with the Home Company is terminated and the employee is rehired by the Host Company. This structure is the preferred approach from a purely employment law perspective because it creates a "clean break" between employing entities, and thus provides clarity as to what laws govern the employment relationship going forward. It also altogether avoids the risk of a PE issue, since the employee will always be employed, i.e., directed and controlled, by the Host Company.

Since this structure involves a technical termination of employment, however, all termination-related obligations and payments are triggered (e.g., severance pay, termination indemnities, distribution of accrued pension benefits, the final paycheck and vacation payout and so forth). While many multinationals handle this issue by asking the employee to waive his entitlement to these benefits, in some jurisdictions the payment of severance upon termination of

employment is mandatory, even if the employee is to rehired by a related company, and cannot be waived as a matter of local law and public policy. This risk can often be mitigated by including appropriate “offset” language in the assignment documentation (similar to the anti “double dip” language referenced earlier). Another issue to consider is that a transfer of employment requires the employee to start as a “new hire” with the new employer, which may mean the loss of seniority and credits for prior years of service with the former employer (unless the new employer agrees to maintain such seniority and service credits). Furthermore, at the end of the assignment when the employee returns to the Home Company, the employee will again have to be terminated and rehired, which will again trigger severance payments and obligations as before. Thus, while it is the preferred approach for certain reasons, this approach is also the most expensive and administratively burdensome, typically, for the employer to implement.

Typical Transfer of Employment Structure



Documenting a transfer of employment is usually a two-step process. The first step is a letter agreement between the current employer and the employee to terminate the employment relationship, and for the employee to waive any notice and/or severance entitlements (vacation rollovers also can be addressed) if allowable in the particular jurisdiction and in accordance with local laws. The letter agreement also presents an opportunity to obtain a release of claims (if allowable under local law) from the employee if there are any potential concerns regarding latent claims against the Home Company. The second step is an offer letter or employment agreement with the new employer.

Since the employee in this situation has a history with the Home Company, it is common practice not to include any probationary periods in the new offer of employment and, where permitted or desired, to recognize prior service with the Home Company for the purposes of participating in employee benefit plans with the Host Company and other seniority purposes.

In light of the inherent cost and complex transfer mechanics, multinational companies tend to use this employment structure very sparingly. A long-term or permanent assignment to a new jurisdiction may suggest the use of this structure, but for most foreign assignments, termination and rehire is not the first choice.

Global Employment Company (“GEC”)

This structure is something of a hybrid – combining elements from both the secondment and transfer of employment structures. First, the employee is terminated by the Home Company and rehired by a global employment company (usually an affiliate) organized for the express purpose of employing expatriates for the GEC. The GEC, as the employee’s employer, becomes the employee’s new Home Company and it then secondes the employee to work for an affiliate.

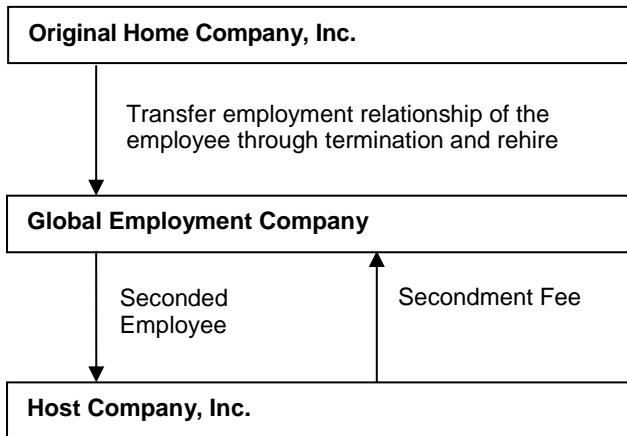
The use of a GEC can offer employers the opportunity to create a uniform structure for their global mobility program. All expatriates would be under one “umbrella” because they would all have the same employer — the GEC. The GEC allows a multinational company to adopt a uniform approach to compensation, benefits, social security and income taxation for its global workforce. Also, the GEC provides an effective buffer for any PE issues that may arise, since the GEC becomes the “employer” and thus it is only the GEC that has PE exposure.

Multinationals can look to a variety of jurisdictions as the location for their GEC. There is no one right choice in this regard. The choice of GEC jurisdiction is primarily a tax decision. It is common to set up a GEC either in a jurisdiction with a robust income tax treaty network

(e.g., the Netherlands, Singapore or Ireland), or in a jurisdiction with minimal or no corporate income taxes (e.g., the Cayman Islands, Bermuda or Guernsey). Other considerations when selecting a GEC jurisdiction include: whether the laws are employer-friendly, whether it is relatively easy to set up a new company in the GEC jurisdiction, whether local laws allow the GEC to be operated and managed from afar, whether the company has other affiliates in or experience with the GEC jurisdiction, and what substance requirements the potential GEC jurisdiction may have to operate the GEC on a daily basis. And, depending on the size and variety of the expatriate population, a multinational may decide to set up multiple GECs for different regions, for different lines of business, or for different nationalities of expatriates (e.g., a US GEC for US citizen expatriates and a non-US GEC for all other expatriates).

The GEC is a real company, established with all the corporate formalities as any other affiliate, i.e., with capital, a bank account, designated directors, a registered agent and often actual employees who work full- or part-time as GEC employees to manage its business. Sometimes, a GEC will be established as a “paper” company, meaning it exists as a real company, has capital, a bank account, designated directors, a registered agent, etc., but it has few, if any employees. The employees it would otherwise hire to help it manage its business are replaced with business services contracts (e.g., accounting, payroll, employee benefits, HR and so forth) with related companies. In exchange for these services, the GEC pays a service fee to the related companies, often with an arm’s length profit mark-up. In either case, the GEC thus receives income from secondment fees with affiliates who need the services of its expatriates, and then uses this income either to pay its own employees to run its business, or to pay for the business services with related companies who provide those services to it. With proper planning, there will be little or no profit left at the end of the year on which the GEC can be taxed.

Typical Global Employment Company Structure



GECs are popular with multinational companies with large expatriate populations. Given the amount of legal, corporate, tax and other work necessary to set up a GEC, companies with smaller expatriate populations tend not to use this alternative. Also, some industries tend to favor GECs more than others. For example, GECs are very popular in the oil and gas industry, in part because these companies have historically sent lots of expatriates to work in other countries on temporary assignment. Special to this industry is a type of employee called a “rotator” (e.g., an employee who works 28 days in another country, followed by 28 days back home) for assignments lasting months or years. Rotators are important roles in connection with energy exploration and production in various jurisdictions all over the world, and some companies have hundreds or even thousands of rotators. For them, the GEC structure makes perfect sense.

Dual Employment

In the dual employment structure, the employee has two active employment relationships, one with the Home Company and one with the Host Company.

A dual employment structure is often used in a situation where the employee in fact provides separate and distinct services that benefit

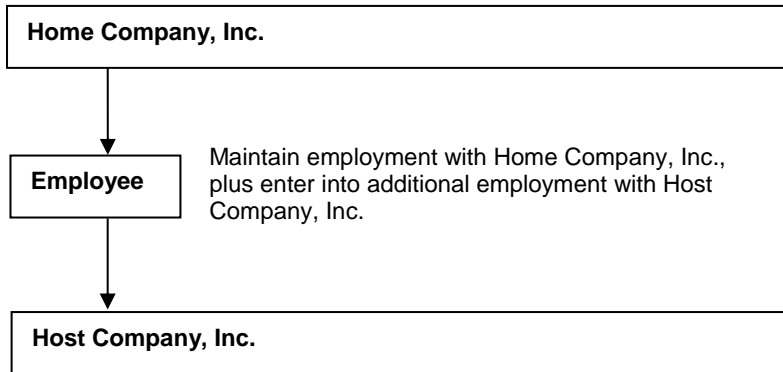
more than one entity, such as a sales manager who is selling products covering more than one line of business, or an executive who has multiple titles and reporting relationships in different jurisdictions across a region (e.g., reports to the corporate headquarters in one country but also has local management responsibility in another country). A dual employment structure is sometimes necessary where local employment is required for the expatriate to obtain a visa or work permit, but the expatriate wants to continue the employment relationship with his Home Country employer to continue participating in Home Country benefit plans. In that case, the compensation is often split between the two countries in proportion to the amount or type of work performed for each employer. Dual employment can, in some cases, achieve some favorable income tax results for the employee. For example, where an employee works both inside and outside of a host jurisdiction that taxes compensation on a remittance basis (e.g., the UK, Hong Kong and Singapore), only the compensation for work performed in the host jurisdiction is taxable by the host jurisdiction, provided the compensation is not paid or remitted to the employee in the host jurisdiction. There are very few countries where this type of employment structure can achieve these types of income tax results. Because of the complexity of a dual employment structure, careful planning is required to avoid paying the expatriate double his compensation, creating complex income tax results, or incurring fines and penalties for failing to withhold or report income where required.

This employment structure is more burdensome than the other structures since it requires maintaining two distinct employment relationships, two employment agreements, multiple tax and filing obligations, and has multiple payroll and benefits implications. As a result, it is the least common employment structure for expatriates.

Documenting a dual employment relationship usually involves a separate employment agreement for each employer. These agreements should be carefully drafted to appropriately document the duties, responsibilities, time allotment and compensation for each separate employment relationship, and to avoid paying the employee

more than 100% of the compensation he is owed for providing services to both employers.

Typical Dual Employment Structure



Further Information

The Global Employment and Compensation Law Practice works in coordination with the Global Immigration and Mobility Practice. Employment practitioners help structure employment relationships for global mobility assignments that factor in the employment laws of multiple countries/jurisdictions. They also assist multinational companies in developing corporate policies and practices for global mobility assignments, as well as guide employers on current trends and best practice solutions. They play a key role in pre- and post-acquisition integration on mergers, acquisitions and reorganizations, as well as redundancies and reductions in force.

Compensation and Employee Benefits

A major concern for both expatriates and their employers is what compensation and employee benefits will be provided to the expatriate while he/she is on assignment. While many multinational companies have compensation packages and employee benefit plans designed specifically to cover the expatriate population, this is not the case for all companies. Some companies attempt to keep the expatriates in the same benefit plans and insurance policies as their other, stay-at-home employees. In other cases, the employer has to customize compensation and employee benefits just for one or several expatriates to fit their particular situation. In short, there is no universal practice among multinational companies. The factors that will influence the amount, type and design of the expatriate's compensation and employee benefits package include: the employment structure; the jurisdictions involved; the length of the expatriate's assignment; the types of employee benefit plans currently provided by the employer; whether benefits coverage can be easily extended to the expatriate under the terms of the employee benefit plan; whether the expatriate will return home or go out on new assignments; and so forth.

Compensation and Payroll

The two primary elements of an expatriate's compensation package are base salary and bonus opportunity. Understandably, there is no single approach or best practice in every case. Each expatriate situation is different, and how much the employer is willing to pay the expatriate in terms of base salary and bonus opportunity will depend largely on the employer's compensation policy, the value of the expatriate to the business, the expatriate's seniority and experience in the field, and other similar factors. Notwithstanding, in most cases the expatriate's base salary on assignment will be no higher than their current base salary. Even if the assignment is deemed to involve more responsibility, employers are reluctant to increase base salary "just because" of the assignment and instead reflect any additional

compensation in the form of bonus or expatriate allowances. Handling base salary in this manner thus avoids the problem that sometimes occurs when an employer temporarily increases base salary during the assignment, and then wants to reduce the level of base salary at the end of the assignment to the former level. Often, such “up and down” movement is not successful, as the expatriate wants to keep the base salary increase upon their return to the home country and make it permanent.

Once the employer has determined how much base salary and bonus to pay the employee, the next question will be: Where and how will the employee be paid?

In the case of a secondment, for example, it is common for the employer to provide that the expatriate will remain on his/her home country employer payroll, but may also be placed nominally on the payroll of the host country employer (a so-called “shadow payroll” or “phantom payroll”) so that local income taxes or social taxes can be remitted on behalf of the expatriate to the local tax authority. It is also common to split the pay of the expatriate on secondment so that a portion of the compensation is paid locally, to cover local taxes and expenses, while the bulk of the compensation is paid to the expatriate via direct deposit into the expatriate’s bank account in the home country.

With a few exceptions, there is no legal requirement regarding where the expatriate must be paid (that is, what payroll must cover the expatriate). More often than not, an expatriate can receive compensation in the host country, in the home country (e.g., direct deposit into a home country bank account that can be accessed in the host country) or a combination of the two. In some situations, however (e.g., Colombia), local immigration or employment laws require that an expatriate working in the host country be paid from the local payroll, i.e., he/she must be paid in the currency of the host country by the host country employer. In other situations, it may be difficult for the expatriate to access any funds paid to him/her outside of the host

country because of currency exchange controls, making a local payroll the only practical option.

Payroll by itself is typically not determinative of the employer-employee relationship. That is, a company does not become the expatriate's "employer" merely because the expatriate is on its payroll. Often, an expatriate sent to a jurisdiction will be put on the local company payroll just as an accommodation (for example, to facilitate the payment of local income tax and social insurance taxes). Alternatively, companies are sometimes designated to serve as payroll agents for other companies merely because they have an existing payroll function and personnel who are familiar with the local payroll requirements. For example, the host company might pay compensation to the expatriate as a "payroll agent" on behalf of the expatriate's real employer in the home jurisdiction. Moreover, the home country employer might continue to cover the expatriate in the home country benefit plans, and might even continue to contribute to home country benefit plans on behalf of the expatriate, even though the expatriate is now employed by another company. Thus, the payroll location will not, by itself, be determinative of who the expatriate's employer is.

Having said that, however, payroll is an important issue in connection with an expatriate assignment, since moving the expatriate to a new payroll must be handled successfully to maintain compliance with applicable reporting and withholding requirements.

Where compensation is delivered to the expatriate in the host jurisdiction, it will be subject to any applicable income tax and social tax withholdings, unless an exemption applies. Understanding local law is therefore critical to making sure that the expatriate's payroll is structured correctly and is compliant.

Extending US Tax-Qualified Plans to Employees Working Abroad

A common question is whether a US expatriate can continue to participate in a US tax-qualified retirement plan while working outside of the United States on an international assignment.

A US tax-qualified retirement plan may provide certain US tax advantages that a foreign retirement plan cannot, such as a pre-tax contribution feature (as in the case of a plan under Section 401(k) of the US Internal Revenue Code of 1986, as amended (“Code”)), no current US income tax on the contributions made to the plan on the employee’s behalf, no current US income tax on earnings of the plan prior to distribution, and favorable US income tax treatment upon distribution (such as tax-free rollover treatment).

A US expatriate may be reluctant to part with these tax benefits, unless a substantial expatriation bonus or other “gross-up” allowance is offered. Further, if the employee’s assignment will be short, he/she may not be able to accrue a meaningful retirement benefit from any non-US retirement plan. Moreover, even if he/she can accrue a sizeable benefit during the assignment, the contributions made to such a plan on the vesting or accrual of such benefits may be taxable under US income tax law. Alternatively, the benefit may be taxable under US income tax law upon distribution.

A US Tax-Qualified Retirement Plan Must Cover “Employees”

The plan sponsor should review the plan document and determine whether an employee working outside of the United States can remain a participant in the plan. If not, the plan will need to be amended to provide this.

The most critical aspect for plan participation purposes is the employer-employee relationship. A US tax-qualified retirement plan

must be limited to employees of the plan sponsor or any member of the plan sponsor's controlled group. The plan may not cover individuals who are not "employees." For these purposes, an individual is an "employee" if the individual's employer has the right to direct and control the activities of the individual. Failure to limit plan participation to employees only may result in disqualification of the plan, which would mean, among other things, that all participants would become immediately taxable on their vested benefits under the plan, even if they have not yet retired or become entitled to a distribution under the plan.

Accordingly, if the employee is working for a US employer and is seconded to work for a non-US company, then he/she will continue to participate in the retirement plan of the US employer because, in a secondment structure, he/she remains directed and controlled by his/her home company employer, and thus technically remains an employee of the US employer.

Furthermore, if the employee transfers to a foreign branch of a US employer, the employee can continue to participate in the US employer's tax-qualified retirement plan because the foreign branch is merely an unincorporated association and thus is treated as an extension of the US employer.

However, where the employee terminates employment with the US employer and is rehired by a non-US company that is outside of the plan sponsor's controlled group, with a few exceptions (described below), he/she would no longer be eligible for participation in the plan. In that case, the employee's participation in the plan will cease upon his/her transfer of employment.

Controlled Group Coverage

Where an employee terminates employment with the US employer and is rehired by a non-US company, his/her participation in a US tax-qualified retirement plan can be nonetheless preserved where the non-US company is a member of the same controlled group as the

plan sponsor. For these purposes, a “controlled group” is defined as a “controlled group of corporations,” or “trades or businesses under common control” under the Code.

A “controlled group of corporations” is a parent-subsidary group in which the parent owns at least 80% of the stock of the subsidiary, or a brother-sister group in which five or fewer individuals own at least 80% of the stock in two or more corporations, and at least 50% of such ownership is identical with respect to each corporation. Similar rules exist for “trades or businesses under common control” (which include unincorporated entities) and affiliated service groups.

Note that the controlled group rules, for purposes of US tax-qualified retirement plans, include non-US entities in the definition of “controlled group,” even though non-US entities are technically excluded from the definition of an “affiliated group of corporations” eligible to file a US consolidated group income tax return.

The IRS has ruled that because of the application of the controlled group rules, employment is tested on an entity-wide basis. That is to say, employment with any one member of the controlled group will be considered to be employment sufficient to participate in the plan as an “employee.” Accordingly, an employee can continue to participate in the tax-qualified plan without disqualifying it as long as he/she transfers employment to a member of the same controlled group. The plan document should be reviewed to confirm that participation can in fact be extended in this manner.

Potential Loss of US Tax Deduction

Even if the employee’s participation can be continued because he/she is transferring employment from a plan sponsor to a foreign company that is a controlled group member, the plan sponsor is not automatically entitled to a US federal income tax deduction for its contributions made on behalf of such employee, since the plan sponsor may only deduct contributions made on behalf of its own employees. In other words, the controlled group rules and the income

tax deduction rules are not synchronized. Notwithstanding, the IRS has ruled in a private letter ruling that if the controlled group member in fact adopts the plan for the benefit of the employee, the contribution made on behalf of an employee who works for the controlled group member is deductible by the plan sponsor, the same as if the employee remained employed by the plan sponsor. Accordingly, the foreign employer would have to adopt the plan to preserve the ability to take a US federal income tax deduction for contributions made to the plan.

Non-deductible contributions, if made, would generally give rise to a special 10% excise tax payable by the employer. Notwithstanding, as long as the non-deductible amount contributed on behalf of the employee does not exceed the amount allowable as a deduction under Code Section 404 (e.g., 25% of compensation), then the 10% excise tax does not apply.

Treat Assignment as a “Leave of Absence”

If the employee will be working abroad on a temporary assignment, he/she may be able to remain a participant in the US tax-qualified retirement plan if the assignment is characterized as a “leave of absence.” The relevant Treasury Regulations provide that a US tax-qualified retirement plan may cover employees who are temporarily on leave. To use this approach, the employee would have to remain employed by the US plan sponsor (that is, as an inactive employee).

Working for a “Foreign Affiliate”

Another way to continue the employee’s participation in the US tax-qualified retirement plan is if the employee is employed by an entity in which an “American employer” (which includes a US corporation) has a 10% or more interest (for these purposes, a “foreign affiliate”). This provision is found in Section 406 of the Code, but is not used that much anymore since the application of the controlled group rules, described above, has lessened the attraction of this Code provision as a means to continue plan participation. Where this provision is utilized,

the employee of the foreign affiliate will be treated as “employed” by the American employer for the purposes of the American employer’s tax-qualified retirement plan (even though he/she is not really employed) if certain requirements are met, including that the American employer agrees to extend US Social Security coverage to all of the foreign affiliate’s employees who are US citizens or residents by means of a Section 3121(l) agreement filed with the IRS, and that the employee does not participate in a local funded, deferred compensation plan.

A similar provision applies to certain employees of US subsidiaries having non-US operations under Section 407 of the Code.

Adoption by Foreign Employer

Plan coverage could also be continued by arranging for the foreign employer to adopt and contribute to the plan. In that case, the plan would be deemed to be a “multiple-employer” plan, and would have to comply with additional participation, coverage, non-discrimination, reporting and other requirements to maintain tax-qualified status.

Foreign Law Implications

There are a number of foreign laws that may affect an employee’s continued participation in a US tax-qualified retirement plan while on foreign assignment, including the following:

Tax Laws. The employee might be immediately taxed under local rules on contributions or benefit accruals made on his/her behalf under the plan. The local tax rules may provide, for example, that plan benefits are taxable when accrued, when a contribution is made to the plan or allocated to a plan account on the employee’s behalf, or when the employee vests in the contribution.

Labor Laws. In certain countries, plan benefits or contributions may be subject to a works council consultation procedure before they can be offered to employees. While it is unlikely that works council approval

or consultation would be required with respect to just one or two US expatriates working in a foreign country, if a larger group of employees are involved then it will be important to check with local labor counsel, especially in an EU jurisdiction, regarding the implications. Note as well that plan benefits may have to be taken into account when determining the employee's dismissal pay or termination or severance indemnities that may be payable when he/she leaves employment. Further, the plan benefits may run afoul of compliance with certain non-discrimination rules in the jurisdiction, particularly if there is a requirement that the expatriate's compensation be no greater than a comparable employee who has been hired locally by the foreign company. There is also a risk in some "acquired rights" jurisdictions that plan participation and benefits may not be terminated or revised unilaterally by the employer without the employee's consent.

Securities Laws. If employer stock is allocated to the employee's account under the plan, foreign securities laws may require compliance with certain registration or prospectus distribution requirements, unless exemptions are applicable.

Coverage under Non-US Retirement Plans

Although there are many reasons why a US expatriate may prefer to remain a participant in a US tax-qualified plan, there are also a number of reasons why the expatriate may end up participating in a local retirement plan instead. For example, if the employee is hired by an employer outside of the controlled group, he/she may simply be unable to continue participation in the US plan. Alternatively, the US plan sponsor may not be able to, or may not want to, extend coverage to the expatriate.

Additionally, the local plan may provide more generous retirement benefits than the US plan. For example, in a number of European countries, private pension plans provide for a cost-of-living indexation of retirement benefits. This indexation means that retirement benefits

are increased for cost-of-living adjustments each year, which results in a larger benefit to the retiree over time. US tax-qualified plans generally do not provide this enhancement.

Finally, local law may currently tax the employee on contributions, earnings and accruals if he/she participates in the US tax-qualified retirement plan while resident in the local jurisdiction, but will not tax the employee if he/she participates in a retirement plan in the local jurisdiction.

For these reasons, participation in a local retirement plan may be attractive to the expatriate. This result is even more likely if the US tax-qualified retirement plan does not penalize the employee for discontinued plan participation through lengthy vesting schedules, final pay benefit formulae or restrictive definitions of “compensation.”

Some representative, non-US retirement plans are described below.

In the United Kingdom, pension plans fall into two general categories: the State Pension and private pension schemes. The State Pension has undergone changes in its structure. It previously consisted of a basic (flat rate) State Pension and the Additional State Pension. Effective 6 April 2016, the State Pension will be structured as a single-tier pension. The State Pension is funded by mandatory social insurance contributions called “National Insurance Contributions” from employers and employees.

Most UK private pension schemes are set up by employers to supplement the State Pension, although an increasing number of individuals are establishing their own private arrangements and pensions. Employers, and in most cases employees, will finance the scheme through an irrevocable trust that will normally comply with certain statutory requirements, in the same manner as a tax-qualified retirement plan in the United States must comply with the requirements of Code Section 401(a). If the scheme is approved by HMRC (the UK tax authorities), the contributions paid by the employer are deductible, the employees are not taxed on their employers’

contributions and any investment earnings of the fund are not subject to tax.

In Canada, there are several different kinds of private pension plans. These plans fall into two basic groups: registered plans and unregistered plans. In addition, the Canada Pension Plan provides mandatory social security benefits.

Registered Pension Plans, which provide for tax-deductible employer contributions, are generally either defined contribution plans or defined benefit plans. Registration of a pension plan in Canada is similar to the process of obtaining a favorable determination letter for a tax-qualified retirement plan from the IRS. Other types of registered plans include Deferred Profit Sharing Plans and Group Retirement Savings Plans (where one or more individual Registered Retirement Savings Plans are sponsored as a group plan by the employer).

Unregistered arrangements include a retirement allowance, which is a lump sum at retirement, and a Retirement Compensation Arrangement, under which employer contributions are made to a custodian and are subject to a 50% refundable tax. Pension plans may also be classified as Employee Profit Sharing Plans, Employee Benefit Plans or Salary Deferral Arrangements.

In Hong Kong, retirement schemes are regulated by the Occupational Retirement Schemes Ordinance ("ORSO"). Unless an exemption from registration applies, it is a criminal offense for an employer to operate, make a payment to, or otherwise contribute to or participate in, an unregistered scheme. The rights of members of unregistered schemes are, however, protected.

ORSO requires a scheme to be registered if it has or is capable of having the effect of providing benefits, in the form of pensions, allowances, gratuities or otherwise, payable on termination of service, death or retirement, to or in respect of persons gainfully employed in Hong Kong or elsewhere under a contract of service. An exemption to the compliance requirements under ORSO may be granted if the

scheme is registered with or approved by an offshore authority that performs functions similar to those of the Hong Kong Registrar, or fewer than 10% or 50 of the scheme members, whichever is lower, are Hong Kong permanent residents.

The Mandatory Provident Fund Schemes Ordinance (“MPFSO”) sets out the framework for the Mandatory Provident Fund system in Hong Kong. In keeping with Hong Kong’s policy of encouraging market enterprise, the legislation establishes a mandatory retirement system, which is largely run by the private sector. The fundamental requirement of the MPFSO is that every employer of the relevant employees must establish or join a Mandatory Provident Fund scheme. Non-Hong Kong employers will be subject to the legislation if they have employees in Hong Kong. A “relevant employee” is defined as an employee of between 18 and 65 years of age, including apprentices.

The MPFSO contains a number of specific exemptions, including ones for expatriate workers and members of existing schemes.

The employer is required to contribute 5% of the employee’s relevant income to a Mandatory Provident Fund scheme. Employees who are members of a Mandatory Provident Fund scheme are required to contribute 5% of relevant income up to a ceiling contribution level. An employee who wishes to contribute in excess of the ceiling may do so.

In Japan, there are three basic types of retirement plan:

- the unfunded severance benefit plan
- the corporate pension plan
- the Employees’ Pension Fund

The unfunded severance benefit plan usually distributes a lump sum severance benefit when an employee terminates employment.

In recent years, Japanese law provides for two corporate pension systems: the Defined Benefit Pension Plan and the Corporate Type Defined Contribution Pension Plan, both of which incorporate greater employee protection than prior pension regimes.

The Employees' Pension Fund is generally only available to employers with 500 or more employees, and is a means for an employer to contract out of the earnings-related part of the social security pension program.

US Tax Consequences of Participating in Non-US Plans

One of the most important considerations in determining whether an expatriate should participate in a non-US pension or other employee benefit plan is the potential US federal income tax consequences of such participation.

If an employee participates in a non-US plan funded through a trust, the tax consequences are determined under Code Section 402(b), which generally provides that contributions must be included in the employee's gross income when vested. Note that limited relief is provided under several US income tax treaties (e.g., UK and Canada).

An employee who participates in a non-US plan or a plan funded using a non-US trust should also address any potential issues under Code Section 409A and 457A. A non-US retirement plan is potentially subject to these rules because it provides a form of non-qualified deferred compensation.

A complete review of the Code Section 409A and 457A rules is beyond the scope of this discussion. Please see the discussion of Code Section 409A and 457A in the chapter entitled "Income Tax and Social Insurance."

ERISA Implications

Due to the breadth of the definitions in the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), a non-US retirement plan may inadvertently become subject to ERISA. In general, ERISA applies to an employee benefit plan established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce.

Non-US retirement plans typically do not worry about ERISA because ERISA exempts a plan maintained outside the United States primarily for the benefit of persons, substantially all of whom are non-resident aliens. The US Department of Labor, which has primary jurisdiction for the interpretation and enforcement of ERISA, bases its determinations on whether plans qualify for this exemption on factors such as whether the plans cover all or primarily all non-resident aliens, whether the work location of the employees is outside the United States and whether the plan records and documents are maintained outside the United States. Whether a plan can meet this ERISA exemption is a facts and circumstances-based determination.

Equity Compensation

To the extent that the employer intends to grant equity compensation to the expatriate while he/she is working abroad, a number of local tax, securities, exchange control, data privacy and other issues will arise. These issues need to be carefully considered since a violation of these local laws, even with respect to one employee, carries significant monetary fines and other penalties.

The tax consequences in each jurisdiction vary, and do not always match US tax consequences. For example, some non-US jurisdictions tax a stock option at the time the employee actually exercises the option (e.g., Hong Kong, Japan, Mexico, Singapore and the United Kingdom). Other jurisdictions tax employees at the time a stock option is granted (e.g., in Belgium if the employee accepts in writing within 60 days of grant). Other jurisdictions have taxed the grant of stock

options on vesting (e.g., in Australia for options granted between 1 July 2009 and 30 June 2015 that were subject to a “real risk of forfeiture”).

In addition, some jurisdictions have local tax-qualified plans (e.g., France and the United Kingdom). If the equity award is granted to the expatriate under such a plan, then he/she will enjoy favorable income tax treatment (usually, deferred tax or reduced taxation).

Tax consequences are further complicated if the employee is granted an equity award in one jurisdiction, but vests in that award or exercises that award in another jurisdiction. Tracking what tax liability is owed to which jurisdiction is challenging, especially with respect to employees who work in multiple jurisdictions during their expatriate assignment.

The issues relate to not only understanding the employee's tax liabilities, but also the reporting and withholding obligations that will be the responsibility of the equity plan sponsor and employer. Each jurisdiction has different rules regarding the sourcing of such compensation and there is little relief found in income tax treaties. Accordingly, it is difficult to handle the tax issues associated with equity compensation awarded to globally mobile employees in a uniform manner.

Although US issuers are generally not entitled to an income tax deduction for equity awards related to employees working for a local subsidiary, the local subsidiary may be able to obtain a local income tax deduction related to such amount. In many jurisdictions, the income tax deduction of the local subsidiary is premised upon the execution of a written reimbursement agreement between the US parent company granting the equity award and the local subsidiary prior to the grant. Some jurisdictions do not permit such a deduction for equity awards under any circumstances (e.g., Netherlands).

The grant of equity compensation to an employee may trigger local securities law compliance issues, such as the requirement to make a

filing with the local securities authorities or to distribute a prospectus document to employees. For example, an offer document and filing in Australia is often required. In Japan, grants of options to 50 or more employees of an indirect or less than wholly owned subsidiary with an offering value equal to or greater than JPY 100 million will require an extensive filing and annual reporting obligation. Grants of equity compensation, especially stock purchase plans, in Europe may require compliance under the EU Prospectus Directive. However, compliance will become easier for US listed and other non-EU listed companies beginning in July 2019.

In certain jurisdictions, exchange control rules still play a large role in determining the ability of a corporation to offer equity compensation to an employee. In some jurisdictions (e.g., China and Vietnam), governmental approval from the exchange control authorities is required in advance before an equity plan can be implemented.

Furthermore, the grant of an equity award to the employee may require compliance with local data privacy and labor rules. Certain jurisdictions have formal legislation prohibiting the transmission of certain personal information about their employees, such as name, age, seniority and so forth, across borders, even to an affiliated company. Some jurisdictions require the employee to consent to the transfer of such information, some require the formal approval or notification to a local governmental authority, and some require both. All multinational companies granting equity awards in the EU have needed to review data privacy requirements in connection with the implementation of the new EU data privacy requirements (GDPR) which became effective in May 2018.

In addition, the value of the equity compensation offered to the employee may give rise to acquired rights issues in certain jurisdictions, making it difficult to terminate the benefit in the future without the employee's consent. In addition, the value of the equity compensation may need to be included for the purposes of calculating

a terminated employee's severance pay, creating a more expensive termination situation for the employer.

Please see the "Global Equity Compensation" chapter for a comprehensive discussion of the equity-related issues facing US expatriates and foreign nationals working in the United States.

Continuing US Health Benefits

If US group health plan coverage is to be provided to an expatriate and his/her family while they are living in a non-US jurisdiction, the plan should be reviewed for any coverage gaps and other problems that may be caused by the foreign assignment. For example, US group health plans often do not cover employees and their dependents while they are working outside of the United States. If a plan does provide such coverage, it may require the employee to pay his/her health care expenses upfront and then submit a claim for reimbursement.

Furthermore, a US group health plan may not necessarily provide for the reimbursement of bills by certain foreign doctors or hospitals if the foreign doctor or hospital does not meet certain qualifications. Amending the US group health plan to resolve or alleviate these problems may not be possible depending, for example, on whether the plan is self-funded or third-party insurers are involved.

As a result, the employer should review the plan document and consult with its insurer, plan administrator or legal counsel before the employee leaves on his/her assignment to determine whether coverage can be extended. In this regard, the employer should determine whether the requirements of the Patient Protection and Affordable Care Act ("PPACA") will continue to apply to the expatriate while he/she is working on foreign assignment. That is, if the expatriate will be required to maintain "minimum essential coverage" while working abroad. It should be noted that there are legislative proposals to repeal PPACA and adopt new legislation, which may result in different requirements for expatriate coverage.

Many multinationals sponsor standalone global health plans for their expatriates specifically to avoid any coverage issues under the US domestic health plan.

The US income tax consequences of providing health benefits to the employee and his/her family through the US group health plan should also be considered. Generally, if the employee is not employed by a US employer, or a foreign branch or a member of the US employer's controlled group, the US employer's contributions to the plan and the amounts the employee and his/her dependents receive through the plan may no longer qualify for tax exemptions under the Code.

In addition, if the US group health plan is financed through the mechanism of a cafeteria plan and the employee is no longer employed by a US employer, or a foreign branch or a member of the controlled group of the US employer, the employee and his/her dependents may lose the ability to make pre-tax contributions under the cafeteria plan.

If the employee becomes a resident in the foreign jurisdiction and is subject to local laws during his/her foreign assignment, the potential impact of the foreign laws should also be considered. For example, the premiums paid on behalf of the employee or benefits provided through the US group health plan may be taxable to the employee or his/her dependents under the tax laws of the foreign jurisdiction. The premiums or benefits may also be subject to employment tax withholding and the premiums or benefits may be includible in the calculation of severance indemnity payments an employer must make for dismissing an employee.

If the employee is a participant in an insured plan in the United States, there may also be a problem providing insurance coverage for someone resident in a non-US jurisdiction if the US insurance company is not registered to conduct business in that country. Failure to comply with this local registration requirement may mean the insurance agreements are unenforceable in that jurisdiction and may also trigger monetary sanctions against the host country employer.

Depending on the situation, the employer may want to arrange to replace or supplement the coverage provided by the US group health plan. This arrangement may include:

- the purchase of a specially designed individual policy
- the enrollment of the employee and his/her family in a specially designed group health plan for expatriates, which is the common approach for many multinationals
- the enrollment of the employee and his/her family in an overseas emergency medical services and evacuation program
- the enrollment of the employee and his/her family in a non-US nationalized or socialized health program

Specially designed individual or group insurance policies or plans may be useful in addressing coverage gaps and other practical problems that arise because of the foreign assignment. Overseas emergency medical services and evacuation contracts may also be useful when evacuation to the United States is necessary to receive a certain type or quality of health care and for referral to qualified foreign health care.

Note that if, as a result of the assignment, the employee is no longer covered by the US group health plan, he/she (or any “qualified beneficiary”) will no longer be eligible to elect COBRA continuation coverage if there is an event that would otherwise trigger COBRA coverage since the employee would no longer be a “covered employee.” In this regard, query whether the employee’s transfer of employment to a non-US employer could constitute a “qualifying event” for purposes of COBRA group health plan continuation coverage.

Non-US Health Benefits

The employee’s participation in a non-US health benefit plan may raise a number of issues. Many non-US countries have extensive

governmental health programs. While non-local, private health plans exist in some countries, they may be structured to only provide supplemental benefits to the benefits provided by the governmental program. Whether an employee can participate in the underlying governmental program may depend on how long he/she is residing in the non-US country or the satisfaction of other conditions.

Accordingly, many employees try to retain some health benefit coverage in the United States while they are overseas.

As a result of limited non-US governmental program benefits, the employee may desire to have supplemental health benefits (if local law does not prohibit them). For example, some governmental programs may only provide ward-level care (e.g., no semi-private or private hospital rooms), require the use of certain governmental or governmentally approved facilities or providers, have long waiting periods for certain types of non-emergency care, provide lesser quality care outside of major cities, not provide coverage of certain benefits (e.g., dental coverage), not be used by employees due to a local class bias and may not cover all or part of the costs of health care received while the covered individual is temporarily out of the foreign country (e.g., in the United States on home leave or in another foreign country on a temporary work assignment).

Income Tax and Social Insurance

An employee who works abroad is always concerned about the possibility of increased income taxation and social taxation resulting from a foreign assignment. For example, will the employee be taxable in both the home country and the host country, resulting in double taxation of the employee's compensation? Whether such increased taxation is likely, and whether it can be avoided, depends on a number of factors, such as the length of time the employee will be working in the foreign jurisdiction, the type of work the employee will do while working abroad, the employee's citizenship, nationality or residency, and other similar factors. This determination will also need to take into account:

- the income tax, social insurance and other relevant laws of the home and host jurisdictions
- special rules, if any, governing the cross-border transfer of employees in the home and host jurisdictions
- the provisions of an income tax treaty, social security totalization agreement or other international agreement between the home and host jurisdictions

The issue of increased taxation will be of equal concern to the employer as well, since many expatriates are covered by a tax reimbursement policy whereby the employer will be responsible for paying the employee's taxes greater than the employee's "home country" tax liability. For further details, see "Tax Equalization and Tax Protection Programs" below.

The employer will also be concerned about avoiding a permanent establishment ("PE") issue resulting from the activities of the employee working abroad, which would cause the employer to be taxable in the host jurisdiction on the activities of the employee working there. For further details, see "Permanent Establishment Risk" below. In addition, the employer will also be interested in the

availability of a corporate income tax deduction for the employee's compensation and assignment-related costs. Finally, to the extent the employee is taxable by the host jurisdiction, the employer will want to confirm that the applicable withholding and reporting rules are followed, both in the home and host jurisdictions. For further details, see "Compliance: Withholding and Reporting" below.

As an example of how jurisdictions often approach these issues, this chapter focuses on some of the key US federal income tax and social security provisions that apply to expatriates, whether outbound or inbound. Space does not permit a discussion of all jurisdictions and their income tax and social tax rules, so it is recommended to consult with international tax counsel to understand the rules for any other jurisdictions. It is also recommended to work closely with tax counsel to understand the potential application of these or similar provisions to the facts of any particular assignment.

US Federal Income Tax: Short-term Assignments

Where an employee lives and works abroad, it is natural to assume that the country where he is assigned will seek to tax his compensation. Notwithstanding, many jurisdictions have provided income tax relief for short-term assignments. Understanding how these rules work in any particular country is key to effective tax planning.

If there is no relief under the host country's domestic tax law for employees who are short-term business visitors in that jurisdiction, often there may be relief under an applicable income tax treaty entered into between the host jurisdiction and the home jurisdiction.

As of the date of publication, the United States has income tax treaties in force with more than 67 countries. Several income tax treaty provisions may be relevant to mobile employees. The provision addressing "dependent personal services" or "income from employment" is primarily directed at certain employees who are sent

by their employers to work on short-term assignments in the host jurisdiction.

For example, Article 14 of the US-UK Income Tax Treaty provides a general rule and two exceptions regarding income from employment. The general rule is that salaries, wages and other similar remuneration derived by a resident of the home country in respect of employment is only taxable in that country, unless the employment takes place in the host country. If the employment takes place in the host country, the host country may tax it.

However, remuneration derived by a resident of the home country with respect to employment in the host country will only be taxable in the home country if:

- the individual is present in the host country for a period or periods not exceeding 183 days in any 12-month period commencing or ending in the taxable year
- the remuneration is paid by or on behalf of an employer who is not a resident of the host country
- the remuneration is not borne by a permanent establishment that the employer has in the host country

Therefore, if an employee is treated as a US resident under this treaty, the employee may avoid UK income tax on remuneration in respect of employment in the UK if: (i) he is not present in the UK for more than 183 days during any 12-month period; (ii) he is paid by or on behalf of an employer outside of the UK; and (iii) the remuneration is not deducted by a permanent establishment that the employer has in the UK.

Many US tax treaties have similar, but not always identical, language. Some treaties look at whether the employee has spent more than 183 days in **a calendar year** in the host country (in addition to the other requirements). In other cases, the time limit may be less than 183 days, or there may be a maximum compensation limit imposed.

It should be noted that the Organization of Economic Community and Development (OECD) has indicated that the “employer,” for the purposes of treaty analysis, is not necessarily the legal employer. The OECD recommends that the “economic employer” concept be used in applying this type of income tax treaty provision. An “economic employer” is deemed to be the one who actually directs and controls the activities of the individual. The “legal employer” is the one who, on paper, is denominated as the employer.

Consequently, when structuring short-term assignments in countries that are adopting the “economic employer” concept, the activities and actions of the employee need to be reviewed. The treaty exemption will only be available if the home country entity meets the test of the “economic employer” and if other tests are met (i.e., 183 days and no chargeback of compensation costs to the host entity).

In a similar fashion, compensation costs related to the employee should not be charged against and reimbursed by a host country entity or permanent establishment in the host country if the employee intends to rely on this treaty exemption. Note that, in some cases, the existence of a treaty exemption such as this one may not necessarily exempt the employee from making an individual income tax filing in the host country.

Treaty provisions providing relief from the potential double taxation of retirement plan participation or pension plan distributions, or with respect to stock option-related income, may also be available, depending on which treaty is involved. These provisions should be reviewed and considered, especially in cases of longer-term assignments. However, these provisions are currently only present in a small number of US income tax treaties.

Traveling and Temporary Living Expenses

Under US income tax rules, an employee may be able to exclude from gross income amounts paid by the employer for traveling and temporary living expense while “away from home” in the pursuit of a

trade or business, including amounts expended for meals and lodging that are not lavish. Internal Revenue Code (“Code”) Section 162(a)(2) allows an exemption for living expenses that are ordinary and necessary while the employee is temporarily away from home.

Whether an employee is “away from home” is a facts and circumstance based determination. However, in no event can an international assignment be considered “temporary” if it is expected to last, or does last, for more than one year.

US Federal Income Tax: Long-term Assignments

In addition to the income tax relief the United States provides to its taxpayers who are on short-term assignments, it also provides some relief for US taxpayers who are on long-term assignments (one year or more).

Foreign-Earned Income and Housing Exclusion

One of the most valuable tax planning devices for a US employee who is working outside of the United States is the ability to elect to exclude “foreign earned income” and a “housing cost amount” from gross income under Code Section 911.

The maximum amount of foreign-earned income that can be excluded is indexed and is USD 104,100 for 2018. It can be only elected by a “qualified individual,” meaning a person whose “tax home” is in a foreign country and who is either:

- a citizen of the United States who is a bona fide resident of a foreign country for an entire taxable year
- a citizen or resident of the United States who, during any period of 12 consecutive months, is present in a foreign country or countries for at least 330 full days of such period

A qualified individual must elect to exclude foreign-earned income on IRS Form 2555, or a comparable form, which must be filed with the

individual's US federal income tax return for the first taxable year for which the election is to be effective. Individuals who expect to be eligible for the exclusion may adjust their federal income tax withholding by completing an IRS Form 673 and filing it with their payroll department.

In addition to the foreign-earned income exclusion, a qualified individual may elect to exclude a "housing cost amount" from gross income, which relates to certain housing expenses attributable to "employer-provided amounts."

The term "employer-provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer that is foreign-earned income for the taxable year without regard to Code Section 911. Thus, salary payments, reimbursement for housing expenses or amounts paid to a third party are included. Furthermore, an individual will have earnings that are not "employer-provided amounts" only if the individual has earnings from self-employment.

If the individual's qualified housing expenses exceed USD 16,944 (for 2019), i.e., 16% of the maximum foreign-earned income exclusion for a full taxable year, the individual may elect to exclude the excess up to a maximum of USD 31,770 (for 2019), i.e., 30% of the maximum foreign-earned income exclusion for a full taxable year. However, the IRS has issued guidance providing upward adjustments to this maximum in a number of high housing cost locations.

A qualified individual may make a separate election to exclude the housing cost amount on the same form and in the same manner as the foreign-earned income exclusion. An individual does not have to make a special election to claim the housing cost amount deduction.

However, the individual must provide at least the following information: name, address, social security number, name of employer, foreign country where tax home is established, tax status, qualifying period of bona fide residence or presence, foreign-earned income for the taxable year and housing expenses.

Foreign Tax Credit

Another valuable tax planning device for the US employee who works outside of the United States is the ability to receive a tax credit for foreign or US possession income tax paid or accrued during the taxable year. The credit also applies against taxes paid in lieu of income taxes, a category that includes withholding taxes.

Note that an individual may not take a credit for taxes paid on foreign income that is excluded from gross income under Code Section 911. The credit is available to any employee who is a US citizen, resident alien of the United States or a resident alien who is a bona fide resident of Puerto Rico for the entire taxable year.

The foreign tax credit is subject to a specific limitation. It is generally limited to the same proportion of the employee's total US tax that the employee's foreign-source taxable income — but not in excess of the entire taxable income — bears to the entire taxable income for the taxable year.

Whether an employee has foreign-source taxable income for the purposes of this limitation depends on the type of income involved and, in some cases, the residency status of the employee.

For example, with respect to wages, the employee has foreign-source income if the services are performed in a foreign country. With respect to interest, the employee has foreign-source income if the interest is credited to a bank account in a foreign country or if the employee invests in foreign bonds that pay interest in a foreign currency. Income from the sale of personal property by a US resident is US-source income regardless of the place of sale. Similarly, income from the sale of personal property by a non-resident is generally sourced outside the United States.

In the event that an employee cannot use all of the foreign tax credit, he is permitted to carry back the unused credit for one year and to carry forward the unused credit for 10 years. This means that the

employee can treat the unused foreign tax of a tax year as though the tax were paid or accrued in the employee's first preceding and 10 succeeding tax years up to the amount of any excess limitation in those years.

Participation in Non-US Compensation Programs

Where an employee on foreign assignment becomes a participant in a compensation or benefit plan sponsored by an employer in the host country, such participation may have US income tax consequences, especially in connection with the rules under Code Section 409A and 457A regarding deferred compensation.

A complete review of Code Section 409A and 457A rules is beyond the scope of this discussion. In general, if a person has a legally binding right in one taxable year to receive an amount (either as compensation or as reimbursement or otherwise) that will be paid in a subsequent taxable year, that amount is considered deferred compensation for the purposes of Code Section 409A, unless it meets one of the exemptions.

Assuming that no exemption to Section 409A applies, to mitigate adverse income tax consequences, amounts that are considered deferred compensation must comply with various requirements regarding the time and form of the payment, timing of deferral elections and a six-month delay of separation payments made to certain "key employees" of a public company. In addition, there are prohibitions under Section 409A on offshore funding and funding tied to the employer's financial condition. If the requirements are not met, the deferred compensation amounts will be taxable to the employee at the time of vesting and an additional 20% tax will be imposed.

Since Code Section 409A rules apply to all plans globally that have US taxpayer participants, the issue should be carefully considered for any non-US compensation plans (e.g., retirement plans, equity incentive plans, cash bonus plans) in which the expatriate will

participate. It is highly unlikely that such plans will be designed to avoid or comply with the Code Section 409A requirements.

As a first step of the analysis, it is critical to identify all of the potential compensation plans, including, for example, equity compensation plans, that will be offered to the employee. The Code Section 409A rules do provide a few specific exemptions for foreign plans, although they are limited in scope.

For example, a foreign retirement plan may qualify for an exemption from Code Section 409A as a “broad-based retirement plan.” US citizens and green card holders will be able to qualify for this exemption if:

- they are not eligible to participate in a US-qualified plan
- the deferral is non-elective and relates to foreign-earned income
- the accrual does not exceed the amount permitted under Code Section 415 (i.e., the US-qualified plan limits)

The broad-based plan must also meet the following requirements:

- the foreign plan must be in writing
- the foreign plan must be non-discriminatory in terms of coverage and amount of benefit (either alone or in combination with other comparable plans)
- the foreign plan must provide significant benefits for a substantial majority of the covered employees and contain provisions, or be subject to tax law provisions or other restrictions, which generally discourage employees from using plan benefits for purposes other than retirement and restrict access to plan benefits before separation from service

There are also Code Section 409A exemptions for plans exempt under a tax treaty, foreign social security plans and plans that are considered funded by a trust under the rules, among others.

In addition, Code Section 457A can also apply to deferred compensation earned by a US taxpayer employee working abroad. It limits the ability to offer deferred compensation in cases where employees (who are subject to US taxation) perform services for employers who are considered “non-qualified entities.” In general, employers based in jurisdictions that do not have a corporate income tax will be “non-qualified entities.”

Furthermore, an employer based in a jurisdiction that has a corporate income tax and an income tax treaty with the United States may also be considered a “non-qualified entity” depending on the extent to which the jurisdiction taxes non-resident income differently from resident income, and also the extent to which the employer’s income for the year includes non-resident income. Given the complexities of Code Section 457A, employers are encouraged to consult with tax counsel regarding the potential impact of this section on their expatriate population.

US Federal Income Tax — US Inbound Assignments

Employees who are sent to work in other countries even for relatively short assignments may nonetheless be subject to local income tax on the compensation they earn for working abroad, unless there is a local tax exemption for such limited work or unless the provision of an income tax treaty provides an exemption. In the United States, for example, the Code provides a limited exemption for foreign employees working in the United States on a short-term basis, but it is practically of no use since the compensation earned during the period of assignment cannot exceed USD 3,000. Other jurisdictions may have similar statutory exemptions for short-term assignments but, generally speaking, they are rare.

Taxation as a “Resident“

The principal concern for an employee who comes to work in the United States (and who is not a US citizen or does not want to become a US citizen) is whether he will be taxed as a resident alien or a non-resident alien.

As a resident alien, he will be taxed in the same manner as a US citizen, namely, all worldwide income, including any compensation paid or earned outside of the United States, will be subject to US federal income tax. A resident alien is permitted to offset this US tax liability by a tax credit or a tax deduction for foreign income taxes paid on compensation income, if any, subject to certain limitations.

As a non-resident alien, he will only be taxed on income “effectively connected“ with the conduct of a US trade or business at the same rate and in the same manner as US citizens and residents, but with some limitations (e.g., generally not able to file a return jointly with a spouse). In addition, absent a tax treaty exemption or reduced rate of tax, there will be a flat 30% tax rate on certain investments and other fixed or determinable annual or periodic income from sources within the United States that is not “effectively connected“ with the conduct of a US trade or business.

The employee’s performance of services in the United States will be deemed to be the conduct of a US trade or business. The compensation he receives therefore will be “effectively connected“ with a US trade or business and will be taxable at the same rate as that for US citizens and residents.

In general, an employee will be treated as a “resident alien“ for tax purposes if the employee:

- is lawfully permitted to reside permanently in the United States (i.e., the “green card“ test)

- is in the United States for a substantial amount of time (i.e., the “substantial presence” test)

The “green card” test is as its name suggests. This covers foreign nationals granted alien registration cards called “green cards,” even though the cards are not green.

The “substantial presence” test is satisfied if, in general:

- the employee is present in the United States for at least 31 days during the current calendar year
- the sum of the days he/she is present in the United States during the current calendar year, plus one-third of the days he/she was present in the preceding year, and one-sixth of the days he/she was present in the second preceding year, is equal to or exceeds 183 days

There is an exception to the “substantial presence” test if a foreign national is present in the United States for fewer than 183 days during the year and has a tax home in and closer connection to a foreign country.

If the employee does not satisfy either of the two tests described above, it is possible to elect to be treated as a resident under certain circumstances.

A non-resident alien who is temporarily present in the United States as a non-immigrant under the foreign student F visa or exchange visitor J visa may exclude from gross income compensation received from a foreign employer or an office maintained outside of the United States by a US person.

In addition, wages, fees or the salary of an employee of a foreign government or an international organization are not included in gross income for US tax purposes if: the employee is a non-resident alien or a citizen of the Philippines; the services as an employee of a foreign government are similar to those performed by employees of the US

government in foreign countries; and the foreign government grants an equivalent exemption to US government employees performing services in that country.

Finally, non-resident aliens may be entitled to reduced rates of, or exemption from, US federal income taxation under an applicable income tax treaty between the country of which they are residents and the United States.

A non-resident alien who claims an exemption from US federal income tax under a provision of the Code or an applicable treaty must file a statement with the employer giving his name, address and taxpayer identification number, and certifying the individual is not a citizen or resident of the United States and the compensation to be paid during the tax year is, or will be, exempt from income tax, giving the reason for the exemption. If exemption from tax is claimed under a treaty, the statement must also indicate the provision and treaty under which the exemption is claimed, the country of which the non-resident alien is a resident and enough facts to justify the claim for exemption.

Participation in Non-US Compensation Programs

As previously discussed, Code Section 409A has a very broad application. In the case of employees who come to work in the United States, there is also a concern that certain non-US plan benefits they receive while working in the United States could be subject to the adverse consequences of Code Section 409A. Accordingly, the employee's participation in non-US compensation programs must be reviewed for Section 409A compliance, the same as for US programs.

For example, some non-US stock option plans may not meet the requirements of the fair market value grant exemption from Code Section 409A. Stock option plans that provide for an exercise price that is less than the fair market value on the date of grant may have this problem. If a foreign national was granted stock options outside of the United States, comes to work in the United States and becomes a "resident alien" of the United States, then unexercised stock option

grants under such plans may be particularly problematic under Code Section 409A.

Notwithstanding, there are some exemptions under Code Section 409A for deferred compensation that vests before the employee becomes a US tax resident. Again, as in the case of all US employees who go to work abroad, it is critical to identify all of the plans and arrangements that could potentially be subject to taxation under Code Section 409A in advance of an employee's assignment to the United States.

US Social Security

One of the major concerns for an employee working outside of his home jurisdiction is whether compensation will be subject to local social insurance taxes (as most of the world calls it), known as "Social Security" in the United States. The concern arises from the employer's standpoint as well, since in many jurisdictions social insurance taxes on compensation are imposed on the employer as well.

Social Security taxes in the United States (commonly referred to as "FICA" taxes) are relatively low in comparison with those of other jurisdictions. Therefore, with respect to a US employee who is working abroad, more often than not there is a desire to remain covered by US Social Security and avoid the imposition of local social insurance taxes wherever possible. Continuing to be covered by US Social Security also allows the employee to build up his eligibility for a maximum Social Security benefit upon retirement.

In general, Social Security contributions must be paid on the earnings of a US citizen or resident alien working for an American employer anywhere in the world. An "American employer" is defined as:

- the United States or any instrumentality thereof
- an individual who is a resident of the United States

- a partnership, if two-thirds or more of the partners are residents of the United States
- a trust, if all of the trustees are residents of the United States
- a corporation organized under the laws of the United States or any state

Special rules apply to companies that contract with the US federal government so that certain foreign entities may also be considered “American employers” for the purposes of this rule.

Thus, a US employee who is seconded to work abroad and continues to be employed by an “American employer” will remain covered by US Social Security and FICA taxes will be withheld from his compensation as a result.

Similarly, a US employee who works outside the United States for a foreign branch or division of an “American employer” will remain covered by US Social Security since, technically, a branch or division is a mere extension of the home company.

On the other hand, a US citizen or resident who is employed outside of the United States by an employer who is not an “American employer” will not remain covered by the US Social Security system and thus FICA taxes will not be required to be withheld from his compensation.

Notwithstanding, there is a special election available for certain employees to remain covered by US Social Security while working abroad. If a US citizen or resident is working for an “American employer,” as defined above, and if the US employee is sent by that American employer to work for a “foreign affiliate,” as defined below, then the American employer may enter into a voluntary agreement under Section 3121(l) of the Code to continue the US Social Security coverage of that individual. A “foreign affiliate” is defined as a foreign entity in which an American employer owns at least a 10% interest. This voluntary, but irrevocable, agreement extends US Social Security

coverage to services performed outside of the United States by **all employees** who are citizens or residents of the United States.

Under this voluntary agreement, the American employer pays the employer and employee portion of FICA taxes that would be imposed if such wages were subject to FICA taxes under the general rules. There is no legal requirement for the employee to reimburse the American employer for the employee's share of the tax, although some companies do in fact require such reimbursement.

Totalization Agreements

Just as the expatriate and his employer might want to avoid the problem of increased income taxation resulting from the foreign assignment, there is also a desire to avoid the problem of double social taxation as well.

Double social taxation occurs when an employee remains covered by the social insurance taxes of his home jurisdiction and also becomes covered by the social insurance taxes of the host jurisdiction. For example, a US employee who is seconded to work abroad, and thus remains employed by an American employer, will remain covered by the US Social Security system. At the same time, the host jurisdiction may impose its social insurance taxes on the employee's compensation merely because the employee works there (a fairly common standard in non-US jurisdictions). In such a case, contributions to both social tax systems may be required on behalf of the employee and also by the employer, reducing the employee's compensation and increasing the employee's and the company's social tax burden.

A further problem that may be encountered by the employee concerns fragmented social security coverage. A US citizen or resident who has worked for less than 10 years and who transfers employment to a foreign employer (that is, not an "American employer") will not continue to earn "quarters of coverage" for a maximum US Social Security benefit. In addition, if the expatriate's employment history

includes a lot of temporary assignments in different foreign jurisdictions, the employee may find at the end of his career that the employee has not worked long enough in any one jurisdiction to qualify for an old age, retirement or other social benefit under any system of the country.

To address these problems, many jurisdictions have entered into international agreements called “Totalization Agreements.” A Totalization Agreement provides a set of rules to determine which jurisdiction will cover the individual’s employment under its own social insurance tax system. Note that a Totalization Agreement does not change the domestic rules of a country’s social tax system. It does not impose social insurance tax coverage if employment would ordinarily not be covered.

In the case of the United States, there are 26 such agreements in force. In general, each Totalization Agreement follows the “territoriality” principle. That is, employment for purposes of social insurance taxes is covered only by the laws of the country in which the work is performed.

An exception to this territoriality rule exists where the employee is sent by the home country employer to be on temporary assignment in the other jurisdiction. In that case, the employee will remain covered by the social insurance system of the home country. A “temporary assignment” is generally defined to be one expected to last five years or less. Note there are some variations to these rules, so it is recommended to check the applicable Totalization Agreement to determine which provisions apply in each case.

With regard to benefits, a Totalization Agreement permits an employee to combine or “totalize” periods of coverage for the purposes of determining eligibility for coverage. For example, to qualify for a minimum US Social Security benefit under the totalization procedure, the executive must have at least six quarters of coverage in the United States system. The Totalization Agreements contain parallel provisions for each country, so that if the combined or

“totalized” periods of coverage are sufficient to meet the eligibility requirements for benefits, then pro rata benefits are payable from each country’s social insurance system.

If an employee wishes to take advantage of the “temporary assignment” exemption, he must obtain a certificate of coverage from the responsible authorities in his home jurisdiction to verify his continued coverage while working abroad.

In the United States, an application for such a certificate must be made by the employer to the Social Security Administration (“SSA”), and must contain the following information: full name of the outbound mobile employee, date and place of birth, citizenship, country of permanent residency, social security number, date and place of hire, name and address of employer in the United States and the other country, and dates of transfer and anticipated return. If the employee is transferring to France, the employee must also certify that there is medical coverage under a private insurance plan, since France imposes this certification requirement on anyone who seeks exemption from French social security tax. Note that in many cases the certificate of coverage can be obtained from the SSA by applying online.

Social Security Implications for Inbound Assignments

In the case of an employee who is assigned by a foreign employer to work in the United States, such employment will be subject to US Social Security coverage (e.g., FICA taxes) unless the performance of services does not come under the definition of “employment” for US Social Security purposes. There is a specific exemption for non-resident aliens who are present in the United States under the F or J visa, for example.

An inbound employee who does not qualify for those exemptions from US Social Security will be subject to FICA tax withholding on

compensation unless an exemption under a Totalization Agreement in effect with the home country can be claimed. For example, if the employee is here on a “temporary assignment,” then the applicable Totalization Agreement can be relied upon as an exemption from the application of FICA tax withholding. In that event, the employee will need to produce a certificate of coverage from the home country authority to claim the exemption.

Employee Reporting Obligations

Employees who are US tax residents should also be aware of the individual reporting requirements under the Foreign Account Tax Compliance Act (“FATCA”) and in connection with the Foreign Bank and Financial Account requirements. In particular, the definition of “foreign financial assets” is rather broad under FATCA. In addition to shares of foreign companies, it can also include balances under foreign compensation plans and other arrangements sponsored by foreign affiliates. Certain taxpayers may also have to complete a Form 8938 (Statement of Foreign Financial Assets) and attach it to their annual US income tax return. Given the complexities of these reporting obligations, employers are encouraged to consult with tax counsel regarding the potential impact of these requirements on their expatriate population, as there are significant penalties for failing to report on time.

Selected Concerns from the Employer’s Perspective

Availability of Corporate Income Tax Deduction

One of the primary issues from the employer’s standpoint is whether the costs of the expatriate’s compensation are deductible, and if so, by which entity. Under US federal income tax principles, the entity that is the common law employer, that is, the entity that has the right to direct and control the activities of the employee, is entitled to the income tax deduction. Note this principle may be similar in non-US

jurisdictions, so it would be prudent to consult with a tax adviser on any tax deduction question.

Accordingly, under US tax principles, if the employee is seconded to work abroad for another company, he remains a common law employee of the sending employer, and that employer is entitled to deduct the costs of the employee's compensation.

Similarly, if the employee's employment is in fact transferred to another company (that is, another corporate entity, such as a subsidiary, a parent company or a brother-sister company), it is that other entity that has the right to deduct the costs of the employee's compensation. Even if the company is in the same corporate group as the employee's former employer, the former employer is not entitled to deduct the costs of compensation because the benefit to such employer is deemed to be only an indirect or derivative benefit. For these purposes, a division or branch is deemed to be the same as the corporate entity to which it relates, and is not considered a separate "entity" for income tax deduction purposes.

Permanent Establishment Risk

One key issue that always needs to be considered in structuring international assignments is whether the employment structure will inadvertently create a "permanent establishment" or "PE" issue for the home country employer. A PE exists where the employing entity is considered to be doing business in the host country and is therefore subject to corporate income tax by the host country on an allocable amount of the entity's net income. As discussed in the chapter on "Employment," under the secondment structure, the employee remains employed by, and thus directed and controlled by, the home country employer. Accordingly, this structure creates a PE risk for the home country employer. The length of the assignment does not necessarily matter. Even in short-term assignments or "informal" assignments where the employee is seconded to work in another jurisdiction for just a few weeks or months, this risk may still exist.

A company that creates a PE is often obligated to file tax returns with a foreign tax agency, to observe local accounting standards for foreign tax purposes and to pay higher taxes on a worldwide basis. The existence of a PE may also trigger registration, filing and publication obligations for the company that would not otherwise exist.

A local tax inspector may assume that a company has automatically created a PE if the expatriate is on secondment while working in the host jurisdiction. To mitigate this risk, many multinational companies will include express language in the expatriate's assignment letter to provide that the expatriate has no authority to conclude contracts on behalf of the home country employer while working in the host jurisdiction. This protective language does not work in all cases, however, so consultation with international tax counsel is recommended.

Activities that could constitute a PE vary by jurisdiction, based on income tax treaty provisions and the structure of the employment relationships. The concept of PE has been undergoing significant changes following guidance from the OECD. As a result, in some jurisdictions a covenant that the expatriate does not have the authority to conclude contracts may not be enough to avoid a PE risk. In some jurisdictions (e.g., China), secondment attracts special scrutiny, simply because it is a secondment, and creates a potential tax liability for the home country employer unless the expatriate is directed and controlled by the local entity in China. In other jurisdictions (e.g., India and Canada), the secondment structure may run afoul of the Services PE concept, that is, a PE may exist merely because an employee of the home jurisdiction performs services in the host jurisdiction. We recommend that companies work closely with their tax advisers to understand the nuances and potential exposures that may arise in connection with the PE risk.

Tax Equalization and Tax Protection Programs

To minimize the expatriate's potential exposure to a higher global income and social security tax burden, the employer will often

implement a tax equalization or tax protection program for all of its expatriates and globally mobile employees. Such a program provides a consistent approach for handling the complex income and social security tax situation of any particular expatriate.

A tax equalization program provides that the employee's tax burden on equalized income will be neither greater nor less than income and social taxes (the "stay-at-home tax" or "final hypothetical tax") he would have paid had he not gone on a foreign assignment. It requires the employee to pay a retained hypothetical tax approximating the stay-at-home taxes. In a typical tax equalization program, the hypothetical tax is computed at the beginning of the year and a pro rata amount is deducted from the employee's wages each payroll period. At the end of the year, the employee's hypothetical income and social taxes are recalculated based on the employee's actual equalized income for the year. A reconciliation is then prepared to compare the employee's final hypothetical tax liability with the employee's hypothetical tax deducted during the year to determine whether the correct amount was withheld. If the amount of the hypothetical tax deducted during the year is greater than the final hypothetical tax liability, the difference is reimbursed to the employee. If the result is that too little hypothetical tax was deducted during the year, the employee must pay the difference to the company. The objective of the tax equalization program is to eliminate the tax windfall that an employee who moves from a high-tax jurisdiction to a low-tax jurisdiction could enjoy by virtue of lower tax rates.

A tax protection program also involves the calculation of a hypothetical tax. However, it is intended only to reimburse the employee in the event the employee incurs additional tax liability as a result of the foreign assignment (for example, where he ends up working in a higher taxing jurisdiction).

Thus, under a tax protection program, if at the end of the year the actual home and host country income and social taxes are more than the hypothetical tax deducted during the year, the employee is

reimbursed for the difference. If the actual taxes are less than the hypothetical tax liability, the employee is not required to pay anything back to his employer and would benefit.

There are many variations on tax equalization and tax protection programs. Some employers cover state and local taxes as well as US federal and foreign income and social taxes. What type of income is included, and what is excluded, depends on the company and the discussions it has with its tax advisers.

Since tax equalization and tax protection programs represent payments of compensation over a number of tax years, for US taxpayer employees there are potential Code Section 409A issues. The company providing such a program needs to ensure that the tax equalization/tax protection program complies with Code Section 409A. Often, consultation with tax counsel is needed for this purpose.

Whatever changes are deemed appropriate to comply with or be exempt from Code Section 409A, such changes should be reflected in the international assignment policy document as a best practice.

Given the complexity of the hypothetical tax calculation, some companies will engage the services of an accounting firm to make the necessary determinations and prepare the various income tax returns for each affected employee. In this way, the employer can be confident that its employees are handled consistently and that their tax returns are prepared and filed on time.

Budgeting and Cost Projections

Given the significant incremental costs generally related to an international assignment (e.g., employer-paid housing, additional allowances, tax reimbursements, home leaves, transition allowances), the company should prepare cost projections of and accrue for the total expected international assignment cost, including estimates of home and host country income and social tax, in cases where the employee is eligible for either tax equalization or tax protection.

Compliance: Withholding and Reporting

As more multinational companies focus on compliance-related issues, it is not surprising that the area of global mobility has received some attention. In particular, companies often look to review their processes and procedures to make sure that all expatriates, extended business travelers and rotators are accounted for, that the appropriate taxes (income, social taxes) are withheld from their employees' pay, and that the appropriate reporting of such pay is being conducted. More often than not, withholding and reporting problems occur when compensation is paid outside of the jurisdiction where the employee is working, or there is a lack of clarity or a lack of direction to the payroll department regarding which entity is obligated to withhold on compensation and at what applicable rate. Where a large number of expatriates are on assignment at any given time, it is not surprising that the details regarding individual participants who are working in perhaps dozens of jurisdictions sometimes become complex and burdensome to monitor.

Notwithstanding these challenges, vigilance is paramount. Local tax authorities, based on recent audits and news accounts, have announced their intention to focus more on the activities of expatriates and their employers to make sure that compliance with applicable tax withholding and reporting obligations is maintained. As local governments search for more revenue to address their fiscal budget concerns, they will look harder at this area.

Global Equity Compensation

Equity compensation awards held by employees present new issues when those employees become globally mobile.

As multinational employers increasingly seek to motivate and retain qualified executives and employees by offering equity-based compensation and, at the same time, transfer such individuals across international borders on short- or long-term assignments, it is important to identify and address the tax, social security and legal impact of such international transfers on equity compensation arrangements. Due to the complexity and global reach of US federal tax and social security regulations, the transfer of employees into and out of the US poses particular challenges that need to be considered in advance of any such transfer of employment.

Key Government Agencies

The Internal Revenue Service and Social Security Administration are the government agencies responsible for overseeing the assessment and payment of federal income taxes and social security taxes (i.e., Federal Insurance Contribution Act taxes, such as social security and Medicare tax).

In addition, the taxation of mobile employees is significantly impacted by tax treaties and other international agreements and acts, published by the US Department of State, and by social security totalization agreements negotiated and signed by the Department of Health and Human Services under the US Social Security Act. For “American employers,” which includes corporations organized under the laws of the United States or any state, sending employees to work in a totalization agreement country for five years or less, the SSA has oversight over the issuance of Certificates of US Social Security Coverage that, in certain circumstances, enable such employees to remain subject to the US social security system and exempt from

social security taxes in the country to which they have been transferred.

State and local income tax and payroll tax authorities also have a stake in the taxation of equity awards held by mobile employees, depending on the time an equity award holder spends in a particular State and municipality.

Finally, the Securities and Exchange Commission and the state securities regulators have oversight over any offerings of equity awards to employees in the US and the resale of shares acquired by those employees. In some instances, there are exemptions available to the issuer because the offering is to employees; however, securities laws should be considered each time an equity award is granted or exercised or shares are resold.

Current Trends

In recent years, there has been an increasing awareness among US and other global tax authorities that significant amounts of taxes may be owed on income derived from stock options and other forms of equity compensation awards held by employees who transfer employment across international borders. In part, the focus arises from a commentary first published by the Organization for Economic Co-operation and Development in 2002, which addressed the tax difficulties of stock options in a cross-border context.

Further, in December 2008, the IRS announced that it added foreign withholding tax compliance to its list of issues with the highest “Tier I” organizational priority and coordination and since then there has been significant audit activity in this area. Although the IRS’s immediate focus is on withholding of taxes on income paid to non-US resident individuals under Section 1441 of the Internal Revenue Code, its increased scrutiny of cross-border withholding practices sends the clear message that companies granting equity awards to US-inbound and outbound globally mobile employees cannot afford to ignore proper US tax compliance. More recently, since 2014, the IRS has

amended the rules for withholding on US-source income received by foreign persons and in August 2015, published an audit guide for equity (stock)-based compensation. The audit guide does not provide any specific guidance on globally mobile employees, but given its interest in equity-based compensation and its prior statements regarding foreign withholding tax compliance, it is expected that the IRS will inquire about globally mobile employees as part of any audits it conducts related to equity compensation. Historically, while employers and tax authorities have generally had arrangements in place to determine and assess the US and foreign taxes owed on salary paid to internationally mobile employees, the proper taxation of income from equity compensation awards has sometimes been overlooked. Consideration has not always been given to the fact that equity award income has usually been earned over a period of one or more years, during which the equity award holder may have been employed and resident in a number of different countries, each of which may assert taxable jurisdiction over the award.

At present, however, both US and foreign tax authorities are aware of potential trailing tax liabilities relating to income from equity compensation arrangements, and are increasingly focusing their attention on this area. This means that it is important for multinational companies that have granted equity compensation awards to globally mobile employees to identify the tax and social security issues affecting the taxability of income from such awards and to develop strategies for dealing with these issues and tracking international tax liabilities upfront.

Business Travel

Depending on the circumstances, non-US resident employees coming to the United States on short-term business trips (e.g., total stay of up to six months) may be subject to US federal income taxation on their wages paid during such business trips. This is based on the general US sourcing rule in Section 861 of the Internal Revenue Code that compensation for labor or personal services performed in the US is

US-source income and therefore subject to US income tax unless an exemption applies. Where an individual such as a business traveler performs services partly in and partly outside the US, the applicable US Treasury Regulations provide that the portion of the individual's compensation for such services that constitutes US-source income should, in many cases, be apportioned on a time basis.

In terms of equity awards, Treasury Regulations Section 1.861-4(b)(2)(ii)(F) characterizes income from stock options as "multi-year compensation," i.e., compensation that is included in the income of an individual in one taxable year but that is attributable to a period that includes two or more taxable years. Where stock options are held by an employee who spends time employed both inside and outside the US, the regulations indicate that it will generally be appropriate to measure US-source income by reference to the number of days the employee worked in the US between the option grant date and the date on which all employment-related conditions for the exercise of the option have been satisfied, i.e., the vesting date, relative to the total days worked during the vesting period (although this rule is modified in a small number of cases by a tax treaty between the US and the country in which the employee is resident). This concept applies equally to other forms of equity award such as restricted stock units which vest over a vesting period and employee stock purchase plan rights which vest/become exercisable over a purchase period.

As a result, if US federal income tax applies to wages paid to a foreign national business traveler during a US business trip, it will also apply to any income the individual receives from an equity award that is attributable to the US under the above sourcing rule, i.e., because a portion of the equity award vested while he/she was on business travel in the US. In such cases, the employer of the business traveler will have an obligation to withhold the US federal income tax due.

However, a non-US resident employee on a business trip will be exempt from US federal income taxation on compensation for personal services performed in the US if the individual qualifies as a

“short-term business visitor” under Sections 861(a)(3) or 864(b)(1) of the US Internal Revenue Code, or if he/she is a resident of a US treaty country and meets the tax exemption requirements of the treaty for individuals employed in the US for a short period. The conditions that must be satisfied for either exemption to apply generally require an assessment of the individual’s length of stay in the United States, the amount of compensation paid to the individual while in the United States and the nationality and/or business location of the employer. If an exemption applies, the employee should provide appropriate documentation to his/her non-US employer, including IRS Form 8233 if a tax treaty exemption is relied on to avoid US income tax withholding obligations.

The situation with respect to FICA tax for short-term business visitors to the US is less clear cut, since the US Internal Revenue Code does not contain a specific exemption from FICA taxes for individuals temporarily performing services within the country. In the absence of an applicable social security totalization agreement, technically, FICA taxes will apply to a non-US resident employee on a business trip in the US, even if for only one day, and notwithstanding that the employer may have no office or other place of business in the country.

If the individual is from one of the 30 countries with which (as of the date of publication) the US has a social security totalization agreement, there should be an exemption from FICA tax under the temporary assignment provisions of such totalization agreement, provided that the employee’s wages (including equity award income) earned while temporarily working in the US are subject to social security taxes in his/her home country. If a totalization agreement does not apply, but there is an income tax treaty between the US and the country of which the employee is a resident, it may be possible to take the position that the treaty implicitly provides for an exemption from FICA taxes, depending on the treaty.

US state taxes also need to be considered in any US-inbound transfer scenario. Although it is highly unlikely that non-US residents on short-

term business trips would be considered residents of the applicable state for income tax purposes, some states may tax the individual's compensation, including equity award compensation, if he/she performed services in the state. Additionally, not all states recognize US federal income tax treaty exemptions or foreign tax credit provisions.

Thus, before a non-US resident is sent on a short-term business trip to the US, it is important to confirm the extent to which the individual may be subject to US federal income tax, state tax and/or FICA tax and, assuming that an exemption is available, take any steps necessary to rely on such exemption. Assuming US income and/or social security tax applies to income earned by the non-US resident during the business trip, to the extent that the individual holds stock options or other equity awards that have partially vested during such period, a tracking system needs to be established to ensure that appropriate taxes are paid when the individual ultimately realizes the income from the equity award (e.g., when exercising the stock option, or exercising/vesting in such other form of equity award) after departing the US.

Similar considerations will apply when a US resident is sent on a business trip to another country, depending on the local tax laws of that country and whether or not such country has entered into a tax treaty or social security totalization agreement with the US. An added complexity is that each country may have its own method of sourcing the income an employee acquires from equity awards for national income tax purposes. Many countries (including the US, as discussed above) broadly follow the model propounded by the Organization for Economic Co-operation and Development, which advocates sourcing the income employees earn upon exercise of a stock option (or similar award) between countries based on the work days spent in each country during the vesting period; however, some adopt their own variation of the rule (e.g., grant to exercise apportionment), while others apply unique rules that may lead to taxation of the entire award in the country in which the employee worked at the grant date, or on

the exercise date depending on the circumstances. In addition, some countries tax equity awards at entirely different times than the US (for example, options may be taxed at grant in Belgium or at sale in Israel), further complicating the allocation of the income and the availability of foreign tax credit relief where double taxation applies.

Training

The tax treatment of equity awards granted to non-US residents coming to the US for training assignments will depend on a number of factors, including the immigration status of the individual and whether the entity that granted the equity awards qualifies as a foreign employer under the US Internal Revenue Code.

However, a threshold question for federal income tax purposes is whether the equity awards continue to vest (i.e., be earned and considered US-source taxable income) during the training assignment, which in turn depends upon the terms of the applicable stock plan. If, under the plan terms, a period spent in training is not considered continued employment for vesting purposes and the vesting of the award is therefore suspended for the duration of the assignment, US federal income taxes should not apply to any portion of the income the employee ultimately receives from the equity award.

For the purposes of the discussion below, it has been assumed that an individual on a US training assignment holds a J-1 exchange visitor visa, which allows for paid business training assignments for periods of up to 12 months, and that the vesting of the individual's equity awards is not suspended during the assignment.

Under Section 872(b)(3) of the US Internal Revenue Code, a special federal income tax exemption applies to compensation paid by a "foreign employer" to a J-1 visa holder for the period he/she is temporarily in the US under J-1 visa status. For this purpose, a foreign employer includes a non-resident alien individual, a foreign partnership or foreign corporation, or a branch or place of business

maintained in a foreign country by a US domestic corporation, US domestic partnership, or US citizen or resident.

Thus, to determine the extent to which equity award income earned by a J-1 visa holder while in the US is subject to US federal income tax, it is necessary to identify whether the entity that granted and bears the cost of the equity award is a foreign employer, under the above definition. If this is the case, any income the individual receives from the equity award should be exempt from US federal income tax, notwithstanding that the individual spent a portion of the period over which the award vested employed within the US.

On the other hand, US federal income tax would apply if, for example, the equity award was granted by a US corporation to an employee of one of its foreign subsidiaries, which subsequently sent the employee on a training assignment under J-1 visa status. This is because the income from the equity award that has been granted by the US parent corporation cannot be considered to have been paid by a “foreign employer,” as required under the relevant US Internal Revenue Code tax exemption.

With regard to US FICA taxes, the situation is generally more straightforward since non-resident alien trainees temporarily present in the US under J-1 visa status are exempt from Social Security and Medicare taxes on wages paid to them for services performed within the US, as long as such services are permitted by the US Citizenship and Immigration Services and are performed to carry out the purposes for which the trainees were admitted to the United States. Therefore, it is likely that any income, including equity award income, an individual under J-1 status may receive during a US training assignment will be exempt from FICA taxes.

As with individuals in the US on short-term business trips, state taxes should also be considered.

Employment Assignments

The international employment assignment context is the key area in which multinational employers need to have controls and procedures in place to track and pay required US and non-US income and social security taxes on equity award income.

US-inbound Assignments

Subject to the terms of any applicable tax treaty, non-US resident employees coming on long-term employment assignments to the US (e.g., more than six months) will likely become US tax residents and be subject to federal income taxes and potentially also to FICA taxes and state and local taxes on all of their income, including equity award income, from both US and non-US sources (please refer to the “Income Tax and Social Insurance” portion of this section of the handbook for further details on attaining US tax residency). However, the challenge with respect to equity award income (in contrast to regular salary) is that it is generally attributable to all countries in which the award-holder has been employed over the period between the grant and vesting of the relevant award and may be taxable in such other jurisdictions under non-US sourcing rules. Note that different stock option sourcing rules apply under certain US tax treaties (e.g., with Canada, Japan and the UK, which apply a grant to exercise sourcing model), and under local laws of countries outside the US.

The result is that employees transferring into US holding equity awards will likely be subject to federal income tax withholding on all income they receive from the awards while they are resident in the US, as well as being subject to non-US taxes and possibly to withholding on at least a portion of the same income, subject to any relief that may later be available under the terms of an applicable tax treaty.

In addition, in the absence of a social security totalization agreement between the US and the non-US resident’s home country (or if there is

a totalization agreement and the transfer to the US is for more than five years), with limited exceptions, FICA taxes will apply to the equity award income. Where a non-US resident is from a totalization agreement country (with the exception of Italy) and is transferred to the US for a period of five years or less, FICA taxes generally will not apply, provided that the individual has obtained a Certificate of Coverage from the home country social security authorities (confirming he/she remains subject to the home country social security system) and furnished it to the US employer. Please refer to the “Income Tax and Social Insurance” portion of this section of the handbook for further information on US FICA tax considerations.

Furthermore, although rules will vary depending on the particular US state in which the transferred employee is employed, where an individual is transferred to work in the US on a long-term or indefinite basis, it is likely that state taxes will apply to the individual’s income, including equity award income. Some states, including California and New York, have specific rules governing the taxation of equity award income partially earned within the state (and are focusing on this income from an audit standpoint), while many others have no specific rules and thus resorting to general principles is required to assess the tax liabilities.

On the regulatory side, if additional stock options or other equity awards will be offered to the US-inbound employee while he/she is in the US, the issuer must ensure that the offer of the securities complies with US securities laws. At the federal level, the shares offered under the equity plan will need to be registered with the US SEC or determined exempt from registration. The shares will also need to be registered or qualified as exempt from registration at the state level based on the state in which the employee is resident. In addition, it is necessary to ensure that the resale of shares by the employee is permissible within the US under applicable federal and state securities law registrations or exemptions.

US-outbound Assignments

Since US federal income tax applies to all income earned by US citizens and permanent residents (i.e., green card holders) anywhere in the world, equal if not greater challenges are presented when a US employer transfers a US citizen or permanent resident employee to work outside the US. Irrespective of the fact that such outbound employees may, under applicable local tax laws, become tax resident of and fully subject to income tax in the country to which they are transferred, in the absence of an exception under the US Internal Revenue Code, federal income tax withholding and reporting obligations will apply to all of the income earned by the transferred employees.

An exclusion from US federal tax applies under Section 911 of the US Internal Revenue Code for a certain amount of foreign income earned by a US citizen or resident (up to USD 105,900 for 2019). However, this exclusion is commonly not useful in the equity award context because the individual's salary income alone surpasses this threshold (this foreign earned income exclusion is discussed in more depth in the "Income Tax and Social Insurance" portion of this section of the handbook).

An exception from US federal tax withholding that is useful for equity award income applies under Section 3401(a)(8)(A)(ii) of the US Internal Revenue Code where, at the time of payment, a US citizen's foreign-source equity award income is subject to mandatory foreign tax withholding (this varies by country and, in some cases, by whether the local employer entity bears the cost of the equity award). To the extent foreign tax withholding is required on the foreign-source portion of the equity award income, US federal withholding is not required. Importantly, this US tax withholding exemption applies only to US citizens and not to US legal permanent residents, or others subject to US taxation, which may increase the administrative complexity of applying the exception on a broad basis.

Another exception to US federal tax withholding on foreign-source income may apply under the foreign tax credit provisions of Section 901(b) of the US Internal Revenue Code, provided that the transferred employee has indicated eligibility for a foreign tax credit on Form W-4. However, for equity award purposes, an important consequence of relying on this exception is that it is no longer possible to treat the equity award income as supplemental wages, subject to flat rate withholding at 22% to the extent the employee's supplemental wages for the year do not exceed USD 1 million (and at 37% (2019) for amounts in excess of this threshold). Instead, US federal taxes must be withheld at the individual's marginal tax withholding rate. Thus, depending on the relative amounts of US-source and foreign-source equity award income, the use of this withholding exception may not ultimately reduce the total amount of US taxes required to be withheld. In sum, the application of this exception needs to be carefully reviewed on a case-by-case basis (for further discussion of foreign tax credit, please refer to the "Income Tax and Social Insurance" portion of this section of the handbook).

Regardless of whether a US tax withholding exemption applies to all or a portion of a US-outbound employee's equity award income, if the employee is a US citizen or resident (including a green card holder) it is necessary to report the entire income on his/her Form W-2 for the applicable year.

If an individual employee is subject to double tax on equity award income as a result of withholding by his/her employer or former employer in two or more countries, relief may be available under the terms of an applicable tax treaty. However, that may be little comfort to the employee when almost all of the proceeds from, for example, a stock option exercise are initially withheld to meet multi-country tax obligations.

Depending on the outbound US citizen or permanent resident's employer entity and the existence of a totalization agreement between the United States and the country to which the individual is

transferred, US FICA tax may also apply to the individual's equity award and other income.

In the absence of a totalization agreement, where a US citizen or resident is employed outside the US by an "American employer" (e.g., a branch of a US corporation), US FICA taxes apply and must be withheld from the individual's income, including equity award income.

If a totalization agreement applies and an individual's equity award income would otherwise be subject to non-US social security taxes, US FICA taxes will generally no longer apply if the transfer is for more than five years, although there are some variations depending on the terms of the applicable totalization agreement.

In the US-outbound context, it is important to consider equity award income separately from salary. This is because a totalization agreement will not apply in the absence of double social security taxation, and equity award income paid by a US parent company to employees working at a subsidiary or affiliate outside the US is sometimes not subject to local country social security taxes, while salary is rarely (if ever) so exempt. It should also be noted that, unlike the federal income tax regulations, the FICA regulations provide no basis for apportionment of multi-year compensation such as equity award income, which can increase the administrative complexity of meeting US withholding obligations in cases where it is possible to apportion income for income tax purposes.

Solutions to Double Tax Issues

To ease the potential tax burden of internationally mobile employees and to encourage employees to take business-necessary international assignments, most multinational employers have a tax equalization or tax protection policy (at least for certain employees, e.g., executive-level employees). These policies ensure that, from a tax standpoint, an international employment assignment is at least tax neutral and, in the case of protection programs, potentially tax favorable for the assignee.

Under a typical equalization policy, tax-equalized employees on foreign assignment will pay approximately the same amount of income and social security taxes that they would have paid had they remained in the US or their home country, with the employer paying any taxes that exceed this amount, and the employee reimbursing the employer if the amount of tax he/she actually pays is less than his/her home country tax liability would have been. A tax protection policy operates in substantially the same way, with the key difference being that the employee does not have to reimburse the employer if his/her actual tax liability is less than the home country liability.

Developing an Approach to Compliance

Given the complexity of the foregoing rules, prior to sending employees holding equity awards on employment assignments to or from the US, employers need to collect information and develop systems that will enable them to track and calculate the amount of the equity award income subject to taxation and, potentially, to employer withholding and reporting obligations in each applicable jurisdiction, as well as the extent to which exemptions from US federal tax income and FICA tax withholding may apply in different employment transfer scenarios.

An essential component of any compliance model is a reliable data collection system to gather and monitor key details that will be determinative of the US and foreign tax and social security treatment of a given transferee. At a minimum, such details include:

- the individual's citizenship
- US or foreign permanent residency status
- US or foreign visa status
- time spent in each country during the periods over which the individual's equity awards have vested

- whether the individual's employment transfer is intended to be on a short- or long-term basis (including if it will be for more or less than five years) ¹

In addition, for US FICA tax and, in some cases, state social tax purposes for US-outbound employees, it is necessary to track whether the entity or entities employing the individual outside the US are US or foreign corporations and, if a US corporation, the state of the entity's incorporation.

Where a tax equalization or tax protection policy exists and income from equity awards is covered under the policy (some policies cover regular wages or other specified items of compensation only), it is necessary to be able to separately track the amount of equity award income paid to tax-equalized/tax-protected employees and calculate and pay both the US and foreign taxes actually due based on the individual's residency and/or citizenship status, and the amount of home country taxes that would have been payable had the individual not gone on assignment.

For companies with a large internationally mobile population, it is important to track patterns of international transfer, develop models that will generally apply to common inter-company transfers (e.g., US to UK or India to US) and create assumptions about employment assignments and categories of employees that will facilitate the development of a system that is both compliant and workable.

Other Comments

As demonstrated by the foregoing discussion, compliance with income and social security tax requirements is the key concern when equity award-holder employees transfer to and from the US.

¹ NTD: Spacing was off. I added bullets, but formatting should be checked/confirmed to make sure it's consistent with other chapters.

However, regulatory considerations should not be overlooked. To the extent that equity awards are offered to employees while on international assignment within or outside the US, issuers of such awards must ensure that they comply with any securities law prospectus, registration or exemption filings and any applicable foreign exchange control, labor law, data privacy or other filings that may be necessary to offer equity awards under the local law of the country in which the assigned employee is resident. Compliance with the requirements of local tax-qualified regimes may also be desirable.

Furthermore, where employees are transferred to a new country after an equity award grant date, particularly where such transfer is on a long-term basis, it may be necessary or desirable to modify the terms of such award to comply with local law or gain the benefit of a favorable local tax regime. In this regard, while bearing in mind accounting issues and plan limitations, it is important to structure equity award grants to allow for flexibility to address legal issues that may arise should an employee be relocated after the grant date. For companies making new grants of equity awards on a global basis, a useful best practice in this regard is to adopt a single global form of award agreement that includes a country-specific terms appendix and a relocation provision. Then, if an award-holder goes on an international assignment after the grant date, the agreement's relocation provision gives the issuer authority to apply the terms set forth in the appendix to the agreement for the country of transfer, to the extent necessary to comply with applicable laws or administer the grant.

Further Information

The Global Equity Services Practice, supported by colleagues advising on the taxation of expatriate assignments, works in coordination with the Global Immigration and Mobility Practice on global mobility assignments. GES practitioners provide streamlined advice on both the US and non-US tax, social security and legal aspects of short- and long-term international employment transfers in

the equity awards context. They also assist multinational companies in developing an approach to global equity compensation tax liabilities that combines the degree of legal protection and operating flexibility most appropriate to the interests of the relevant company.

Section 3

Country Guide

Argentina



Argentina

Argentine migration regulations provide different alternatives to facilitate foreign nationals rendering services, either as employees of local Argentine entities or as employees of foreign companies transferred to Argentina. The regulations contemplate transitory, temporary and permanent residence permits. The foreign national's place of birth, nationality, purpose and duration of the visit, and current country of residence will determine what procedure must be followed (in certain cases, more than one solution could be worth consideration). Requirements and processing times vary by visa and residence classification.

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Key Government Agencies

The “*Dirección Nacional de Migraciones*” (National Migration Bureau or “NMB”) is the governmental office in charge of issuing residence permits. It has offices all over the country and its headquarters are located in Buenos Aires.

The National Single Register for Foreigners (“*Registro Nacional Único de Requientes de Extranjeros*” — “RENURE”) inside the NMB is in charge of the registry of the calling entities and determines the validity of foreign nationals' different types of residences related to each Calling Entity.

The “*Ministerio de Relaciones Exteriores, Comercio Internacional y Culto*” (Ministry of Foreign Relations) is responsible for issuing visas at the Argentine consular offices outside Argentina.

The “*Registro Nacional de las Personas*” (National Registry of Individuals) issues national identification cards (“*Documento Nacional de Identidad*” or “DNI”).

The “*Administración Federal de Ingresos Públicos*” or “AFIP” (Federal Tax Authority) is involved in the process after the visa or residence is granted, to issue the “*CUIL*” or workers’ identification number, which allows the foreign national to be legally employed by a local entity.

Inspections and admissions of foreign nationals are conducted by the NMB and the Federal Police at Argentine ports of entry. Investigations and enforcement actions involving employers/companies and foreign nationals are handled jointly by the NMB and the Ministry of Labor. These agencies are all part of the National Executive Branch.

Current Trends

Work Permits

A foreign national who intends to work in Argentina for less than 90 days may obtain a Transitory Work Permit. The foreign national should enter the country as a tourist (in some cases, a tourist visa is needed) and apply for residence at the NMB. The authorized stay term expires on the same day on which the period of time authorized at the time of his entry as a tourist ends, and is extinguished when the foreign national leaves Argentina.

The transitory residence authorizing the foreign national to undertake remunerated tasks may not be extended or granted more than twice per year, beginning on the date on which it was originally requested.

Business Travel

By means of a Business Visa, the foreign national is authorized to conduct a limited number of commercial and/or professional activities in Argentina, including business meetings, visits to the company or visits to clients for a short period of time (maximum of one week). A Business Visa does not allow the foreign national to perform remunerated work.

Foreign nationals from countries that need a visa to enter the country should obtain the Business Visa at the Argentine consulate before entering the country.

Employment Assignments

Non-MERCOSUR Citizens

Nationals who are not of the MERCOSUR or its associated countries can follow the same procedure as described above. In this case, the applicant will be granted Temporary Residence and a DNI for a term of one year, renewable upon expiration for an additional one year. Upon expiration of the first renewal, it can be renewed for an additional one year. Upon two renewals, the applicant may apply for Permanent Residence. A Calling Entity registered in the RENURE is required to call the foreign national.

Non-MERCOSUR Citizens — Entry Permit and Visa Abroad

If a foreign national who is not a national of the MERCOSUR or its associated countries intends to work in Argentina, he can obtain a temporary residence and a DNI upon arrival at Buenos Aires. This is the more expedited procedure. He can also obtain an “Entry Permit” and the corresponding Working Visa (“Visa”), provided that he has been hired or employed by an Argentine company (Calling Entity) which has been registered as such in the RENURE (sometimes

moving companies need this Working Visa stamped on the passport to release household goods).

Registration of the Calling Entity with the RENURE

Calling Entities must register with RENURE.

Registration with RENURE is not required if the foreign national is a national of the countries that are members of the MERCOSUR or its associated countries.

The application must be made in writing and filed with RENURE. The registration must be made only once and should be updated every year with the presentation of the minutes evidencing the last appointment of corporate officers. This registration is free of charge. The Calling Entity will receive a registration number and all future admission applications must be filed with this number.

The Calling Entity that requests registration in the RENURE must provide the following documentation: (i) registration with the Public Registry of Commerce; (ii) bylaws; (iii) minutes evidencing the last appointment of corporate officers; (iv) taxpayer's identification number ("*Clave Única de Identificación Tributaria*" — "CUIT"); (v) Income Tax registration; (vi) VAT registration; (vii) Gross Receipt Tax registration; and (viii) registration as an employer in the public social security system.

Non-compliance with the RENURE may trigger penalties, including the cancellation of the Calling Entity.

Temporary Residence and DNI (Argentine Mandatory Identification Card)

To obtain temporary residence for one year, the applicant should file with the Argentine immigration authorities the following documentation:

- (1) Employment pre-agreement subscribed by the employer and the migrating employee, specifying all personal data of the parties: tasks to be performed, working day, term of duration of the labor relationship, remuneration and CUIT of the employer. All signatures should be certified by a civil law notary/notary public.
- (2) Proof of registration of the employer with the AFIP and with RENURE.
- (3) Valid original passport and a full copy thereof.
- (4) Original birth and marriage certificates (if applicable) legalized by the Argentine Consulate at the place of issuance thereof, or through the "Apostille" (the Hague Convention of 1961, which overrules the mandatory legalization of public instruments). They should be translated into Spanish by an Argentine Certified Translator.
- (5) Federal Criminal Record certificate of foreign nationals who have reached the age of 16, issued by the countries where they have resided during the last three years and of their birth country, legalized by the Argentine Consulate at the place of issuance or through the Apostille and translated into Spanish by an Argentine Certified Translator. In those cases in which a country does not issue such certificate according to its domestic laws, they shall annex the consular proof of such fact.

American Citizens should file only a police record issued by the FBI (Federal Bureau of Investigations), duly legalized by means of the Apostille.

- (6) Certificate of criminal records in Argentina issued by Dirección Nacional de Reincidencia, located at Tucumán 1353. Fees to be paid amount to ARS 500. Such certificate is granted within 24 hours. An appointment should be booked online.
- (7) ARS 16,000 per applicant in cash to pay migration fees and ARS 300 per applicant in cash to pay for the DNI.

- (8) Power of Attorney granted to your attorney to assist you with such formalities at the NMB. This document shall be signed by the foreign national at the Immigration Office.
- (9) Address certificate granted by the police office in Buenos Aires.

These formalities shall be completed personally by the foreign national and all the members of his family, who shall appear at the National Migration Bureau. These formalities take approximately three hours.

Once the requirements established above have been complied with, the foreign national shall be granted a Provisional Residence Certificate ("*Precaria*").

Within a term of 30 days after granting the Provisional Residency Certificate, the foreign national shall file with the Migrations Bureau proof of the Early Registration Code requested by the employer and issued by the AFIP.

Afterwards, he shall be granted a Temporary Residence for the term of one year, and the authorized term shall be equivalent to the effective term of the agreement.

Entry Permit

The Calling Entity must file a request with the NMB to grant the foreign individual an Entry Permit, which will allow him to obtain the Visa at the consulate of his place of residence or country of origin. The following documentation must be filed with the NMB with that application:

- Taxpayer's identification number of the Calling Entity.
- Receipts of payment of VAT, Gross Receipts Tax, and Social Security contributions.
- Last income tax return.

- Full copy of the passport (including blank pages) of the foreign national and of the members of his family who require an Entry Permit.
- An original marriage certificate (if appropriate) per spouse.
- A certified copy of the birth certificates of the foreign national's children who are also applying for the Entry Permit.
- The foreign national's résumé in Spanish.
- An employment contract, valid for at least one year, to be executed between the Calling Entity and the foreign national in accordance with Argentine labor laws. The employment contract must specify that the labor relationship shall be conditioned to the granting of the Visa. The employment contract should be solely signed by a representative of the Calling Entity (the foreign national should sign it after obtaining the Visa) and must be certified by a notary public and legalized by the Notaries' Association.
- A letter from the Calling Entity stating the description of the activities and tasks to be performed by the foreign national in Argentina. The letter should be signed by the legal representative of the Calling Entity and certified by a notary public.
- Power of attorney granted by the Calling Entity to obtain the Entry Permit from the NMB.
- Particular personal data from the foreign national. This first stage finishes once the Entry Permit has been issued.

The foreign national cannot be in Argentina during the processing of the Entry Permit application with the NMB.

Visa

This stage takes place at the Argentine consulate with jurisdiction over the place of residence or nationality of the foreign national.

The foreign national must file the Entry Permit application with the Argentine consulate along with the following documents:

- (1) Original passport, with a minimum validity of one year (and a complete copy of all pages), on behalf of the foreign national and each of his accompanying family members.
- (2) Two original birth certificates of the foreign national and of the members of his family who are requesting a visa.
- (3) An original marriage certificate per spouse.
- (4) The foreign national's academic certificate, diploma or degree.
- (5) A certificate of criminal record for individuals over 16 years old, issued by the countries in which the foreign national has resided over the last five years before arriving in Argentina.
- (6) A personal 3/4" right profile format photograph.
- (7) Consulate fee.

The documents mentioned in 2, 3, 4, and 5 must be translated into Spanish and previously legalized by the Argentine consulate with jurisdiction over the place of issuance or by means of the Apostille.

Once all the documentation has been approved, the consulate shall grant the Visa for a one-year term, renewable upon expiration for an additional one year. In turn, upon expiration of the second year, it can be renewed for an additional one year. Upon two renewals, the foreign national may apply for Permanent Residence if he and his family wish to remain in Argentina.

Transfer Visas (“Visas de Traslado”)

Multinational companies seeking to temporarily transfer foreign nationals to Argentina under an assignment or secondment agreement must file a request for a Transfer Visa or “*Visa de Traslado*.” This visa is initially valid for assignments of up to one year and can be renewed. This renewal requires the registration of the foreign national with the Federal Tax Authority.

The requirements for this Transfer Visa are basically the same as those set forth above for Non-MERCOSUR citizens.

The Calling Entity should request the corresponding Entry Permit and Visa from the NMB. In this case, instead of an employment contract, the Calling Entity will have to file a letter stating the description of the activities and tasks to be performed by the foreign national in Argentina.

As an alternative to the Entry Permit, foreign nationals that do not need a visa to enter Argentina could enter as tourists and apply for the Working Visa directly at the NMB. The documents required are the same documents required during the Entry Permit process.

National Identification Card (“Documento Nacional de Identidad” — “DNI”)

Once the Temporary Residence has been obtained from the Argentine consulate abroad, the applicant and his family should obtain the DNI from the National Registry of Individuals (“*Registro Nacional de las Personas*”) in Argentina.

The DNI is the local identification document, which is necessary to obtain a definitive registration with the Federal Tax Authority, open bank accounts, register with healthcare providers, and obtain a local driver’s license, among other things. The DNI shall be granted to the foreign national for the same term of the visa and shall only be renewed once the Temporary Residence has been extended.

Training

Training/Technician Work/Short-term Assignments

A special transitory residence visa enables foreign employees to receive training or deliver limited technician work in Argentina for brief periods of time, on a tourist visa.

Such transitory residence is granted at the Argentine consulate abroad for a term of 30 or 60 days depending of the type of visa, renewable upon expiration. This applies for nationalities that require a visa to enter into Argentina. For citizens of countries that do not require a visa to enter to Argentina, they can obtain a 90-day transitory residence with the Argentine immigration authority upon arrival in Argentina. This kind of working permit may be obtained twice in each one-year period.

Entry Based on International Agreements

MERCOSUR Citizens

If a foreign individual is a national of the MERCOSUR or its associated countries and intends to work in Argentina for one or two years, he must obtain his residence directly at the NMB by using the nationality benefit. RENAME registration is not required.

The formalities are conducted on a strictly individual basis and all the applicants shall appear personally at the NMB.

A Precaria will be delivered to the applicant, which allows him to obtain a CUIL and immediately start working. The Precaria also authorizes the applicant to leave and re-enter the country.

The Temporary Residence with a term of two years will be granted to the applicant, together with the DNI, about 90 days thereafter. After the expiration of the two-year term, the applicant may apply for Permanent Residence.

Australia



Key Government Agencies

The Department of Home Affairs (DHA) is the responsible government department that processes all visa applications. All visa applications must be made as an internet application via the DHA's online system unless otherwise authorised by the DHA.

Depending on the type of the visa, visa applicants must be onshore (i.e. in Australia) or offshore (i.e. outside Australia) at the time of the application and the visa grant. The processing times are different depending on whether the visa applications are made onshore or offshore.

Onshore applications are processed by the DHA in Australia. The majority of the offshore applications are processed by the visa processing offices at the Australian embassies, high commissions or consulates, multilateral missions or representative offices responsible for the countries where the visa applicants are at the time of application or usually reside.

It is important to note that Australia does not offer any visa waiver or visa-free travel to any country except for the New Zealand passport holders, who are granted a Special Category visa (subclass 444) on their arrival in Australia and the APEC Business Travel Card holders, who are travelling to Australia for the business activity purposes. All non-Australian citizens, regardless of their purpose of stay, must hold an appropriate visa prior to traveling to Australia.

All foreign nationals in Australia regardless of their visa status are entitled to enjoy the minimum employment terms and conditions set by the Australian workplace laws. The Fair Work Ombudsman is an independent government agency responsible for regulating and monitoring the workplace relations, enforcing Australian employment laws, and investigating any breaches with workplace laws and seeking penalties for such breaches. The Fair Work Ombudsman also has power to audit the temporary sponsored visa holders' work arrangements.

The Department of Jobs and Small Business is a government department responsible for reviewing and updating the skilled migration occupation lists for the temporary and permanent skilled visa programs in response to the changes and needs in the skilled workforce in Australia's labour market.

Since the announcement of the work visa reform in April 2017, the Department of Jobs and Small Business has been taking an active role in conducting consultation with external stakeholders employers, industry bodies, unions and individuals to determine the skilled occupation codes in temporary and permanent demand in the Australian labour market. The most recent updates to the skilled occupations were published on 11 March 2019, and the next review is scheduled to occur in the second half of 2019.

Current Trends

Below is the summary of the statistics relating to the temporary work visa and business visitor visa programs published in the 2017-2018 Australia's Migration Trends report by the Department of Home Affairs.

The number of temporary visa grants increased by 3.4 per cent to 8.7 million in 2017-2018. Approximately 5.6 million (65 per cent of the temporary visa grants) were visitor visas and about 8.6 per cent of the visitor visa granted were business visitor visas.

Business visitor visas, which are comprised of three subclasses depending on the country of the passport the visa applicants, grew 34.5 per cent over the ten years to 2017-2018.

The number of the primary temporary skilled work visas lodged and granted in 2017-2018 fell by 28.4 per cent (to 39,230) and 25.9 per cent (to 34,450) respectively primarily due significant changes implemented in phases leading up to the implementation of the new visa work visa program (the TSS visa). As of 30 June 2018, there

were 83,470 primary temporary work visa holders in Australia, down by 7.9 per cent from the previous year.

The most common types of the visas the primary temporary skilled work visa applicants held in Australia at the time of application for the temporary skilled work visa were the Working Holiday Maker visa (24.5 per cent) followed by the Student visa (22.6 per cent) and Visitor visa (10.7 per cent).

The top three occupational groups of the temporary work visa program for 2017-2018 were the Professionals (60 per cent) followed by the Technicians and Traders Workers (21.1 per cent) and the Managers (14.4 per cent).

Business Travel

Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC)

Foreign nationals with a valid ABTC with 'AUS' printed on the reverse side of their APEC Business Travel card do not need to apply for a Visitor visa to travel to Australia for the following business visitor purposes, and they may stay in Australia for up to three months at a time:

- trade and investment activities;
- investigating, negotiating, signing or reviewing a business contract; or
- participating in conferences, trade fairs or seminars

The ABTC card holders must ensure that their passport number on their ABTC matches the passport number of the passport they will use to travel to Australia.

Eligible Country of Passport	• Brunei Darussalam	• Indonesia	• Russia
	• Canada	• Japan	• Singapore
	• Chile	• Korea	• Chinese Taipei
	• China	• Malaysia	• Thailand
	• Hong Kong SAR (and the permanent residents of the Hong Kong SAR)	• New Zealand	• United States of America
		• Papua New Guinea	• Viet Nam
		• Peru	
		• The Philippines	

Business Visitor Visa

There are three different subclasses of the business visitor visa:

- Subclass 601 ETA (Electronic Travel Authority) (Business stream)
- Subclass 651 eVisitor (Business stream); and
- Subclass 600 Visitor (Business stream)

The appropriate subclass of the business visitor visa depends on the country of the passport of the visa applicant holds and whether the visa applicant is onshore or offshore at the time of application.

The business visitor visa does not allow work and the visa holders are allowed to carry out the “business visitor activity” only, which is strictly limited to following categories of the activities:

- Making a general business or employment enquiry (which is limited to identifying new business or employment opportunities; purchasing goods from Australia; establishing contact with the Australian based prospective business representatives; attending business meetings at an affiliated business in Australia; visiting an Australian business that provides goods or services to the visa holder’s business overseas for the purposes of conducting quality assurance; and fact finding);
- Investigating, negotiating, entering into, or reviewing a business contract;
- Activities as part of an official government to government visit; and
- Attending a conference, trade fair or seminar in Australia provided the visa holders are not paid for their participation and it does not involve the direct sale of goods to the general public.

If the proposed activity or event in Australia does not fall under any of the four categories above, such activity or event is likely to be classified as “work”, which under the Australian immigration law, is defined as any activity that normally attracts remuneration in Australia, and the “activity” does not have to be “paid for” in order to be classified as “work”. The mere fact that the activity would otherwise attract remuneration in Australia is sufficient to be regarded as “work”.

The proposed activity the visitor visa intends to undertake in Australia must not impose any adverse consequences on the employment conditions or the employment and training opportunities of the Australian citizens and permanent residents.

The business visitor visa is not appropriate for providing or undergoing training in Australia, and the Subclass 400 (Short Stay Activity) or Subclass 407 (Training) visa would more appropriate.

Subclass 601 Electronic Travel Authority (ETA) Business Stream

Visa Validity Period and Length of Stay

The ETA is generally granted for multiple entries with a validity period of 12 months or the validity period left on the visa applicant’s passport. The visa holder is able to stay in Australia for up to three months upon each entry during the life of the visa.

Eligible Country of Passport

Eligible Country of Passport	• Andorra	• Japan	• Taiwan (excluding official or diplomatic passports)
	• Austria	• Liechtenstein	
	• Belgium	• Luxembourg	
	• Brunei	• Malaysia	
	• Canada	• Malta	• The Netherland s
	• Denmark	• Monaco	
	• Finland	• Norway	
	• France	• Portugal	• United Kingdom— British Citizen
	• Germany	• Republic of San Marino	
	• Greece		
	• Hong Kong (SAR of China)	• Singapore	• United Kingdom— British National (Overseas)
	• Iceland	• South Korea	
	• Ireland	• Spain	
		• Sweden	
	• Italy	• Switzerland	• United States of



America

- Vatican City

Subclass 651 (eVisitor) visa - Business Stream

There is no application fee for the Subclass 651 (eVisitor) visa.

The subclass 651 eVisitor visa is granted for with multiple entries with a validity period of 12 months or the validity period left on the visa applicant’s passport. The visa holder is able to stay in Australia for up to three months upon each entry during the 12 month life of the visa.

**Eligible
Country of
Passport**

- | | | |
|------------------|-------------------|------------------------------------|
| • Austria | • Hungary | • Poland |
| • Belgium | • Iceland | • Portugal |
| • Bulgaria | • Ireland | • Romania |
| • Croatia | • Italy | • Republic of San Marino |
| • Cyprus | • Latvia | • Slovak Republic |
| • Czech Republic | • Liechtenstein | • Slovenia |
| • Denmark | • Lithuania | • Spain |
| • Estonia | • Luxembourg | • Sweden |
| • Finland | • Malta | • Switzerland |
| • France | • Monaco | • United Kingdom – British Citizen |
| • Germany | • The Netherlands | • Vatican City |
| • Greece | • Norway | |

Australia

Subclass 600 (Visitor) visa - Business stream

All nationalities are eligible to apply for the subclass 600 visa (Business stream).

The validity period of the subclass 600 visa is determined at the discretion of the DHA or the DHA's visa processing office at the responsible Australian mission (if the applications are made outside Australia).

The low risk business visitors may be granted visitor visas with the travel period of two to three years, and they may stay in Australia for up to three months on each entry.

Employment Assignments

There are two types of the work visas applicable for the employment assignments, namely, the subclass 400 Temporary Work (Short Stay Activity) and the subclass 482 (Temporary Skill Shortage) depending on the nature of the proposed work in Australia.

The subclass 400 visa is appropriate if the proposed assignment involves highly specialised and non-ongoing work, and is likely to be concluded within a continuous period of three or six months, and the visa applicant's knowledge, skill or experience is not readily available in Australia.

For all other skilled work, which cannot be filled locally due to a genuine skills shortage in the Australian labour market, the 482 (TSS) visa would be appropriate.

Subclass 400 - Temporary Work (Short Stay Activity) - Highly Specialised Work stream

The proposed activity, work or event in which a visa applicant will be participating or engaging in, must be of highly-specialised and non-ongoing nature. In addition, such activity, work or event must not have adverse consequences for ongoing employment or training

opportunities, or conditions, for the Australian citizens or Australian permanent residents.

Non-ongoing means the proposed activity, work or event is likely to be completed within the specified period and there is no expectation for the visa applicant to stay in Australia for the same nature of the event, activity or work after the end of the stay period requested at the time of the application. The overseas business, which employ the visa applicant must not rotate other foreign nationals through one position by sending different employees on the 400 visa to carry out the same nature of activity or work.

Highly specialised work means the visa applicant has specialised technical skills, knowledge and/or industry experience, which cannot be found or are extremely limited in Australia, and would be beneficial to the Australian business. The visa applicant's position overseas must also be considered highly skilled and must correspond to the skilled occupation code classifications.

The 400 visa holder must be and remain employed by their overseas employer, which is currently delivering or engaged to deliver goods or services to an Australian business, which is inviting the visa holder for the work classified as highly specialised.

Under current immigration policy, the normal stay period of the 400 visa is up to three months. However, a stay period of six months may be granted where there is a strong business case.

The visa applicant may request a single entry or multiple entries depending on their needs to travel in and outside of Australia during the stay period. If multiple entries are granted, each new entry will not trigger a new period of stay and the stay period will start on the date of their first arrival in Australia.

Subclass 400 visa application must be made offshore and the visa applicant must be offshore at the time of the grant of the visa.

Subclass 482 Temporary Skilled Shortage (TSS) Visa

The Temporary Skilled Shortage (TSS) visa program is designed to accommodate skilled labour shortages across the skilled occupations. The TSS visa program allows eligible businesses to bring in the skilled foreign nationals on a short-term to medium-long term basis without impacting the employment conditions and opportunities for the local Australians.

The TSS visa allows the primary visa holder to:

- work for their sponsoring employer or the sponsoring employer's associated entity in their approved occupation
- bring their dependants with them to Australia, and allow their dependants have full work and study rights
- travel in and out of Australia throughout the visa validity period

The TSS visa program consists of three stages, namely the Business Sponsorship, the Nomination and the Visa.

The first stage is for an eligible business applying to become an approved sponsor.

Both start-up businesses and established businesses may apply to become a business sponsor. Foreign businesses, without an operating base or representation in Australia, are also eligible to become a sponsor for the purposes of bringing in skilled foreign nationals to work in Australia for various purposes, including the establishment of business operations in Australia or the fulfilment of contractual obligations of Australian businesses.

The business sponsorship, once approved, is valid for five years and the approved business sponsor is able to nominate eligible foreign nationals in the eligible skilled occupations throughout the life of their business sponsorship.

The second stage involves the approved business sponsor nominating an eligible skilled occupation for a prospective TSS visa applicant or existing TSS visa holder.

The maximum validity period of the TSS visa is determined by the number of years the sponsor is able to, and needs to nominate the proposed position for. The sponsor is required to pay the Skilling Australians Fund (SAF) levy for each year they wish to nominate the position for.

The SAF levy is tax deductible and payable in full by the sponsor upfront at the time of the Nomination.

There are three skilled occupation code lists which determine the type of the TSS visa stream, namely the Short-term stream and Medium-term stream.

The Short-term stream visa is for the occupations listed on the Short-term Skilled Occupation List (STSOL) can be renewed once only onshore unless international trade obligations apply.

The occupations on the STSOL can be nominated for up to two years and the associated visa is granted for the same number years nominated by the sponsor. There is no employer sponsored permanent residency pathway available for this stream.

If the nominated foreign nationals are intra-corporate transferees from the countries to which Australia has commitments under the international trade obligations, and are nominated in the STSOL occupations, which are classified as Executive or Senior Manager by the DHA, the sponsors may nominate the positions for up to four years and therefore, the corresponding visa may be granted for up to four years.

Executive or Senior Manager occupations are as follows:

Advertising Manager; Chief Executive or Managing Director; Chief Information Officer; Corporate General Manager; Corporate Services

Manager; Finance Manager; Human Resource Manager; Sales and Marketing Manager; and Supply and Distribution Manager.

The Medium-term stream visa is for the occupation codes listed on the Medium and Long-Term Strategic Skills List (MLTSSL) or the Regional Occupation List (ROL). The occupations on the MLTSSL and the ROL may be nominated for up to four years, without the limitation on the number of times of the TSS visa renewals. The ROL is available for the positions nominated by the businesses in the regional, remote and low population growth areas classified by the DHA. The Medium-term stream offers a pathway to permanent residency under the ENS program.

The business sponsors seeking to nominate foreign nations must demonstrate that they tested the local labor market to offer Australians the employment opportunities first before nominating foreign nationals by submitting evidence that they have advertised the nominating position in the Australian labour market for at least four weeks in a manner prescribed by the DHA before offering the positions to the foreign nationals and provide reasons as to why the nominated positions could not be filled locally. This requirement is commonly known as the Labour Market Testing requirement.

The Labour Market Testing is not required for certain applications including the applications involving the intra-company transferees or the proposed salary of at least AU\$250,000.

The Labour Market Testing is also not required where it would be inconsistent with Australia's commitments under the international trade obligations, which include the Free Trade Agreements and the World Trade Organization (WTO) General Agreement on Trade in Services (GATS).

Under the international trade obligations, the nominations for the following are exempt from the labour market testing:

- (1) a citizen of China, Japan or Thailand; or citizen/national/permanent resident of Chile, Korea and New Zealand or Singapore;
- (2) a foreign national currently employed by the business sponsor's associated entity, which is located in Chile, China, Japan, Korea, New Zealand, any ASEAN member country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam);
- (3) a foreign national currently employed by the business sponsor's associated entity or an overseas business sponsor operating in a WTO member country, and is nominated in the occupation code considered as an Executive or Senior Manager; and will be in charge of the entire or a substantial part of the Australian operation; and
- (4) a citizen of a WTO member country and is being nominated by an employer for whom the nominee has worked in Australia for two years continuously on a full-time basis immediately before the application.

The intra-company transferees may remain employed and paid by their home-country company while they are sponsored by the Australian host company provided the two entities are the associated entities as defined by the Australian corporations law.

Regardless whether the nominated foreign nationals will remain employed by their home company overseas or the host company in Australia, the sponsors are required to ensure that the employment terms and conditions offered to the foreign nationals are no less favorable than those they offer or would offer the comparable Australian employees in Australia, and the ten minimum employment entitlements (the National Employment Standards) set out under Australia's national workplace laws.

The sponsors seeking to nominate foreign nationals are also required to demonstrate that the foreign nationals will be paid in accordance with the local labour market rate for their occupations, skill level, industry experience and location of employment. This is also an obligation the sponsors will continue to meet throughout the employment of the nominated foreign nationals.

The final stage is for the foreign national identified in the nomination stage to obtain a visa to work in the skilled occupation proposed by the approved business sponsor.

The TSS visa applicants must be appropriately skilled and experienced, and must have at least two years of full-time employment experience closely related to their nominated occupation.

The primary visa applicants (i.e. the foreign nationals nominated in the approved occupations) must also demonstrate they satisfy the English language proficiency level.

Exemptions are available for the passport holders of Canada, the Republic of Ireland, the USA, the UK and New Zealand; the intra-company transferees with the certain salary level set by the DHA; and the applicants who completed at least five years of full-time secondary and/or tertiary education where all instructions were delivered in English.

The primary visa applicants and their dependents included in the visa application will need to satisfy the character and health requirements.

Employer Sponsored Permanent Residency

The Australian businesses may sponsor skilled foreign nationals for permanent residence under the applicable employer sponsored permanent residency programs.

There are two most common pathways for the employer sponsored permanent residency program.

The first pathway is through the TSS visa sponsorship. The sponsors may nominate the Medium-term TSS visa holders once they have worked in their nominated occupation for their sponsor (or the sponsor's associated entity) for at least three years.

The second pathway is through the direct nomination of foreign nationals by their eligible prospective or current employers. The nominated occupations must be listed on the MLTSS. In order to be eligible under this pathway, the foreign nationals are required have their qualifications and skills formally assessed by the skills assessing organisations appointed by the DHA for the nominated occupations.

There is also a separate regional employer sponsored permanent residency program for the businesses and nominated positions in regional, remote or low population growth areas classified by the DHA. The businesses may nominate the occupations listed on the Regional Occupation List (ROL).

Training

The Training (subclass 400) visa program is designed for foreign nationals seeking to enhance their skills or education by undertaking structured workplace-based training activities including classroom based professional development activities in Australia.

The training visa may also be used by overseas students who are required to undergo a period of workplace-based training to satisfy their course requirements.

The Training visa requires the trainees to be nominated by an Australian business or a government organization for the three different types of occupational training, namely registration, skills enhancement and capacity building overseas.

The training provided must be a clearly structured program that is workplace-based, and the training program must show how the trainees' skills or area of expertise would be improved without

adversely affecting the occupational training opportunities of the Australian workers.

Other Comments

The onus is on employers to prove that they took reasonable steps at reasonable times to ensure that their prospective and current employees are legal workers. Legal workers are defined as Australian citizens, permanent residents and foreign nationals with appropriate work rights.

Tougher sanctions and penalties are imposed on anyone who allows an illegal worker to work, or refers an illegal worker for work regardless they knew or not.

The only statutory defence for verifying the work rights of the non-Australian citizens is conducting a check via Visa Entitlement Verification Online (VEVO) system, a real-time visa verification tool managed by the Department of Home Affairs, and keeping a record on file.

Employers must conduct VEVO checks for all of their non-Australian citizen employees at reasonable times (i.e. prior to making an employment offer, employment commencing and during the course of employment).

Employers must obtain written consent from their prospective and current non-Australian citizen employees prior to conducting a VEVO check.

Other Visa Programs, Maintaining Australian Citizenship

As at 30 June 2018, there were 486,934 student visa holders in Australia. Student visa holders are permitted to work for up to 40 hours each fortnight when their course is in session and full-time when their course is not in session. The student visa holders, who

commenced masters by research or doctoral degrees may work full-time.

In addition to the employer sponsored permanent residency visa program, there are independent permanent residency pathways for the eligible foreign nationals (i.e. without the sponsorship of an Australian employer) on the basis of their qualification and skill level.

The family visa program facilitates the temporary or permanent relocation of the spouses, children and other dependent family members of Australian citizens and permanent residents to Australia.

Australian permanent residents are eligible to apply for citizenship if they have been living in Australia on a valid visa for at least four years immediately before applying, including one year as a permanent resident, and have not have been absent from Australia for more than one year in total during the four-year period, including no more than 90 days in the year before applying.

The permanent residents are required to continue to meet specific residency requirements to maintain their permanent residency status if they do not wish to obtain Australian citizenship as prolonged period of absence from Australia often jeopardizes the permanent residency status.

Australian permanent residency visas usually have the travel facility of five years from the date of grant, meaning the permanent residents are able to travel in and out of Australia as many times as they want until the travel facility validity expires. Accordingly, the permanent residents are required to obtain a Resident Return Visa prior to depart Australia if they will not be able to return to Australia before their travel facility validity expires.

Austria



Key Government Agencies

The embassies and consulates of the Austrian Foreign Ministry (*Außenministerium*) process applications for visas and temporary residence permits and have the ultimate responsibility for handling visa issues.

Temporary residence permits and settlement permits are handled by a number of governmental entities within Austria. Usually, the Governor of each federal province (*Landeshauptmann*) is the relevant authority for all residence and settlement proceedings. However, the Governors usually delegate their power to the local district administration authority (*Bezirksverwaltungsbehörde*, known as *Magistratsabteilung 35* in Vienna) which then issues the decision on behalf of the Governor. The relevant local district administration authority will be where the foreign national resides or is planning to live. The relevant authority for complaints is the locally competent Administrative Court of the Federal State (*Verwaltungsgericht der Länder*). As far as work or posting permits are required, the Central Coordination Office for the Control of Illegal Employment at the Federal Ministry of Finance (*Zentralen Koordinationsstelle des Bundesministeriums für Finanzen für die Kontrolle der illegalen Beschäftigung* or ZKO) and the Austrian Labor Employment Service (*Arbeitsmarktservice Österreich* or AMS) are the relevant authorities. The AMS operates through several local offices in Austria.

Current Trends

The Austrian government has recently implemented combined temporary residence and work permits for the intra-company transfer of executives, specialists and trainees. The new legislation provides for different application procedures and permits depending on (i) whether the employees are directly deployed from a third state or a EU member state; and (ii) the duration of the assignment to Austria.

The Austrian government has recently focused on wage and social dumping. These legislative measures have severe effects on postings to Austria.

The law sets forth several duties for employers who post employees to Austria (e.g., provisioning of certain documents like employment contract, pay slips, time records, etc.; registration of employees with the ZKO). The duties differ slightly, depending on whether the employer is located within or outside the EEA.

However, those rules do not apply to cases where employees are sent to Austria to perform minor short-term jobs in connection with business meetings or seminars (without any further performance of services), fairs and similar events (except preparatory and final works), attendance and participation at congresses, and certain cultural events, as well as specified international sports events. In addition, the rules also do not apply to intra-group assignments of (i) special-skilled employees for specific purposes (e.g., research and development, project planning, controlling etc.) for up to two months within a calendar year; and (ii) employees with a minimum monthly salary of at least EUR 6,525.00 gross (2019).

Non-compliance may not only lead to severe monetary penalties, but also, in case of repeated violations, a prohibition to perform services in Austria for up to five years.

The authorities may also instruct the service recipient to stop payments to the service provider. However, a stop of payments may only be imposed in cases where prosecution is complicated.

Several provisions also apply to personnel leasing from abroad.

Business Travel

Non-European Economic Area

For non-EEA citizens, Austrian immigration law provides a set of legal entitlements to immigration. Such entitlements include visas,

temporary residence permits (*Aufenthaltsbewilligungen*) and settlement permits (*Niederlassungsbewilligungen*). As a general rule, a separate work permit will have to be obtained if a foreign national intends to take up employment in Austria.

Temporary Visa-based Immigration for Tourists and Business Visitors

A non-EEA citizen must obtain a visa for any period of residence in Austria up to six months. If residence is to exceed six months, a specific temporary residence permit will have to be obtained (see “Temporary Residence Permits” for further detail).

As a general principle, all visas have to be applied for at the relevant Austrian authority abroad. Generally, a visa does not permit employment in Austria, with the exception of temporary employment visas (where a separate work or posting permit is also obtained). Severe penalties can be issued to both employers and employees for working illegally.

Visa for Temporary Employment

Where temporary employment is required (i.e., up to six months within a maximum period of 12 months), the Austrian authority may issue either a Travel Visa C or a Visitor Visa D for temporary employment (please see below). Such employment may be executed either independently or dependently. For temporary independent work in this sense, it is required that a domicile in a third country is maintained; this third country has to remain the center of vital interests for the entrepreneur. For a temporary dependent work in this sense, it is essential that the employee disposes of a work permit according to the Austrian Act on the Employment of Foreign Nationals for no longer than six months or that the employee conducts certain types of work that are excluded from the Austrian Act on the Employment of Foreign Nationals.

Travel Visa C

The most common visa for tourists and business visitors is the Travel Visa C (Schengen-Visa), which allows travel within the European Union and permits up to 90 days' residence within a period of 180 days in Austria.

Visitor Visa D

The Visitor Visa D is available for visitors coming to Austria for more than 90 days and up to 180 days as either a tourist or on business.

Visa Waiver

Visitors from certain countries do not need an entry permit (visa) to stay in Austria as tourists or as business visitors for a period of up to 90 days (called "visa-free entry"). Nevertheless, such visitors are not allowed to take up employment without a relevant work or posting permit (with the exception of business meetings).

Citizens of the following countries are currently entitled to visa-free entry to Austria:

Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Barbados, Bahamas, Belgium, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Ecuador (only special passports), Egypt (only special passports), El Salvador, Estonia, Finland, France, Georgia, Germany, Great Britain and Northern Ireland, Greece, Grenada, Guatemala, Holy See, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan (up to six months), Kiribati, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau (only special passports from "Regiao Administrativa Especial de Macau"), Macedonia, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, the Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Romania, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles,

Singapore, Slovakia, Slovenia, Solomon Islands, South Korea (up to six months), Spain, Sweden, Switzerland, Taiwan (only holders of passports with ID number), Timor-Leste, Tonga, Trinidad & Tobago, Turkey (only special passports), Tuvalu, Ukraine, United States, UAE, Uruguay, Vanuatu and Venezuela.

However, citizens from Albania, Bosnia and Herzegovina, Georgia, Macedonia, Moldova, Montenegro, Serbia and Ukraine must hold a biometric passport to be waived from visa requirements.

Please note that the above list may change from time to time. An updated list may be found on the following homepage of the Austrian Ministry of the Interior:

https://www.bmi.gv.at/202/Fremdenpolizei_und_Grenzkontrolle/Visumpflichtige_Laender/files/BF_EN_HP_BMI_Visaliste_20190220.pdf

http://www.bmi.gv.at/202/Fremdenpolizei_und_Grenzkontrolle/Visumpflichtige_Laender/start.aspx

Temporary Residence Permits (Aufenthaltsbewilligungen)

If foreign nationals wish to enter Austria for more than six months, they must apply for a temporary residence permit. Temporary residence permits are issued by the residence authorities in Austria. When applying for a temporary residence permit, the applicant does not need to prove any German-language skills beforehand, unlike for certain settlement permits (refer to “Settlement Permits” for further information).

All temporary residence permits share a number of common requirements. Applications must be submitted in person and require a passport which is valid for at least three months beyond the date of travel. All applicants must present proof of sufficient funds, adequate accommodation and health insurance. Additional documentation may be required, depending on the respective residence permit.

The application may either be filed in person at the Austrian authority abroad or, insofar as the applicant is entitled to visa-free entry to Austria, at the relevant immigration authority in Austria. However, a residence permit for company-internally transferred employees may only be applied for abroad or by the Austrian entity with the relevant immigration authority in Austria. The relevant immigration authority is determined by the (temporary) place of residence of the applicant. It is not permissible to file several applications or applications with differing purposes for residence simultaneously. The residence permit, once issued, has to be picked up by the issuing authority in Austria.

A temporary residence permit does not entitle the foreign national to take up employment in Austria. In this case, a separate work or posting permit will have to be obtained. Alternatively, the applicant may obtain a Red-White-Red Card (see chapter “Skilled Workers” below) if he/she meets the requirements. However, exceptions apply concerning company-internally transferred employees who are eligible to a combined temporary residence and work permit.

The temporary residence permits most commonly used by multinational companies on global mobility assignments are:

Company-internally transferred employee – “ICT”
(*Unternehmensintern transferierte Arbeitnehmer*)

This (new) temporary combined residence and work permit is for foreign nationals who are employed by an international corporation in a specific position and are being sent to Austria within the company or within a group of companies. The ICT-permit is eligible for (i) executives who manage the Austrian entity or a (sub-)department of the Austrian entity; or (ii) employees who have essential special knowledge relevant for the areas of activity, procedures or the administration of the Austrian entity and have high qualifications including specific technical knowledge as well as adequate professional experience; or (iii) trainees with a university degree who shall be supported in their professional development. Before the transfer, executives and specialists must be employed at least nine

months (trainees for at least six months) with the same company or group to obtain such permit. This permit allows the company-internally transferred employee only to perform her/his specific job as executive, specialist or trainee with the Austrian entity. The duration of the ICT-permit may be extended to up to three years for executives and specialists and to up to one year for trainees, whereby stays with such ICT-permit in other EU member states must be taken into account.

Company-internal transferred employee with ICT-permit of another member state – “ICT mobile” (*Drittstaatsangehörige mit einem Aufenthaltstitel „ICT“ eines anderen Mitgliedstaates*)

This temporary combined residence and work permit is for foreign individuals employed as executive, specialist or trainee who already have an “ICT” permit of another EU member state and who are sent to Austria intra-group. This permit allows the company-internally transferred employee to perform her/his job as an executive, specialist or trainee within Austria, i.e., there is no obligation to obtain an additional work permit. The ICT-mobile permit may only be issued if the total duration of the stay of the individual within the EU does not exceed three years if the employee is an executive or a specialist and one year if the employee is a trainee.

Employee sent on temporary duty (*Betriebsentsandter*)

This temporary residence permit is for foreign citizens who are employed by a foreign employer without a seat in Austria and who are being sent to Austria by their employer to perform services to fulfill a certain assignment (see also chapter “Posting of Employees to Austria”). A work or posting permit or a guarantee certificate (*Sicherungsbescheinigung*) according to the Austrian Act on the Employment of Foreign Nationals will have to be obtained.

Self-employment (*Selbständiger*)

This temporary residence permit is for foreign nationals coming to Austria to perform services as self-employed persons. The duration of the assignment has to exceed six months.

Researcher (*Forscher*)

The temporary residence permit for researchers is used for scientific employees at certified research institutes only. Other researchers may obtain a temporary residence permit, known as the “Special Cases of Dependent Employment” residence permit. Specific requirements regarding the employment contract as well as the research facility have to be met. There are visa benefits for family members.

Researchers are generally exempt from the Austrian Act on the Employment of Foreign Nationals and therefore do not require a separate work permit.

Special cases of dependent employment (*Sonderfälle unselbständiger Erwerbstätigkeit*)

In case no other temporary residence permit is applicable to the case at hand, the authorities may issue a “Special Cases of Dependent Employment” residence permit. This residence permit is, for instance, used for employees who are exempt from the Austrian Act on the Employment of Foreign Nationals.

Settlement Permits (Niederlassungsbewilligungen)

Where the applicant intends to settle permanently in Austria, he/she may apply for a settlement permit. Settlement permits are usually only issued when the applicant is (i) highly qualified; (ii) a family member of a foreign national entitled to settlement; or (iii) has been living lawfully in Austria (or the European Union) for a specific period of time.

To ensure permanent social and cultural integration in Austria, applicants must usually prove basic German-language skills at A1 level of the Common European Framework of Reference for Languages for certain settlement permits (there is an exception for those who have obtained a RWR Card). To obtain the “Permanent Settlement EU” (*Daueraufenthalt EU*) permit or Austrian citizenship, German-language skills at B1 level are required.

Employment Assignments

Neither a visa nor temporary residence permit entitles the foreign national to take up employment in Austria. Any non-EEA citizen generally has to obtain a work permit (however, please refer to the exceptions in “Exemptions from the Austrian Act on the Employment of Foreign Nationals”) in addition to a residence permit. If the employee matches the relevant criteria, he/she should obtain a Red-White-Red Card (see further below), as this option includes a settlement permit as well as a work permit. No further requirements (apart from relevant qualifications) have to be met.

Skilled Workers

The Red-White-Red Card

The criteria-based immigration model called the “Red-White-Red Card” (*Rot-Weiß-Rot Karte* (RWR Card)) offers highly qualified employees an easier way to work and live in Austria. The RWR Card combines the legal privileges of a residence permit as well as a work permit (i.e., no separate work permit has to be obtained). At the beginning of 2019, the RWR Card system was expanded to better meet the needs of the Austrian labour market for immigration of qualified workers.

To determine whether a person is qualified, a specific credit system has been established, which measures qualification based on objective criteria (such as prior education, professional qualification and experience, language skills or age). Since 2019, it is possible to reduce the number of required points for certain highly qualified persons, who have a university degree as determined by the Austrian Ministry for Employment, Social Affairs and Consumer Protection. Therefore, a person seeking to work in Austria is able to determine relatively easily whether or not he/she is qualified by checking off the criteria.

There are six kinds of foreign nationals who may obtain an RWR Card, as follows:

- A very highly qualified individual is allowed to enter Austria for a period of six months to search for employment that matches his/her credentials. If the individual succeeds in finding adequate employment or has already found employment, he/she may obtain an RWR Card. In practice, however, this option is also used if a foreign company sets up an Austrian branch office and transfers its respectively qualified employees to that branch office.
- A skilled worker in shortage occupations may obtain an RWR Card if he/she is specifically educated in a shortage occupation (*Mangelberuf*), as determined by the Austrian Ministry for Employment, Social Affairs and Consumer Protection, and provides an adequate employment offer. Since 2019, also the federal states ("Bundesländer") can determine local shortage occupations within their territory. An RWR Card issued due to such a shortage occupation generally only entitles to work within the employer's operation within the respective federal state.
- A foreign university graduate may extend his/her stay for six months after finishing studies in Austria to find employment that matches his/her qualifications. A certain minimum salary will have to be paid.
- An independent key worker may obtain an RWR Card if there is an overall benefit for the economy, i.e., if he/she transfers capital of at least EUR 100,000 or new technologies or knowhow to Austria and/or creates new jobs for the Austrian labor market or if the business of the independent key worker is of major significance for a whole region.
- A start-up founder may obtain an RWR card if he/she fulfills certain criteria (qualification, professional experience, language skills, age, additional capital or support/subsidies of a start-up organization). In addition, the start-up founder must (i) develop

innovative products, services, procedures or technologies or introduce such on the market; (ii) provide a sound business plan for funding and operating the start-up business; (iii) have significant influence on the start-up; and (iv) show evidence for a start capital of at least EUR 50,000 with an equity ratio of at least 50%.

- Other key workers may obtain an RWR Card if he/she fulfills certain criteria (qualification, adequate professional experience, language skills, age) and has an adequate employment offer with a defined minimum salary. In 2019, the annual minimum salary amounts to EUR 36,540 gross for employees who are under 30 years old and to EUR 43,848 gross for any other employees. In addition, there must be no equally qualified Austrian employee available on the job market.

Individuals already in possession of the RWR Card may additionally obtain the RWR Card Plus if they have fulfilled the admission requirements (as described above) during 21 out of the last 24 months before the application. However, individuals who hold an RWR Card for start-up founders must fulfill additional criteria to be awarded an RWR Card Plus (e.g., the start-up must employ at least two full-time employees). After the issuance of the RWR Card Plus, a foreign national will have unrestricted access to the Austrian labor market and will be entitled to take up employment within Austria.

Family members of highly qualified employees may also obtain an RWR Card Plus. Generally, they will have to prove basic German-language skills before coming to Austria (exceptions are family members of very highly qualified employees). Within two years of migrating to Austria, all family members have to prove advanced basic German-language knowledge if they want to extend their RWR Cards Plus.

The EU Blue Card

The EU Blue Card offers highly qualified employees the opportunity to obtain a combined residence and work permit.

An individual qualifies for an EU Blue Card if he/she (i) has completed university education with a minimum study duration of three years; (ii) will be employed in a position that is adequate for such education; and (iii) will receive a minimum annual salary of EUR 62,265gross (2019). In addition, an EU Blue Card will only be issued by the Austrian authorities if there is no equally qualified and currently unemployed Austrian citizen registered with the AMS when applying for the EU Blue Card.

Individuals already in possession of an EU Blue Card may consequently obtain the RWR Card Plus if they have fulfilled the admission requirements (as described above) during 21 out of the last 24 months before the application. After the issuance of the RWR Card Plus, a foreign national will have unrestricted access to the Austrian labor market and will be entitled to take up employment within Austria.

Family members of holders of an EU Blue Card may also obtain an RWR Card Plus. Generally, they will have to prove basic German-language skills within two years of migrating to Austria if they want to extend their RWR Cards Plus.

Work Permits

If an employee does not meet the criteria for an RWR Card or an EU Blue Card, he/she may only be employed in Austria if the employer has either obtained a work permit (*Beschäftigungsbewilligung*) or the employee has been granted a certificate of dispensation (*Befreiungsschein*) for Turkish citizens.

Work permits may be issued if there are no other important public or economic reasons to preclude the employment of a foreign national. Public reasons include the possibility of filling the job in question with an Austrian employee. Thus, no equally qualified and currently

unemployed Austrian citizen may be registered with the AMS when applying for a work permit. There are special work permits available to seasonal workers and university students.

If these requirements are not fulfilled, the competent authorities will not issue a work permit. However, a work permit is required to legally employ a non-EEA worker (for the exceptions please see below); the work permit needs to be obtained before the employee starts working. Employing a person without a valid work permit may lead to severe fines for the employer as well as to the rejection of an application for a work permit in the future. Besides this, the law foresees further severe penalties.

Exemptions from the Austrian Act on the Employment of Foreign Nationals

Generally, where a foreign national intends to take up employment in Austria, he/she has to obtain a RWR Card or a work or posting permit. However, certain groups are legally excluded from this obligation. The most important exceptions are:

Citizens from the EEA and Switzerland

Citizens from the EEA (exceptions apply for certain Croatian nationals, please see “Entry Based on International Agreements”) and Switzerland do not have to obtain a work permit before taking up employment in Austria.

International Researchers

Special rules apply to the employment of foreign researchers. As highly qualified scientists are in great demand, Austrian laws exempt all private or public scientific researchers from the obligation to obtain a work permit. Correspondingly, foreign researchers may easily obtain a temporary residence permit.

Scientific researchers will, in most cases, also qualify for the RWR Card. It is usually recommended to apply for a RWR Card because

the foreign researcher can also use this option to settle permanently in Austria.

Senior Managers (*Besondere Führungskräfte*)

Senior managers, in the sense of this statutory exception, are those individuals who (i) hold executive positions at board or management level at internationally active corporations and groups of companies; or (ii) are internationally recognized scientists. Their duties must comprise (a) building or maintaining sustainable business relationships; or (b) creating or securing qualified workplaces in Austria. They have to receive a minimum salary (at least EUR 6,264 gross monthly salary plus special payments as of 2019).

Senior managers, their spouses and children, as well as their support and household staff (i.e., secretaries, assistants, etc. if they have been employed by the manager for at least one year), are also exempt. There are no quota limits in force for senior managers. In most cases, however, senior managers will also qualify for the RWR Card.

Intra-company Transfer

Posting of Employees to Austria

Whereas opportunities to work in Austria as an employee are limited, providing services in general is not. However, restrictions might apply due to trade law.

Generally, companies may perform “projects” in Austria. When employees are sent to Austria to perform services within projects, a posting permit (*Entsendebewilligung*) by the local AMS office has to be obtained. In this case, two conditions have to be met. First, the project may not exceed six months and, second, the employee must not work in Austria for more than four months during the entirety of the project’s duration. If these periods are to be exceeded, a work permit or Red-White-Red Card will have to be obtained.

It is important to emphasize that the work permit requirement cannot be avoided by claiming a chain of four-month projects to attempt continuous use of the posting permit. Austrian authorities would consider this an inadmissible circumvention of mandatory provisions.

Alternatively, an individual who is employed as (i) executive; (ii) specialist; or (iii) trainee, and deployed to Austria intra-group to work in a relevant position may be eligible to a temporary residence and work permit for company-internally transferred employees (ICT-permit).

If non-EEA employees working for a company situated within the EEA are being sent to Austria to perform services, they are only required to register beforehand with the ZKO. If the posting is lawful, an EU-posting certification will be issued (*EU-Entsendebestätigung*). Alternatively, non-EEA employees who are transferred intra-group and already have an ICT-permit of another EU Member State may be eligible to obtain an ICT-mobile permit in Austria provided their stay exceeds 90 days.

Austrian law stipulates that if an applicable collective bargaining agreement (“CBA”) for the business of the sending company exists in Austria, the salary has to be at least the minimum salary as stipulated by the CBA. If no applicable CBA exists, the average salary of a comparable peer group of Austrian employees has to be paid.

Lease of Employees

Employers situated in a non-EEA country may lease their employees to Austria to work under the direction of an Austrian company, but only if the employee disposes of a work permit according to the Austrian Act on the Employment of Foreign Nationals as well as according to the Austrian Act on the Lease of Employees. A permit under the latter is only issued if the competent trade authority approves the lease of employees and confirms that:

- the employees are significantly well-qualified for the proposed tasks (i.e., the employee has already held a specific position for a long period of time and therefore is “significantly well-qualified”) and the assignment of such employees is required due to labor market and economic reasons
- employment is only possible by leasing employees from foreign countries (e.g., no equally qualified Austrian employees would be available on the Austrian labor market)
- employment of those employees does not jeopardize payment and working conditions of comparable Austrian employees

Austrian law stipulates that the employees are entitled to adequate payment and working conditions. Likewise, the assigned employees will be entitled to the same minimum wages as provided by the respective CBA to comparable Austrian workers.

Applications for the assignment of employees undergo strict scrutiny by the Austrian authorities and permits are seldom issued.

However, the lease of non-EEA employees of employers situated in the EEA does not require the prior permission of Austrian authorities. But, in such cases, a notification of the posting with the ZKO is required. If the posting is lawful, an EU-leasing certification will be issued (*EU-Überlassungsbestätigung*).

Any lease of employees requires the advance consent of the affected employee being sent to another company or corporation member, even if the employment is only planned for a short-term period.

Training

Employees sent to Austria for training purposes have to obtain either a visa for temporary employment or a temporary residence permit as a “Special Case.”

Further requirements, according to the Austrian Act on the Employment of Foreign Nationals, also have to be met. Voluntary services (up to three months, extendable to a maximum of 12 months in certain cases), professional or holiday traineeships or education or training programs within joint ventures or an international group of companies do not require a work permit. However, these types of training must be registered with the AMS and partly also with the competent tax authority at least two weeks before commencement.

In addition, the Austrian Act on the Lease of Employees foresees exemptions for certain trainees. Exceptions are applicable if the employees are leased to be trained in a public or publicly subsidized program.

Post-Entry Procedures

Each person staying in Austria has to register with the competent authority (usually, this is the local mayor). However, if the person stays in a hotel, the obligation is fulfilled as soon as registration with the hotel has been completed. In case of a stay in private accommodation, registration is not required if the stay lasts no longer than three days. Registration is usually an administrative formality.

In case of employment of foreign workers, but also in case of a posting or a lease of workers to Austria, the employer is obliged to hold certain documents (e.g., contract of employment, pay slip, work permit, etc.) ready at the place of employment. In case of non-compliance the employer may face severe administrative penalties.

Entry Based on International Agreements

Citizens from the European Economic Area

For citizens of the EEA and Switzerland, gaining employment in Austria can be done easily. They do not need a special residence or work permit to reside and work in Austria if they are employed or self-

employed in Austria or earn a secure living and have sufficient health insurance coverage.

However, a general obligation to notify the Austrian registry authority within three days of arrival also applies to EEA citizens. In addition, EEA citizens and their family members have to register their permanent residence with the local immigration authorities within four months if they intend to reside in Austria for more than three months. In most cases, however, these registration obligations are merely an administrative formality.

Additionally, the quota-free “Settlement Permit for Family Members” (*Niederlassungsbewilligung Angehöriger*) is also available to family members of EEA citizens under certain circumstances.

Specific exemptions apply for Croatian citizens until the end of 2020.

Other Comments

Austrian citizenship may either be acquired by birth or awarded by the competent authorities.

There are strict requirements which have to be fulfilled to be awarded Austrian citizenship. For instance, at least 10 years of legal and continuous residence in Austria, integrity, disposal of sufficient funds and possession of language skills must be proven. If those general requirements are fulfilled, the award of citizenship still lies within the discretion of the authority. However, if the applicant fulfills several further requirements, he/she may have a legal right to be awarded citizenship after six years of legal and continuous residence in Austria. Austrian citizenship may also be awarded in several other cases in which the applicant resides abroad (e.g., certain relatives of Austrian citizens).

Belgium



Nationals from the European Economic Area (i.e., the European Union Member States, plus Iceland, Norway and Liechtenstein) and Switzerland do not require a work authorization/permit to be employed in Belgium. EEA nationals are, however, required to obtain a residence permit if their stay in Belgium is longer than three months.

Non-EEA nationals coming to Belgium to perform work (the so-called economic migration) must, as a rule, obtain a work authorization and a residence authorization to work and reside in Belgium. These two authorizations will ultimately take the form of one single combined document : the so-called *single permit*.

In case the period of employment in Belgium exceeds 90 days, the employee will need to apply for a single permit by submitting a complete application file, including both the employment and the residence related application documents to the competent regional employment authority. The regional employment authority is responsible for taking a decision on the work authorization and will forward the file to the federal Immigration Office for a decision on the residence aspect. The authorities will keep one another informed of their respective decisions as well as the applicant. A final decision must be taken by the authorities within 4 months after the application file has been declared admissible and complete. Failing such decision, the single permit will be deemed granted. If the employee resides abroad, a visa D must be applied from the Belgian Embassy/Consulate in the employee's country of residence and the employee must collect the single permit and register in the local municipality's immigration register within eight days upon arrival in Belgium. If the employee is already residing in Belgium, the 8-days delay starts running as from the notification of the positive decision.

In case the period of employment in Belgium does not exceed 90 days (and in other very specific circumstances), the residence and type B work permits are issued through distinct procedures and will take the form of two separate documents. In this case, upon receipt of a type B work permit, the employee may need to obtain a work visa (in the

case of a stay in Belgium for less than 90 days within any given period of 180 days, it depends on the individual's nationality whether a visa is required to enter Belgium: citizens of the USA, Australia, Canada, South Korea, Japan, etc. can enter Belgium on the basis of their national passports. For other nationalities, such as citizens of India, China, Turkey, etc. a type C Schengen visa is required) at the Belgian consulate or embassy abroad with jurisdiction for the latest place of legal residence. Within eight days of arrival in Belgium, the foreign national must register with the local commune which has jurisdiction for the intended place of residence to obtain a residence permit. Residence permits are valid for the same duration as the work permit plus one month. The work permit is valid only when combined with a residence permit.

Besides this so-called economic migration, foreign nationals may also be granted automatic access to the labor market based on their specific residence situation even though they were not coming to Belgium for employment related purposes in the first place. These specific residence situations are listed exhaustively in the Royal Decree of 2 September 2018 (e.g. students, refugees, family reunion, etc.).

The single permit or the visa and the type B work permit must in any event be obtained prior to the start of the employment. Working in Belgium without a valid single permit or work permit and/or residence permit or a valid exemption thereof, is considered a serious offense, subject to substantial criminal sanctions and penalties.

The Belgian Act of 11 February 2013 introduced a complex mechanism of joint liability for principals and contractors for wage debts in the event that the contractor/subcontractor employs illegal workers. Principals and contractors can therefore be held liable for the payment of wages (including taxes and social security contributions) that their subcontractor has not yet paid to its employees with illegal status in Belgium. The latter does not apply if the principal/contractor has a written statement from the subcontractor confirming that he/she

does not employ any non-EEA nationals who have no legal residence in Belgium. However, the joint liability immediately kicks in again when the principal/contractor is aware that illegal employees are being employed by its subcontractor.

The Belgian Act of 9 May 2018 also provides for a number of additional obligations for employers who are employing foreign employees (i.e., non-EEA nationals) in Belgium: (i) the obligation to verify whether the foreign employee has a valid residence permit or any other valid residence authorization, prior to engaging in any work; (ii) the obligation to maintain a copy of the residence permit/residence authorization with the social inspection during the period of employment of such foreign employee; and (iii) the obligation to declare the start and end date of the employment via the Dimona or Limosa declaration. Employers who do not comply with these obligations can be sanctioned with a level 4 penalty (i.e., the highest criminal level). Employers who engage employees without a valid work permit or residence permit are moreover jointly liable for the payment of repatriation costs, lump-sum housing costs and healthcare for the foreign employee and their family members who are illegally residing in Belgium.

Key Government Agencies

Consular posts abroad are part of the Federal Public Service (FPS) Foreign Affairs and are responsible for visa applications outside Belgium.

The FPS Foreign Affairs, Department of Federal Immigration is the competent authority for issuing residence authorizations in the framework of a single permit application as well as Belgian residence permits within the framework of a type B work permit application.

Single permit or type B work permit applications in all three regions must be submitted directly to the regional immigration ministries, which are the relevant government offices for issuing work authorizations in the framework of a single permit application as well

as Belgian work permits. The federal state of Belgium consists of three regions: the Brussels-Capital Region, the Flemish Region in the north and the Walloon Region in the south. The competent region regarding the single permit application is determined according to a legally provided cascade mechanism and can either be the region where the employee will (mainly) perform the work, the region where the employer has its registered seat or the region where the employee's official domicile is located. The type B work permit application must be filed with the region of the place of employment.

Current Trends

At the end of the year 2018, Belgium finally implemented in national legislation the European Single Permit Directive of 2011 ("Directive") stipulating that third-country nationals should be able to apply for a work and residence permit through one single application procedure.

The tardiness in implementing this Directive is due to the complex division of competences whereby the Federal State is competent for the immigration aspects while the three Regions are competent, each for their respective territory, for the working aspects. A cooperation agreement between these different authorities was therefore required to correctly implement the Directive. Said cooperation agreement concerning the Single Permit entered into force on 24 December 2018.

As a result thereof, the Belgian immigration landscape has significantly changed and has also become considerably more complex since each Region implemented new sets of rules governing the working aspects of the procedure (whereas the same legal framework was previously applicable in all three Regions). Depending on the competent Region (as determined by the aforementioned cascade mechanism provided in the cooperation agreement), different rules will thus apply.

Accordingly, various types of work permits that existed for students and refugees, among others, will disappear. On the other hand, a

number of categories of foreign employees now have to go through the combined application procedure, where they were previously exempted (e.g. researchers).

That being said, it is important to note that the combined application procedure only applies to employment of more than 90 days. If the employment is for a maximum of 90 days, the former and still existing type B work permit procedure must still be complied with.

Business Travel

Schengen Visa

The short-stay or Schengen visa is valid for the territory of all the Schengen Member States and permits short trips for up to 90 days in any 180-day period.

The European Visa Code enhances the harmonization of procedures for short-stay visas and transit visas within the Schengen Area and facilitates the application procedure. Apart from a uniform application form, the Visa Code introduces a maximum deadline of 15 days (extendable to 30 days and a maximum of 60 days in exceptional circumstances) within which the consular posts must decide on the visa application.

Work Permit Exemption

Foreign nationals coming to Belgium on short-term business trips are exempt from obtaining a work permit, subject to certain conditions. No work permit is required if the foreign national's activities are restricted to attending so-called "business meetings in a closed circle" or attending scientific seminars. The maximum length of stay under this work permit exemption for business purposes is set at a maximum of 20 subsequent days per meeting, with a maximum of 60 days per calendar year. For attending scientific seminars, the work permit exemption is limited to the duration of the seminar.

The notion of a business trip or “meetings in a closed circle” is not defined under Belgian law. However, the concept of “meetings in a closed circle” is interpreted restrictively and refers to a range of meetings, including discussions on strategy, contract negotiations with a customer, evaluation interviews and board of directors’ meetings. It is forbidden to perform any productive work activity in Belgium under this status. Once a foreign national requires work authorization or permit, he/she is no longer considered a business visitor from a Belgian immigration perspective, even though he/she may be making a very short visit to Belgium for what he/she considers to be business purposes.

Foreign national sales representatives who travel to Belgium to meet with customers in Belgium on behalf of foreign companies which do not have a branch or legal entity in Belgium also do not require a work permit, provided their stay in Belgium does not exceed three subsequent months.

Self-employed individuals coming to Belgium for business purposes (i.e., to visit professional partners, develop professional contacts, attend trade fairs, negotiate or conclude contracts, or attend board of directors’ meetings) do not require a professional card, provided their stay does not exceed three months.

Visa Waiver

Citizens of EU/EEA countries and Switzerland do not need a visa when traveling to Belgium.

Unless exempt by treaty or other reciprocity agreement, non-EEA nationals are generally required to obtain a short-stay type C visa (the so-called Schengen visa) prior to entering Belgium for short business visits.

Citizens of certain privileged countries (e.g., the United States, Canada, Japan, Brazil and Mexico) do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to

enter Belgium on the basis of their nationality and upon presentation of their international passport. The permitted length of stay is up to 90 days in any 180-day period only. A new method of calculation entered into effect on 18 October 2013. To apply the 90 days in a 180-day period rule, a calculator has been developed for the general public and for the authorities of each Member State.

Although no visa is required, if subject to border control, the individual will need to be able to prove the purpose of the trip and demonstrate sufficient means of subsistence (this is, of course, not applicable to EU citizens). On entering Belgium, one may be asked for one or more of the following documents: proof of hotel reservation; departure ticket, or proof of adequate means of subsistence, such as cash or credit cards accepted in Belgium; or an original copy of a pledge of financial support. The business traveler must also report to the local commune of residence after arrival.

Employment Assignments

As a general rule, a work authorization/permit and a residence authorization/permit are required for all employment assignments in Belgium and the work authorization/permit must be obtained prior to the start of the employment.

Work Authorization/Permit Exemptions

Some employees are, however, exempt from obtaining a work authorization/permit, either based on their residence situation (foreign nationals coming to Belgium for purposes other than employment who are given access to employment) or on specific exemptions legally provided within the framework of economic migration (foreign nationals coming to Belgium for employment purposes). Most of these exemptions are common to all three regions of Belgium but as different sets of rules apply, some may only be relevant in a specific region or be subject to different requirements and conditions. The work authorization/permit exemptions only apply provided the

employee is in a situation of legal stay in Belgium. The most relevant categories are, without limitation:

Citizens from the EEA

EEA nationals coming to work in Belgium are exempt from obtaining a work permit. This also applies to their spouse and children under the age of 21, even if they are not themselves EEA nationals. Such family members are required to obtain a “family reunion visa” to accompany or join the EEA national coming to work in Belgium.

The following 31 countries belong to the EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Iceland, Norway and Liechtenstein. Although Switzerland does not form part of the EEA, Swiss nationals are also allowed to freely reside and work in Belgium without any prior formalities.

The United Kingdom will leave the EU and the EEA as soon as the Brexit process is implemented. Both the exact timing of Brexit and the consequences in terms of immigration and employee mobility remain uncertain at this stage. In order to prepare for a withdrawal of the United Kingdom from the European Union without an agreement between both parties, the Belgian Government has however taken legislative action. This legislative act will only come into force in case no agreement is reached on the day of the withdrawal. It concerns temporary measures which are meant to provide a solution to the most important and urgent questions. Belgium has chosen to safeguard the right to reside of the British citizens and their family members who were already residing in Belgium at the time of the withdrawal. The existing rights of residence will thus be prolonged after the withdrawal and this until the 31st of December 2020. In that period nothing much will change for British citizens and their family members already residing in Belgium at the time of the withdrawal.

EEA nationals and their family members are free to be employed by a company or to work in a self-employed capacity without a work authorization. If, however, an EEA national plans to stay in Belgium for more than three months, the individual must apply for a residence permit for EEA nationals with the local municipality responsible for the place of residence. The local municipality will issue a residence permit which will be valid for maximum five years and may be renewed automatically.

Belgian “*Van der Elst Visa*”

No work permit is required for individuals eligible for the so-called “Van der Elst visa.” A non-EEA employee regularly working for a company in one Member State does not need to obtain an additional work permit if this employee is transferred to another Member State.

To qualify, the employee must be working on a project of a temporary nature (i.e., on a contractual basis) for the supply of services by its employer established in one Member State to a company established in another Member State.

Belgian law exempts such foreign nationals from the requirement to obtain a Belgian work permit, provided they:

- are entitled to residence, or have a valid residence permit, for a period of more than three months in the Member State of the EEA where they have established residence
- are lawfully employed in the Member State where they have established residence and hold a permit which is at least valid during the period of the services to be carried out in Belgium
- possess a valid employment contract
- possess a passport and a residence permit, of which the duration is at least equivalent to the duration of the services to be carried out in Belgium to ensure their return to their home country or residence country

- the provision of services does not consist solely of the provision of workforce (this condition is only applicable in the Flemish Region)

Students and interns

Students lawfully residing in Belgium for the purpose of their studies carried out in Belgium are allowed to work without single/work permit both during the school holidays (i.e. Easter holidays, summer holidays, Christmas holidays, etc.) and outside school holidays periods, provided in this latter case that their employment does not exceed 20 hours per week and that the work performed is compatible with their studies.

Students who are taking a compulsory internship in Belgium for the purpose of their studies carried out in Belgium, in a EEA Member State or in the Swiss Confederation (contrary to the first exemption described above where the studies must be pursued in Belgium) are also allowed to work without single/work permit, exclusively within the framework of said internship.

Non-EEA Nationals

Except when qualifying for a specific exemption, non-EEA nationals require a work authorization/permit for any work activities in Belgium. Work authorizations/permits are only issued to nationals of countries linked to Belgium by international agreements or conventions on the employment of foreign nationals, or when there are not enough workers available in the European labor market to perform services.

For certain categories of non-EEA nationals or activities (professions or trades where a shortage of labour has been recognized by the Minister), work authorizations/permits may be issued without the labor market criterion being met, which considerably simplifies the process for obtaining a work permit.

Highly Qualified Employees or Executives

Single permit / Work permit type B

The labor market criterion is not taken into account if the foreign national is considered a highly qualified employee or an executive whose annual remuneration amounts to at least, respectively, EUR 41,868 (Flemish Region), EUR 41,739 (Brussels Region and Walloon Region) or EUR 66,989 (Flemish Region), EUR 69,637 (Brussels Region and Walloon Region) gross for 2019 (indexed annually). The validity of their residence authorization corresponds to the duration of their work authorization.

For highly qualified employees:

- If the employee earns at least EUR 41,868 (Flemish Region), EUR 41,739 (Brussels Region and Walloon Region) gross salary per year in 2019.
- In the Flemish Region, the yearly gross salary requirement is reduced to 80% of the above mentioned amount (*i.e.* EUR 33,495 per year in 2019) for employees bound by an employment contract to an employer established in Belgium, provided that they have not reached the age of 30 years or are employed as a nurse.

For executives:

- If the employee earns at least EUR 66,989 (Flemish Region), EUR 69,637 (Brussels Region and Walloon Region) gross salary per year in 2019 and holds an executive position within the company.
- In the Walloon Region, the yearly gross salary requirement mentioned above could be higher depending on the specific circumstances of the case as it cannot be less favourable than that of comparable positions in accordance with the applicable laws, collective bargaining agreements or practices.

The application process to obtain a single permit takes about 6 to 8 weeks but one should also take into account an additional period of 1 month to gather all the necessary documents regarding both the work and residence aspects as these must be submitted at once. The type B work permit application process on the other hand takes about two to four weeks.

The documents to provide depend on the work authorization/permit applied for (highly qualified or executive) as well as on the competent Region to deliver it. That being said, the following documents - among others - are in any event required : a medical certificate, an employment contract or assignment letter, copies of academic certificates and professional qualifications (for highly-qualified) and proof of payment of the administrative fees related to the application procedure.

EU Blue Card

As part of the efforts to attract foreign highly qualified nationals, the EU has implemented an EU work permit, the so-called “Blue Card,” which allows employment of non-Europeans in any country within the EU. The “Blue Card” scheme is inspired by the United States’ “Green Card” program and aims to attract top talent to the EU to combat the aging population and declining birth rate. The framework European regulations are set forth in the EU Blue Card Directive¹. The Blue Card allows highly qualified non-EEA nationals to work and reside in the territory of the Member State issuing the Blue Card.

The EU Blue Card Directive is partially implemented in each Region by means of the new sets of rules taken within the framework of the legislative change resulting from the implementation of the Single Permit Directive. Other complementary implementation measures are provided in the implementing cooperation agreement of December 6, 2018 that has yet to enter into force.

¹ EU Directive 2009/50/EC of 25 May 2009 regarding the conditions for the access and residence of third-country nationals for highly qualified employment.

Under Belgian law, the Blue Card can be delivered to highly qualified third-country nationals, provided they can demonstrate: (i) high-level professional qualifications (through a higher education diploma of a minimum of three years); (ii) an employment contract for an indefinite term, or for a definite term of at least one year; (iii) a gross annual remuneration of respectively at least EUR 50,441.60 (Flemish Region), EUR 52,978 (Brussels Region) or EUR 53,871 (Walloon Region) gross salary per year in 2019.

It results from the foregoing that no Blue Card can be granted to seconded employees and that the salary threshold is considerably higher than the threshold under the current procedure for highly qualified employees (i.e., EUR 41,868 (Flemish Region), EUR 41,739 (Brussels Region and Walloon Region) gross salary per year in 2019).

The Blue Card will allow increased intra-Europe mobility. After five years of stay within the EU (including two years in Belgium immediately preceding the application for long-term residence), the foreign national becomes eligible for long-term resident status in Belgium. Moreover, highly qualified foreign nationals who hold an EU Blue Card will not lose their status when leaving the country for 12 months. Once they have obtained long-term resident status, they may leave the EU territory and Belgium for a maximum of two years and a maximum of six years, respectively. The current work permit system for highly qualified individuals continues to exist alongside the EU Blue Card system. The practical relevance of the Blue Card is somewhat limited due to the narrow scope of application, the administrative burden during the first two years and the rather limited advantages.

The EU Directive EC/810/2009, regarding the European Visa Code, constitutes a major step towards a common visa policy and towards reinforcing cooperation within the Schengen Area. The Visa Code sets out harmonized procedures and conditions for issuing short-stay visas and airport transit visas.

Legislation in relation to the issuance of visas for long stays (beyond 90 days) remains of national competence. However, pursuant to the Visa Code, third-country nationals who hold a long-stay (type D) visa can travel freely within the Schengen Area for up to 90 days in any 180-day period.

Specialized technician work permit

The specialized technician work authorization/permit is specifically aimed at specialized technicians or engineers coming to Belgium for a maximum period of six months to install, start up, or repair an installation or software application developed or manufactured abroad. It should be noted that the study and analysis of the factual situation at the location of the Belgian customer, the so-called “requirement capturing stage,” prior to the development of the installation or software application, is not covered in this permit. A foreign national coming to Belgium to perform such preparatory study and analysis services should obtain a normal work authorization/permit.

On the other hand, specialized technicians coming to Belgium for urgent repairs or maintenance work to machines delivered by their foreign employer to a Belgian-based company are exempt from obtaining a prior work permit, provided their stay in Belgium does not exceed five days per month.

Long-term EU residents

Non-EEA nationals, who have obtained the status of long-term resident in another EU Member State, can obtain access to the Belgian labor market subject to certain conditions. The long-term residence status is a very specific status in accordance with the EC Directive 2003/109/EC with respect to long-term residents from non-EEA countries for which a specific residence permit is delivered (i.e., in Belgium, this takes the form of an electronic residence card type D).

Professional card

Non-EEA nationals require a professional card for any self-employed activity in Belgium, including, depending on the factual circumstances, corporate mandates held with a company established in Belgium. The national can apply for the card at the Belgian consulate or embassy abroad, together with the visa application, or in Belgium, in case the foreign national resides in Belgium.

The basis for granting a professional card is much more discretionary than the basis for granting a work authorisation/permit. Demonstrating economic interests plays a major role in obtaining a professional card. The application process takes six months on average.

Intra-corporate Transferee

Within the framework of the implementation of the Single Permit Directive, Belgium was subsequently able to implement the Intra-corporate Transferee Directive 2014/66/EU for which the single permit was a prerequisite. This Intra-corporate Transferee Directive lays down, on the one hand, the conditions of entry and residence of managers, experts or trainee employees from third countries who are the subject of a temporary intra-group transfer. On the other hand, it establishes a common set of rights for persons undergoing temporary intra-group transfer when working in the EU. In addition, this Directive sets forth the conditions under which employees who have been the subject of a temporary intra-group transfer may benefit from (short or long-term) geographical mobility in the various territories of the Member States.

Managers, experts or trainee-employees undergoing a temporary intra-group transfer of a maximum duration of 90 days over any period of 180 days (short-term mobility) and holding an ICT permit issued by another Member State valid for the duration of the transfer are exempted from a work permit. Specific salary requirements as well as additional documentation requirements also apply depending both on

the competent Region and on the transferee's position (executive, expert or trainee-employee).

On the other hand, for the purpose of long-term mobility in the context of a temporary intra-group transfer, a work authorization will have to be applied for with the competent Region, subject to the following conditions: (i) the transferee holds an ICT permit issued by another Member State, valid for the entire duration of the application procedure; (ii) the host entity and the company established in a third country belong to the same company or group of companies. Specific salary requirements as well as additional documentation requirements also apply depending both on the competent Region and on the transferee's position (executive, expert or trainee-employee).

Besides the short- or long-term mobility rights as provided under the Intra-corporate Transferee Directive, a work authorization can be granted to third-country nationals undergoing a temporary intra-group transfer of more than 90 days if the following conditions are met: (i) the host entity and the company established in a third country belong to the same company or group of companies; (ii) immediately before the date of the transfer, the transferee is employed by the company or group of companies for at least three consecutive months as manager, specialist or trainee employee; (iii) the transferee has higher professional qualifications linked to a higher education diploma for the ICT executive and the ICT expert or linked to a university diploma for the trainee-ICT employee. Specific salary requirements as well as additional documentation requirements also apply depending both on the competent Region and on the transferee's position (executive, expert or trainee-employee).

The work authorization is issued for the duration of the transfer, with a maximum duration of three years for the ICT manager and the ICT specialist, and for a maximum duration of one year for the ICT trainee employee.

The aforementioned provisions related to any work authorization application for a trainee are subject to specific conditions laid down in an implementing cooperation agreement of December 6, 2018 and will only enter into force when said implementing cooperation agreement enters into force. This is to date still not the case.

Training

Employee Training Assignments not Exceeding Three Months

Foreign national employees who come to Belgium to participate in training not exceeding three subsequent calendar months at the Belgian seat of the multinational group to which their employer belongs, in the framework of a training agreement between the respective companies of the multinational group, are exempted from the work authorization/permit requirement. The authorized scope of training is restrictive and may not result in productive work.

In the Brussels Region, the following additional requirements apply. The company organizing the training is required to inform the local immigration authorities of the employee's stay in Belgium, at the latest at the start of the training.

This specific work permit exemption is limited to three categories of employees:

- employees who are employed with an associated company located within the EEA, irrespective of their citizenship
- employees who are employed with an associated company located outside the EEA and who are citizens of an OECD Member State
- employees who are citizens of countries with which Belgium has entered into a bilateral employment agreement (e.g., Switzerland, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, Macedonia, Morocco, Tunisia and Turkey)

Other Employee Training Assignments

Employees engaged by a foreign company belonging to an international group that has a seat in Belgium and cannot call upon the aforementioned work permit exemption are eligible to obtain a work authorization/permit, regardless of their regular place of employment abroad and irrespective of nationality. Such training may not include any productive work or be an “on-the-job” type of training. The duration of such training is not limited.

Training

Within the framework of the implementation of the Single Permit Directive, the different authorities also decided to implement the Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

Work authorization can be granted to a trainee under the following conditions: (i) the trainee is bound to the employer by an internship contract of a maximum duration of six months; (ii) the trainee provides proof of higher professional qualifications by means of a higher education diploma obtained in the two years preceding the application, or proof that he is undergoing training leading to the issuance of the aforementioned diploma; (iii) the traineeship relates to the same level of qualification and covers the same field as the diploma or studies referred to in the previous condition.

The work authorization is valid for a maximum period of six months. It may be extended on a one-off basis in the Flemish Region.

The aforementioned provisions related to any work authorization application for a person undergoing a temporary intra-group transfer as well as for long-term mobility are subject to specific conditions laid down in an implementing cooperation agreement of December 6, 2018 and will only enter into force when said implementing

cooperation agreement enters into force. This is to date still not the case.

The previous provisions remain applicable in the meantime, i.e. : (i) the trainee must be between 18 and 30 years old; (ii) the trainee undertakes not to occupy any job in Belgium during the training period (iii) the training needs to be full time; (iv) the training may not exceed 12 months; (v) a training agreement needs to be signed and translated in the mother tongue of the employee-trainee (or a language the trainee understands) and needs to indicate the number of hours of training and the salary which cannot be lower than the legal minimum of the applicable business sector (vi) a training program needs to be presented together with a legalized copy of the diploma or degree.

Other Comments

Prior Limosa Declaration of Employment

Attention must be paid to the Limosa registration obligation when employing foreign national staff or developing self-employed activities in Belgium.

To simplify the administrative formalities related to the employment of foreign nationals in Belgian territory, the Belgian government has adopted a number of measures jointly referred to as “Limosa” (Dutch abbreviation for cross-country information system).

In the long run, the Limosa project will lead to the creation of an electronic platform which can be accessed to apply for various permits. For the time being, the Limosa project implies an additional administrative obligation for employers. The first step of the Limosa project consists of the obligation for employers who employ foreign nationals in Belgian territory and for self-employed individuals who perform their activities on Belgian soil to communicate a number of details in relation to such professional activities to the Belgian

government (i.e., through a mandatory prior electronic notification of employment/self-employed activities).

The mandatory Limosa notification applies to all employees and self-employed individuals who temporarily or partially work in Belgium and who usually work in another country or are hired abroad. There are various exemptions from the mandatory notification, including (subject to certain conditions) short-term business travel, scientific congresses, foreign government personnel, and the assembly and installation of goods.

The Limosa declaration should be made online at www.limosa.be, prior to the start of the employment in Belgium. A declaration certificate ("Limosa-1") is delivered and can be downloaded or printed at once.

A company with operations in Belgium that makes use of the services of the foreign nationals or self-employed individuals, directly or indirectly, is held to verify whether the Limosa obligation has been complied with prior to the start of the professional activities in Belgium through delivery of the Limosa-1 declaration.

Non-compliance with the Limosa registration can result in substantial criminal sanctions and monetary penalties for both the foreign employer and the Belgian user of the services.

On 19 December 2012, the European Court of Justice ruled that, with regard to self-employed service providers, the Belgian mandatory Limosa-1 declaration is incompatible with the principle of freedom to provide services. The CJEU believed that the prior declaration requirement, with respect to self-employed service providers, constitutes a restriction on the freedom to provide services and that Belgium failed to prove that a detailed Limosa-1 declaration is necessary to achieve the objectives sought. On 19 March 2013, a Royal Decree was issued by the Belgian government to react to this decision, serving two purposes: (i) explaining why the Limosa-1 declaration is necessary in the framework of the fight against social

fraud; and (ii) stating the current rules which were amended to limit the nature of the information that is to be disclosed, be it in a very limited manner.

Identity Card for Foreign Nationals

After residing legally in Belgium for an uninterrupted period of three to five consecutive years and subject to certain conditions, non-EEA nationals can obtain an “identity card for foreign nationals” or a residence permit for an indefinite term at the local commune of residence. A residence permit for an indefinite term or an identity card for foreign nationals allows them to work in Belgium without having to obtain a work permit.

Type A Work Permit

Under the former regime, a work permit type A allowing to benefit from employment of indefinite duration with any Belgian employer could be obtained by foreign nationals who could demonstrate four years of relevant professional work experience, but this period could be reduced to three years in some circumstances, e.g., under a type B work permit combined with a legal and uninterrupted residence in Belgium during the 10 years immediately preceding the application.

These unlimited work authorizations must now be applied for via the new single permit procedure. The previous applicable conditions and requirements remain more or less the same in each Region. Foreign nationals who have obtained the status of long-term resident in another Member State who are in possession of a legal residence permit in Belgium and who can demonstrate 12 uninterrupted months of work are also eligible.

Type C Work Permit

Under the former regime, a type C work permit could be obtained by certain individuals who legally resided in Belgium and had obtained a

valid residency title (e.g., refugees, students), subject to certain conditions.

These specific residence situations are now listed exhaustively in the Royal Decree of 2 September 2018 and grant automatic access to the labor market. Type C work permits are therefore no longer delivered and their legal basis has been repealed. As transitional measure, the granted type C work permits remain valid until their expiration date or until a new residence permit including a reference to the labor market is delivered.

Planned Legislative Change

As the Belgium immigration legislative framework significantly changed recently as a result of the implementation of the Single Permit Directive, future major legislative changes are not expected.

While implementing the Single Permit Procedure, other European Directives (e.g. Intra-corporate Transferee, Trainees, Seasonal Workers) were also partially implemented by the Regions in their respective legal framework. These provisions are however subject to specific complementary conditions laid down in an implementing cooperation agreement of December 6, 2018 and some of them will only enter into force when said implementing cooperation agreement enters into force. This is to date still not the case but should reasonably still occur this year.

Brazil



Brazil

Brazil covers almost 48% of South America, and with a rapidly growing population, vibrant business environment and wealth of resources, the country is an attractive destination for both multinational companies and foreign professionals, as well as tourists.

To travel to Brazil, either for work, business or tourism purposes, foreign nationals must obtain the proper authorization to enter and remain in the country. The regulations that govern immigration in Brazil are numerous, but the visa categories and corresponding application requirements are straightforward.

Key Government Agencies

The National Immigration Council (Conselho Nacional de Imigração) is responsible for the orientation, coordination and surveillance of all immigration activities.

The General Coordination of Labor Immigration (Coordenação de Imigração Laboral) of the Ministry of Labor and Employment is responsible for receiving, reviewing and approving work permit applications for foreign nationals intending to obtain temporary or permanent visas to work in Brazil.

The Consular Division of the Ministry of Foreign Affairs, represented by various Brazilian consulates abroad, is the authority that issues prior residence and the appropriate documents to those desiring to travel to Brazil, including those who have previously obtained work authorization from the General Coordination of Immigration.

Current Trends

The migration legislation 13.445/2017 aims to give more protection to foreign nationals. It is also much more convenient, for instance, offering the possibility to convert an existing visa into a residence permit inside Brazil.

Visitor Visa

A foreign national who intends to come to the country for tourism or business purposes is entitled to a visitor visa. With this type of visa, he should not receive any payment from a Brazilian legal entity and, therefore, should remain exclusively in the payroll of the company abroad.

A visitor visa's term depends on the nationality, but it is normally valid for one year with a maximum length of stay of 90 days. Visitor visas can be renewed through the Federal Police Department.

Aside from tourism, a visitor visa allows for the following **business** activities: attendance at business meetings and corporate events, press coverage, market prospect, signing contracts and performing audits or consultancy work.

For citizens of countries that have a reciprocity policy with Brazil, the appropriate visa will be granted upon arrival in Brazil. Travelers on business trips may be asked to show a return or onward ticket as well as proof of funds to support their stay in Brazil.

An updated list of countries with reciprocity agreements with Brazil and a list of countries need a visitor visa to enter in Brazil is available at: <http://www.portalconsular.itamaraty.gov.br/images/qgrv/QGRV-simples-ing-Fev18.pdf>

The migration legislation (Law 13.445/2017), authorizes the foreign national to choose between prior residence or residence when applying for a work permit.

Although it is still necessary to observe the activities which will be developed in the country and the position occupied, if the foreign national is already in Brazil, he can apply for **residence** with the Ministry of Labor. If the foreign national is outside Brazil, he must abide by the old rule of collecting a visa from the corresponding

consulate abroad when the **prior residence** is duly approved by the Ministry of Labor.

Whether a foreign national selects **prior residence or residence** when applying, he will have the same type of work permit. Residence simply allows a foreign national already in Brazil to complete the process without leaving the country to collect the visa stamp. This makes it possible to convert one visa into another if the foreign national is already living in Brazil, except when applying for a 180-day short-term technical visa, which is only possible to obtain by prior residence which is therefore to be collected from the corresponding Brazilian consulate.

Prior residence or residence are both governed by specific rules, so when choosing applicability it is still necessary to mainly observe the activities that will be performed in the country.

Decree n. 9.731/2019, published on 16 March 2019, exempts citizens of **Australia, Canada, the US and Japan** from having the visitor visa stamped on their passports. The new ruling takes effect on June 17, 2019.

Employment Assignments

Work Visas

Foreign nationals entering Brazil to provide technical assistance or professional services pursuant to a cooperation agreement or work contract may qualify for a temporary prior residence upon approval of a work permit by the Ministry of Labor and Employment.

Professionals Under Work Contract

Professionals entering pursuant to a work contract must satisfy the requisite educational and experience requirements relative to their expected position. In addition, their work contract must be submitted to the Ministry of Labor and Employment for approval.

A residence based on a local work contract request for professionals must prove that the foreign national has at least one of the following:

- two years of relevant professional experience and at least nine years of education (intermediate level)
- one year of professional experience after graduation with a relevant university degree

Technical Assistance

In contrast to the work situations discussed previously, a foreign national entering for the purpose of providing technical assistance is contracted to provide services to a Brazilian company but remains on the payroll of a foreign company.

In such cases, the residence is valid for a period of up to one year. There must be a technical assistance agreement (a covenant or a cooperation agreement is also accepted) executed between the Brazilian company (which will receive the services) and the foreign company (which will provide the services and consequently send the foreign national to Brazil). Furthermore, the applicant must provide evidence of at least three years of relevant professional experience.

Short-Term Technical Assistance

If the foreign national that will provide the technical assistance does not need to stay in Brazil for a period exceeding 180 days, a short-term technical assistance temporary visa may be granted without all the requirements that need to be accomplished to obtain standard technical assistance temporary residence, subject to the evidence that the foreigner is fulfilling an urgent need (for instance, broken machinery that is impacting the company's production). The application process for this work permit is usually faster than the application process for other work permits since the documents required are not too complex. Although it needs to be analyzed

beforehand by the Ministry of Labor its processing time is faster and should not exceed five business days.

Note, however, that this type of visa should be obtained exclusively by prior residence – it can not be converted inside Brazil – therefore it should be applied for at the Ministry of Labor and, when approved, duly collected from the Brazilian consulate.

Post-Entry Procedures

Once the foreign national and family arrive in Brazil, they must apply for an identity card known as an “RNM” card. Applications must be submitted to the local federal police department in the area of residence, and registration must occur within 30 days when the foreign national is already living in Brazil or within 90 days of arrival in the country in case of prior residence after he has collected the visa from the consulate.

Entry Based on International Agreements

Citizens of Argentina, Paraguay, Uruguay, Chile, Bolivia, Peru and Colombia

In view of the Residence Agreement (Acordo de Residência Mercosul) Brazil has signed with the Mercosul countries (Argentina, Paraguay and Uruguay) and with Chile, Bolivia, Peru, Ecuador and Colombia (which were later included in the Mercosul Agreement for immigration purposes), citizens of those countries do not need to obtain work permits to live and work in Brazil.

Any person who holds a passport from the aforementioned countries and chooses to move to (or, if applicable, remain in) Brazil — for or not for purpose of working — may apply for “residence” before the federal police (if the individual is in Brazil) or the closest Brazilian consulate (if the individual decides to apply from their home country). Essentially, to obtain “residence” one must submit proof of nationality and have a clean criminal record.

Management Position

In practice, executives who are appointed to management positions (administrators, directors, etc.) in Brazilian companies are also eligible for residence. The granting of this visa to an executive is conditioned upon the experience of the applicant in managerial positions within the company's group, as well as his/her articular managerial abilities.

The granting of this residence requires approval of a work permit by the Ministry of Labor and Employment, which may be granted based upon consideration of the factors noted (foreign investment, experience, skills, etc.). Further, if the foreign national is already living in Brazil, it is possible to convert his existing visa (for instance, a visitor visa) into residence without leaving the country by applying for residence.

Private Investors

The migration legislation also provides the necessary guidelines for those who intend to invest their own resources in already existing or newly established companies.

As such, the main point is to provide evidence that the foreigner's private investment is equivalent to BRL 500,000, duly paid to the Brazilian company that will sponsor the visa.

In addition to the investment, the foreign private investor is required to present a detailed business plan to be concluded within three years.

Real Estate Investment Visa

This new visa modality is based on the government policy of attracting investments that focused on the creation of jobs in Brazil.

To be entitled to such a visa, the foreigner shall evidence a private investment in real estate based in Brazil **with potential for job creation or income.**

The grant of work permit is subject to the acquisition of real estate, whether already built or under construction, in amount equal or higher than BRL 1,000.000.00 in urban areas and at least BRL 700,000.00 for those located in the northern and northeastern regions of Brazil.

Further Information

Baker McKenzie's *Immigration Laws in Brazil* guide provides further information about Brazilian visas, immigration and citizenship.

Canada



Canada

Canada's immigration programs facilitate both the temporary and permanent movement of workers with a policy emphasis on the transition of temporary foreign workers to permanent resident status. A growing area of movement into Canada and a key focus of the federal government are the Temporary Foreign Worker Program and International Mobility Program. The government has created numerous opportunities for these workers to remain permanently in Canada. In addition, over the last decade the provincial and territorial governments have rapidly strengthened their own immigration selection programs, many of them focusing on highly skilled workers and international student recruitment. No relocation strategy is complete without a review of all federal, provincial and territorial programs.

Key Government Agencies

Immigration, Refugees and Citizenship Canada is the primary federal department in charge of overseeing Canada's immigration programs. It is made up of several offices within Canada, as well as various overseas visa offices disbursed around the globe. Employment and Social Development Canada ("ESDC") is a federal department responsible for Canada's social programs and the labor market. ESDC plays an important role in the enforcement of employer compliance regulations and the administration of the Temporary Foreign Worker Program ("TFWP"). Canada Border Services Agency is the federal department responsible for border and immigration enforcement and customs services.

Canada's provinces and territories also have jurisdiction when it comes to developing and administering some of Canada's permanent residence streams; these are commonly referred to as provincial nominee programs ("PNPs"), and are designed to address each region's unique economic migration needs. PNPs typically provide pathways to Canadian permanent residence for economic immigrants, international students or foreign nationals with family already located in Canada. Once a foreign national has been nominated by a

province, he or she must still submit an application to the federal government to become a Canadian permanent resident. Some nominees may also be eligible to obtain a work permit to facilitate employment in Canada until the federal stage application is approved.

Business Travel

Business travel to Canada has become increasingly difficult over the past five years with greater enforcement of work authorization by border officials, and the introduction of new entry requirements for visa-exempt foreign nationals. Now more than ever, it is important for business travelers to plan in advance to make sure they are traveling to Canada with the appropriate visa authorizations and supporting documentation. If a business traveler arrives in Canada without the appropriate paperwork, the border official may deny entry and send the traveler back to the destination country, resulting in major headaches for both travelers and businesses. Moreover, with changes to the employer-sponsored work permit application process, it is no longer possible for a border official to process an employer-sponsored work permit at the border, unless the employer has already submitted an online form and fee in support of the work permit application. As such, advanced planning and preparation is now a critical component of business travel when a work permit is required to authorize activities in Canada.

Foreign nationals who enter Canada to engage in business activities may be eligible to enter as a Business Visitor which means a work permit is not required to authorize business activities in Canada. However, entering as a Business Visitor has become significantly more difficult in recent years, and travelers are now subject to more scrutiny by Canadian border officials, regardless of the duration of their visit to Canada. The most important factor when determining whether an individual can enter as a Business Visitor is the activities which the individual will be performing while in Canada. In other words, an individual may require a work permit even if entering Canada for less than a day. If a business is sending one of its

employees to Canada as a Business Visitor, it should ensure the traveler carries the appropriate documentation to demonstrate the nature of their activities in Canada. This may be in the form of an invitation letter from the Canadian business or an employer support letter from the foreign employer.

Generally, a Business Visitor's remuneration and principal place of employment, as well as the employer's principal place of business and accrual of profits, must remain outside Canada. There cannot be an intention to enter the Canadian labor market (i.e., no gainful employment in Canada), and the Business Visitor's activities must be international in scope. Most often, Business Visitor activities fall within the areas of research, design, growth, manufacturing, production, marketing, sales, distribution, and both general and after-sales services. Attending business or board meetings, conventions or conferences, and negotiating contracts are common reasons for business entry. Border officials have enormous discretion when evaluating whether an individual qualifies for entry as a Business Visitor so it is important for the traveler to carry supporting documentation to justify the purpose of their trip to Canada.

Once in Canada, Business Visitors may be able to submit an inland application to extend their stay in Canada as a Business Visitor but cannot apply to change the conditions of their stay to foreign worker status. Generally, Business Visitors are permitted to enter Canada for up to six months at a time; however, the authorized length of stay may be more or less depending on the nature of the activities and the supporting documentation.

When the Global Skills Strategy was introduced in the summer of 2017, another option for Business Travel became available in certain circumstances. Some individuals who are entering Canada to perform highly skilled, hands-on work for a very short period of time may be eligible for one of the newest work permit exemption categories under the Global Skills Strategy. Qualifying individuals must be working in a highly skilled position, and they must be seeking to enter Canada to

work for a maximum of either fifteen consecutive days within a six-month period, or thirty consecutive days within a twelve-month period. Some eligible researchers may also qualify for a work permit exemption that would enable them to enter Canada for a period of 120 consecutive days within a twelve-month period, depending on where their research is performed.

An individual who applies to enter Canada under one of the above Global Skills Strategy work-permit exemptions should receive a Visitor Record for the short period of time they are needed in Canada. These Visitor Records cannot be extended, so if the individual needs more time to complete their work in Canada, they may either need to apply for a work permit, or wait until the applicable six- or 12-month period has passed, before they can re-enter Canada under this work permit exemption category.

Visa-Exempt Nationals

In Canada, a visa is an entry document, called a Temporary Resident Visa (“TRV”), which facilitates a traveler’s entry to Canada. This is different from a status document, like a work permit or student permit. Not all travelers require a TRV to travel to Canada; some are visa-exempt and are not required to apply for a TRV before traveling to Canada. Visa-exempt travelers, with the exception of American passport holders, are still required to apply for an electronic Travel Authorization (“eTA”) before traveling to Canada. An eTA can be applied for online and is usually processed within minutes and will be electronically linked to the traveler’s passport. US Green Card holders are also considered to be visa-exempt, but unlike American passport holders, they must have an eTA to enter Canada.

Foreign nationals traveling on a passport from one of the countries below are visa-exempt:

Andorra	Australia	Austria	Bahamas	Barbados
Belgium	Brunei	Bulgaria	Chile	Croatia

Cyprus	Czech Republic	Denmark	Estonia	Finland
France	Germany	Greece	Hong Kong	Hungary
Iceland	Ireland	Israel	Italy	Japan
Republic of Korea	Latvia	Liechtenstein	Lithuania	Luxembourg
Malta	Mexico	Monaco	Netherlands	New Zealand
Norway	Papua New Guinea	Poland	Portugal	Romania
Samoa	San Marino	Singapore	Slovakia	Slovenia
Solomon Islands	Spain	Sweden	Switzerland	Taiwan
United Arab Emirates	United Kingdom (including citizens of overseas British territories)	United States (including US Green Card Holders)	Vatican City State	Some Brazilian citizens

All other foreign nationals must have a TRV inside their passport before they can travel to Canada as a temporary resident (includes visitors, foreign workers and international students). Visa-requiring nationals must apply for temporary residence through an overseas visa office before traveling to Canada. Upon approval, the visa office will insert the TRV into the traveler's passport.

Employment Assignments

In most cases, employers should consider work permits for international assignments. The general rule is that any foreign national doing “work” must obtain a work permit unless there is an available exemption (i.e., Business Visitors). There are two types of work permits applicable to international assignments: work permits based on a Labour Market Impact Assessment (“LMIA”), and LMIA-exempt work permits.

Work permits are divided into two programs: the TFWP and the International Mobility Program (“IMP”). The TFWP usually requires an employer to conduct extensive recruitment activities to try to identify a qualified, willing and able Canadian in the labor market for the position in Canada. If the employer is unable to identify a Canadian after the recruitment and screening activities, it can submit an application for a LMIA. Overall, the processing time for LMIAs and LMIA-based work permits is lengthier than the IMP process. As such, if a prospective candidate is eligible to apply for a work permit under the IMP, this is generally the route that Canadian employers would prefer for hiring foreign talent in Canada.

LMIA-based work permits

The LMIA-based work permits fall under the TFWP. The regular LMIA-based work permit process is unpredictable and costly so it should be used as a last resort option. The TFWP also includes an expedited LMIA program called the Global Talent Stream (“GTS”). GTS LMIA applications do not require the employer to advertise and conduct recruitment activities before applying for the LMIA. There are currently two GTS streams available (Category A and B). GTS LMIA applications are processed in approximately two weeks.

Category A is designed for high-growth companies that are looking to hire unique and specialized talent and that have been referred to the GTS program by a Designated Partner organization. Category B targets employers seeking to hire highly-skilled foreign workers in

specific occupations found on the Global Talent Occupations List. The pre-determined list reflects in-demand occupations and may be updated from time to time.

Employers applying for a GTS LMIA must develop a Labour Market Benefits Plan (LMBP) as part of the application process. This LMBP is a summary of activities that the employer has agreed to complete in exchange for, or as a result of, the hiring of foreign workers. Each year, the government will conduct a review of LMBP commitments to measure and track the employer's progress.

LMIA-exempt Work Permits

The IMP includes a variety of LMIA-exempt work permit categories, including many employer-sponsored work permit strategies. The most commonly used categories are outlined below.

Intra-company transfers

Multinational companies seeking to assign foreign nationals to Canadian positions often use one of the Intra-Company Transfer work permit categories. Many of Canada's international agreements include intra-company transfer work permit provisions with slight variations with respect to eligibility requirements and work permit durations.

Generally, an initial work permit can be valid for up to three years, and can be extended at least once.

Executive and managerial-level staff must supervise other managers or professional employees, although management of crucial company functions or processes may also qualify under some international agreements. Employment in a specialized knowledge capacity requires proof that the employee holds advanced knowledge of the organization's proprietary products, services, research, equipment and techniques. Some international agreements also require specialized knowledge applicants to possess advanced and unique industry-specific knowledge related to the position, at a level that is not ordinarily held by others within the industry. Under the General

Agreement on Trade-in Services ("GATS"), a prevailing wage requirement for intra-company transferees in the specialized knowledge category is introduced. Under some other international agreements, such as the North American Free Trade Agreement ("NAFTA") and Canada-European Comprehensive Economic and Trade Agreement ("CETA"), there is no requirement for intra-company transferees to meet any wage requirement.

At the time of the work permit application, the employee must be currently employed with the foreign entity in a position similar to the proposed role in Canada, and must have at least one year of full-time, continuous work experience in the position within the three years preceding the date of the application. The foreign and Canadian entities must have a qualifying relationship such as parent-subsidary, branch, or affiliate relationship.

Reciprocal Employment

This category can be used for international exchanges or assignments, both in public and private sector contexts. There must be a bilateral flow of talent between the foreign and Canadian entities which is related to the policy behind this category, which fosters complementary opportunities for international work experience and cultural interchange.

Businesses can also use this exemption category if they have a global mobility policy in place which creates equivalent opportunities for Canadians abroad. For companies to benefit from this work permit category, they should be able to produce evidence of reciprocity.

Employer Portal

Employers using the IMP are required to submit an Offer of Employment form (IMM 5802) and pay an Employer Compliance Fee (C\$230 per position) via an online government portal. The employer must submit the form and payment, and provide proof of same to the employee prior to the submission of the work permit application.

Training

There is a fine line between when a foreign national can simply enter as a Business Visitor, and when a work permit is required. Employers must carefully consider the parameters of the training activities in Canada to determine if a work permit is required to authorize the activities in Canada. If an officer determines a work permit is required for the training activities, this could delay business requirements and training plans.

Training as a Business Visitor vs. Training Requiring a Work Permit

Short-term trainees, particularly employees of a related corporation abroad, may be permitted to enter Canada as Business Visitors under the business provisions as long as the trainees continue to be paid abroad, and provided their duties are strictly limited to training activities while in Canada.

Employees coming to Canada to provide training can enter as Business Visitors in certain circumstances, such as when training is contemplated in the after-sales service provisions of a contract or service agreement. For instance, a foreign national entering Canada to train Canadians on machinery or software does not trigger the requirement for a work permit, as long as the original contract clearly sets out the training requirement. Employees should have a copy of the service agreement with them at the time of entry, as well as an invitation letter and other supporting documents.

Work permits must be obtained for commercial trainers or commercial speakers hired by Canadian companies to provide training services for their employees (unless the training falls under the after-sales service provisions of a contract). US and Mexican nationals may benefit from NAFTA provisions, which facilitates the process for professionals who need to obtain work permits for pre-arranged training sessions for subject matters within the trainer's profession.

Entry Based on International Agreements

Many International Agreements other than NAFTA, CETA and GATS allow international assignees of certain nationalities to obtain work permits without an LMIA, as long as they have arranged employment opportunities in Canada and meet program-specific eligibility criteria. These agreements include:

- Canada Chile Free Trade Agreement
- Canada Peru Free Trade Agreement
- Canada Colombia Free Trade Agreement
- Canada-Korea Free Trade Agreement
- Canada Panama Free Trade Agreement
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Three of the more commonly used agreements for international employment transfers are NAFTA, CETA and GATS, which allow certain professionals and skilled workers to come to work in Canada for periods of up to three years (90 days in the case of GATS), subject to extensions. Where applicable, CETA is increasingly being used for the transfer of senior personnel, and specialist workers coming to work in Canada.

NAFTA

NAFTA provides expanded mobility and foreign workers rights for citizens of the United States and Mexico. There are provisions under NAFTA for Business Visitor entry, as well as work permit categories for Intra-Company Transferees, Investors and Traders.

NAFTA Professional is another work permit category included in the international agreement, which contains a list of over 60 occupations which have been identified as occupations for which there is a labor

market demand in Canada. Citizens of the United States and Mexico who have the requisite licenses, education requirements, and/or work experience to qualify for these occupations, and who have pre-arranged employment with a Canadian employer, may apply for a work permit on the basis of their proposed occupation in Canada.

NAFTA Professional work permits can be issued for up to three years at a time, and are usually eligible for extensions.

CETA

CETA provides entry to Canada for citizens of an EU member state. Within CETA, the two most commonly used categories are Intra-Corporate Transfers for senior personnel and specialists, which mirror NAFTA's Intra-Company Transfer executive/senior managerial and specialized knowledge work permit categories, respectively.

Employees applying under either the senior personnel or specialists category must: have one year of continuous work experience within the past three years; be currently employed by an enterprise of an EU member state; and be temporarily transferred to a related enterprise (subsidiary, affiliate or branch) in Canada.

CETA also facilitates entry for Business Visitors, and foreign workers under the Independent Professionals, Investors, and Contractual Service Suppliers categories.

CPTPP

As of December 30, 2018, the CPTPP was implemented, offering additional avenues for Canadian immigration to 10 countries in the Asia-Pacific region, including: Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The CPTPP facilitates temporary entry for Business Visitors, Investors, Intra-Corporate Transferees, Professionals and Technicians.

Certain countries have access to more application categories than others. Australia, Japan and Mexico are the only countries that have access to all of the available categories at the time of this publication.

BIOMETRICS

Biometrics are now required for almost all non-Canadian citizens applying for a visitor visa, work or study permit, or permanent residence. Exceptions to this requirement include U.S. nationals and visa-exempt nationals only visiting Canada for a short time. Biometrics can be provided as part of an application submitted at a VO, or upon arrival in Canada at a POE (for visa-exempt nationals). For those applying for an extension of their current temporary status, Biometrics will be required when the in-Canada service for collecting Biometrics has been established in 2019. Applicants will only be required to give their biometrics once every 10 years.

Other Comments

Global Skills Strategy (GSS) - 2 Week Processing

Under the Global Skills Strategy (GSS), *employers looking to hire high-skilled workers quickly can now benefit from faster application processing times*. Foreign nationals that are applying from outside of Canada for a work permit in order to perform work in an occupation that is a skill type 0 (management occupations) or skill level A (professional occupations), may be eligible for two-week priority processing after their complete application package is submitted and their Biometrics are completed.

Employer Compliance and Enforcement

The federal government implemented a more stringent employer compliance regime which directly affects employers sponsoring foreign workers under the TFWP and IMP. Immigration compliance and enforcement regulations now include routine immigration inspections and the introduction of Administrative Monetary Penalties

for findings of non-compliance. Employers may be selected for inspection from the date when a work permit is issued, to six years thereafter.

An employer is compliant if it can demonstrate that it adhered to the work permit conditions described in the work permit application, or if it can justify any failure to do so under the enumerated grounds. An employer is non-compliant if it is unable to justify any violations of the work permit conditions.

The government is committed to inspecting one out of four employers each year. Inspections can be randomly initiated, triggered by a whistleblower or other sources, or based on a previous finding of non-compliance. Inspectors have wide investigatory powers including on-site visits and interviews with foreign workers or other employees (with consent).

When there is a finding of non-compliance following an inspection, employers now face a range of consequences, depending on the frequency and severity of the violation. Penalties include warning letters, fines from C\$500 to C\$100,000 per violation (up to a maximum of C\$1 million per year, per employer), temporary or permanent bans from accessing immigration programs, revocation or suspension of work permits, and online publication of the business' name, violation and penalty. Voluntary disclosures of non-compliance may serve to mitigate these consequences, but this strategy should be discussed with counsel prior to submission.

In order to avoid being found non-compliant, employers should designate an internal immigration compliance officer and should conduct regular internal reviews of the foreign worker population. Employers should implement a review process before any changes to the terms and conditions of a foreign worker's employment take effect to make sure the change is consistent with the work authorization. Some changes may require a new work permit before the change can take effect.

Open Spousal Work Permits

Spouses are eligible for open work permits, and dependent children are eligible for visitor records or study permits for most international transfers. For spouses and children to qualify for dependent status, the transferee has to be entering Canada for a highly skilled position that falls under Canada's National Occupation Classification ("NOC") codes 0, A or B with a work permit valid for more than six months. The transferee also has to physically reside in Canada while working.

Open Spousal Work Permits are generally issued for the same duration of the foreign worker's work authorization, and in most cases allows the spouse to work with any employer, in any occupation, anywhere in Canada.

Dependent children accompanying parents to Canada are eligible to attend primary and secondary school with either a Study Permit or a Visitor Record. In order to attend post-secondary school, dependent children must apply for a Study Permit after being accepted to a study program in Canada. The age of dependency includes children who are under 22 years old.

Chile



Chilean law provides many solutions to help employers of foreign nationals bring their employees into Chile. These solutions range from temporary non-immigrant permits (tourist permits and consular tourist visas) to permanent residence. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The respective Chilean consulate, if the applicant is outside Chile, is responsible for visa processing at consular posts abroad. In case the applicant is already in the country, the Ministry of Interior, through its Immigration Department (*Departamento de Extranjería y Migración*) will process visas. Inspection and admission of travelers is conducted by the National Customs Service and Investigation Police (*Policía de Investigaciones*) through its international office at Chilean ports of entry and pre-flight inspection posts.

Current Trends

Chile has changed in the last two decades from an exclusive emigrants-generating country to a place of interest to immigrants of several nationalities. The presence of so many multinational companies in Chile has significantly increased the number of visa applications in the last decade.

Foreign nationals are protected by labor law almost in the same way as Chilean employees. Only a few differences are observed (e.g., a company operating in Chile must not have more than 15% of foreign national employees, with the exception of (i) foreign professionals and technicians; and (ii) companies with fewer than 25 employees).

Immigration is taking on more importance in the country's legislation. A new immigration regulation that includes international commitments made by Chile is part of the current government's agenda.

Business Travel

Foreign nationals coming to Chile for short-term business purposes and who do not engage in remunerated activities are considered tourists and, as a general rule, do not require previous authorization to enter Chile (tourist permits). Only individuals from certain countries (e.g., Cuba, China, India) require such authorization, called the consular tourist visa, which can be requested at the Chilean consulates of the country of origin.

Tourist status authorizes a foreign national to attend high-level business activities, like business meetings and conferences. Employment in Chile, however, is not authorized.

The permitted length of stay is up to 90 days, with the possibility of requesting an extension for up to another 90 days (days are counted from the date of entry into Chilean territory). The Border Control Authority may limit the period of stay at the moment of entering the country.

An accompanying spouse or children can be admitted under the same tourist status. Proof of financial ability to stay in Chile may be required at police discretion.

Employment Assignments

Work Contract Visa

This is a visa granted to foreign nationals who enter Chile to comply with a work contract. The same visa is given to the spouse and children of the applicant. The dependents cannot perform remunerated activities unless they apply for their own visas.

To obtain this visa, a number of conditions must be satisfied:

- The employer (company or individual) must be legally domiciled in Chile.

- When the visa is requested in Chile, the work contract on which the visa is based must be signed and notarized in Chile by the employer (or its representative) and the employee. If the visa is requested through a Chilean consulate, the employee must sign the employment contract, once the visa is granted, before the Chilean consul. In this last case, the employer should sign and notarize the work contract in Chile, before applying for the visa. It is possible for the employer to sign the work contract before the Chilean consul, but it is not the usual procedure.
- The parties must stipulate special clauses in the work contract confirming:
 - the employer's obligations to pay the employee and his family the costs of their return to their country of origin or to a foreign country on which both parties agree (return ticket clause)
 - the employee may not work, until he has been granted his work permit or visa (clause of validity)
 - the employer will be responsible for the payment of the income tax corresponding to the employment relationship (income tax clause)
 - the employee will make his social security contributions in Chile; the employer will retain and pay such contributions to the corresponding social security institutions (social security clause)

With regard to the last point, foreign technical or professional employees who are affiliated with social security systems abroad that grant them benefits in case of illness, old age, disability and death may be exempted from some social security contributions in Chile.

The work contract visa has a maximum duration of two years and it may be extended for the same term. If the duration term is not

specified in the passport, it will be understood that such term is the maximum.

In any event, termination of the work contract will cause the visa to expire. The sponsor company is obliged to notify the immigration authorities upon termination of the corresponding employment agreement within 15 days of the date of termination. The visa holder has the right to apply for a new visa or permanent residency. The holder of the work contract visa will be able to apply for permanent residency only after two years as a holder of such visa.

Temporary Resident Visa

If the foreign national executes his activities in a company in Chile but will be remunerated abroad, a temporary resident visa is most appropriate.

The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for Chile. This is the case of professionals, technical specialists, executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than 90 days depending on their activities or interests in Chile.

As in the case of the work contract visa, this visa is also granted as a “holder” to the interested person and as a “dependent” to the members of his family.

The temporary resident visa has a maximum duration of one year and may be renewed only once for the same period. If the visa stamp does not specify the term for which it was granted, it will be understood that its duration is the maximum. Once the one-year period has elapsed, the holder may apply for an extension thereof or permanent residency in Chile. After two years of residence in Chile, the holder shall either apply for permanent residency or leave Chile.

Work Permit

For work assignments of up to 30 days, including possible extensions, a work permit is sufficient authorization. This is a special work permit for tourists (holders of tourist permits or holders of consular tourist visas) that enables foreign nationals to work in Chile for a limited period of time.

Training

As a Tourist

For short-term training for up to 180 days (including all possible extensions, which are discretionary), tourist status is not sufficient. The features of tourist status described above for “Tourist” in the “Business Travel” section are applicable.

Remunerated activities are not allowed unless the foreign national receives a work permit, which is a special work permit for tourists that enables foreign nationals to work for a limited period of time. To obtain a work permit, a work contract or a letter from the visa sponsoring company in Chile is required.

Temporary Visa

A temporary visa allows its holder to stay in the country for a maximum period of one year and may be renewed only once for the same period. The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for Chile and it allows its holder to carry out any legal activities without special limitations. This is the case of professionals, technical specialists, executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than 90 days depending on their activities or interests in Chile.

This visa is granted to the foreign national (the holder) and can be granted to the members of his family (the dependents).

After one year, the holder may apply for an extension or permanent residency. After two years of residence in Chile, the holder must either apply for permanent residency or leave Chile.

Student Visa

In case training involves studying in an educational institution duly acknowledged by the state, a student visa can be used. The duration of this visa is up to one year, renewable for equal terms. This visa does not allow its holder to execute remunerated activities, yet an additional work permit can be requested.

Post-Entry Procedures

If the applicant requested a visa before a Chilean consulate, once the visa is stamped in his passport, he must enter Chile within 90 days of the visa being granted. In Chile, the foreign national must register his visa before the Investigation Police and request his Chilean Identity Card for foreign nationals.

If the applicant requests a visa in Chile, once the visa is granted and it has been stamped in his passport, he must register his visa before the Investigation Police and request his Chilean Identity Card for foreign nationals.

Entry Based on International Agreements

Chile has created a temporary visa for citizens of MERCOSUR (Argentina, Bolivia, Brazil, Paraguay and Uruguay) that facilitates applying for and obtaining a temporary visa.

The temporary visa has the same effects and terms as other temporary visas.

For more information on these Free Trade Agreements please visit:

<http://www.extranjeria.gob.cl/acuerdos-internacionales/>

Other Comments

Permanent residence can be obtained after residing in Chile. Terms of residence vary according to the type of residence held. In the case of a work contract visa holders, permanent residence can be required after a stay of two years without interruption. For temporary visa holders, the request can be made after a stay of one year without interruption. Student visa holders can make their request after a stay of two years without interruption, with the additional requirement that the student must have finished their studies.

In the previous cases, stay without interruption meant that the applicant could not remain outside Chile for more than 180 days during the last year of validity of his visa.

An individual with permanent residence has the right to reside in Chile indefinitely and carry out any type of legal activity. Permanent residence is tacitly revoked if the main holder remains outside Chile for an uninterrupted period of one year or more.

Chilean nationality can be obtained by children born in Chile of foreign parents in a transit status (e.g., tourists, irregular residents) and children of foreign nationals who are in Chile performing a specific service to their government. In addition, Chilean nationality can be granted by special grace through law. This does not occur frequently, but has been granted to entrepreneurs who have made a significant contribution to Chile. Also, Chilean nationality can be requested after having resided in Chile for at least five years and having complied with the other legal requirements. The cost of a visa (irrespective of whether it is a work permit, work contract visa or temporary visa) will depend on what that country will charge a Chilean national for the same due process.

The People's Republic of China



Having become the world's second largest economy in 2010, the People's Republic of China ("PRC") remains the number one destination for multinational companies seeking investment opportunities in the Chinese market. Like many other countries in the world, its immigration policy strives to achieve the delicate balance of maintaining border sovereignty and an adequate employment rate for local residents, while at the same time facilitating trade and commerce.

To encourage economic growth and firmly establish its role in the global economy, the PRC has comprehensive laws and regulations governing foreign nationals coming to do business in the country and has been developing new laws and regulations for foreign nationals working in the country (see "Current Trends" below). While the laws are generally national in scope, practice and procedure are often dictated by local government offices, giving rise to significant variation within the country.

The Special Administrative Regions (e.g., Hong Kong and Macau) have retained their own immigration systems. Hong Kong is discussed in a separate chapter.

Key Government Agencies

The Ministry of Foreign Affairs operates the PRC diplomatic missions, consular posts and other agencies abroad, which are responsible for processing visa applications.

The Ministry of Human Resources and Social Security and the State Administration of Foreign Expert Affairs and their respective local counterparts are jointly responsible for issuing work permits and the overall administration of the employment of foreign nationals, and overseas Chinese (i.e., PRC nationals with permanent residency in foreign countries).

The Ministry of Culture and its local counterparts are responsible for certain approval of foreign nationals who engage in commercial

performances in the PRC; China National Offshore Oil Corporation is responsible for the approval of foreign nationals who engage in Offshore Petroleum Operations in the PRC.

The exit and entry administration divisions of local Public Security Bureaus (PSBs), which are under the National Immigration Administration, are responsible for processing extension and change of visa applications and foreign nationals' residence permit applications domestically. National Immigration Administration and local PSBs are also responsible for enforcing applicable laws and regulations and enforcing penalties for non-compliance.

Current Trends

Starting from 1 April 2017, the State Administration Bureau of Foreign Expert Affairs, the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs and the Ministry of Public Security jointly issued a notice which announced the full nation-wide implementation of a unified work permit system ("system") for foreign nationals in the PRC. The system is designed to curb illegal employment while attracting highly skilled individuals to support the Chinese economy. The system is intended to unify the process and requirements to obtain work permits for foreign nationals under one online platform. While the system has been enacted on a national level, there remain some gaps in the implementation at a local level, based on local interpretation.

Based on the system, local sponsor companies in the PRC should submit work permit applications via an online system, followed by a physical submission of the documents to the relevant authorities. A foreign national will be given a work permit with a permanent serial number which will be recognized across the country.

Local PSBs in some cities (such as Beijing and Shanghai) have implemented exit-entry related policies to attract foreign talent to live and do business in the PRC, reflecting the country's emphasis on innovation. For example, if a foreign national is certified by the local

relevant talent-in-charge authorities to be a “Foreign High-Level Talent,” he/she may obtain a long-term residence permit and enjoy a fast route to apply for a PRC permanent residence permit..

Local rules and policies governing foreign nationals’ work permits and residence permits also vary by city and can change on a regular basis. For example, if foreign nationals change employer in Shanghai, a legalized degree certificate will generally be required for their new work permit applications, while the degree certificate will not be required in Beijing provided that the degree has been verified through the nation-wide system. With regards to residence permit applications, an in-person interview with the foreign national is required throughout the country for the first application. In certain cities in Guangdong Province, the PSB may additionally audit residence permit applications. The audits may include multiple requests as the PSB sees fit, such as an on-site inspection, a request for proof of the sponsor’s operational and/or financial status.

This guidance is based on existing legislation and current practice which are subject to change as further rules are introduced.

Business Travel

Visa Waiver

Currently, nationals of Brunei, Japan and Singapore may enter and stay in the PRC for a period of up to 15 days without applying for a visa for the purpose of tourism, business, visiting relatives or friends, or transit.

72 Hours/144 Hours Visa-free Transit

Since 1 September 2013, a number of international entry points into the PRC (including to Beijing, Chengdu, Chongqing, Guangzhou, Shanghai, Tianjin and Xiamen) have adopted a visa-free policy for certain passport holders to transit for up to 72 hours (three days). As

of May 2019, three areas described below in the PRC have increased the transit period to 144 hours (six days):

- Jiangsu, Zhejiang, Shanghai areas: Eligible foreign nationals should arrive or depart through international entry points to Shanghai and air entry points to Nanjing and Hangzhou.
- Beijing, Tianjin and Hebei areas: Eligible foreign nationals should arrive or depart through designated entry points (Beijing Capital International Airport, Beijing West Railway Station, Tianjin Binhai International Airport, Tianjin International Cruise Home Port, Hebei Shijiazhuang International Airport, or Qinhuangdao Harbor).
- Shenyang Province: Eligible foreign nationals should arrive or depart through the international airport in Shenyang or Dalian.

Importantly, the transit requirement means the foreign national must depart the PRC for a third country and may not depart from and return to the same country. In addition, the foreign national cannot travel to another administrative area in the PRC during the transit period.

Business Visa

Foreign nationals who travel to the PRC for commercial and trade activities should apply for an M business visa. Visa applications are submitted to PRC consular posts, many of which require an invitation letter issued by the relevant business partner or “inviting company” in China. The most common types of M visas are as follows:

Type (or number) of Entry	Visa Validity	Duration of Stay Per Visit
Single	30 or 90 days	30, 60 or 90 days
Double	90 days	30 days
Multiple	180 or 365 days	30, 60 or 90 days

Note: Currently, US and Canadian citizens may be granted multiple-entry M visas valid for 10 years based on the countries' reciprocal visa validity agreement with the PRC. British citizens may be granted multiple-entry M visas valid for two years, five years and 10 years respectively. Since 1 February 2018, former Chinese nationals may be granted multiple-entry M visas valid for five years.

Employment Assignments

Short-term Assignments (less than 90 days per calendar year)

If foreign nationals will be seconded by their overseas employer to work with its subsidiary in the PRC for no more than 90 days per calendar year whilst the employment and compensation are maintained by the overseas employer, the foreign nationals could be exempted from obtaining a work permit. Instead, the foreign nationals can apply for an M business visa and enter the PRC with the M visa to accomplish the short-term assignment.

Long-term Assignments/Local Employments

In general, foreign nationals who wish to work in the PRC either under a local employment contract or under an international assignment for more than 90 days must apply for a work permit and a work-type residence permit, regardless of whether they are intra-company transfers or skilled workers. Under the standard process, they need to enter the PRC on a Z visa. To apply for a Z visa, a foreign national must obtain one of the below-listed documents (the application for such documents must be sponsored by the PRC host entity (typically, the employer)):

- Foreigner's Work Permit Notice
- Representative Certificate, confirming that the foreign national is a registered representative under the representative office of a foreign company

- Approval Document for taking up commercial performance in China, issued by the local authority responsible for cultural affairs
- Letter of Invitation to Foreigners for Offshore Petroleum Operations in China, issued by the China National Offshore Oil Corporation

Foreigner's Work Permit Notice

Foreign nationals who wish to work in the PRC must meet the following conditions:

- be 18 years of age or older and in good health
- have professional skills and job experience required for the intended employment
- have no criminal record
- have a clearly defined employer
- have a valid passport or other international travel document in lieu of a passport

Pursuant to the current system, the authorities introduced a comprehensive foreign talent assessment system to divide applicants into three categories based on academic background, professional qualifications and the nature of the assignment/employment in the PRC. The assessment includes various lists of achievement criteria and a score-based system. Applicants may apply for Work Permit Notices based on either the achievement criteria or the score-based system. In principle, a foreign national will be eligible to obtain work authorization in the PRC if he/she meets the above conditions and has a bachelor's degree as well as two years of post-graduate relevant work experience.

The three categories include:

- Type A – Foreign High-level Talent

- Type B – Foreign Professional Talent
- Type C – Foreign nationals who engage in temporary, seasonal, non-technical or service-oriented work that also meet the needs of local labor markets

In general, Type A applicants are encouraged, Type B applicants are controlled and Type C applicants are limited. If an applicant is classified as Type A, he/she may skip the work permit notice application, enter the PRC with a valid visa of any kind and then apply for a work permit directly. He/she will also be exempt from the age and work experience restrictions.

The applicant is also required to undergo a medical examination. If the examination is completed at an approved hospital overseas, the medical report can be forwarded to the relevant health center in the PRC for verification. However, health centers in the PRC sometimes will not verify overseas medical reports and will require the applicant to complete a new medical examination in the PRC. Accompanying dependents of 18 years and over must also complete medical examinations.

It is not necessary for a resident representative office of a foreign enterprise to apply for a work permit notice when appointing a foreign national as its chief representative or representative in the PRC. The representative office must, however, seek authorization from the appropriate “approval authority” and register such approval, generally with the Local Administration for Industry and Commerce (AIC). Upon registration, a Representative Certificate will be issued to the chief representative and each of the other representatives. Under governing regulations, representative offices may only register up to four representatives, effectively capping the number of foreign representatives.

If the foreign national is accompanied by family members (e.g., spouse, parents or children under 18), the family members should apply for an S1 visa to enter the PRC. For an S1 visa application,

kinship certificates legalized by the relevant PRC consular office must be provided.

Z Work Visa

Upon receipt of the work permit notice or Representative Certificate, the foreign national may apply for a Z work visa from the appropriate PRC consular post (usually in the foreign national's home country).

In certain cities, such as Beijing, Shanghai and Shenzhen, a simplified procedure has been introduced as part of a series of policies encouraging foreign talent to seek employment in the PRC. If a foreign national is already in the PRC on a business M visa when his/her work permit notice is approved, he/she may apply for a residence permit directly and then a work permit without the need to obtain a Z visa offshore. Whether a foreign national is eligible for the simplified procedure will also be at the discretion of the local PSB.

Training

There is no specific visa designed exclusively for training. Depending on the circumstances, another visa category may be appropriate. It is recommended to seek guidance based on individual circumstances.

Post-Entry Procedures

A Z work visa is single-entry and allows a foreign national to enter the PRC within 90 days after visa issuance and stay for up to 30 days to complete post-arrival applications. The accompanying dependents should enter the PRC with an S1 visa, which is also single-entry.

Within 15 days of arrival on a Z visa, the foreign national holding a work permit notice or a Representative Certificate must apply for a work permit from the local relevant authorities.

Within 30 days of arrival on a Z visa, and upon issuance of the work permit, the foreign national and accompanying family members must

apply for residence permits with the PSB. Residence permits function as multiple-entry visas, replacing the single-entry Z/S1 visas.

Work permits and residence permits are employer and location specific. A foreign national typically can only work for the entity shown in his/her work permit and should reside in a location where the permits are issued. If there are any changes in the registration items shown in the work permit or residence permit, amendments must be promptly filed with the relevant authorities. If a foreign national no longer works for the employer, the work permit must be de-registered with the relevant authority while the residence permit should be canceled with the PSB within 10 days after the employment end date.

Other Comments

HMT Residents and Overseas Chinese

Hong Kong, Macao and Taiwan residents ("**HMT residents**", i.e., Hong Kong, Macao and Taiwan passport holders with relevant mainland travel permits) who wish to travel to the PRC need not apply for a visa. Instead, they may use their mainland travel permit for Hong Kong and Macau residents or their mainland travel permit for Taiwan residents. Starting in August 2018, HMT residents no longer needed to obtain employment permits to work in the PRC. HMT residents who reside in mainland China for more than six months may opt to apply for mainland residence permits provided that they meet any of the following criteria:

- have a stable job in mainland China
- hold a legitimate and stable residence in mainland China
- attend a school in mainland China

Mainland residence permit applications will be administered by local police stations, so detailed documentation requirements may vary by location. With the mainland residence permits, HMT residents can enjoy the same rights as mainland Chinese residents in accessing 18

public services, including participating in local social insurance, accessing the housing provident fund and benefitting from other services according to the local law where they reside.

In some locations, Chinese nationals with overseas permanent residence status may be required to complete certain registrations for employment verification in China.

Temporary Residence Registration

Foreign nationals, HMT residents and overseas Chinese nationals are required to carry out temporary residence registration at the local police station in the district where they reside within 24 hours after they arrive in the PRC. For most hotel residents, this registration process is carried out by the relevant hotel upon check-in. If they move to a new residence or obtain new visas during their stay in the PRC, they are required to re-register with the local police station. In some jurisdictions, the local police station may require the foreign nationals to complete residence registration within 24 hours every time they returned to the PRC from any international trips.

Colombia



Colombian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for work and business purposes.

Foreign nationals who enter the country for work or business purposes may not enter the country without the respective visa or legal permit that allows them to perform the activities for which they enter Colombia (e.g., as employees or legal representatives). Failure to comply will lead immigration authorities to fine the company and/or the local sponsoring entity and even to deport the foreign national.

The issuance of Colombian visas can be performed either abroad at a Colombian consulate or with the Ministry of Foreign Affairs at Bogotá, unless the applicant is of a restricted nationality, in which case the application must be made at a Colombian consulate abroad, with prior authorization by the Ministry of Foreign Affairs, or electronically with the Ministry of Foreign Affairs' platform, before the foreign national enters Colombia.

Key Government Agencies

The Ministry of Foreign Affairs located in Bogotá and the Colombian consulates abroad are responsible for visa processing.

The Special Administrative Unit of Migration Colombia (*Migración Colombia* (UAEMC)) is in charge of issuing temporary permits, safe-conducts and foreign IDs, the registration of visas, and performs investigations and enforcement actions involving local employers, sponsoring entities and foreign nationals.

Professional Councils are no longer part of the visa process. If the foreign national plans to execute activities involving regulated professions (e.g., engineering, medicine, law) in Colombia, he should request a temporary license or validate his undergraduate studies degree. The determination of whether a foreign national executes activities that involve professional experience is a prerogative of the Professional Councils.

Current Trends

Colombian consulates and the Ministry of Foreign Affairs exercise a great deal of discretion and may ask for additional documentation or requirements.

As of 2017, in Colombia there are three main types of visas:

- Visitor visas (V visa), which is divided into 16 subcategories
- Migrant visas (M visa), which is divided into 11 subcategories
- Resident visa (R visa)

Business Travel

V Visa for Business Travel

As a general rule, foreign nationals who visit the country on short-term visits without receiving any salary or compensation in Colombia may request a V visa for business travel. This category of visa applies to a foreign national who is a legal representative, or who occupies a managerial or executive position in a foreign company. Foreign nationals who obtain this kind of visa may perform business promotion activities related to the interests of their company, such as attending board meetings of partners or directors, and supervising the operations of economically, strategically and legally related companies. This kind of visa is valid for a term of up to two years, for multiple entries, and authorizes a stay of up to 180 consecutive or nonconsecutive days in a 365-day term. As a general rule, a foreign national entering Colombia under a V visa cannot take residence or receive a salary or compensation in Colombia.

Foreign nationals who come to work on issues connected to any kind of free trade agreement involving Colombia may also enter by means of a V visa. Normal government fees are waived for nationals of South Korea, Japan and Ecuador.

V Visa for Temporary Visits

The V visa may also be granted to foreign nationals who intend to enter Colombia to do any of the following:

- to perform activities as a journalist, reporter, cameraman or photographer
- to perform commercial or business activities, such as meeting business contacts and attending business meetings or training
- to attend academic activities, such as seminars, conferences, presentations or any other non-conventional studies
- to attend scientific, cultural or sports activities
- to participate in interviews within recruitment processes

The V visa under this category may be granted for a term of up to two years with multiple entries. The term of stay in Colombia for a foreign national holding the V visa will depend on the activity to be performed in the country. The V visa must be sponsored by an entity domiciled in Colombia. Foreign nationals interested in obtaining this type of visa may not live or establish their residences in Colombia. Depending on the activity to be performed in Colombia, foreign nationals holding this visa could eventually receive salaries or any kind of compensation for the activities performed in Colombia.

Visa Waiver – Temporary Immigration Permit (“PIP-6”)

The V visa requirement may be waived for foreign citizens with non-restricted nationalities. For these citizens of certain countries, a PIP-6 may be issued by the UAEMC, provided the foreign national has neither a labor nor commercial relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or salary).

The PIP-6 allows foreign nationals from non-restricted nationalities to enter Colombia and engage in one of the following activities, provided the foreign nationals do not have a labor relationship within any local entity: (i) academic activities in seminars, conferences, or expositions; (ii) non-remunerated scientific, artistic, cultural, sports or religious activities; (iii) interviews within recruitment processes; (iv) activities as a journalist, reporter, cameraman or photographer; or (v) providing training.

In August 2016, the Ministry of Foreign Affairs issued a resolution eliminating the possibility of carrying out business-related activities under the PIP-6, and limited the scope of this permit to the activities listed above. Foreign nationals who intend to visit Colombia to carry out non-remunerated business-related activities for short terms (no more than 180 days per calendar year) should apply for a business visa.

In practice, the immigration authority still grants PIP-6s to foreign nationals who intend to carry out short-term, non-remunerated business activities in Colombia.

This permit may be granted for a term of up to 90 calendar days within the same calendar year (i.e., between 1 January and 31 December). This permit can be extended, before the initial 90 calendar days expire, by requesting a PIP-6 from the UAEMC, which can be granted for 90 additional calendar days within the same calendar year.

The PIP-6 does not allow multiple entries for the foreign national and shall be requested each time the foreign national enters the country by submitting the required documents from the officials of the UAEMC at the airport.

The PIP-6 must be sponsored by an entity domiciled in Colombia, by granting an invitation letter to the foreign citizen.

Visa waiver benefits are available to citizens of: Albany, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan,

Bahamas, Barbados, Belgium, Belize, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Brunei-Darussalam, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Federal State of Micronesia, Fiji, Finland, Former Yugoslavian Republic of Macedonia, France, Georgia, Germany, Granada, Greece, Guatemala, Guyana, Holy See, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Kazakhstan, Korea, Malta, Marshal Islands, Mexico, Moldova, Monaco, Montenegro, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and Grenadines, Saint Marino, Saint Lucia, Salomon Islands, Samoa, Serbia, Singapore, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Trinidad & Tobago, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay and Venezuela.

Visitor visa requirements are waived for citizens of Hong Kong - SARG China, Military Order of Malta, Taiwan-China, Nicaragua (who demonstrate to be from the Autonomous Region of the North Caribbean Coast and Autonomous Region of the South Caribbean Coast) and Cambodia.

This visa waiver also applies for nationals of India, China, Myanmar, Nicaragua, Thailand and Vietnam who either: (i) hold a residence permit issued by a Member State of the Schengen Area or the US; or (ii) hold a Schengen visa or US visa with a validity of 180 days or more, when entering Colombia.

Visa Waiver – Temporary Immigration Permit (“PIP-5”)¹

Foreign nationals from any Schengen Area country may be issued a PIP-5 by the UAEMC. This permit allows foreign nationals from any

¹ Formerly the PIP-10. The PIP-10, created in November 2015, was replaced by the special PIP-5 immigration permit so foreign holders of this permit may request a VAT refund for goods.

Schengen Area country to engage in one of the following activities, provided that the foreign national does not have a labor relationship with a local entity: (i) activities provided under a PIP-6; (ii) academic activities in non-formal educational programs for up to six months, e.g., internships, researchers, teachers or lecturers; (iii) receiving medical treatment; or (iv) leisure activities.

This permit may be granted for a term of up to 90 calendar days within the same calendar year (i.e., between 1 January and 31 December). This permit can be extended, before the initial 90 calendar days expire, by requesting a PIP-5 from the UAEMC which can be granted for 90 additional calendar days within the same calendar year.

The PIP-5 permit does not allow multiple entries for the foreign national and shall be requested each time the foreign national enters the country by submitting the required documents from the officials of the UAEMC at the airport.

This visa waiver benefit is available to citizens of: Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Slovakia, Slovenia, Spain, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Republic of Malta, the Netherlands, Poland, Portugal, Czech Republic, Romania, Sweden, Switzerland, Norway, Liechtenstein and Iceland.

Employment Assignments

M Visa – Work Visa

Under Colombian immigration laws, any foreign national that intends to undertake work activities in the country must request a M visa to work or a visa under a different category that allows him to work (e.g., M visa for spouses of Colombian nationals, V visa for technical assistance, M visa - Mercosur or R visa). The M visa to work is granted to foreign nationals who enter Colombia by virtue of a labor relation or a service agreement with an entity domiciled in Colombia. It

is also granted to artistic, sports or cultural groups entering the country for the purpose of a public performance.

These visas are issued for a maximum term of three years and allow multiple entries. They expire automatically if the foreign national is absent from the country for a period that exceeds six continuous months and may be renewed for a period of three years or less in accordance with the term of the labor contract and the evaluation of the submitted documents.

The M visa must be issued before the foreign national renders services locally or becomes part of a local payroll.

The spouse or permanent companion, parents, and children under the age of 25 of the foreign national who holds a M visa may obtain a temporary beneficiary visa, which allows them to enter Colombia to study or engage in home activities but does not entitle them to work.

A foreign national who holds a M visa will only be allowed to perform the activity authorized in the visa and only for the company authorized in the visa. In the event there is any change of activity or position, the foreign national and the sponsoring company must inform the immigration authorities in writing of the change and, if necessary, request the change of the visa.

V Visas – Technical Visitor Visa

The V visa for technical visitors may be granted to foreign nationals who intend to enter Colombia to perform specialized technical activities, with or without employment or independent services agreements with public or private entities.

This type of visa may be granted for a term of up to two years with multiple entries. The term of stay in Colombia for a foreign national holding the V visa under this category is for the entire term granted in the visa.

The visa must be sponsored by a local entity in Colombia, which will be responsible for the foreign nationals during their stay in Colombia.

Visa Waiver – Technical Visitor Permit (“PIP-7”)

The normal technical visitor visa requirement may be waived and citizens of certain countries may be issued a PIP-7 by the UAEMC, provided that the services required should be provided on an urgent basis, that the foreign national does not have a labor relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or salary).

The PIP-7 permit may be granted to foreign nationals from non-restricted nationalities who enter Colombia to perform urgent technical services that cannot be provided by a Colombian citizen.

This permit may be granted for a term of up to 30 calendar days per calendar year and cannot be renewed in the same calendar year.

This type of permit is commonly granted to technicians or engineers who will inspect, test or install equipment, or perform any duties related to their technical expertise.

The PIP-7 must be requested by the local sponsoring company from the UAEMC's regional director at least five business days in advance of the foreign national entering Colombia. The issuance of this permit must be authorized by the UAEMC's regional director prior to the foreign national entering Colombia, who must provide a copy of the authorization letter to the immigration official at the airport.

Visa waiver benefits are available to citizens of the same countries listed in the PIP-6 mentioned above.

Training

Foreign nationals who intend to enter Colombia for the purposes of participating in training programs should obtain a V visa.

The V visa for trainings requirement is waived for foreign citizens with non-restrictive nationalities. For these citizens, a PIP-5 or PIP-6 may be issued by the UAEMC, provided that the foreign national has neither a labor nor commercial relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or salary).

Please refer to the “V Visa – Temporary Visits,” “Visa Waiver – Temporary Immigration Permit (“PIP-5”)” and “Visa Waiver – Temporary Immigration Permit (“PIP-6”)” sections above.

Post-Entry Procedures

Obligations of Registration, Foreign ID and Control

Any foreign national who obtains a visa with more than three months of validity should appear at the offices of the UAEMC to be registered in the immigration files and, if the foreign national is seven years old or more, should obtain a foreign identity card (*cédula de extranjería*). When the immigration authorities issue or renew any visa, the foreign national and his family must present themselves before the UAEMC within 15 calendar days of the day of entry or visa issuance (e.g., in the case of renewals) to register and obtain the foreign identity card.

Foreign nationals entitled to any type of visa valid for a term of less than three months have the prerogative to stand before the UAEMC to register his visa and to obtain a foreign identity card. If the foreign national decides not to stand before the UAEMC, no sanctions will be imposed.

Employers (entities, institutions or individuals) must inform the UAEMC of the hiring and termination of employment or of the engaging of any foreign nationals within 15 calendar days of such event. Employers should also give notice to the UAEMC whenever the foreign employee’s visa is amended or changed.

These notices should be given to UAEMC electronically, via the SIRE (Foreign National's Report Information System) platform. The registration in SIRE aims to facilitate the report and registry obligations for companies that hire foreign citizens. To successfully register foreign citizens on the SIRE platform, it is necessary for companies to register on the electronic platform at <http://apps.migracioncolombia.gov.co/sire/public/login.jsf>.

Furthermore, foreign nationals must give notice to the UAEMC and the Ministry of Foreign Affairs of any change of residence or domicile within 15 days of such event.

The Ministry of Foreign Affairs has broad discretionary powers to approve the issuance or renewal of visas and, when denied, the applicants do not have the opportunity to appeal the decision. Prior to filing the visa application, the best practice is to informally approach the immigration authorities to review the fulfillment of the application documents with them. It is important to minimize the risk of denial, since a new petition may be presented only after a six-month wait if a visa request is denied.

The requirements to obtain visas change periodically and should be verified prior to submitting the application. In response to the governmental policy to reduce the unemployment rate, the Ministry of Foreign Affairs has made the TP-4 visa process more burdensome for companies, requesting documents that were suppressed when the immigration amendment of 2013 took place. Employers should be alert to possible amendments to immigration regulations, which may require them to adapt the process for obtaining TP-4 visas.

As from 2019, the process to obtain the visa must be performed either online or at the Colombian Consulate. The process takes 5–10 business days.

Noncompliance with immigration regulations will incur fines against the foreign national and the company and, in some cases, may result in the deportation or expulsion of the foreign national.

Entry Based on International Agreements

M Visa – Mercosur

Citizens from Argentina, Brazil, Bolivia, Peru, Chile, Paraguay, Uruguay and Ecuador may apply for a special visa called the Mercosur visa. This visa is a temporary residence permit that may be granted by the immigration authorities for up to two years, and allows foreign nationals to perform any of the following occupations or activities: performing home activities (cleaning the home, grocery shopping, caring for one's children, etc.), rendering independent services, or undertaking educational, business or work activities for any employer in Colombia.

A foreign national who holds a Mercosur visa for at least two continued and uninterrupted years can apply for a R visa.

The Mercosur visa is recommended for those companies that recently established their entities in Colombia to hire foreign nationals from the countries mentioned above.

V Visa – Pacific Alliance Visa

Foreign nationals from Chile, Peru and Mexico may apply for the Pacific Alliance visa. This visa is granted for foreign nationals that apply for any holiday-related work, the purpose of which is to promote the expansion of recreation and culture.

This visa may be granted for a term of up to one year for foreign nationals between the age of 18 and 30 years old.

The visa must be requested before a Colombian consulate abroad and may not be renewed.

Other comments

As from October 2018, all public sector entities and private companies that hire foreign individuals in Colombia (either as employees or

contractors), must report this act to the Ministry of Work, through the RUTEC platform. RUTEC is an electronic platform that aims to quantify and identify employment-related immigration in Colombia.

Registration in RUTEC must be carried out for a term of up to 120 common days, counted from the date when the foreign individual is hired.

Employers and contracting entities should update the reports in RUTEC when any of these events occur:

- termination of employment or services agreement
- whenever there is a change in the economic activity to be performed
- when a foreign employee or contractor permanently changes his domicile

The term for giving these reports is 30 common days, following any of these events.

Reports in RUTEC are valid during the term of the employment or services agreement.

Reports must be given every time a foreign employee or foreign contractor is hired, regardless if the individual was previously reported by other entities.

Czech Republic



Czech Republic

The Czech Republic provides several solutions to assist employers of foreign non-EU nationals. A different process is used in case of foreign non-EU nationals seconded to the Czech Republic and foreign non-EU nationals employed directly by a Czech entity. Requirements, processing time, employment eligibility and benefits for accompanying family members vary by visa classification and purpose of stay. The immigration process may be lengthy in some cases. Therefore, the application should be filed sufficiently well in advance.

If a foreign non-EU national is employed without having the required valid work permit, Blue Card, Employee Card or Intra-Company Transfer Card, both the employer and the foreign national are subject to administrative penalties.

Key Government Agencies

Applications for a Blue Card, Employee Card or Intra-Company Transfer Employee Card (“**ICT Card**”) (which serve as both a residency and work permit) are generally filed with a Czech embassy abroad, and processed by the Department for Asylum and Migration Policy of the Czech Ministry of the Interior. The relevant Czech Labor Office is responsible for the processing of a work permit required for non-EU nationals seconded to the Czech Republic. Czech embassies are competent to approve or reject applications for short-term Schengen visas.

In case a non-EU national will be employed directly by the Czech entity, the prior notification of a job vacancy by the potential employer to the Czech Labor Office is required. Such a vacancy must be advertised to Czech nationals by the Labor Office for 30 days before the Czech entity is allowed to employ a non-EU national.

Current Trends

In August 2017, the Intra-Company Employee Transfer Card was introduced. It is a new type of a long-term residence permit on the basis of which a foreign national performs work as a manager,

specialist or employed intern to which the foreign national has been seconded. In contrast to the Blue Card and the Employee Card, the holder of the ICT Card remains employed by the foreign entity while performing work for a Czech entity.

In February 2019, a new act regulating certain matters (e.g., residence, employment, social security and family relations, etc.) in connection with Brexit was adopted. The act aims at regulation of relations of British nationals in the Czech Republic for a transitory period in case of a so-called hard Brexit.

Business Travel

Uniform Schengen Visa

In relation to short-term visas, Czech law currently adheres to the EU Visa Code, which lays down the conditions for granting a short-term visa, the reasons for potential denial, conditions for extension of the period of stay, and the reasons for revocation of its validity.

In accordance with the EU Visa Code, short-term visas are granted by the embassies or consulates of individual Member States. The request for an extension of stay in the Czech Republic on a short-term visa shall be submitted by the foreign national to the Foreign Police.

The total duration of the stay of a foreign national in the territory of the Member States under a Uniform Visa may not exceed 90 days within a 180-day period from the first date of entry into the Member States.

Schengen Visa: Airport Transit Visa

Generally, a person is able to stay in the international transit area at the Czech airport without a Czech visa while waiting for a connecting flight. However, some nationalities are required to have a valid airport transit visa, even if they do not leave the international transit area. The Airport Transit Visa only authorizes the holder to transit through the airport's international transit area.

Short-term Visa

A single-entry visa allows foreign nationals to enter, stay and leave only once. The visa may be used at any time stipulated in the visa. A multiple-entry visa allows foreign nationals to enter, stay and leave the country several times. The visa may be used at any time stipulated in the visa until the permitted number of days of entry and stay is reached.

Allowed purposes are tourism, spa or medical treatment, invitation, study and scientific purposes, business trip, meeting, or conference, cultural and sports purposes, short-term employment (a work permit required) and training.

Schengen Visa: Visa with Limited Territorial Validity

A Schengen Visa with limited territorial validity is only valid in the territory of the Member State which issued the visa. Occasionally it may be valid in several Member States, provided agreement is received from each of these Member States. This visa is granted mainly on humanitarian grounds, grounds of national interest, or the implementation of international commitments.

Long-term Visa

A long-term visa is a visa for a stay exceeding a period of 90 days.

Permitted purposes are business, studies, seasonal employment, joining family, invitation, cultural purposes or taking over of residence permit.

Long-term visas are no longer issued for the purpose of employment, because this type of visas was replaced by Employee Cards and long-term visas for the purpose of seasonal employment.

The long-term visa is issued for a period of up to one year except for visas for purpose of seasonal employment and visas to take over a residence permit.

The foreign national may apply for extension of a long-term visa provided that the entire period of stay does not exceed one year. The application should be submitted in person by the foreign national to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior no earlier than 90 days before and no later than on the day of the expiration of the long-term visa.

If the entire period of stay is to exceed one year, the foreign national must apply for a long-term residence permit. The application should be submitted in person by the foreign national to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior no earlier than 120 days before and no later than on the day of the expiration of the long-term visa.

Please note that there is no legal entitlement for granting a Czech visa or long-term residence permit.

Visa Waiver/Visa Exemptions

EU citizens do not need a visa to stay in the Czech Republic. They are subject to the registration requirement only. A similar treatment also applies to citizens of Norway, Lichtenstein, Iceland and Switzerland. Some non-EU citizens traveling to the Czech Republic as tourists are not required to obtain a Czech visa, provided their stay does not exceed the stipulated number of days. These individuals are subject to the registration requirement only.

For example, a US citizen entering the Czech Republic for tourist purposes may only stay in the territory of the Czech Republic and Schengen area countries for a period of up to 90 days within a six-month period. If he interrupts his stay in the Schengen area (including the Czech Republic) within these six months (i.e., he travels outside the Schengen territory), the days spent outside of the Schengen territory are not calculated into the 90-day period.

Employment Assignments

EU citizens do not need a work permit or a residence permit for employment purposes to work in the Czech Republic. They are subject to the registration requirement only. Similar treatment applies to citizens of Norway, Lichtenstein, Iceland and Switzerland.

Non-EU foreign nationals may perform work in the Czech Republic under two different scenarios – either the foreign national is employed directly by the Czech entity or he remains employed by a foreign entity and is only seconded to perform work in the Czech Republic. These two basic options are described in more detail below.

Employee Is Employed by Czech Entity

Employee Card (Dual)

Non-EU foreign nationals may be employed directly by a Czech entity provided that they have been granted an Employee Card that contains both a residence and a work permit.

For the purpose of application for an Employee Card, the employer must notify the Labor Office of a job vacancy. The foreign non-EU national may apply for the Employee Card for the respective position only in the event that the position remains vacant for at least 30 days.

An application for an Employee Card is filed at a Czech embassy or a consular post either in the country of origin of the applicant, or a country where the applicant's long-term or permanent residence is permitted or a country which issued the applicant's passport.

The validity of the Employee Card may not exceed two years, but the foreign national may apply to extend it.

Employee Card (Non-dual)

In certain cases in which a foreign national is entitled to perform work in the Czech Republic on the basis of a separate legal title (e.g. he has free access to the Czech labor market or has obtained a work

permit), it is also possible to issue a non-dual Employee Card, which only serves as a residence permit.

A work permit to employ a non-EU citizen in the Czech Republic is not required (however, a non-dual Employee Card is still required) if the foreign non-EU citizen has free access to the Czech labor market.

The immigration laws list groups of foreign nationals who are authorized to freely access the labor market. These are, for example, foreign nationals who:

- have a permanent residence permit
- have obtained secondary or tertiary professional education or tertiary professional education at a conservatory, or university education in the Czech Republic
- attend regular daily studies in the Czech Republic (the study program must be fully accredited in the Czech Republic)
- do not perform work within the territory of the Czech Republic for more than seven consecutive calendar days or a total of 30 days within a calendar year, and provided that the foreigner is a performer, performing artist, pedagogical worker, or academic worker of a university, a scientific research or development worker, who is a participant in a scientific meeting, a scholar or student up to 26 years of age, an athlete, a person providing the delivery of goods or services within the territory of the Czech Republic under a business agreement

Skilled Workers – Blue Card

A Blue Card is a type of long-term residence permit in the Czech Republic for citizens of all non-EU countries which enables the foreign national to perform highly skilled work. Non-EU foreign nationals may be employed in a position requiring a high level of skills, provided that they have been granted a Blue Card that contains both a residence and a work permit. Duly completed university education or higher

vocational education, the duration of which was at least three years, is deemed to constitute a high level of skills.

For the purpose of applying for a Blue Card, the employer must notify the Labor Office of the job vacancy. The foreign non-EU national may apply for a Blue Card for the respective position only in the event that the position remains vacant for at least 30 days.

An application for a Blue Card is filed at a Czech embassy or a consular post either in the country of origin of the applicant, or a country where the applicant's long-term or permanent residence is permitted or a country which issued the applicant's passport.

A Blue Card is valid only for the specific job, site and employer listed on the permit. A change in any of these factors may trigger the requirement to obtain prior consent from the authorities.

The validity of a Blue Card may not exceed two years, but the foreign national may apply to extend it.

Employee Remains Employed by Foreign Entity

Secondment

Foreign nationals who are seconded to the Czech Republic by their employer which is located outside the EU/EEA or Switzerland on the basis of an agreement between their employer and a Czech entity to perform work for the Czech entity (while remaining employed by the foreign employer) need to obtain a work permit and a non-dual Employee Card (as a residence permit) separately. A work permit is issued by Czech Labor Office for a period not exceeding two years.

On the contrary, such a work permit is not required to employ (accept secondment of) a non-EU foreign national who was seconded to the Czech Republic within the scope of providing services by his employer residing in another EU Member State. However, there are special requirements to meet these criteria.

Intra-company Transfer

The ICT Card is a type of long-term residence permit in the territory of the Czech Republic where the purpose of residence (longer than three months) of the foreign national is to perform work in the position of manager, specialist or employed intern to which the foreign national has been transferred. The ICT Card serves both as a residence permit and a work permit.

In simple terms, intra-company transfer is the temporary transfer of an employee of a multinational company from a functioning section of a multinational company in a country that is not an EU Member State to a functioning section of the company located in the Czech Republic.

The ICT Card is issued for the duration of transfer to the territory of EU Member States, but only for a maximum of three years for a manager and specialist and for one year for an employed intern. The ICT Card validity may be repeatedly extended while it may not exceed the maximum duration of three/one year(s).

Post-Entry Procedures

A non-EU citizen staying in the Czech Republic is obligated to report the beginning of the stay, purpose of the stay, place of residence and expected length of stay to the Foreign Police within three business days after his arrival. If a non-EU citizen stays with a person/entity who accommodates more than five foreign nationals or provides accommodation in return for compensation (e.g., a hotel), registration must then be made by the provider of the accommodation. The preceding rule will not apply in case the provider of the accommodation is a person related to the non-EU citizen.

If the foreign national changes his place of residence, he is required to notify the relevant Foreign Police or Department for Asylum and Migration Policy of the Czech Ministry of the Interior. Foreign nationals who possess an Employee Card (or other type of long-term residence permit or long-term visa) must notify of a change of their place of

residence within 30 days from the date on which such change occurred if the foreign national assumes that the change will last at least 30 days.

An EU citizen is obligated to register with the Foreign Police within 30 days of the date of his last entry into the Czech Republic if his stay is expected to exceed 30 days. Such obligation also applies to his family members if they also stay in the Czech Republic. This obligation does not apply to those EU citizens who fulfill the obligation via the person/entity providing them with accommodation, based on the assumption that the person/entity providing the accommodation registers on the foreign national's behalf.

The change of place of residence of an EU citizen and his family members is subject to notification to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior, if they assume that the change will last longer than 180 days.

All foreign nationals (including EU citizens) are obligated to report respective changes regarding their personal data and IDs during their stay in the Czech Republic to the relevant Foreign Police or to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior. The changes shall be reported within three business days from the date on which such change occurred. Changes that need to be reported include, in particular:

- change of travel documents
- change of marital status
- change of surname

Foreign nationals are further obligated to:

- possess a travel document that is valid for three months beyond the intended stay in the Czech Republic (i.e., beyond the applied visa period, if the visa is granted)

- prove their identity with a valid travel document or a residence permit card, if requested by a competent authority, and prove that their stay in the territory is legitimate
- surrender their immigration document to the authority that issued the immigration document, if it has expired or if it is filled in with official records
- surrender their immigration document to the authority that issued the immigration document no later than three days before termination of residence in the Czech Republic (with the exemption of their visa and travel identification card if such documents were issued for the purpose of travel out of the Czech Republic)
- report loss, destruction, damage or theft of an immigration document within three days from the date of such occurrence
- immediately report loss or theft of travel documents to the Foreign Police
- submit to such actions as taking fingerprints, video recording, medical examination, etc., in the manner and to the extent stated in Czech law

In principle, foreign nationals must have valid and effective health insurance covering their entire period of stay in the Czech Republic. If the foreign national seeks a short-term visa, evidence of travel health insurance must be presented when applying for a short-term visa. The minimum coverage is EUR 30,000. If the foreign national seeks a long-term visa, or an Employee Card, a Blue Card or an ICT Card, evidence of travel health insurance must be presented before the issuance of the long-term visa. The minimum coverage necessary is EUR 60,000. The foreign national is obliged to submit evidence of travel health insurance when inspected by the Foreign Police.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Other Comments

Residency in the Czech Republic

Temporary Residence Confirmation

Temporary residence confirmation is issued by the Ministry of the Interior upon an EU citizen's request if he intends to stay in the Czech Republic for a period exceeding three months and has not threatened safety of the state or gravely infringed public order.

Temporary Residence Permit

An EU citizen's family member who is a non-EU citizen and accompanies or follows the EU citizen to the Czech Republic is obliged to apply for a temporary residence permit if he intends to stay in the Czech Republic for more than three months.

Long-term Residence Permit

This type of permit is issued to a foreign national (a non-EU citizen) that has a Czech long-term visa and intends to stay in the Czech Republic for a period longer than one year, based on the assumption that the purpose of the stay will be the same for the entire period of stay.

Such a permit may be issued for the purposes of study in the Czech Republic, scientific research, business, family reunification and investment purposes. It cannot be issued for the purpose of employment. The Employee Card, Blue Card or ICT Card can be issued for the purpose of employment and contain both a residence permit and a work permit.

Permanent Residence Permit

In general, this permit may be issued to a foreign national after five years of continuous legal stay in the territory of the Czech Republic. In some cases (e.g., international protection purposes), four years of continual stay in the territory of the Czech Republic is sufficient for the permit to be issued.

Under special circumstances (e.g., asylum), a permanent residence permit may be issued to an applicant without fulfilling the requirement of previous continuous stay in the Czech Republic.

A foreign national is, subject to exceptional situations, obligated to submit evidence that his income is regular for the purposes of proving funds for permanent residence.

Additional Comments

All Czech immigration procedures are time-consuming and administratively demanding. The key steps and the timeline of the typical immigration procedure applicable to a non-EU citizen intending to work in the territory of the Czech Republic in the context of an employment relationship with a local employer are as follows:

- Preparation stage: four to six weeks to obtain all documentation (the documents issued by foreign authorities must be apostilled/legalized and translated by a court sworn translator into Czech).
- Notification of the job vacancy to the Labor Office by the Czech employer: up to 30 days to complete administrative proceedings.
- Application of the non-EU citizen for an Employee Card or Blue Card shall be made at a Czech embassy or a consular post (in certain countries the waiting period for the appointment to file the application exceeds one month).

- The deadline for the authorities to decide on the application is 60 (resp. 90) days, however, it is not uncommon that the decision making process is prolonged to 90 or more days in exceptional cases.

In light of these administrative procedures, advanced planning is crucial.

France



France

France is a popular destination for holiday and business travelers alike. While brief visits generally pose no issue, coming to France to work or stay for a prolonged period of time means complying with strict procedures imposed by various authorities.

It is very important to apply for an appropriate visa in the foreign national's home country before coming to France. In-person attendance at the consulate is required in most cases.

Key Government Agencies

Long-term visa residence applications for work in France were substantially modified by a law dated 7 March 2016 on foreign nationals' entry, stay and work in France. The law came into effect on 1 November 2016.

A new talent passport (*passeport talent*) system aims to facilitate and expedite the process for the most qualified workers coming to France. In addition, French consulates have now become the sole interface for visa applicants prior to their arrival in France and some procedures are now simplified.

The scope of intervention of the Labor Department (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi* (DIRECCTE)) is now restricted to a few specific cases (e.g., change of status or authorization for short-stay work).

Current Trends

French immigration policy pursues four objectives: controlling migration flows; favoring integration; promoting French identity; and encouraging the development of partnerships.

Furthermore, France hopes to improve the immigration system for professionals. Therefore, in response to recruitment needs in certain economic sectors, the French government has decided to encourage

the immigration of professionals and make it easier for foreign nationals to enter France in selected professions.

Business Travel

Visa Waiver/Visa Exemptions

Visas are not required for citizens of the 28 European Union countries or European Economic Area countries (i.e., Norway, Liechtenstein and Iceland), Switzerland, Monaco and Andorra, to visit France.

In addition, the normal visa requirement is waived for trips of up to 90 days for citizens of the following countries: Albania, Andorra, Antigua, Argentina, Australia, Bahamas, Barbados, Barbuda, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Israel, Japan, Kosovo, Malaysia, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, San Marino, Serbia, Seychelles, Singapore, South Korea, Taiwan, United States, Uruguay, Vatican and Venezuela. Also included are holders of passports from the Former Yugoslav Republic of Macedonia, the Hong Kong Special Administrative Region of the People's Republic of China and the Special Administrative Region of Macau of the People's Republic of China, the British Overseas Territories, and holders of a valid residence document in France.

Short-term Visas (Less Than Three Months)

“C type” visa common to all Schengen countries (*visa de court séjour type C*)

In general, and subject to the visa waiver described above, foreign nationals must obtain a visa from the French consulate in their country of residence prior to coming to France, even for a short visit.

Applicants should apply for a Schengen visa from the French consulate where the main travel destination is France. The Schengen

visa permits entry to France and also allows the individual to move freely within other countries in the Schengen Area.

The following countries are currently members of the Schengen Area: 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.

Schengen visas are not valid for travel to EU countries that are not members of the Schengen Area.

The visa is granted for a maximum period of 90 days in any 180-day period, and allows single or multiple entries. For the validity of the visa, a foreign national is authorized to stay in the Schengen Area for the period indicated on the visa.

The applicant must provide a passport valid for at least three months after the date of return to the country of origin (for a total of six months including the visa period), a return ticket, and evidence of sufficient financial resources and accommodation for their stay in France. In addition, travel insurance has been required since 18 October 2013. This insurance must provide for a minimum coverage of up to EUR 30,000 to cover any expenses that may arise in connection with the applicant's repatriation for medical reasons, urgent medical attention, or emergency hospital treatment. The travel insurance should cover the whole period of stay in the Schengen Area.

The start date for the authorized duration of stay is generally determined by the date stamped on the passport when crossing the border into France. In the absence of a stamp, the burden of proof will fall on the foreign national to demonstrate the actual date of entry into France (e.g., showing a travel ticket).

Employment Assignments

Intra-company Transfer (“ICT”)

Employees in this category are those who are already employed in a company of a group (the employee must show a minimum three-month period of prior service with the foreign employer before being sent to France) and who are assigned by the foreign employer within that group to a French company which is part of the same group.

Two different ICT secondment categories are provided by French law with different options offered within each category as follows:

1. Short-term ICT assignment (less than three months)

In the case of short-term assignments in the scope of intra-group mobility/ICT **of less than three months**, two different situations may arise:

- Employee coming to France only for a “business trip” (e.g., client meetings) but not intending to work for the French company: a Schengen visa is sufficient and no work authorization is required from the Labor Department.
- Employee coming to France to work for the French entity: work authorization is required from the Labor Department in addition to the Schengen visa. Pursuant to a decree of 28 October 2016, certain very specific categories of seconded employees may work in France for less than three months without a work authorization (e.g., participants in conferences, seminars, trade fairs and IT, management, finance, insurance and engineering audits and expertise).

Such employees should have remuneration equal to at least the French minimum wage (the “SMIC”) (currently EUR 1,498.47 gross per month for 2018) and must be at least equal to the minimum remuneration provided by the applicable collective bargaining agreement (“CBA”).

Employees falling under the above-described ICT category may be transferred to another Schengen Area member state to carry out their assignment, provided the total length of stay is reduced by the time already spent in the initial state. No additional resident visa will be required since the assignee already holds a Schengen visa. However, work authorization may need to be requested from the local labor authorities.

2. Long-term ICT assignment (more than three months)

- Long-stay visa equivalent to a residence permit (*visa long séjour valant titre de séjour* (“VLS-TS”))

A VLS-TS is valid only for employees seconded to France for a **four-month to one-year period**. The employee remains on the foreign company’s payroll.

The VLS-TS visa applicant must apply to the French consulate of his/her place of residence.

- Multi-annual card for an employee on secondment or “Assignee ICT” (*carte pluriannuelle détaché ICT*)

This residence permit concerns employees seconded to a French company of the same group for a temporary assignment. This residence permit is **valid for up to three years** (consistent with the length of the secondment) and is not renewable. It must be obtained in addition to a long-stay visa (*visa long séjour* (“VLS”)).

With this multi-annual card, there is no need to require a separate work authorization.

Such employees should have remuneration equal to at least the French minimum wage and must be at least equal to the minimum remuneration provided by the applicable CBA.

- Multi-annual talent passport card for an employee on secondment with a French employment agreement (*salarié en mission*)

This residence permit is **valid for up to four years** and is renewable. This must be obtained in addition to a VLS.

This multi-annual card is for foreign nationals who come to France in the scope of an intra-group assignment. In addition to the requirement to have a professional seniority of at least three months in the home company, these employees must have a French employment agreement with a company established in France.

Such employees should have remuneration equal to at least 1.8 times the French minimum wage (EUR 2,697.24 for 2018) and must be at least equal to the minimum remuneration provided by the applicable CBA.

All employers based outside of France seconding employees to work in France must submit a preliminary declaration of secondment to the labor authorities of the place of work before the start of the secondment (www.sipsi.travail.gouv.fr).

Employee Seconded in the Framework of a Service Agreement

This category concerns employees temporarily seconded to France by their foreign employer to a third party company for the performance of specific services (e.g., technical assistance) in the scope of a service agreement.

The secondment should not result in the employee's effective involvement in the daily running of the French host company's activities. In this case, employees can benefit from a residence permit (VLS-TS or multi-annual card), the validity of which depends on the duration of the service agreement.

Skilled Workers

In addition to the above, the Law of 7 March 2016, which entered into force on 1 November 2016, has created new talent passport cards

with a maximum duration of four years renewable. This must be obtained in addition to a VLS.

The main talent passport categories are the following:

1. Highly skilled workers (“EU Blue Card” (*Carte Bleue européenne*))

This category concerns foreign nationals employed under a French employment agreement in highly qualified positions for a period of at least one year with diplomas showing at least three years of university studies or professional experience of at least five years at a comparable level.

With the EU Blue Card, non-EU nationals and their families may enter and stay in France and visit other EU Member States.

Such employees should have remuneration equal to at least EUR 2,247.70 gross per month for 2018 and must be at least equal to the minimum remuneration provided by the applicable CBA.

2. Employee on secondment, with a French employment agreement (*salarié en mission*)

As described above.

3. Corporate representative

This category concerns corporate representatives of a company or establishment in France who are employees or corporate representatives within an establishment or company belonging to the same group.

Corporate representatives are required to obtain a visa to both reside and hold their positions in France. The applicant must earn a gross monthly compensation of at least EUR 4,480.41 per month (for 2018).

4. Employee of an innovative company

This category concerns foreign nationals who have obtained a diploma equivalent to at least a master's degree and will work for a company officially recognized in France as an "innovative company" as defined by the French Tax Code.

Such employees should have remuneration equal to at least twice the French minimum wage (EUR 2,996.94 for 2018) and at least equal to the minimum remuneration provided by the applicable CBA.

5. Researchers

This category concerns foreign nationals holding a diploma equivalent to at least a master's degree who intend to carry out research or teach at a university level, in the context of an agreement with a recognized public or private organization.

6. Setting up a commercial activity

This category concerns foreign nationals holding a diploma equivalent to at least a master's degree or demonstrating five years of professional experience at a comparable level who create a company in France, provided they demonstrate that the project is well prepared, feasible and funded by a EUR 30,000 investment as at 2017.

7. Innovative economic project

This category concerns foreign nationals who demonstrate by a clear business plan that they intend to launch an innovative project that is recognized by a public organization.

8. Economic/financial investor

This category concerns foreign nationals who carry out direct investment in France.

Regular Employees

In principle, new immigrants are not allowed to arrive and commence work in France. However, since French employers often face

difficulties in recruiting local employees who meet the requirements of the available positions, the labor authorities can take account of the employment market in France in each relevant sector. The employer should therefore set out the particular difficulties of finding employees in its sector.

In the event that an employer finds a non-EU employee who fulfills the relevant conditions, the employer could be asked to obtain clearance from the National Employment Agency. However, this clearance does not guarantee that the work permit application will be approved.

Training

Citizens of the EU/EEA are able to live and work in France without a visa. Therefore they are authorized to remain in France for training without securing a French visa.

Citizens of other countries must qualify for one of the visas set out in this chapter. In addition, non EU/EEA citizens will generally be required to hold a residence permit allowing them to work. An employment agreement must be first duly approved by the Labor Department. The application must then be submitted to the competent consulate.

Post-arrival Requirements

The employee and all family members will typically be required to appear in person to present their visa applications at a French consulate in their country of current residence. Once the employee and his/her family arrive in France, formalities must be undertaken with the competent immigration office (or *préfecture*) to start the process for the issuance of residence permits.

For assignments of less than three months, there are no post-arrival requirements.

For assignments of 4 to 12 months (VLS-TS), through the intra-company transfer process, all family members must regularize their

stay in France with the French Immigration Office (*Office Français de l'Immigration et de l'Intégration*) within three months after their arrival.

For assignments of more than 12 months, under a multi-annual card “*salarié détaché ICT*” or “*Passeport Talent – salarié en mission*,” the VLS issued should be granted for three months only for all members of the family to regularize their stay in France before the *préfecture* within two months after their arrival.

Once seconded in France, any change of address by non-EU nationals must be registered with the competent administration in France. If the new address is located in another geographical and administrative area (*département*), registration must occur with the *préfecture*; if in the same area, registration must occur with the local police department (*Commissariat de Police*).

A foreign employee may not convert from visitor status to work authorized status once in France.

Penalties for Non-compliance

The penalties for employing a foreign worker without an appropriate work permit are five years' imprisonment and a maximum fine of EUR 15,000 for the legal representative of the French employer company. In addition, the company itself may be fined EUR 75,000.

Additional penalties for non-compliance with the preliminary declaration of secondment may also apply in an amount of up to EUR 2,000 per employee on secondment and not more than EUR 4,000 for a repeated offense. The total amount of the fine may not exceed EUR 500,000.

Other Comments

After five years' residency in France, non-EU nationals can apply for a 10-year residence permit (*carte de résident*) if they have a good command of the French language and can prove that they have a regular business activity in France (e.g., as a corporate officer, regular

employee or otherwise) from which they derive sufficient income. They must also declare that they intend to reside in France for a long period or on a permanent basis. The non-EU spouse of an EU employee working in France may be entitled to obtain a 10-year residence permit. In contrast, the non-EU national who is a spouse of a French national can only receive a one-year residence permit, which is renewable once before obtaining a 10-year residence permit. This one-year residence permit allows the spouse to work.

The 10-year residence permit enables the holder to take any position in France. This permit is renewable and the holder can remain outside France for up to three years without losing the benefit of the permit.

The benefit can also be extended for an additional year under specific conditions.

Children of non-EU nationals residing in France must secure a residence permit (*titre de séjour*) after their 18th birthday for the same duration as their parent's permit if the parents do not have a residence permit as *avisiteur*.

Children of non-EU nationals born in a foreign country may apply for a DCEM document (*Document de Circulation pour Enfant Mineur*).

Children of non-French nationals born in France may apply for a TIR document (*Titre d'Identité Républicain*).

These documents enable the child to prove his/her identity, to travel freely in France and to prove that he/she has a regular domicile in France while traveling outside the country.

A non-EU national who changes address must notify the local police department or the *préfecture*.

French residents may be eligible to be naturalized and become French citizens after continuously residing in France for five years. Residency during the five-year qualification period may be achieved

by living in France under certain categories of valid residency (e.g., visitor, student, regular employee, or corporate executive).

Approval criteria includes assimilation into France (e.g., knowledge of the French language, integration into the French community), health (e.g., absence of a chronic condition), morality (e.g., no police record indicating an unlawful act in France or abroad), and an acceptable professional and financial profile.

Germany



Many people migrate to Germany each year. The reasons for leaving their home countries vary, but most foreign nationals come to Germany for employment, business or tourism purposes. To enter and reside in Germany, any non-European Economic Area national needs permission in the form of a residence permit for the purpose of the stay.

Key Government Agencies

Depending on their nationality and the purpose and length of their stay, foreign nationals may either require an entry clearance in the form of a visa or may enter Germany without a visa and apply for a residence permit within Germany.

When a foreign national is required to obtain a visa, the application is submitted to the German embassy (*Botschaft*) or consulate general (*Generalkonsulat*) at the applicant's place of residence abroad. Before issuing the visa, the German authority will involve the immigration office (*Auslaenderbehoerde*) responsible for the place of intended residence in Germany and the Federal Employment Agency (*Bundesagentur fur Arbeit*), if necessary, for approval. Approval from the Federal Employment Agency is required for most work and employment activities carried out in Germany.

Foreign nationals from a privileged or semi-privileged country that is party to a non-visa movement treaty signed by Germany or the EU may enter Germany without an entry clearance and may submit the application to the local immigration office directly (except for applications for the new ICT Permit, see further information below). The immigration office will internally involve the Federal Employment Agency as necessary.

Current Trends

According to the latest studies commissioned by the Federal Ministry of Economy, Germany is currently facing a lack of qualified employees, which costs German businesses billions every year. In

particular, there is a lack of skilled labor for positions such as technicians, as well as in the academic subjects of mathematics, information technology, natural science and technology. The federal government intends to deal with this deficit of specialists not only by launching a national campaign for better education, but also by facilitating access to the German employment market for foreign specialists in the areas sought after.

Currently, employees of certain occupational groups, as well as highly specialized employees, can obtain a residence permit for employment purposes without first having to go through the so-called “labor market check” by the Employment Agency.

Highly specialized employees may apply for an “EU Blue Card” which facilitates the applicant’s access to the German labor market and his move within the Schengen Territory.

Business Travel

Temporary Business Visitor

Except for nationals of non-privileged countries, business visitors are not required to obtain a visa or a residence permit if their stay does not exceed 90 days within a 180-day period.

Anyone who enters Germany as a business visitor is expressly barred from taking up employment and to do so is a criminal offense. A business visitor is defined as an individual who normally lives and works outside Germany and comes to Germany to transact business, to attend meetings and briefings, for fact-finding purposes, or to negotiate or conclude contracts with German businesses to buy goods or sell services. A business visitor must not intend to produce goods or provide services within Germany.

Short-term Visa (“Schengen Visa“)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Germany, and must apply for such visa at a German diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Austria, Belgium, 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 up to 90 days within a 180-day period.

Schengen Visas have to be applied for at the representation of the main destination of the intended travel or, where a main destination cannot be ascertained, at the representation of the country first entered into in the Schengen Area.

Employment Assignments

For most work and employment activities carried out in Germany, a residence permit for employment purposes must be requested. This will only be granted with the approval of the Federal Employment Agency. The residence permit for employment purposes allows a specifically designated foreign employee to carry out a specific job for a particular employer based in Germany. The residence permit will usually be limited to one year but can be extended if necessary. In most cases, the Employment Agency will only approve an employment application in Germany after carrying out a so-called “labor market check” in which it surveys whether:

- no adequately trained or qualified German or EEA personnel are available for the vacancy in question; the Employment Agency can insist on a four-week waiting period during which they will try to find personnel with German or other EEA-country citizenship who can fill the position, before they grant the approval

- the salary is comparable to that offered to resident workers in the same position
- the intended assignment (vacancy) is allowed to be filled by foreign nationals under the ordinance on employment of foreign nationals, which is a detailed catalog of possible qualifying professions

Intra-company Transfer

There are two options for intra-company transferees:

Personnel Exchange

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany may apply for their residence/work permits under simplified conditions provided that the intended assignment can be seen as part of a personnel exchange program for internationalization of the group. Furthermore, the assignment must be of crucial interest for the cooperation and development of the group or the company in the international market. It is essential that the employees are permanently employed by the company and that they possess a university diploma or similar level of education. Moreover, it is required that, from time to time, the company also sends skilled employees from Germany to other countries. A work-related residence permit under this provision can be granted for up to three years.

The approval of an intended employment like this has to be granted by a special labor authority (*Zentralstelle für Arbeitsvermittlung*) without a labor market check, which usually speeds up the application process considerably.

ICT Permit

Since August 2017, non-EU nationals can apply for an Intra-Company Transfer Permit for a secondment in Germany for more than 90 days (ICT-Karte). This ICT Permit is granted to managers, specialists or

trainees who are bound (and remain bound during their secondment) by a work contract with a non-EU entity belonging to the same group of companies which is established in the EU Member State to which they are seconded. An ICT Permit can be granted for up to three years for managers and specialists and up to one year for trainees. As stated above, it is not possible to file the application for an ICT Permit in Germany, even for nationals from privileged countries. The application for an ICT Permit **must be filed from outside of Germany**.

Service Delivery

Approval from the Employment Agency is not required for non-EEA employees working for an EEA company that provides its services to customers within Germany, if they are employed at the company's place of residence and if the assignment to Germany is temporary.

Skilled Workers

Senior Executives

No approval of the Employment Agency is required if the foreign national is:

- a chief executive officer with full power of attorney (*Generalvollmacht* or *Prokura*) as certified/verified by the German commercial register
- a member of the executive body of a legal entity (e.g., managing director of a GmbH)
- a partner and/or shareholder of a trading or commercial company with the power to represent the company

Highly Qualified Specialists

Highly qualified specialists may apply for a settlement permit that gives unlimited residence rights to them and their family members. Prior approval for the intended employment from the Employment

Agency is not required in these cases. Highly qualified persons include:

- scientists with special technical knowledge
- teaching or scientific personnel in prominent positions

EU Blue Card

Foreign employees with a university diploma acknowledged in Germany who earn a salary corresponding to at least two-thirds of the earnings ceiling of the statutory pension insurance (i.e., at least EUR 53,600 gross yearly salary as of 2019) may apply for a so-called “EU Blue Card.” The permit enables the holder not only to reside and work in Germany but, under specific conditions, also in the Schengen Territory. Under certain conditions, foreign nationals holding an EU Blue Card can be eligible for an unlimited settlement permit for Germany after a period of 33 months provided that, for the duration of the stay, contributions to the (statutory) pension scheme are paid. The foreign national can be eligible for a settlement permit after 21 months at the earliest, if German-language skills at B1 level can be ascertained.

Specific Assignments

For some categories of visitors, the Employment Agency’s approval is not required for the issuance of a residence permit for employment purposes, provided the foreign national retains residency outside of Germany. Such privileged categories are, for instance:

- students of foreign universities or vocational schools for a holiday job placed by the Employment Agency (for a temporary limitation of 90 days within a 12-month period)
- employees of a company whose business is in a country outside of Germany who will install or set up a “ready-to-use” machine or a (computer) system delivered by their foreign company, or who

will provide training for the use of such machine or system and the maintenance or repair thereof

An individual is only eligible for the latter exemption if it can be shown that the company has sold a product or computer system that its employee will implement in its customer's office, that some installation or training is necessary and in case the employee's stay does not exceed a duration of 90 days within a 12-month period. The exemption from the Employment Agency's approval only applies if the employer has notified the authority prior to the commencement of work.

Training

The German Immigration Act does not provide a specific visa category for foreign employees who seek on-the-job training in Germany. In principle, training is considered as a kind of employment from the authorities' perspective; therefore, trainees must apply for a residence permit for employment purposes. Exemptions may apply if the duration of the inter-company training will not exceed 90 days within a 12-month period, but only if the major focus is on the training of the foreign employee and not on his employment. There may also be some privileges for specific occupational groups, such as information technology specialists or in the case of an international personnel exchange.

Post-Entry Procedures

In cases where the foreign individual intends to stay in Germany for longer than three months, he will need to register his domicile in Germany at the local registration office (*Einwohnermeldeamt*) in the city where he resides upon presentation of the lease contract.

After the individual's move to Germany, he has to schedule an appointment with the responsible immigration office at the place of residence to apply for the work-related residence permit in person and to receive a temporary permit. The individual is not allowed to start

working before he has received the (temporary) permission to work. However, if the foreign individual has applied to a German embassy or consulate for a work-related visa prior to his entry to Germany, he may be allowed to work with this visa even before the appointment with the immigration office, provided that the visa provides for a corresponding work permission.

Entry Based on International Agreements

Citizens of EEA countries are, in general, free to reside and work in Germany without any prior formalities. Family members of an EEA national (who are not themselves EEA nationals) are required to obtain an “EEA Family Permit” to accompany or join an EEA national who is exercising his rights to reside in Germany. EEA nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization first. Their only obligation is to register their local address after moving to Germany.

Besides Germany, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

According to treaties between Switzerland and the EU, Swiss nationals enjoy immigration rights equal to those of nationals from EEA countries as well.

Other Comments

There are privileges for additional groups. For example, foreign students may stay in Germany for 18 months after the successful completion of their exams for the purpose of looking for work.

Foreign nationals may apply for a settlement permit, which gives unlimited residence rights to the applicant and the family if the foreign national has held a fixed-term residence permit for at least five years and fulfills further requirements (e.g., contributing to the German (statutory) pension scheme for at least 60 months, proving maintenance and sufficient knowledge of the German language, etc.). The holder of an EU Blue Card may apply for a settlement permit after 33 months if the foreign national can provide proof of his German-language skills at B1 level.

Spouses and dependent children may accompany the holder of a work-related residence permit. They are eligible to receive a residence title for family reunion purposes. These family members may stay for the same period of time as the applicant. However, the applicant must provide evidence of the ability to financially support all family members during their period of stay in Germany. Family members who receive a residence title for family reunion purposes are also entitled to work without restriction.

Foreign nationals who want to become naturalized German citizens must legally reside in Germany for at least eight years and must fulfill some other preconditions. Such naturalization generally requires that the foreign national is established in Germany (i.e., is able to sustain him and his family without the help of welfare benefits or unemployment assistance), has no criminal record and possesses adequate command of the German language. Furthermore, applicants are generally requested to give up their present citizenship. In this category, naturalization is generally not possible from abroad.

The same requirements apply for a foreign national who is the spouse or legal partner of a German citizen and wants to become naturalized, provided that they have been married for two years and have been residing in Germany for at least three years.

Hong Kong



On 1 July 1997 Hong Kong became a Special Administrative Region of the People's Republic of China ("PRC"). Although part of the PRC, Hong Kong continues to operate under a common law legal system that is distinct from other parts of the PRC.

Key Government Agencies

The Hong Kong Immigration Department (HKID) is responsible for all immigration-related matters in Hong Kong. It monitors and controls the movement of people in and out of Hong Kong by land, sea and air. The HKID is also responsible for processing applications for visas, right of abode (i.e., permanent residency), naturalization, Hong Kong travel documents, Hong Kong identity cards, and registrations of births, deaths and marriages.

Current Trends

Expanded Visitor Visa Scope to Cover Foreign Speakers and Presenters

The HKID recently expanded the scope of permitted business-related activities for foreign visitors to include an exception for speakers/presenters.

A foreign visitor ("speaker") may now attend an event to deliver a speech or presentation subject to three conditions without obtaining a visa. If any one of the following conditions is not met, an employment visa will be required:

- the speaker will not be remunerated (either locally or overseas) for speaking/presenting at the event (except for the provision of accommodation, passage, meals relating to the event, or the reimbursement of such expenses)
- the duration of the event (not the speaker's length of stay) will not be longer than seven days

- the speaker will only attend one single event to deliver speeches/presentations during each period of permitted stay for the same group of attendees A single event can last more than one day. This condition will not be met if the speaker will present at different locations during the same trip, even if the presentations are on the same subject matter.

If the conditions are not met, the responsibility to obtain an employment visa ultimately lies with the speaker, who would usually be sponsored by the Hong Kong event organizer.

Dependant Visa Eligibility for Same-sex Spouse

The HKID's dependant visa policy has been judicially reviewed in the case of *QT v. Director of Immigration [2017] HKEC 2051*. In this landmark decision, a lesbian expatriate won an appeal against the HKID's refusal to grant her a dependant visa. The court of appeal unanimously held that the refusal amounted to indirect discrimination based on sexual orientation, in breach of Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights. The Director of Immigration lodged an appeal against the decision and the case is set to be heard at the court of final appeal on 5 June 2018.

Pending the decision of the court of final appeal, the HKID has not announced any policy change to the existing dependant visa requirements. As of April 2018, the adjudication of a same-sex spouse's dependant visa application remains at the discretion of the HKID. In the event that the court of final appeal affirms the court of appeal's decision, the HKID will likely update the dependant visa policy.

The QT case, along with a recent same-sex benefits decision in *Leung Chun Kwong v. Secretary for the Civil Service and another 28/04/2017 HCAL 258/2015* shows a shift towards greater recognition and protection of LGBT rights in Hong Kong.

Business Travel

Visa Waiver/Visa Exemptions

Citizens of over 160 countries are not required to obtain visas as tourists or business visitors if they are staying in Hong Kong for a limited period of time. Their permitted period of stay depends on their country of citizenship. Citizens of the following countries may visit Hong Kong visa-free for the period of stay shown below:

Country	Period of Stay in Days
Australia	90
Austria	90
Bulgaria	90
Canada	90
Finland	90
France	90
Germany	90
Greece	90
India	14 (subject to pre-arrival registration)
Ireland	90
Italy	90
Japan	90
Netherlands	90
Philippines	14
Russian Federation	14

Country	Period of Stay in Days
Singapore	90
Spain	90
Saint Kitts and Nevis	90
Sweden	90
Switzerland	90
Thailand	30
United Kingdom	180
United States	90

The HKID's regularly updated list of visa-free countries and countries requiring visitor visas is published at:

<http://www.immd.gov.hk/en/services/hk-visas/visit-transit/visit-visa-entry-permit.html>.

Visitor Visa

Citizens from non-visa waiver countries should apply for visitor visas from the nearest Chinese diplomatic and consular mission in their country of citizenship or residence, or directly with the HKID by post.

PRC nationals residing in mainland China must apply for and secure appropriate entry permits and exit endorsements through relevant PRC authorities in mainland China prior to traveling to Hong Kong. They may apply through an authorized travel agent in the PRC to visit Hong Kong on group tours. Mainland Chinese residents from certain provinces may also directly apply through relevant PRC authorities in mainland China to visit Hong Kong under the Individual Visit Scheme.

Alternatively, PRC nationals traveling on PRC passports who transit through Hong Kong to and from another country may be granted a

stay of seven days without the need to obtain a prior entry visa to Hong Kong or entry permit and exit endorsement from the PRC, provided the usual immigration requirements are met, including possession of a valid entry visa for the destination country and a confirmed onward booking.

All visitors are required to have adequate funds to cover the duration of the stay without working and to hold onward or return tickets.

Non-Visitors

Foreign nationals who wish to enter Hong Kong, other than as tourists or business visitors, may consider applying for one of the following visas based on the eligibility criteria described below (please note that special guidelines apply to PRC nationals):

- training
- employment
- employment (investment)
- quality migrant
- dependent

Employment Assignments

An employment visa is required for a foreign national to work in Hong Kong, regardless of (i) whether the foreign national is paid or unpaid for services rendered in Hong Kong; (ii) the locality of the employer; and (iii) the duration of the employment or assignment in Hong Kong. Failure to do so is an offense under the Hong Kong Immigration Ordinance.

Extensions of the employment visa are available and are granted in increments of three years. The employment visa is employer specific. A foreign national granted an employment visa is only authorized to work for the sponsoring employer in Hong Kong. If the foreign national

wishes to work for another employer, notwithstanding the fact that the visa has not expired, prior approval is required from the HKID. If an employment visa holder is required to work other than for the approved employer, the foreign national must first obtain side-line approval from the HKID. This requirement is noteworthy in cases where a foreign national may be required to supervise or engage in activities for several related companies in Hong Kong.

Upon termination, the sponsoring employer in Hong Kong must inform the HKID. The employer may be required to bear the cost of the foreign national's repatriation.

General Employment Policy ("GEP")

A foreign national who possesses special skills, knowledge or experience that is of value to and not readily available in Hong Kong may apply for an employment visa under the GEP.

The HKID assesses each employment visa application on its own merits. An application may be favorably considered if:

- the business sponsoring the employment visa is beneficial to the economy, industry and trade of Hong Kong
- the foreign national possesses skills, knowledge and experience not readily available in Hong Kong
- the position cannot be easily filled by someone locally in Hong Kong

Nationals of Afghanistan, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam are not eligible for employment visas under the GEP. Employment visas for PRC nationals residing in mainland China are discussed below.

Admission Scheme for Mainland Talents and Professionals (“ASMTP”)

Despite Hong Kong’s reversion to the PRC in 1997, the entry of PRC nationals into Hong Kong remains restrictive. For example, a PRC national residing in mainland China traveling to Hong Kong from China as a visitor or resident is required to carry an Exit-entry Permit for Traveling to Hong Kong and Macau (“EEP”) with the appropriate exit endorsement issued by the Public Security Bureau (PSB) in mainland China. Restrictions on the use of available visa categories by PRC nationals are noted in various sections in this chapter.

Employment visa applications for PRC nationals are evaluated under the ASMTP. The eligibility criteria for such applications, as well as training visas and employment (investment) visas for PRC nationals, are applied quite strictly. Document requirements tend to be more extensive than for other foreign nationals.

The sponsoring entity should submit the application directly to the HKID on behalf of the PRC national. Upon application approval, the HKID will issue an entry permit. The PRC national must present the entry permit to the PSB in mainland China and apply for an EEP and a relevant exit endorsement before traveling to Hong Kong.

Immigration Arrangements for Non-Local Graduates (“IANG”)

Foreign nationals and PRC nationals who have completed tertiary education in full-time and locally accredited programs in Hong Kong (e.g., bachelor’s degree or higher level studies) (“non-local graduates”) may remain in or re-enter Hong Kong for employment after graduation.

Non-local graduates who wish to remain and work in Hong Kong within six months of their graduation date may submit their IANG visa application to the HKID without first securing an offer of employment. Non-local graduates who wish to re-enter and work in Hong Kong six

months after their graduation date are required to secure an offer of employment at the time of application.

Non-local graduates who have obtained their visa under the IANG are free to take up and change employers during their permitted stay without the need to seek prior approval from the HKID.

Nationals of Afghanistan, Cuba, Laos Democratic People's Republic of Korea, Nepal and Vietnam are not eligible for visas under IANG.

Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents ("ASSG")

The ASSG is available to foreign nationals aged between 18 and 40 who were born overseas (i.e., not in the PRC, Hong Kong, Macao SAR or Taiwan) to at least one parent who is a Hong Kong permanent resident at the time of application and was a Chinese national who had settled overseas at the time of the foreign national's birth.

Eligible foreign nationals must also have a good educational background and proficiency in either Chinese (written and spoken Mandarin or Cantonese) or English. Applicants need not secure an offer of employment prior to application.

Foreign nationals who have obtained their visas under the ASSG are free to take up and change employers during their permitted stay without the need to seek prior approval from the HKID.

Nationals of Afghanistan, Cuba, Laos Democratic People's Republic of Korea, Nepal and Vietnam are not eligible for visas under the ASSG.

Other Entry Visa Options

Employment (Investment) Visa

A foreign national investing and starting a business in Hong Kong may apply for an employment (investment) visa. The business should be beneficial to the local economy, commerce and industry of Hong

Kong, usually shown by the creation of jobs. Further, it is important to show that the foreign national has the expertise and resources to carry on and finance the operation of the business.

Nationals of Afghanistan, Cuba, Laos Democratic People’s Republic of Korea, Nepal and Vietnam are not eligible for employment (investment) visas. Employment (investment) visas for PRC nationals residing in mainland China are discussed in the previous section (see “Employment Assignments – Admission Scheme for Mainland Talents and Professionals“ above).

Quality Migrant Visa

The Quality Migrant Admission Scheme is available for highly skilled or talented persons. Applicants need not secure an offer of employment prior to application. There are two types of points-based assessments: the General Points Test and the Achievement-based Points Test.

The General Points Test allocates marks according to the following five factors:

Factors	Maximum Points
Age	30
Academic/Professional Qualifications	70
Work Experience	55
Proficiency in Chinese and English	20
Family Background	20
Total Points	195

Applicants must achieve above a minimum mark set by the HKID. The minimum mark is subject to change.

The Achievement-based Points Test is for individuals with exceptional talent or skills, requiring receipt of awards of exceptional achievement (e.g., Olympic medal, Nobel prize) or proof that their work has been recognized by industry peers or has significantly contributed to the development of the individual's field (e.g., lifetime achievement award from an industry). Applicants must obtain the maximum mark of 195 or face refusal.

High-scoring applicants assessed under either the General Points Test or Achievement-based Points Test will be short-listed for further selection by the Advisory Committee, comprising official and non-official members appointed by the Chief Executive of Hong Kong. The Advisory Committee meets quarterly to assess applications based on the prevailing socio-economic needs of Hong Kong, the sectoral mix of candidates, and other relevant factors. Applicants who are allotted a place in the scheme quota will be published on the HKID's website and issued with an Approval-In-Principle letter. After document verification, successful applicants will be granted Formal Approval and may sponsor their spouse and minor children for dependent visas.

Nationals of Afghanistan, Cuba, Laos Democratic People's Republic of Korea, Nepal and Vietnam are not eligible under the Quality Migrant Admission Scheme.

Dependent Visa

Foreign nationals not subject to a limit of stay in Hong Kong (i.e., foreign nationals who are Hong Kong permanent residents, residents with the right to land, or on unconditional stay), may sponsor their spouse, unmarried biologically related or formally adopted dependent children under the age of 18, and dependent parents aged 60 and above to take up residence in Hong Kong as their dependents.

Foreign nationals and PRC nationals admitted to Hong Kong to take up employment, investment, or training, or to study in full-time undergraduate or post-graduate programs in local degree-awarding institutions, or as quality migrants, may sponsor their spouse and

unmarried biologically related or formally adopted children under the age of 18 for dependent visas.

Dependent visa holders are free to study and take up employment in Hong Kong without the need to apply for separate visas (except for dependents sponsored by student visa holders), so long as their principal sponsors maintain their resident visa status, or if their sponsors are not subject to a limit of stay in Hong Kong.

Under current immigration policy, common law spouses, as well as children born under surrogacy, are not eligible for dependent visas but may be able to obtain prolonged visitor visas. The success of a prolonged visitor's visa application is at the sole discretion of the HKID.

PRC nationals residing in mainland China (except for those whose sponsors hold employment visa, employment (investment) visa, training visa, student visa, and visas under the Quality Migrant Admission Scheme); former mainland Chinese residents residing in Macau who have acquired residence in Macau through channels other than the One-way Permit Scheme; and nationals of Afghanistan and the Democratic People's Republic of Korea) are not eligible for dependent visas.

Hong Kong Identity Card

Once a foreign national (including a PRC national) has secured the appropriate resident visa, registration for a Hong Kong identity card with the Registration of Persons Office is required if the foreign national is permitted to reside in Hong Kong for more than 180 days.

Hong Kong residents aged 11 and above must register for a Hong Kong identity card. Hong Kong residents aged 15 or above must carry a Hong Kong identity card at all times. Failure to do so is an offense under the Immigration Ordinance.

Training

Training visas are typically granted to foreign national students and intra-company transferees to acquire skills, knowledge or experience in Hong Kong otherwise not available in their country of residence. A training visa is valid for a maximum period of 12 months and is not renewable. At the end of the training, those foreign nationals are expected to apply their knowledge gained in Hong Kong to their studies or work overseas.

Nationals from Afghanistan, Cuba, Laos, the Democratic People's Republic of Korea and Nepal are not eligible for training visas. Training visas for PRC nationals residing in mainland China are discussed in the previous section (see "Employment Assignments – Admission Scheme for Mainland Talents and Professionals" above).

Other Comments

Foreign nationals may be eligible to apply for right of abode (permanent residence) after maintaining continuous ordinary residence in Hong Kong for seven years or more.

A Chinese national who is a Hong Kong permanent resident and holder of a valid Hong Kong permanent identity card may apply for a Hong Kong SAR passport. Naturalization to become a Chinese national is possible under strict criteria. However, because the PRC does not recognize dual nationality, naturalization applicants must relinquish all foreign citizenship(s) prior to acquiring Chinese nationality.

Hungary



Hungarian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Usually, there are several possible solutions for entry and stay in Hungary that are worth considering during the planning phase of Hungarian residence.

Hungarian immigration law also provides various exemptions to simplify the residence and employment of foreign nationals who are executive employees of Hungarian entities, or international companies sent to Hungary on secondment, scientific researchers, students, etc. As a result of this, foreign nationals can easily choose the form of their residence and employment in Hungary that fits as close as possible to their expectations and needs.

Key Government Agencies

Depending on their nationality, as well as the purpose and length of their stay in Hungary, foreign nationals may either require permission to enter the country by obtaining a specific visa or residence permit, or they may enter Hungary without a visa.

If the foreign national is required to obtain a visa, the application must be processed in accordance with the Visa Code adopted by the European Parliament and the Council in July 2009 (“Visa Code”). This regulation aims to include European legislation on visa matters in a unified document and, thus, increase transparency, enhance the rule of law and the equal treatment of visa applicants, and harmonize the rules and practice of Schengen countries where common visa policy is applicable.

The Visa Code involves all the currently effective provisions applicable to the Schengen Visa. It defines the common rules on the conditions and procedure of issuing a visa as well as the conditions for obtaining a visa. The Visa Code also harmonizes the rules on processing applications and orders.

Pursuant to the Visa Code, the visa application must be submitted generally to the Hungarian embassy (*Nagykövetség*) or consulate (*Konzulátus*) at the place of residence abroad. The visa application may also be processed by various forms of cooperation of Member States, such as limited representation, co-location, common application centers, recourse to honorary consuls and cooperation with external service providers.

The application for a residence permit is forwarded to the regional office of the Office of Immigration and Asylum (*Bevándorlási és Menekültügyi Hivatal*), which is authorized to issue such permits in Hungary.

The issuance of the visa or the residence permit is only a preliminary requirement for entry; however, it does not ensure automatic entry for foreign nationals. At the Hungarian border, third-country nationals must demonstrate to the border guard officer that specific requirements set out in the 562/2006/EC regulation are met (i.e., they hold a valid passport and visa; justify the purpose of their stay; the cost of their living in Hungary is covered by sufficient financial resources; they are not persons for whom an alert has been issued in the Schengen Information System (“SIS”) for the purposes of refusing entry; and they are not considered to be a threat to public policy, internal security, public health or the international relations of Hungary).

If gainful activity is the purpose of a foreign national's entry into Hungary, a work permit or joint work and residency permit (“joint permit”) is required provided that the performance of said gainful activity is not exempted from work permit requirements. Usually no work permit is required if the foreign national is an executive officer or a member of the supervisory board of a Hungarian company operating with foreign participation.

Current Trends

Foreign nationals from a privileged or semi-privileged country for which the European Community has abolished or simplified the visa requirement may enter Hungary without a visa and may submit the application for a residence permit/joint permit directly to the regional office of the Office of Immigration and Nationality. Notwithstanding this, work cannot be commenced until a work permit/joint permit has been issued.

Simultaneously with European integration, Hungary developed a unified immigration system of regional immigration offices that are responsible for immigration issues of any kind. Hungary joined the EU on 1 May 2004, and became a party to the Schengen Treaty effective as of 31 December 2007. These milestones in Hungary's integration had substantial impact on Hungarian immigration law as applicable law has been harmonized with EU law and the specific provisions applicable to EEA citizens has been introduced to the Hungarian legal system.

Hungary has developed extensive business and commercial relations within Europe, as well as with Asia and other countries, in the last two decades. As a consequence of this, there is a significant demand on flexible immigration rules that decrease the bureaucratic burdens for business travelers as well as foreign nationals who are employed by Hungarian entities or international corporations, but sent to Hungary for work.

Although, in the case of short-term stay in Hungary, foreign nationals from non-privileged countries are still obliged to obtain a visa, the visa is issued within 15 calendar days. This period may be extended to 30 calendar days when further scrutiny of the application is necessary, or in cases where a diplomatic delegation processes the visa application and certain authorities of Hungary are consulted. In exceptional situations where additional documentation is necessary, the period may be extended to a maximum of 60 calendar days.

For long-term residence in Hungary, non-EEA nationals are required to obtain a residence permit/joint permit. Immigration law provides various categories of residence permit depending on the purpose of stay in Hungary (e.g., performing work, intra-group transfer, studying, family reunification, scientific research, visiting, healthcare, performing voluntary activities, assignment within a group of undertakings, job-seeking, starting a business, student mobility, training, research); therefore, applicants can easily choose a category that accommodates their stay in Hungary. In addition, applicable law also provides specific provisions on foreign nationals who intend to work seasonally or whose residence is related to the care or study of the Hungarian language, culture, or family relations, except in the case of family reunification.

The current practice of the labour center and the immigration bureau that third country citizens seconded within the same group of undertaking may only obtain a residency permit in Hungary if they hold the position of executive, expert or trainee, creates some practical difficulties for some applicants. If secondees do not hold any of the above positions, or if the secondment is not intra-group, then a local employment contract with the Hungarian receiving entity is necessary to obtain a work and residency permit.

As of 1 January 2019, family members of EEA nationals (who are not themselves EEA nationals) will be required to obtain a residency permit to reside and also a work permit if they want to work in Hungary. (Until 1 January 2019, they enjoyed the same rights as EEA citizens.)

Summary procedures are available in certain limited scope of immigration procedures. That said, if the background facts and documents of an application are clear and the administrative deadline for the procedure is less than two months or 60 days, the immigration bureau grants a decision on the permit application within eight days. This may accelerate certain types of residency permit procedures in Hungary.

In line with Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, the Hungarian Office of Immigration and Nationality issues EU Blue Cards to support the work and residence of third-country nationals with especially high skills.

Simultaneously, with the increased number of foreign nationals employed in Hungary, there is a significant growth in the number of foreign nationals employed illegally. In the scheme of the fight against illegal employment, applicable law has been amended to enhance the rigor of the immigration rules and, consequently, the employers of foreign nationals are increasingly subjected to penalties and other sanctions in Hungary for unauthorized employment.

As of 1 January 2019, residency permit applications may be submitted electronically, unless the application is filed with the Hungarian Embassy or Consulate abroad.

At the date of this submission, it is not clear how UK citizens will be treated from an immigration law perspective after a potential Brexit.

Citizens from the European Economic Area

Citizens of EEA countries are, in general, free to reside and work in Hungary without any prior formalities. Family members of an EEA national (who are not themselves EEA nationals) will be required to obtain a residency permit to reside and also a work permit if they want to work in Hungary. EEA nationals and their EEA national family members are free to work for a company or be self-employed without the need to obtain a work permit. If EEA nationals stay for longer than 90 days within any 180-day period, they are required to notify the competent regional office of the Office of Immigration and Asylum of their residence in Hungary no later than on the 93rd day of their stay in Hungary and the competent office will issue a registration card certifying the notification.

Besides Hungary, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

According to treaties between Switzerland and the EU, Swiss nationals enjoy immigration rights equal to those of nationals from EEA countries as well.

EEA citizens and family members who have resided legally and continuously within the territory of Hungary for five years have the right of permanent residence. However, in certain cases, less than five years' residence is required for EEA citizens who have been residing in Hungary with the purpose of gainful activity (e.g., more than three years is required, if the EEA citizen performing a gainful activity is entitled to receive pension upon termination of his/her employment). The right of permanent residency must be terminated if such EEA citizen spends more than two years outside of Hungary or if such EEA citizen is subject to residence restriction in Hungary.

Business Travel

Short-term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Hungary and have to apply for their visa at the Hungarian diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for a maximum period of 90 days within any 180-day period.

Schengen Visas must be applied for at the representation of the country being the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen Area.

Long-term Visa

Foreign nationals may enter and stay in Hungary for a period exceeding 90 days within any 180-day period if they meet the specific requirements (e.g., justify the purpose of their stay, have sufficient financial resources to cover their healthcare services and similar) included in the Third-Country Nationals Act.

The applicable law distinguishes between the following type of visas and permits:

- a visa for a period longer than 90 days within any 180-day period (i.e., a visa for acquiring a residence permit; a seasonal employment visa, for single or multiple entry and for the purpose of employment for a period of a minimum of 90 days within any 180-day period but no longer than six months; or a national visa may be issued under specific international agreement, for single or multiple entry and for a period of longer than 90 days within any 180-day period)
- a residence permit (which might be either a regular type of residency permit or a joint residency permit)
- an immigration permit
- a permit for settling down
- an interim permit for settling down
- a national permit for settling down
- an EC permit for settling down
- an EU Blue Card

Residence Permit

Based on the residence permit, a foreign national is entitled to stay in Hungary for longer than 90 days within any 180-day period. If the purpose of the stay is the performance of work, the applicant intends to conclude a local employment contract with the Hungarian receiving entity, and the applicant is not subject to a work permit exemption, a residence permit must be applied for in a joint permit procedure; the joint permit will permit both work and residency in Hungary.

Third country citizens seconded within the same group of undertaking may only obtain a residency permit in Hungary if they hold the position of executive, expert or trainee. If secondees do not hold any of the above positions, or if the secondment is not intra-group, then a local employment contract with the Hungarian receiving entity is necessary to obtain a work and residency permit.

In addition to the gainful activities, under specific circumstances, a residence permit may be issued for the purpose of family reunification, studying, scientific research, job-seeking, training, starting a business, student mobility, etc.

Settlement Permit

The applicable law specifies three types of settlement permits: (i) an interim settlement permit; (ii) a national settlement permit; and (iii) an EC settlement permit. However, the Third-Country Nationals Act also acknowledges settlement permits that were issued prior to the Third-Country Nationals Act coming into force.

A third-country national intending to settle down in Hungary may obtain: (i) an interim settlement permit; (ii) a national settlement permit; or (iii) an EC settlement permit, if specific requirements are satisfied (e.g., expenses related to the third-country national's living and accommodation in Hungary is covered or similar) of the Third-Country Nationals Act.

A third-country national, holding an EC settlement permit granted by an EU Member State in accordance with Council Directive 2003/109/EC of 25 November 2003, can obtain an interim settlement permit if the purpose of stay in Hungary is: (i) to pursue gainful activities or to work, with the exception of seasonal employment; (ii) to engage in studies or vocational training; or (iii) for some other certified reason. Such permit can be obtained for five years, but occasionally it can be extended for another five years.

A national settlement permit may be issued to third-country nationals holding a residence visa or residence permit, or an interim settlement permit, and provided the particular person satisfies the specific requirements included in the Third-Country Nationals Act.

An EC permit for settling down may be issued to a third-country national after he/she has lived legally for at least five years in Hungary prior to filing the application.

EU Blue Card

The Hungarian Office of Immigration and Nationality issues EU Blue Cards to support work and residence of third-country nationals with especially high skills. An EU Blue Card is a work permit and a residence permit and is issued for at least one year; it is valid for a maximum of four years and can be extended for an additional four-year period.

Spouses and Children

Hungarian immigration law provides specific provisions on the residence permits of spouses and other close relatives of foreign nationals holding a residence permit, a settlement permit or other valid long-term visa. These specific provisions aim to facilitate the cohabitation of families during their residence in Hungary.

Training

There is category residency permit exclusively for training. The residence permit may be valid for six months or for the shorter period of the training. Trainees may apply for a residence permit for training on the basis of a training agreement between the trainee and the approved host entity.

Employment by a Hungarian Entity

EU nationals are not required to obtain a work permit or visa to stay or work in Hungary. They are subject to registration requirements only. Similar treatment applies to citizens of Norway, Liechtenstein, Iceland and Switzerland. However, the employer is required to notify — not later than on the commencement date of employment — the competent labor center of the employment of an EEA national without a work permit. Furthermore, the employer must also notify the labor center on the termination of such employment.

Other foreign nationals may be employed, provided that they have been granted (i) a work permit, (ii) a joint permit, depending on their length of stay in Hungary, or (iii) a residence permit.

Permit for Assigned Managers, Experts and Trainees

Third-country managers, experts and trainees assigned to a Hungarian receiving enterprise must within the same group of undertakings obtain a special type of residency permit tailored to assignments within the group of undertakings. The process deadline is 60 days and no manpower procedure is to be conducted.

Work Permit and Joint Permit

As a general rule, a work permit must be obtained if a foreign national would like to perform work in Hungary for less than 90 days within any 180-day period. A joint permit (including the approval of the labor center and a residency permit) is necessary if a foreign national would

like to perform work in Hungary for a period exceeding 90 days within any 180-day period.

If a work permit or a joint permit is required, the Hungarian entity for which the foreign employee will work must initiate a manpower procedure as a preliminary step. This means that the applicant (employer) must submit a valid manpower request to the regional branch of the labor center. The purpose of this procedure is to examine whether the position to be opened for the third-country national can be filled by a Hungarian national.

A manpower request form and a data sheet of the Hungarian entity must be submitted for a manpower request.

After a valid manpower request has been filed:

- A work permit application must be filed with the labor center if the foreign national would like to perform work in Hungary for less than 90 days within any 180-day period.
- If a foreign national would like to perform work in Hungary for a period exceeding 90 days within any 180-day period, the manpower procedure must be followed by a joint permit application to be filed with the immigration bureau. The immigration bureau will make, as a one-stop shop, an official inquiry to the labor center and send the application for a work permit to the labor center. In this case, the deadline for deciding on the joint permit application shall be 70 days. If issued, the joint permit will be valid for a maximum of two years which may be extended by up to two additional years at a time.

Under certain circumstances, the work permit/approval of the labor center may be issued/obtained in a simplified procedure, i.e., there is no need to go through a manpower request procedure when submitting the work permit application to the labor center/the joint permit application to the immigration bureau. The following circumstances may give rise to a simplified procedure:

- if one or more foreign firms (or persons) have a majority ownership interest in the company applying for the work permit, provided that the total number of foreign nationals to be employed by the applicant in one calendar year does not exceed 10% of the total workforce of the company on the last day of the quarter preceding the date of the application
- if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreign national for installation work, or to provide guarantee, maintenance or warranty-related activities for more than 15 consecutive working days (however, no work permit is required at all, if the foreign nationals are to be employed by the applicant for less than 15 consecutive working days occasionally)
- if the foreign individual is exempt from work permit requirements, as a residency permit must be applied for

Rather than providing an exhaustive list of each category exempted from the requirement of the work permit, below is a summary of those categories that are relevant for business travelers and foreign nationals sent by multinational corporations for the performance of work in Hungary.

No work permit is required for the performance of work by a foreign national:

- who is an executive officer or a member of the supervisory board of a Hungarian company operating with foreign participation
- who is the head of the branch of the representative office of an enterprise having its registered seat abroad based on international treaties
- who performs work related to the installation, warranty, and other repair activities based on a contract concluded with a foreign

enterprise, provided that such activity does not exceed 15 working days per occasion

- who performs scientific, educational or art-related work for a period of no more than five working days per calendar year

Other Comments

There are additional authorizations that may apply to specific cases, such as work permit exception and residence authorizations that apply to professors or other university lecturers as well as researchers performing research or educational activities; students sent to Hungary by international student organizations for vocational trainings; sportspeople; students with a Hungarian student card for performing work in Hungary; foreign nationals employed in Hungary in the scheme of the EU Erasmus+ program; or the reunification of families.

The issuance of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions without the opportunity to appeal the decision; however, the applicant may submit a complaint to the head of the embassy or consulate if he/she disagrees with the process of rejecting their visa application. The applicant may appeal within five working days, if his/her application for a residence permit was rejected. Since the duration of the general application process is 15 calendar days, which can be prolonged to up to 30 calendar days, the best practice is to visit the consulate or contact the immigration authorities to clarify any issues that may arise in connection with the application. This can prevent applications being rejected due to formal or material deficiencies of the application documents.

Republic of Indonesia



There are several visas that allow foreign nationals to enter Indonesia for business purposes.

To work in Indonesia, foreign nationals must be sponsored by an Indonesian entity that will need to obtain the appropriate work permit. In addition, the foreign national will need to obtain a Limited Stay Visa.

It should be noted that certain positions are not open for foreign nationals working in Indonesia. In addition, the Indonesian government has issued several regulations with regard to the specific positions that foreign nationals can hold in certain sectors.

Key Government Agencies

Visas are generally issued by the Embassy or Consular Office of the Republic of Indonesia in accordance with the decision of the Director General of Immigration (“DGI”) on behalf of the Minister of Law and Human Rights (“MOLHR”). The DGI may fully authorize the Indonesian Embassy or Consular Office to approve or reject visa applications.

However, Diplomatic Visas and Service Visas (*Visa Dinas*) are issued subject to the decision of the Minister of Foreign Affairs. The Diplomatic Visa is a visa granted to a foreigner holding a diplomatic passport who is traveling to Indonesia to perform official diplomatic duties. The Service Visa is a visa granted to a foreigner holding a “service passport” (*paspor dinas*) or other types of passport who is traveling to Indonesia to perform official non-diplomatic duties from a foreign government or an international organization.

Work permits are issued by the Ministry of Employment (MOE).

Admission to Indonesia remains under the authority of the Immigration Officers at the port of entry.

Current Trends

With the enactment of Minister of Employment Regulation No. 16 of 2015 (which was amended by Minister of Employment Regulation No. 35 of 2015) ("Regulation 16"), there have been changes to the requirements for obtaining work permits. Although in general the process for obtaining a work permit should be much simpler (and therefore faster), the MOE continues to review and consider each application carefully. In some cases, the MOE may not approve the total number of foreign nationals an Indonesian entity intends to employ (i.e., the MOE may approve less or may not approve any at all).

Business Travel

Foreign nationals coming to Indonesia for business trips may use a Visit Visa (single entry or multiple entry), which must be obtained prior to entry into Indonesia.

Citizens of certain countries may use a Visit Visa on Arrival, which is obtained at certain major international gateways and seaports in Indonesia upon entry into the country.

Citizens of certain countries may be eligible to enter the country using a Visa Free Facility.

Visit Visa (Single Entry or Multiple Entry)

A Visit Visa is provided for non-working purposes, including all aspects related to governmental duties, tourism, socio-cultural visits, business visits (but not for working), family visits or transits.

A Single-Entry Visit Visa allows the foreign national to stay in Indonesia for a maximum period of 60 days. The Single-Entry Visit Visa can be extended in the country up to four times. Each extension is for a maximum stay period of 30 days.

A Multiple-Entry Visit Visa can be granted if the activities concerned require several visits to Indonesia. The maximum validity period of a Multiple-Entry Visit Visa is five years. Upon expiry, the Multiple-Entry Visit Visa cannot be renewed or extended, i.e., a new Visit Visa needs to be obtained.

The holder of a Multiple-Entry Visit Visa can stay in Indonesia for a maximum period of 60 days for each visit.

Examples of activities permissible for a holder of a Visit Visa are:

- tourism
- family
- social
- arts and culture
- governmental duties
- sports (non-commercial)
- comparative study, short training, or courses
- carrying out guidance, counseling, and training in the implementation and innovation of industry and technology to increase the quality and design of industrial products/technology, in addition to foreign marketing cooperation for Indonesia
- carrying out emergency and urgent works
- carrying out journalism activities that have received a permit from the competent institution
- making a non-commercial film that has received a permit from the competent institution
- conducting business discussions

- purchasing goods
- giving lectures (seminar) or joining seminars
- attending international exhibitions
- attending meetings with headquarters or representatives based in Indonesia
- conducting audits, production quality control or inspections of a company branch in Indonesia
- foreign employee candidates participating in a required fit and proper test prior to commencing employment
- continuing travel to another country
- joining a transportation vessel within the territory of the Republic of Indonesia

Visit Visa on Arrival

Citizens of certain countries (see below) may obtain a Visit Visa on Arrival to enter Indonesia. The Visit Visa on Arrival is provided for the purpose of tourism, socio-cultural visits, business visits (but not for working), or governmental duties and will be given on arrival in Indonesia with a stay period of 30 days, which can be extended for another 30 days with approval from the DGI. The Visit Visa on Arrival can be given at the determined Special Economy Area.

The types of activities that can be performed under the Visit Visa on Arrival are theoretically the same as those of a Visit Visa.

With the issuance of Minister of Law and Human Rights Regulation No. 39 of 2015 on the Ninth Amendment to Minister of Law and Human Rights Regulation No. M.HH-01.GR.01.06 of 2010 on the Visit Visa on Arrival, citizens of the following countries are presently qualified to obtain a Visit Visa on Arrival: Algeria, Andorra, Argentina, Australia, Austria, Bahrain, Belarus, Belgium, Brazil, Bulgaria,

Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, England, Estonia, Fiji, Finland, France, Germany, Greece, Hungary, India, Iceland, Ireland, Italy, Japan, South Korea, Kuwait, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Mexico, Monaco, the Netherlands, New Zealand, Norway, Oman, Panama, People's Republic of China, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Taiwan, Timor-Leste, Tunisia, Turkey, UAE, US and Armenia

A Visit Visa on Arrival is only available at major international gateways and seaports in Indonesia.

The seaports are located at: Sekupang, Citra Tritunas (Harbour Bay), Nongsa, Marina Teluk Senimba, and Batam Center in Batam (Riau Islands), Bandar Bintan Telani Lagoi and Bandar Seri Udana Lobam in Tanjung Uban (Riau Islands), Sri Bintan Pura in Tanjung Pinang (Riau Islands), Tanjung Balai Karimun (Riau Islands), Belawan (North Sumatra), Sibolga (North Sumatra), Yos Sudarso in Dumai (Riau), Teluk Bayur in Padang (West Sumatra), Tanjung Priok in Jakarta, Tanjung Mas in Semarang (Central Java), Padang Bai in Karangasem (Bali), Benoa in Badung (Bali), Bitung (North Sulawesi), Soekarno-Hatta in Makassar (South Sulawesi), Pare-pare (South Sulawesi), Maumere (East Nusa Tenggara), Tenau in Kupang (East Nusa Tenggara), Jayapura (Papua) and Sabang.

The airports are located at: Sultan Iskandar Muda in Banda Aceh (Nanggroe Aceh Darussalam), Sabang (Nanggroe Aceh Darussalam), Kualanamu in Medan (North Sumatra), Sultan Syarif Kasim II in Pekanbaru (Riau), Hang Nadim in Batam (Riau Islands), Minangkabau in Padang (West Sumatra), Sultan Mahmud Badaruddin II in Palembang (South Sumatra), Soekarno-Hatta in Jakarta, Halim Perdana Kusuma in Jakarta, Husein Sastranegara in Bandung (West Java), Adisutjipto in Yogyakarta, Ahmad Yani in Semarang (Central Java), Adi Sumarmo in Surakarta (Central Java), Juanda in Surabaya (East Java), Supadio in Pontianak (West Kalimantan), Sepinggan in

Balikpapan (East Kalimantan), Sam Ratulangi in Manado (North Sulawesi), Hasanuddin in Makassar (South Sulawesi), Ngurah Rai in Denpasar (Bali), Lombok (West Nusa Tenggara) and El Tari in Kupang (East Nusa Tenggara).

A Visit Visa on Arrival is also available at the land point of entry at Entikong (West Kalimantan).

Visa Free Facility

Under Presidential Regulation No. 21 of 2016 on the Visa Free Facility ("Regulation 21"), citizens of the following 167 countries and two special administrative regions of certain countries can enter Indonesia using a Visa Free Facility:

South Africa, Albania, Algeria, the US, Andorra, Angola, Antigua & Barbuda, Saudi Arabia, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, the Netherlands, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia & Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Czech Republic, Chad, Chile, Denmark, Dominica (Commonwealth), Ecuador, El Salvador, Estonia, Fiji, the Philippines, Finland, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guyana, Haiti, Honduras, Hungary, Hong Kong (SAR), India, England, Ireland, Iceland, Italy, Jamaica, Japan, Germany, Cambodia, Canada, Kazakhstan, Kenya, Marshall Island, Solomon Island, Kiribati, Comoros, South Korea, Costa Rica, Croatia, Cuba, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Lichtenstein, Lithuania, Luxembourg, Macau (SAR), Madagascar, Macedonia, Maldives, Malawi, Malaysia, Mali, Malta, Morocco, Mauritania, Mauritius, Mexico, Egypt, Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Norway, Oman, Palau, Palestine, Panama, Ivory Coast, Papua New Guinea, Paraguay, France, Peru, Poland, Portugal, Puerto Rico, Qatar, Dominican Republic, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, San Marino, Sao Tome & Principe, New Zealand, Senegal, Serbia, Seychelles,

Singapore, Cyprus, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Taiwan, Tajikistan, the Vatican, Cape Verde, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, Uruguay, China, Uzbekistan, Vanuatu, Venezuela, Vietnam, Jordan, Greece, Zambia and Zimbabwe.

Under Regulation 21, citizens of the above countries cannot use a Visa Free Facility for journalistic purposes.

It is our understanding that based on the current unwritten policy of the DGI, for citizens of countries that are also listed in the Visit Visa on Arrival eligibility above, the Visa Free Facility will only be applicable for visits to Indonesia for tourism purposes. It should be noted that the unwritten policy could change at any time. In addition, it is possible that an implementing regulation or decree could be issued by the DGI to further elaborate the Visit Visa on Arrival and Visa Free Facility eligibility.

Employment Assignments

Intra-company Transfer

Indonesian law does not differentiate between:

- a foreign national who is an employee of a foreign entity and assigned to work at the Indonesian affiliate of that foreign entity as part of an intra-company transfer
- a foreign national who is directly hired by an Indonesian entity

Limited Stay Visa

The Limited Stay Visa is granted to a foreign national clergy, expert, worker, researcher, student, investor or elderly individual, as well as to their families, to a foreign national who is legally married to an Indonesian individual, and to a foreign national traveling to the Indonesian territory to stay for a limited period of time or to work on

board a ship, floating device, or other vessel operating within the Indonesian seas, territorial seas, continental shelf, and/or Indonesian Economic Exclusive Zone.

Work Permit

Indonesian law requires any employer intending to employ foreign nationals to obtain written permission (*Izin Mempekerjakan Tenaga Kerja Asing* (IMTA)) from the MOE. Employers who fail to obtain an IMTA for employing a foreign national may be subject to a criminal sanction of imprisonment for a minimum of one year and a maximum of four years and/or a fine of a minimum of IDR 100 million and a maximum of IDR 400 million.

The process to obtain an IMTA begins with an application by the sponsoring Indonesian entity at the MOE for the approval of the Foreign Manpower Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or (RPTKA)).

Once the approval of the RPTKA is issued, the Indonesian company must submit an application for the IMTA to the MOE.

Applications for the approval of an RPTKA and an IMTA are submitted online (through the MOE's online application website www.tka-online.depakertrans.go.id).

Payment of the Compensation Fund for Foreign Worker Utilization ("DKP-TKA")

The DKP-TKA is set at USD 100 per month for each foreign national employed. If the IMTA application is valid for 12 months, the amount is increased to USD 1,200.

Once the DKP-TKA is paid, evidence of the payment must be submitted through the online application process on the MOE's website.

Issuance of the IMTA

If all required documents are complete (and the DKP-TKA has been paid), the IMTA should be issued.

The IMTA can then be used as the basis to obtain the relevant visa to enter Indonesia for the purpose of working (commonly known as a “VITAS”) and the limited stay permit (“KITAS”). The VITAS and KITAS are required if the foreign national intends to reside and work in Indonesia.

Qualification for Foreign Workers

Foreign nationals intended to be employed by employers in Indonesia must:

- have an educational background appropriate to the job title to be held by the foreign national
- have a competency certificate or evidence of having at least five years' work experience relevant to the position to be held by the foreign national
- sign a statement letter confirming that they will transfer their expertise to the Indonesian counterpart worker, which will be proven by a report on the implementation of their imparted education and training
- have an Indonesian Taxpayer Identification Card, if they have been working for six months
- provide evidence of having insurance policy with an Indonesian insurance company
- participate in the national social security program if they have been working for six months

Appointment of Indonesian Counterpart Workers

Indonesian law requires that for every foreign national employed, the employer must appoint an Indonesian as the counterpart worker of the relevant foreign national (“Counterpart”). The only exception to this requirement is if the foreign national holds the position of a director (i.e., a member of the board of directors) or commissioner (i.e., a member of the board of commissioners).

The law does not specify who qualifies to become a Counterpart. However, the focus of the “Counterparting” is on the transfer of technology and expertise from the foreign national to the Counterpart. In this regard the Counterpart is expected to have the capability to replace the foreign national at the appropriate time.

The current policy of the MOE is that in appointing Counterparts, the employer must consider education, expertise and qualifications between the Counterpart and the foreign national. Ideally, a Counterpart should be the subordinate of the foreign national.

An employer who violates the Counterpart requirement may be subject to a criminal sanction of detention for a minimum of one month and a maximum of 12 months and/or a fine of a minimum of IDR 10 million and a maximum of IDR 100 million.

Ratio

The number of foreign nationals an entity in Indonesia is able to employ depends on a variety of factors, e.g., industry, size of the Indonesian entity, number of Indonesian employees, etc.

In the past, the MOE applied a ratio of one foreign worker to 10 Indonesian employees. For a director-level role, the Indonesian company would have needed five Indonesian employees to hire one foreign worker. This strict ratio system is no longer in place but essentially, if an Indonesian employer would like to employ a large number of foreign nationals, the MOE will expect the employer to employ a greater proportion of Indonesians. In addition, the MOE may

require the employer to explain why it needs to employ such a large number of foreign nationals.

Temporary Work Permit

Under Regulation 35, a temporary work permit (“TWP”) is required for the following activities:

- making a commercial movie that has received authorization from the relevant agency
- conducting audits, production quality control or inspections of Indonesian branches for more than one month
- work related to machinery installation, electrical equipment, after-sales service, or products that are in the business exploration stage

A TWP must be sponsored by an Indonesian entity. The holder of a TWP must also obtain a VITAS.

19 Positions that Cannot be Held by Foreign Nationals

The Minister of Manpower and Transmigration issued Decree No. 40 of 2012 on Certain Positions That Are Restricted for Foreign Workers (“Decree 40”). Decree 40 lists 19 positions that cannot be held by foreign nationals (“List”) (see prohibited positions below). Please note that 18 out of the 19 positions are related to human resources. This follows from Article 46(1) of the Law No. 13 of 2003 on Labor (“Labor Law”), which includes a prohibition on foreign workers holding a position related to “*managing personnel and/or certain positions*.”

The List is as follows:

No.	Name of Position		
	Indonesian	ISCO Code	English

No.	Name of Position		
	Indonesian	ISCO Code	English
1.	Direktur Personalia	1210	Personnel Director
2.	Manajer Hubungan Industrial	1232	Industrial Relations Manager
3.	Manajer Personalia	1232	Human Resources Manager
4.	Supervisor Pengembangan Personalia	1232	Personnel Development Supervisor
5.	Supervisor Perekrutan Personalia	1232	Personnel Recruitment Supervisor
6.	Supervisor Penempatan Personalia	1232	Personnel Placement Supervisor
7.	Supervisor Pembinaan Karir Pegawai	1232	Employee Career Development Supervisor
8.	Penata Usaha Personalia	4190	Personnel Declaration Administrator
9.	Kepala Eksekutif Kantor	1210	Chief Executive Officer
10.	Ahli Pengembangan Personalia dan Karir	2412	Personnel and Career Specialist
11.	Spesialis Personalia	2412	Personnel Specialist

No.	Name of Position		
	Indonesian	ISCO Code	English
12.	Penasehat Karir	2412	Career Advisor
13.	Penasehat Tenaga Kerja	2412	Job Advisor
14.	Pembimbing dan Konseling Jabatan	2412	Job Advisor and Counseling
15.	Perantara Tenaga Kerja	2412	Employee Mediator
16.	Pengadministrasi Pelatihan Pegawai	4190	Job Training Administrator
17.	Pewawancara Pegawai	2412	Job Interviewer
18.	Analisis Jabatan	2412	Job Analyst
19.	Penyelenggara Keselamatan Kerja Pegawai	2412	Occupational Safety Specialist

Positions Open for Foreign Nationals in Certain Sectors

The MOE also issued several decrees describing positions that foreign nationals can hold in certain sectors. Below are examples of the positions in certain specific sectors:

- Construction: Positions ranging from project manager, project engineer and architect, to construction management specialist and construction management engineer.
- Educational services: Positions ranging from school principal, vice principal, advisor and academic specialist to teachers and lecturers of particular subjects.

- Chemical substances and products from chemical substances Industry: Positions ranging from president commissioner to certain engineers.
- Wholesale, retail, repair and maintenance of cars and motorcycles: Positions ranging from president commissioner to certain engineers.
- Air transportation: Positions ranging from traffic manager, flight operational manager and flight engineer, to pilot, co-pilot, pilot instructor and flight attendants for international flights.
- Arts, entertainment, crafts and creativity and sports: Positions ranging from art director, music director, show manager and film director, to actor, dancer, karaoke guide, bodyguard and fashion model.
- Beverage industry: Positions ranging from president director, director, president commissioner, commissioner, financial director, marketing director, financial manager, research and development manager, general manager, marketing advisor, quality control advisor and architect, to electrical engineer and after-sales service engineer.
- Water supply, waste and recycling management, disposal and cleaning of waste and trash, waste management: Positions ranging from members of the president director, vice president director, director, president commissioner, commissioner, financial director, operational director, factory manager, environmental design engineer, quality control advisor and production advisor, to electrical engineer and commissioning engineer.
- Textile industry: Positions ranging from president director, director, president commissioner, commissioner, financial director, marketing director, quality control manager, marketing manager, quality control advisor and quality assurance advisor, to cotton classer specialist and electrical engineering.

- Ready-to-wear clothing industry: Positions ranging from president director, president commissioner, director, commissioner, financial director, marketing director, general manager, logistic manager, material manager, product design advisor, sewing specialist, cutting specialist, mechanical engineer, electrical engineer and commissioning engineer, to auditors and after-sales service engineer.
- Food industry main classification: Positions ranging from president director, president commissioner, director, commissioner, financial director, marketing director, general manager, sales manager, product development manager, branch manager, factory manager, information technology advisor, purchasing advisor, laboratory advisor, logistic advisor, quality assurance supervisor and chemical engineer, to food specialist and nutritionist.
- Non-machinery metal goods and their related equipment industry: Positions ranging from president director, president commissioner, director, commissioner, production director, marketing director, commercial director, general manager, financial manager, electrical manager, procurement manager, marketing advisor, financial advisor and production advisor, to power generating engineer and market research analyst.
- Accommodation, food and beverage services: Positions ranging from president director to chef.

Despite the above decrees, the MOE has extensive discretion to determine the position that can be held by a foreign national working in Indonesia. It is not uncommon for the MOE to issue an IMTA with the position of the foreign national being different than the position that the Indonesian entity is applying for.

Foreign Nationals Working in the Lines of Business of Services, Trade and Consultancy

Based on an announcement issued by the MOE in January 2015, in relation to the employment of foreign nationals by companies working in the areas of services, trade and consultancy:

- the validity of a work permit for a foreign national holding the position of “advisor” (e.g., marketing advisor, quality control advisor) can only be for a maximum period of six months
- the validity of a work permit for a foreign national holding the position of “director” or “manager” can be for a maximum period of 12 months

Working and Holidaying in Indonesia for Australians

Applications made by Australians for the limited stay visas should be made in Australia and, if granted, will be valid for 12 months. The visa will allow the holder of the visa to work, with or without pay (volunteer work) in the education, tourism, health, social, sport and cultural sectors. However, the work should not be an ongoing matter, which requires a longer commitment of the person working on it.

There is an annual quota for the special limited stay visas. For each year from 1 July until 30 June, the maximum number of special limited stay visas is 100. The visas are also subject to strict conditions:

- the main purpose for the foreign national is to visit Indonesia during another season
- the applicant is aged between 18 and 30
- the applicant holds, at least, a degree-level qualification or is two years into a higher education qualification
- the applicant holds a recommendation certificate from the Department of Immigration and Citizenship in Australia

- the applicant is functionally literate in Indonesian
- the applicant holds a return air ticket and has a minimum of AUD 5,000 in a bank
- the applicant has not previously been a participant in the working holiday scheme

Presumably, the above conditions would need to be proven along with the visa application.

Certain fees are applicable for the visa application. However, the regulation does not specify the amount of the fees.

Training

As noted above, the Visit Visa and Visit Visa on Arrival allow foreign nationals to enter into Indonesia to participate in short-term training. However, it is not advisable for participants of on-the-job training to enter Indonesia using a Visit Visa or Visit Visa on Arrival, if they will receive remuneration/wages from the Indonesian entity conducting the on-the-job training or if the length of the training is relatively long (e.g., more than three months). A Limited Stay Visa should be obtained for that purpose, and the Indonesian entity carrying out the on-the-job training should also arrange a work permit for the foreign national participants.

Post-Entry Procedures

KITAS and Re-Entry Permit

Once the foreign worker has arrived at an Indonesian airport (using the VITAS), the immigration officer who is in charge at the airport will provide a stamp of admission indicating that the foreign worker is permitted to enter Indonesia and must report to the Local Immigration Office within 30 days from the date of arrival at the airport. This means that within this period of 30 days, the foreign worker is required to

process a KITAS and Re-Entry Permit at the Local Immigration Office where the foreign worker is domiciled in Indonesia.

The foreign worker is required to present himself/herself to the Local Immigration Office as his/her fingerprints will be taken and he/she will need to sign various forms. By holding the KITAS and the Re-Entry Permit, the foreign worker has legally complied with the Indonesia immigration law and regulations. However, as a KITAS holder, the foreign worker will also be required to obtain, in due course, the following additional certificates or permits:

- a Police Report Certificate ("STM") issued by the Local Police Office where the foreign worker is domiciled (in Indonesia)
- a Temporary Residential Card ("SKTT") issued by the Local Population and Civil Registry Office where the foreign worker is domiciled (in Indonesia)
- a Certificate of Family Composition of Foreign Citizen ("SKSKPS") issued by the Local Population and Civil Registry Office
- a report on the existence/arrival of the foreign citizen issued by the local office of the MOE where the foreign worker is domiciled

Each accompanying dependent family member of the foreign worker must also obtain their own KITAS, STM and SKTT. The SKSKPS will need to include details about the accompanying dependent family member(s) of the foreign worker.

Entry Based on International Agreements

The Association of South East Asian Nations ("ASEAN") issued a number of mutual recognition agreements opening certain work fields to professionals (i.e., medical practitioners, dental practitioners, engineering services, nursing, tourism professionals, accountancy and architectural services). However, Indonesia has not yet ratified these mutual recognition agreements and as such they are not yet effective.

APEC Card

A foreign national who holds an APEC Card can come to Indonesia for business. Having an APEC Card means that the holder does not need to apply for a visa when they enter Indonesia. However, having an APEC Card does not mean that the foreign national does not need to obtain a TWP or an IMTA and relevant visa (if needed). If a foreign national is:

- conducting any of the activities referred to under Regulation 16 as needing a TWP, they will need to obtain a TWP and the relevant visa, i.e., there is no exemption to obtain a TWP (if required) if a foreign national has an APEC Card
- working in Indonesia, they will need to obtain an IMTA (and other expatriate documents), i.e., there is no exemption to obtain an IMTA (if required) if a foreign national has an APEC Card

Other Comments

The Visit Visa and Visit Visa on Arrival both allow their holders to enter Indonesia for business purposes. However, some immigration officials (in Jakarta) have viewed that a Visit Visa on Arrival and a Visa Free Facility are only for “tourism purposes” (not applicable for business purposes). While this view is not necessarily correct from a legal perspective, a better solution to minimize the risks of possible difficulties is to use a Visit Visa to enter Indonesia for business purposes — keeping in mind, however, that an application for a Visit Visa for business purposes needs to be supported by an Indonesian sponsoring company.

Planned Legislative Changes

Implementation of Regulation 21

The DGI may issue a regulation or decree to further implement Regulation 21. There is no information at the moment regarding what the implementing regulation or decree would cover (if it is issued).

However, if issued, it is possible that the implementing regulation or decree will further elaborate the Visit Visa on Arrival and Visa Free Facility eligibility.

Indonesian Language Test

It has been planned that the MOE will introduce an Indonesian language test for foreign nationals working (or intending to work) in Indonesia. If this plan is materialized, a new regulation on this would likely be issued. However, this is yet to be confirmed.

Italy



Italian law provides many solutions to help employers of foreign nationals. These range from short-term to long-term visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

Italian diplomatic authorities and consular representatives are responsible for visa processing. To obtain an entry visa, an application must be filed with the visa department along with a number of documents. The issuance of the visa is at the discretion of such diplomatic authorities, meaning that under the applicable laws, the Diplomatic and Consular Representations are entitled to discretionally ask for any additional information or documents they deem necessary to evaluate the application.

Many visa applications firstly require the approval of a work permit (*nulla osta*) petition by the prospective Italian employer, filed with the Italian immigration office through a dedicated public office (*sportello unico per l'immigrazione*) responsible for many aspects of the immigration process, together with a number of documents. The issuance of the *nulla osta* is at the discretion of the immigration office.

The immigration office processes work permit applications through the local labor office (*Ufficio Territoriale del Lavoro*) and the *nulla osta* through the local foreign national's Bureau of Police Headquarters (*Questura*), which also handles the permit to reside (*permesso di soggiorno*) after arrival in Italy.

Current Trends

A distinction should be made between EU citizens and non-EU citizens as far as immigration and becoming a resident in Italy are concerned.

EU citizens have the right of free movement throughout the EU. If an EU citizen wishes to work or reside in Italy, their presence in the country needs to be declared at the local registry office, specifying the purposes and financial means to support the citizen and accompanying family members in Italy.

Non-EU citizens are subject to stricter requirements to obtain work and residence permits. There is a fixed quota of permits available each year, and a non-EU citizen needs gainful occupation with an Italian employer or the financial means to support him/herself while in Italy.

Further, Italian immigration laws provide for a number of different immigration permits that are granted for specific reasons, independent of the restricted quota.

It is increasingly important for employers to ensure that foreign employees in Italy comply with all legal formalities. Employers of foreign nationals unauthorized for such employment are subject to civil and criminal penalties.

Employers involved in mergers, acquisitions, reorganizations, etc., must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

Business Travel

Business Visa

Foreign nationals coming to Italy on short-term business trips may use the business visa. In general terms, to obtain a business visa, the individual/employee concerned must be traveling to Italy for “economic or commercial purposes, to make contacts with local businesses or carry out negotiations, to learn, to implement or to verify

the use of goods bought or sold via commercial contracts and industrial cooperation.”

Employment in Italy is not authorized with a business visa. Each individual may benefit from one 90-day business visa in any given 180-day period, and such visa usually allows multiple entries into the Schengen Area during its validity period. This visa requires a return-trip booking or ticket or proof of available means of personal transport, proof of economic means of support during the journey, health insurance with a minimum coverage of EUR 30,000 for emergency hospital and repatriation expenses, the business purpose of the trip, and the status as financial-commercial operator of the applicant.

Visa Waiver

As noted previously, EU citizens have the right of free movement throughout the EU. The normal requirement of first applying to an Italian consular post for the business visa is waived for non-EU citizens of certain countries. The permitted scope of activity is the same as the business visa. The length of stay is up to 90 days only, without the possibility of extending or changing status. A departure ticket is required.

The following countries are presently qualified under this program:

Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, Dominica, Timor-Leste, El Salvador, Former Yugoslav Republic of Macedonia, Guatemala, Grenada, Honduras, Hong Kong, Israel, Japan, Republic of Kiribati, Malaysia, Macau, Mauritius, Mexico, Federated States of Micronesia, Monaco, Montenegro, New Zealand, Nicaragua, Northern Marianas, Palau, Panama, Paraguay, Peru, Saint Kitts and Nevis, Samoa, Saint Lucia, Serbia, Seychelles, Singapore, South Korea, Saint Vincent and the Grenadines, Solomon Islands, Taiwan, Tonga, Trinidad & Tobago, Tuvalu, United States, UAE, Ukraine, Uruguay, Vanuatu and Venezuela.

The list of qualified countries might change and the regularly updated list can be found at <http://www.esteri.it>.

Employment Assignments

Permits Granted to Non-EU Citizens Outside Quotas

This permit is issued pursuant to Article 27, par. 1, lett. a) of Italian immigration law (Legislative Decree 286/1998).

This is a special type of permit, valid for up to five years, for managers or highly skilled employees employed by a company abroad and who come to Italy to perform activities within an Italian company through secondment.

To obtain a work and residence permit, an application must be filed through an online system, containing the terms and conditions of a subordinate employment relationship (*contratto di soggiorno per lavoro*) that will be entered into with the foreign national. This is a substantially new type of employment agreement and requires the following to be valid:

- the guarantee that the employer shall provide the foreign national with a house or other living facilities
- the undertaking to pay travel expenses for the foreign national to return to his/her country of origin, once his/her permit has expired or he/she does not obtain a renewal

This type of contract has to be signed with the mediation of the *sportello unico per l'immigrazione*. The duration of the permit shall be as follows:

- for seasonal employment, no longer than nine months
- for fixed-term employment, one year
- for employment for an indefinite period of time, one or two years, at the discretion of the immigration authorities

On 11 January 2017, Legislative Decree 253/2016 (the “Decree”) entered into force and implemented the so-called ITC Directive (“Intercorporate Transfers”) n. 2014/66/EU, which regulates the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (the entering into force of this new law determined the introduction of 27-5 of Italian immigration law (Legislative Decree 286/1998)).

The rationale of such legislation consists of facilitating the mobility of workers subject to intra-corporate transfers within the EU and reducing the administrative burden associated with work assignments in different Member States.

The requirements to benefit from this mobility program are as follows:

- The employing entity and the host entity belong to a group of companies according to Art. 2359 Italian Civil Code. We expect that it will not be an easy process representing the existence of the group of companies, in case of articulated structures, lacking a consolidated balance sheet or proof of the existence of entities of the group outside Italy.
- The worker has been employed by any company of the group for at least three consecutive months prior to the secondment in Italy.
- The worker has the qualification and experience required by his/her classification as “executive,” or as “skilled worker” or “trainee.”

The maximum length of the secondment can be three years for executives and one year for skilled workers and trainees.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Permit Issued Pursuant to Article 27, par. 1, lett. i) of Italian Immigration Law (Legislative Decree 286/1998)

This is a special type of permit for a non-EU citizen, regularly employed and salaried by foreign employers, who comes to Italy for employment reasons on a temporary basis through secondment to perform his/her activities under a contract (*contratto di appalto*) executed between his/her employer and an Italian client.

Permits are valid for a maximum period of two years and may be renewed. In addition, this type of work permit is granted independent of quota restrictions that otherwise generally apply to non-EU citizens.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Employers must undertake to give foreign national employees wages, working conditions and benefits equal to those normally offered to similar employed workers in Italy.

Training

Study Visa

A study visa allows foreign nationals to come and stay in Italy for a short or long period to attend ordinary university courses, as well as other training courses or vocational training held by qualified or certified entities, or as an alternative to foreign nationals who will perform educational and research activities. This visa requires:

- documents concerning the study, training or vocational courses to be attended by the applicant
- proof of economic means of support during the entire stay in Italy

- health insurance covering healthcare and hospitalization, unless the applicant is entitled to public health assistance in Italy according to any bilateral agreement in force between Italy and his/her country of origin
- the applicant be older than 14

Other Comments

There are additional visas less frequently used for global mobility assignments worth a brief mention. One of them is the Mission Visa, which is issued at the discretion of the Italian diplomatic authorities and consular representatives in the place of residence of applicants coming to Italy for “reasons of public utility between a foreign state/international organization and Italy.” This type of visa is granted independent of quota restrictions. This visa requires:

- an invitation letter prepared by the foreign state or international organization concerned outlining clearly the purposes of the invitation, the scope and the description of the mission that the invited applicant will have to perform, the duration of the stay in Italy, and the entity that will bear the travel and living costs
- a letter from the applicant outlining the proposed itinerary and confirming the purpose of the trip and the duration of the stay as indicated in the invitation letter
- a confirmed return airplane ticket or return airplane ticket reservation print-out (open airplane tickets are acceptable)

The processing time for this application depends on the caseload of the Italian consulate at the time of application. It is normal for the process to take 90 to 120 days or longer. Once the visa has been issued, and within eight days from entering Italy, the foreign national employee has to file an application via an Italian post office to the local police station (*questura*) to complete the immigration procedure

and obtain the final stay permit – a meeting with the local police office and the foreign national is required for this purpose.

A non-EU citizen who has legally resided (i.e., by means of a regular work and residence permit) in Italy for more than 10 years may request Italian citizenship. Citizenship is discretionally granted by decree of the President of the Republic, upon the proposal of the Ministry of Internal Affairs.

EU Blue Card

Another possibility that exists for a non-EU national to be hired by an Italian company is the EU Blue Card. Essentially, the EU Blue Card is a fast-track permit for non-EU employees that have a special skill proven by a university diploma.

Holders of an EU Blue Card are able to apply for a two-year renewable residence permit giving them rights almost equal to EU nationals. It is also easier to bring along family members, as well as to move to other EU countries after the first 18 months in Italy.

Investor Visa

This permit is issued pursuant to Article 26-a of Italian immigration law (Legislative Decree 286/1998).

This is a special type of permit for a non-EU citizen who intends to invest within three months of his or her entry into Italy, either:

- (i) EUR 2 million in government bonds, for at least two years
- (ii) EUR 1 million in “equity instruments representing the assets of a company constituted and operating in Italy,” for at least two years; this amount shall be decreased to EUR 500,000 if the investment concerns an “innovative” start-up
- (iii) EUR 1 million in a philanthropic initiative

This visa requires proof of available means of support during the stay in Italy and of the amounts to be invested under the obligation undertaken through the visa application.

Permits are valid for a maximum period of two years and may be renewed.

Start-up Visa

This permit is issued pursuant to Article 26 of Italian immigration law (Legislative Decree 286/1998).

This permit is issued to a non-EU citizen who intends to create or join an “innovative” start-up in Italy, either with the support of a “certified incubator” (which is a company that hosts startups and supports business ideas, meeting the requirements set out by the Ministerial Decree of 22 December 2016) or without.

Applicants must provide a business model to be evaluated by a technical committee set up by the Italian Ministry of Economic Development, in addition to the proof of available means to be invested in the startup.

Permits are valid for a period of one year and may be renewed.

Promise to Integrate

Starting 10 March 2012, all applicants for residence permits with a minimum of a one-year duration must sign an Integration Agreement. This new integration requirement is a points-based system concerning permission to stay, according to which each applicant starts with 16 points and must obtain 30 points within the first two years of their residence permit.

Within 30 days of signing the agreement, the applicant is required to attend a five-hour course in English (eight other languages are also available) to learn about Italy and Italian culture. Failure to attend this course results in the loss of 15 points.

One month before the expiry of the Integration Agreement, the Prefecture will carry out an audit to verify the number of points the applicant has obtained. The applicant may take a test to demonstrate their degree of knowledge of the Italian language, civic culture and civic life in Italy. The result of the audit can be a finding that the requirement has been completed (if 30+ credits are obtained), a one-year extension (if less than 30 credits), or final resolution (zero credits or less, resulting in permit of stay revocation and expulsion from Italy).

Japan



In general, foreign nationals who come to Japan must apply for landing permission at the port of entry. If Japanese passport control officers grant landing permission, the appropriate status of residence (zairyu shikaku) from among the 38 different types of status of residence (official categories are 29) will be granted, depending on the nature and period of the stay. Foreign nationals in Japan are allowed to engage only in those activities permitted under the status of residence granted.

Except for temporary visitors, in most cases it is recommended for foreign nationals to obtain a certificate of eligibility prior to coming to Japan.

In addition, foreign nationals are generally required to obtain an appropriate visa from a Japanese consulate. In Japan, the term “visa” carries all or at least one of the following meanings:

- (i) a visa issued from a Japanese consulate located overseas
- (ii) landing permission applicable at the port of entry
- (iii) a visa granting residency status

For the purpose of avoiding confusion, this chapter will refer to (i) as a visa; (ii) as landing permission; and (iii) as either status of residence or visa status.

In Japan, the focus is on facilitating entry and residency for foreign nationals with specialized knowledge and skills, while the admission of unskilled foreign nationals has generally been outside the scope of discussion.

Key Government Agencies

As the government organization responsible for immigration control services, the Ministry of Justice has the Immigration Services Agency as well as eight regional Immigration Services Bureaus, seven district offices, 61 branch offices and two detention centers. The Immigration

Services Agency and regional Immigration Services Bureaus are in charge of entry into and departure from Japan, residency, deportation and recognition of refugee status.

The issuance of visas is handled by Japan's Ministry of Foreign Affairs through consulates and diplomatic offices abroad.

Current Trends

According to revisions to the Immigration Control and Refugee Recognition Act ("**Immigration Act**") in July 2009, which entered into force on 9 July 2012, records for foreign nationals in Japan are managed by the Immigration Bureau to ensure the availability of Japanese administrative services for foreign nationals. In addition, the alien registration system was replaced with a new system that uses a "Residence Card." Upon the implementation of the Residence Card system, valid periods of stay and re-entry permits can be extended for up to five years. Holders of Residence Cards will not be required to obtain re-entry permits for absences from Japan lasting no more than one year.

The Immigration Bureau started the e-Notification System on 24 June 2013. The Electronic Notification System is to allow medium- to long-term residents and their employers to submit mandatory notices online to the Minister of Justice. Currently, the Electronic Notification System accepts notices concerning employers which are filed by their medium- to long-term resident employees, and notices concerning medium- to long-term resident employees which are filed by their employers.

The Immigration Act was amended, effective June 2014. Notable changes are as follows:

- Re-organization of statuses of residence (effective 1 April 2015):
 - To further promote acceptance of foreign nationals with advanced and specialized skills, a new status of residence,

“Highly Skilled Professional I,” is now available for foreign nationals with advanced and specialized skills who were previously granted the “Designated Activities” status of residence, which affords various kinds of preferential immigration treatment. In addition, another status of residence, “Highly Skilled Professional II,” was established for holders of Highly Skilled Professional I status who remain in Japan under the Highly Skilled Professional I status for a certain period of time. Such foreign nationals will be permitted to engage in a wider range of activities in Japan and remain in Japan for an indefinite period of time.

- The name of the “Investor/Business Manager” status of residence has been changed to “Business Manager” and no longer requires applicants to establish ties to foreign capital/investment. Holders of Business Manager status may now engage in business operations/management of Japanese-owned business entities.
- “Engineer” and “Specialist in Humanities/International Services” statuses of residence have been consolidated. To respond to the needs of companies concerning acceptance of foreign nationals in specialized and technical fields, the division between those two statuses of residence, which had been based on differences in the types of knowledge in which they specialized (e.g., natural sciences vs. humanities), has been abolished. These statuses of residence are now the comprehensive “Engineer/Specialist in Humanities/International Services” status of residence.
- The categories of foreign nationals eligible to use automated gates will be expanded to include foreign nationals who frequently visit and stay in Japan under Temporary Visitor status. The start date will be announced in due course.

The Immigration Act, through the amendments from November 2016, newly set up a category called “Nursing Care” for a foreign national to

engage in the nursing care services when he holds a Certified Care Worker license under the relevant laws of Japan.

Further, a new set of laws concerning protection of technical interns and appropriate operations of technical internship for foreign nationals came into force on 1 November 2017, and the new technical internship system was accordingly put in effect.

On 8 December 2018, the Act was partially amended and the amendments came into effect on 1 April 2019. Under the new amendments, the Immigration Bureau was renamed the Immigration Services Agency on 1 April 2019 in order to assist with increasing foreign visitors and medium- to long-term residents and to develop a favorable living environment for foreign nationals. The new categories of residence status of Specified Skilled Worker # 1 and # 2 were also introduced on 1 April 2019 to solve manpower shortage. These workers are currently permitted to engage in limited area of job in 14 specified industry fields.

Business Travel

Temporary Visitor

“Temporary Visitor” is a status of residence for foreign nationals who intend to stay in Japan for a limited amount of time (up to 90 days) for such business purposes as meetings, contract signings, market surveys and post-sale services for machinery imported into Japan.

Activities involving business management (i.e., profit-making activities) or remuneration other than those activities permitted under the status of residence (paid activities) by Temporary Visitor visa status is not permitted. Violation of the status of residence rules is considered illegal labor. Both the foreign national and the employer may incur criminal liability.

“Paid activities” means activities for remuneration for certain services, such as employment by another person or organization for

compensation, or any other activities for compensation (both financial and material) for the completion of any project, work, or clerical work. There is an exemption for certain types of incidental or non-recurring compensation of certain amounts that occur within regular, daily life.

In principle, temporary visitor status may not be extended because it is intended for foreign nationals who stay in Japan for a short period of time.

Visa Waiver

As of July 2017, Japan has entered into reciprocal visa exemption agreements with 68 countries and regions, as shown in the list below. Foreign nationals from these areas are not required to obtain a visa to enter Japan if the purpose of their stay is within those authorized under the Temporary Visitor visa status, and the length of their stay does not exceed the terms of the agreement between their country and Japan (either six months, 90 days, 30 days, or 15 days).

List of Countries and Regions with Visa Exemption as of July 2017:

Countries and Regions	Term of residence
Asia	
Brunei	15 days
Hong Kong (BNO, SAR passport)	90 days
Indonesia (ICAO standard ePassport which is registered with a Japanese embassy/consulate in advance)	15 days
South Korea	90 days
Macau (SAR passport)	90 days
Malaysia (ePassport in compliance with ICAO Standard)	90 days

Countries and Regions	Term of residence
Singapore	90 days
Taiwan (passport which includes a personal identification number)	90 days
Thailand (ePassport in compliance with ICAO Standard)	15 days
North America	
Canada	90 days
US	90 days
Europe	
Austria	six months
Germany	six months
Ireland	six months
Liechtenstein	six months
Switzerland	six months
United Kingdom	six months
Andorra	90 days
Belgium	90 days
Bulgaria	90 days
Croatia	90 days
Cyprus	90 days
Czech Republic	90 days
Denmark	90 days
Estonia	90 days

Countries and Regions	Term of residence
Finland	90 days
Former Yugoslav Republic of Macedonia	90 days
France	90 days
Greece	90 days
Hungary	90 days
Iceland	90 days
Italy	90 days
Latvia	90 days
Lithuania	90 days
Luxembourg	90 days
Malta	90 days
Monaco	90 days
Netherlands	90 days
Norway	90 days
Poland	90 days
Portugal	90 days
Romania	90 days
San Marino	90 days
Serbia	90 days
Slovakia	90 days
Slovenia	90 days
Spain	90 days

Countries and Regions	Term of residence
Sweden	90 days
Latin America and Caribbean	
Mexico	six months
Argentina	90 days
Bahamas	90 days
Barbados (MRP, ePassport in compliance with ICAO standard)	90 days
Chile	90 days
Costa Rica	90 days
Dominican Republic	90 days
El Salvador	90 days
Guatemala	90 days
Honduras	90 days
Suriname	90 days
Uruguay	90 days
Middle East	
Israel	90 days
Turkey (MRP, ePassport in compliance with ICAO standard)	90 days
United Arab Emirates (ICAO standard ePassport which is registered with a Japanese embassy/consulate in advance)	90 days
Oceania	
Australia	90 days

Countries and Regions	Term of residence
New Zealand	90 days
Africa	
Lesotho (MRP, ePassport in compliance with ICAO standard)	90 days
Mauritius	90 days
Tunisia	90 days

It should be noted that immigration inspectors at ports of entry have a wide discretion to decide a period of stay in Japan for foreign nationals wishing to enter Japan. As for Temporary Visitor status applicants, the immigration inspector grants either 15 days, 30 days, or 90 days, whichever he considers as appropriate to cover such foreign national's stay.

Nationals of countries and regions that have taken measures concerning the waiver of visa requirements with Japan for stays of up to six months are granted permission to stay in Japan for 90 days at the time of entry. Nationals of these countries and regions who wish to stay in Japan for more than 90 days must apply at their nearest local Immigration Services Bureau in Japan to extend their period of stay.

However, nationals of some of these countries that have taken measures concerning the exemption of visa requirements, including Peru (since 15 July 1995) and Colombia (since 1 February 2004), are still encouraged to obtain visas before entering Japan; otherwise, these nationals without visas will be strictly examined upon entering Japan.

Similarly, the above measure applies to those who possess non-machine-readable passports, in the case of nationals of Barbados

(since 1 April 2010), Lesotho (since 1 April 2010) and Turkey (since 1 April 2011).

Expanded Eligibility for the Use of Automated Gates

Eligibility for the use of automated gates was be expanded to include foreign nationals who frequently travel to Japan and are deemed to pose little immigration control risk (Trusted Travelers) on the condition that they complete the prior registration process (including filing of fingerprints, etc.). Trusted Travelers are permitted to enter and leave Japan without needing to apply for landing permission each time, for the purpose of simplifying and streamlining the immigration process.

Employment Assignments

Foreign nationals may engage in the activities authorized for the specified period of time under their visa only after obtaining the appropriate status of residence. Therefore, it is crucial that the applicant and intended activities meet the criteria for at least one status of residence category, and that those fulfil the criteria required specifically by the status of residence for which he is applying.

Among the 36 types of status of residence allowed in Japan, holders of 23 categories thereof are allowed to engage in profit-making and paid activities. The four most common statuses of residence for employment are engineers, specialists in humanities or international services, intra-company transferees, and investors or business managers, as well as family members with dependent visa status.

Engineers/Specialists in Humanities/International Services

This status of residence covers both the former Engineer and Specialist in Humanities/International Services statuses of residence. No major changes have been made to the required qualifications for this category. It still targets applicants who intend to engage in services which require knowledge and/or skills relevant to: (i) the natural sciences (e.g., physical science, engineering, etc.)

(Engineers); (ii) the humanities (e.g., law, economics, social science, etc.) (Specialist in Humanities); or (iii) specific ways of thinking or sensitivity acquired through experience with foreign cultures (International Services).

The law requires the activities to be based on contracts with public organizations or private companies in Japan. Therefore, the applicant must enter into an employment agreement, service contract or consignment agreement. The applicant's employer must have an office located in Japan, and is, in many cases, required to arrange social and labor insurance for the applicant.

Applicants must:

- have graduated from or completed a course at a college or acquired an equivalent education majoring in a subject relevant to the skills and/or knowledge necessary for the proposed employment
- have at least 10 years of experience (including the time spent studying the relevant skills and/or knowledge at a college or upper secondary school, etc.)
- be coming to work in a job that requires skills or knowledge concerning information processing for which the applicant has passed an information processing skills examination designated by the Minister of Justice or has obtained the information processing skills qualification designated by the Minister of Justice

If the job requires specific training or sensitivity based on experience with foreign cultures, the applicant must have a minimum of three years of experience in the relevant field, except where the applicant will engage in a translation, interpretation, or language-related role.

In addition, the applicant must be offered a salary equal to the salary a Japanese national would receive for comparable work. The Immigration Services Agency does not announce the actual amount

that satisfies this requirement; however, it is currently understood that a minimum of JPY 200,000 is to be paid as monthly salary.

Intra-company Transferee

This status of residence authorizes activities for personnel transferred to business offices in Japan for a limited period of time from business offices established in foreign countries by public organizations or private companies that have head offices, branch offices, or other business offices in Japan, and where applicants' work at these business offices is encompassed by the activities described in the engineers/specialists in humanities/international services status.

The applicant must be transferred from a business office located overseas to a business office in Japan, both offices being of the same company, to engage in a job requiring skills or knowledge pertinent to physical science, engineering or other natural science fields, or knowledge pertinent to jurisprudence, economics, sociology or other human science fields, or to engage in services that require specific training or sensitivity based on experience with foreign cultures.

The main difference between the intra-company transferee and engineers/specialists in humanities/international services status of residence categories is that an intra-company transferee status does not require the applicant to have a contract with public organizations or private companies in Japan. The applicant therefore may receive his salary from business offices overseas.

Transfers between offices of the same company include transfers between the parent company and its subsidiary, as well as a transfer between group companies that have a certain level of financial ties with each other. In addition, applicants for the intra-company transferee status of residence are different from applicants who are to operate or manage the operations of business offices located in Japan (who should apply for the business manager status).

Applicants must have been continuously employed at business offices outside of Japan for at least one year immediately prior to the transfer to Japan in a position that falls under the status of residence category of engineers/specialists in humanities/international services.

Furthermore, the applicant must receive a salary equal to the salary a Japanese national would receive for comparable work. The Immigration Services Agency does not announce the actual amount that satisfies this requirement; however, it is currently understood that a minimum of JPY 200,000 is to be paid as monthly salary.

Business Manager

This status of residence authorizes foreign nationals to operate or manage international trade or other businesses.

Further, if the applicant is to operate or manage that business, the following conditions must be satisfied:

- The office for the business must be located in Japan. If the business has not yet completed the start-up process, the location which will serve as its office must be in Japan.
- One of the following conditions should be satisfied:
 - The business concerned must have the capacity to employ at least two full-time employees residing in Japan in addition to those who operate and/or manage the business. Full-time employees mentioned here exclude foreign nationals residing in Japan, except for foreign nationals with a status of residence as “permanent resident,” “spouse or child of a Japanese national,” or “spouse or child of permanent resident,” or “long-term resident.”
 - The amount of investment in the business is at least JPY 5 million, which may vary depending on the size of the entire business operating in Japan.

If the applicant is to engage in the management of international trade or other businesses in Japan, the applicant must:

- have at least three years' experience in the operation or management of the business (including the time during which the applicant majored in business operation and/or management at a graduate school)
- receive a salary equal to a salary a Japanese national would receive for comparable work

Highly Skilled Professional I

This status of residence targets applicants who will engage in one of the following activities designated by the relevant Ministry of Justice ordinances as those offered by highly skilled professionals who are expected to contribute to Japan's academic research and/or economic development:

- research activities, research guidance activities or education activities based on a contract with a public or private organization in Japan, and the same activities engaged in simultaneously with the aforementioned based on the business the applicant runs himself or a contract with another public or private organization in Japan
- activities which require knowledge and/or skills related to the natural sciences or humanities fields based on a contract with a public or private organization in Japan, and activities related to operating a business which simultaneously engages in the aforementioned activities
- activities related to the operation of international trading or other businesses, management of such trading and businesses at a public or private organization in Japan designed by the Minister of Justice, and activities related to operating a business which simultaneously engages in the aforementioned activities

Applicants for the Highly Skilled Professional I category must first qualify for a status of residence other than Diplomat, Official or Technical Intern Training. The applicant's intended activities in Japan must not be considered harmful to Japan's industries or to the lives of its citizens.

A holder of Highly Skilled Professional I status will be given preferential immigration treatment, including: (i) permission to engage in multiple types of activities during his stay in Japan; (ii) a five-year period of stay; (iii) relaxation of the requirements for the granting of permission for permanent residence in line with his history of staying in Japan; (iv) preferential processing of immigration and stay procedures; (v) employment permission for his spouse; (vi) permission to bring his parents into Japan; and (vii) permission to bring a domestic servant he employs.

In addition, a qualified applicant must engage in activities categorized as "academic research activities," "advanced specialized/technical activities," or "business management activities," and earn 70 points or more under the points-based system to be recognized as a "Highly Skilled Foreign Professional."

Highly Skilled Professional II

This status of residence targets holders of Highly Skilled Professional I status who have lived in Japan for a period of three years or longer.

In addition to enjoying the above-listed types of preferential treatment granted to holders of Highly Skilled Professional I status, holders of Highly Skilled Professional II status will be allowed an infinite period of stay (as opposed to a maximum of five years for Highly Skilled Professional I) and will be allowed to engage in a much wider variety of activities (practically any work activities authorized under any work-related status of residence).

Dependants

This status of residence is for applicants whose daily activities are as the spouse or dependent children of foreign nationals who are staying in Japan with a status of residence other than “diplomat,” “official,” “temporary visitor,” “pre-college student,” or “designated activities.”

A dependent spouse must be legally and substantively married to the principal applicant. The Immigration Services Agency does not recognize common-law or same-sex marriages. Dependent children include adult children (age 20 or above) and adopted children.

Permissible “daily activities” include non-profit-making activities that family members are reasonably expected to be engaged in, such as household duties or attending elementary and high schools. Profit-making activities and paid activities are excluded. However, job hunting is considered to be within a dependent’s authorized activities. Subject to obtaining special permission from the Immigration Services Bureau, a holder of the dependent visa status may engage in profit-making activities within the limit of 28 hours per week.

Other Comments

Certificate of Eligibility

The Certificate of Eligibility (“**CoE**”) is a document issued by the Minister of Justice prior to the arrival at a port of entry in Japan, certifying that the applicant fulfils the requirements for the status of residence requested. It is the applicant’s responsibility to prove conformance to the disembarkation and residency requirements. The CoE procedure, which aims to complete the inquiry into the applicant’s qualification prior to arrival, helps expedite the process for landing permission at the port of entry.

The CoE is evidence that the examination of status of residence has been completed and disembarkation permission has been granted.

Therefore, a CoE will speed up the visa process at the Japanese consulate overseas (usually completed within three to five business days after filing), as well as the process for obtaining landing permission at the port of entry.

In principle, the applicant's proxy (staff of the sponsoring company) or its agent (authorized attorney-at-law and administrative scrivener or (*gyoseishoshi*)) in Japan must submit the CoE application to the local Immigration Services Bureau. The application documents, as provided by the Immigration Control Act Enforcement Regulations, differ depending on the status of residence category.

Landing Permission and Residence Card

When a foreign national enters Japan, he will be granted landing permission, which includes his status of residence and an authorized period of stay if he is proven to meet the landing requirements upon screening at the port of entry.

When landing permission is granted, a residence card will be issued to a foreign national authorized to stay in Japan for three months or more (called a “medium- to long-term resident”). A residence card carries the holder's ID photo, name, address in Japan, gender, status of residence and period of stay (expiration date) and contains an IC chip that also stores information of the holder.

Medium- to long-term residents are now required, as with Japanese nationals, to file a resident registration to allow their relevant local city governments to provide them with the same services that are available to Japanese nationals.

Where any items stated/recorded in a medium- to long-term resident's residence card are changed, the medium- to long-term resident is required to report such change(s) to his local city government so that these can be reflected in the residence card and resident registration.

Re-entry Permit

The status of residence granted to foreign nationals at the time of their entry automatically expires upon departure. If a foreign national subsequently wishes to re-enter and continue the status of residence he was previously granted, it is important to obtain re-entry permission prior to departure. By obtaining re-entry permission prior to leaving, the procedure for entry and landing can be simplified and the foreign national can retain the status of residence for the stay period originally granted.

A residence card holder is considered to hold a re-entry permit valid for one year from the date of his last departure from Japan, because the act of presenting a residence card to an immigration official at the port of departure from Japan is considered equivalent to issuing a valid re-entry permit.

However, if a foreign national leaves Japan and presents the residence card at the port of his departure without holding an actual re-entry permit and fails to return to Japan within one year after such departure, the foreign national will lose his status of residence. This is because the one-year period during which a residence card holder is deemed to hold a re-entry permit cannot be extended while outside Japan.

Further, foreign nationals with a re-entry permit may register their personal identification information (e.g., fingerprints and photograph) with the Immigration Services Bureau prior to departure to further simplify the immigration inspection at the time of departure and re-entry.

Extension of Period of Stay

A foreign national who wishes to remain in Japan under the same status of residence beyond the period originally approved and for the same purpose must apply for permission at the local Immigration Services Bureau before the current visa status expires.

Filing an application does not mean an extension of period of stay will be approved. The Minister of Justice will give permission only if it can be determined that there are reasonable grounds to grant an extension.

As mentioned earlier, the temporary visitor visa status generally may not be extended because it is intended only for foreign nationals who plan to stay in Japan for a short period of time.

Change of Status of Residence

Foreign nationals in Japan who wish to change the activities authorized under their current status of residence must obtain permission to change their status of residence from the local Immigration Services Bureau.

Certificate of Authorized Employment

A certificate of authorized employment certifies that a foreign national seeking employment in Japan is legally authorized to be engaged in certain types of jobs. This certificate may be issued by the Minister of Justice when a foreign national files an application with the local Immigration Services Bureau for such purposes, such as intending to switch to another company for a job that falls under his current status of residence.

Kazakhstan



Key Government Agencies

The MFA is responsible for processing of first-time issuances of all categories of visas (except exit visas) in Kazakhstan and at Kazakhstani consular posts abroad.

In the territory of Kazakhstan, the Ministry of Internal Affairs issues private visas and permanent residence visas, in certain limited circumstances, as well as exit visas. Local departments of the Ministry of Internal Affairs also register foreign nationals upon their arrival to Kazakhstan.

Local executive bodies (Akimats) are responsible for issuing work permits, which are a necessary precondition for working in Kazakhstan.

Current Trends

In the Republic of Kazakhstan, immigration-related procedures are complicated and time-consuming. Foreign nationals coming to Kazakhstan for work, studying, living, or other purposes may face heavy bureaucracy. Furthermore, it must be mentioned that the immigration environment in Kazakhstan is highly discretionary, non-transparent and very volatile, changing on a regular basis. For example, officials are not required to provide any reasons for their refusal to issue or revoke a visa. There are some legal ambiguities in relation to the immigration regulations, and there is a lack of consensus as to the proper interpretation of certain aspects of the legislation, which allows the authorities a great deal of discretion in exercising their functions.

This summary provides a general overview of the immigration rules, processes and procedures most pertinent to business-related immigration, i.e., those associated with businesses, investors, permanent residents, work permits and work visas only.

Permanent Residents and Temporary Visitors

In Kazakhstan, foreign nationals are divided into the following two general categories:

- foreign nationals permanently residing in Kazakhstan (“Permanent Residents”)
- foreign nationals temporarily staying in Kazakhstan (“Temporary Visitors”)

Permanent Residents are foreign nationals who have been issued a Kazakhstani permanent residence permit. Permanent Residents are exempted from the work permit and any visa requirements (once they receive a permanent residence permit). That is, they may reside and work in Kazakhstan without any visa or work permit (if working) on the same basis as the citizens of Kazakhstan. They are also covered by the social and pension schemes adopted in Kazakhstan.

In contrast, Temporary Visitors are foreign nationals who stay in Kazakhstan on the basis of their national passport and an applicable type of Kazakhstani visa (citizens of certain countries, however, as discussed in further detail below in the “Visa Waiver” section, are exempted from the visa requirement and may enter and stay in Kazakhstan for specified periods of time). Furthermore, if a Temporary Visitor arrives in Kazakhstan for work purposes (or arrives on a business visa, but stays in Kazakhstan for a period exceeding 120 days in any calendar year), in addition to the work visa, a work permit would be required in connection with his employment in Kazakhstan. Generally, the work permit obligation lies with the local employer, but certain foreign professionals included on the list of 30 specified professions (including software engineers, computer graphics specialists, professors, ballerinas, etc.) may apply for a work permit directly without the local employer’s involvement.

Types of Visas

Subject to certain exceptions, some of which are specifically addressed below, a foreign citizen must obtain a visa to be able to enter, stay in and exit Kazakhstan. There are 22 categories of visas available in Kazakhstan based on the purpose of stay and the status of the foreign national, as follows:

- Diplomatic Visas
- Official Visas
- Investor Visas
- Business Visas
- Visas for International Transporting
- Visas for Crews of Airplanes, Trains and Ships
- Visas for Joining Religious Events
- Visas for Taking Internship
- Permanent Residence Visas
- Private Visas
- Visas for Child Adopting
- Tourist Visas
- Transit Visas
- Exit Visas
- Permanent Residence Visas
- Family Reunification Visas
- Work Visas

- Missionary Visas
- Student Visas
- Visas for Nonages
- Healthcare Visas
- Humanitarian Visas

Furthermore, visas can be single- or multiple-entry ones. Single-entry visas give a foreign national the right to enter Kazakhstan once and thereafter exit the country; multiple-entry visas give the foreign national the right to enter the country multiple times, and thereafter exit Kazakhstan, in each case within the validity period of the subject visa.

Process Overview

Generally, obtaining a Kazakhstani visa consists of the following two stages (please note that a different procedure applies to certain categories of visas, such as exit visas):

Stage I involves filing the applicable application documentation (including an invitation letter) with, and obtaining a visa endorsement number from, the Consular Service Department of the Ministry of Foreign Affairs (MFA) in the cities of Almaty or Astana.

Stage II involves obtaining a visa on the basis of the visa endorsement number from a Kazakhstani consulate or embassy abroad.

Business Travel

Business visas are issued for single and multiple entries and can be of three different categories. The maximum term of a multiple-entry business visa is one year, during which its holder may not stay in Kazakhstan for more than 60 days per visit. Single-entry visas, as a general rule, may be issued for a period of up to 90 days, during

which a foreigner may stay in Kazakhstan up to 60 days. Business visas are generally not extendable.

As of 1 February 2019, each of these visas has a number of subcategories that affect the scope of permissible actions and the permissible length of stay per visit to which their holders are entitled.

Depending on its category, the following activities are permitted under a business visa:

- B1 visa – participation in conferences, forums, exhibitions, concerts, cultural and scientific events, roundtables, expert meetings; giving lectures and conducting classes in educational institutions; participating in student and school exchange programs, and sports events
- B2 visa – assembly, repair and technical maintenance of equipment, and rendering consulting and audit services
- B3 visa – negotiations and signing of contracts, including negotiations and signing of contracts related to investment and industrialization projects, and shareholders and members of board of directors

A business visa can be issued on the following bases depending on the intended frequency of travel and the type of visa being applied for:

B1 visa:

- (1) Single entry – valid for not more than 90 days with up to 60 days of stay
- (2) Multiple entry – valid for not more than one year with up to 60 days of stay per entry

B2 visa:

- (1) Single entry – valid for not more than 90 days with up to 30 days of stay

- (2) Multiple entry – valid for not more than 180 days with up to 90 days of stay cumulatively

B3 visa:

- (1) Single entry – valid for not more than 90 days with up to 30 days of stay
- (2) Multiple entry – valid for not more than one year with up to 30 days of stay per entry

However, as will be discussed further below, from a practical perspective, business visas should not exceed 120 days per calendar year as there may be a risk that the local authorities will insist on a work permit and work visa.

Business visas are issued to foreign nationals coming to Kazakhstan for the purposes outlined above.

for the assembly, installation, repair and technical servicing of equipment, however, the installation/maintenance of software and IT will likely not fall within this category as they do not qualify as equipment

A foreign national holding a business visa should not, among other things:

- receive compensation from the host entity in Kazakhstan
- receive/send directions from and to the host country entity's officers and employees
- act as a representative of the host company, such as having a personal assistant, office, workplace or business cards
- stay longer than 120 days within one calendar year

Business visas are generally issued on the basis of an invitation letter from a local Kazakhstani government or non-government entity, an

embassy/diplomatic mission or a consulate of a foreign state, or an international organization accredited in Kazakhstan. The invitation letter is filed with the consular department. Once approved, a visa number is assigned and the host entity sends the invitation letter and the visa number to the foreign national, who obtains the business visa at the embassy/consulate in his home country. From filing it usually takes five business days until a visa number is assigned.

Foreign nationals of Kazakh nationality and citizens of the countries listed below may apply for a single-entry business visa (for up to 30 days) directly through an applicable embassy/consulate without an invitation letter and visa support (recommendation) from the consular department/ MFA: Australia, Austria, Greece, Luxembourg, Hungary, Israel, Qatar, Ireland, Italy, Denmark, Saudi Arabia, Spain, Iceland, Canada, Liechtenstein, Monaco, Netherlands, Norway, Sweden, Belgium, Lithuania, Latvia, New Zealand, United Arab Emirates, Portugal, Singapore, Poland, Croatia, the Republic of Korea, Bulgaria, Cyprus, Malta, Slovenia, Romania, United States, UK, Slovakia, Oman, Finland, France, Germany, Malaysia, Brazil, the Czech Republic, Switzerland, Estonia, Japan and Jordan.

A foreign national may stay in Kazakhstan on the basis of a business visa for up to 120 calendar days per calendar year. If the foreign national works or stays for business purposes for a longer period, this is deemed to constitute employment in Kazakhstan. In such cases, as a general rule, subject to certain limited exceptions, the local employer must obtain a work permit (or, if such foreign national is a professional in one of the 30 specified specialty areas, the foreign national may apply for a work permit on his own), and the foreign national must obtain a work visa.

Visa Waiver/Visa Exemptions

There are a number of foreign states that have signed international agreements with Kazakhstan, which allow citizens of these countries to enter into and stay in Kazakhstan without any visa for a prescribed or non-prescribed period of time. Please bear in mind that the list

below is not exhaustive and reflects the current status of affairs and may change. In addition, the list below applies to persons without any diplomatic or other special status. Finally, please note that absence of a visa requirement does not necessarily exempt the individual from the work permit requirement. Only Permanent Residents and certain other limited categories of foreign employees (e.g., heads of branch or representative offices of the foreign entities, and citizens of Russia, Belarus and Armenia) are exempted from the work permit requirement.

- Armenia (for a term not exceeding 90 days)
- Azerbaijan (for an unlimited term)
- Belarus (for an unlimited term)
- Georgia (for a term not exceeding 90 days)
- Kyrgyzstan (for an unlimited term)
- Moldova (for a term not exceeding 90 days)
- Mongolia (for a term not exceeding 90 days)
- Russia (for an unlimited term)
- Serbia (for a term not exceeding 30 days)
- Tajikistan (for an unlimited term)
- Turkey (for a term not exceeding 30 days)¹

¹ Turkish and Ukrainian citizens may enter and stay in Kazakhstan without a visa for up to 30 days (it is not clear from the applicable agreement, however, whether this 30-day visa-free stay limitation is a per stay or a per year limitation; in practice, Turkish nationals re-enter Kazakhstan every 30 days); however, they are not allowed to work in Kazakhstan. If the purpose of the stay is business or employment, a Turkish citizen must obtain the appropriate visa to enter Kazakhstan, and if the purpose of the stay is work, a work permit must be obtained (with certain exceptions).

- Hong Kong Special Administrative Region of the PRC (for a term not exceeding 14 days)
- Ukraine (for a term not exceeding 30 days)
- Uzbekistan (for an unlimited term)

Additionally, citizens of the US, United Kingdom, Germany, France, Italy, Malaysia, the Netherlands, UAE, Republic of Korea, Australia, Hungary, Monaco, Belgium, Spain, Norway, Sweden, Singapore, Finland, Switzerland, Germany, Greece, Denmark, New Zealand, Israel, Ireland, Iceland, Canada, Cyprus, Latvia, Lithuania, Luxemburg, Malta, Mexico, Monaco, Poland, Portugal, Slovakia, Slovenia, Turkey, Croatia, Chile, Czech, Estonia and Japan may visit Kazakhstan without a visa if their visit does not exceed 30 calendar days.

Employment Assignments

Generally, a foreign employee coming to Kazakhstan for work purposes (or who comes to Kazakhstan for business purposes but stays in Kazakhstan for more than 120 days in any calendar year) would be required to have a work permit (the work permit is issued either to the local employer or the employee, as discussed below) and a work visa. The law provides for a number of exceptions to the work permit requirement. For instance, certain categories of foreign employees are exempt from the work permit requirement, including Permanent Residents, heads of representative or branch offices of foreign entities in Kazakhstan, heads of local companies with 100% foreign share and their deputies, citizens of Russia, citizens of Belarus, Armenia and Kyrgyzstan, actors, conductors, professional athletes, certain airspace specialists and members of sea/air/railroad crews.

Work Permits

General

Generally, work permits are issued on the basis of an application by a local employer, the “sponsor,” with such work permits being “Employer WPs.” If a foreign entity sending its employees to Kazakhstan for work purposes does not have legal presence in Kazakhstan (no subsidiaries, representative offices or branch offices) and if such foreign entity sends its personnel to work exclusively for a counterparty/client (host) based in Kazakhstan, then such local counterparty/client (host) would be responsible for obtaining the applicable work permits, subject to satisfaction of all applicable requirements including quotas and ratios, as applicable. However, once the foreign entity establishes legal presence in Kazakhstan, this secondment option, whereby the local counter-party/client (host) would “sponsor” work permits for the foreign employees of the foreign entity, would no longer be available. There is also a corporate transfer option available to foreign employees temporarily transferred to an affiliate of a foreign entity registered in Kazakhstan. The corporate transfer option is mostly similar to obtaining work permits on a regular basis, except for a slightly different procedure and different effective terms of work permits. Intracorporate transfer is discussed below in more detail in the Intracorporate Transfer section below.

Certain foreign employees, however, might be able to avoid the local sponsor requirement and apply for a work permit themselves, which offers a number of advantages (at least in theory) over the Employer WP process (e.g., no need to satisfy the local content ratios, no imposition of special conditions, faster processing, including due to the absence of the local labor market search). The work permit rules allow a very specific and narrow group of foreign professionals to apply for an Employee WP directly without the local employer’s sponsorship.

Among such foreign professionals who qualify for Employee WPs are certain teachers, doctors of medicine, engineers, professors,

anthropologists, computer science specialists and software design engineers, specialists in the field of information technology and electronics, specialists in the field of electro-technology and electronic engineering, animation specialists and computer graphic specialists.

However, due to the fact that the Employee WP option was introduced only recently, there is no established practice in place in connection with the Employee WP application process. Therefore, in practice, this may result in delays and procedural complications.

Validity Term

- Employee WPs are issued and extended, subject to the annual quota availability, for a term of up to three years. Extension is available up to two times, not exceeding five years in total.
- Employer WPs are valid for the following periods, depending on the foreign employee category:

Category	Validity period	Extension
Category 1 (chief executives and their deputies) (other than small businesses)	up to 3 years	for up to three years
Category 2 (department heads)	12 months	For a period up to 12 months, not more than three times
Category 3 (specialists)	12 months	For a period up to 12 months, not more than three times
Category 4 (qualified labor) and seasonal workers	Up to 12 months	No right to extension

Annual Quotas

Work permits are issued by taking into account work permit quotas allocated to an applicable region for that year. Every year, by 30 September, the Kazakhstani labor authorities request interested local employers to submit a request outlining their work permit needs for the following year. Theoretically, these numbers are consolidated and used to determine the overall annual quota for work permits, which are distributed among different regions and categories of employees. In addition, the local labor authorities (the Ministry of Labor and Social Protection of the Republic of Kazakhstan) may, upon “suggestion” of the interested governmental authorities (e.g., city and regional departments of labor and employment), reallocate the annual quotas among the regions and cities, but within the established quotas for that year.

The annual quotas apply to both the Employer WP and the Employee WP scenarios.

Local Content Ratios

The local content ratios apply only in the context of the Employer WP process (Employee WP applications are exempt from this requirement). The local content requirement also does not apply to: (i) small businesses; (ii) governmental organizations; (iii) certain “priority” projects; and (iv) branches and representative offices of foreign companies with less than 30 employees.

Basically, in addition to the annual quotas, in connection with an Employer WP application, the local employer (other than the local employers that are small businesses, governmental organizations, or employers that are engaged in certain “priority” projects) must maintain and certify that the ratio for local versus foreign employees outlined below is met:

- 70/30 for the first (chief executives and their deputies) and second (department heads) categories combined – in order words, the number of citizens of the Republic of Kazakhstan shall be not less

than 70% of all employees in the first and second categories combined.

- 90/10 for the third (specialists) and fourth (skilled workers) categories combined – in other words, the number of citizens of the Republic of Kazakhstan shall be not less than 90% of all employees in the third and fourth categories combined.

Fees for Work Permit Issuance

Starting from 1 January 2017, work permits are issued upon payment of a state fee of up to USD 3,750. The exact amount depends on the category of the relevant work permit and area of employer's activities.

Skilled Workers

There is no special regulation for the engagement of foreign skilled workers in Kazakhstan. Foreign employees in this category may be engaged based on a regular work permit procedure or the regulations described above.

Intracorporate Transfer

Work permits are also required for foreign nationals who visit Kazakhstan through intracorporate transfers (i.e., where an employee of a foreign company-employer is assigned to Kazakhstan to perform work for the interests of its local subsidiary, branch or representative office). In this case, the foreigner is not supposed to become an employee of the local entity applying for the work permit.

Regulations for Intra-Corporate Transfer ("ITC") are mostly similar with regular work permits. However, there are a number of specifics:

- ITC work permits are divided into three categories:
 1. Executives
 2. Managers
 3. Specialists

- Local content ratio requirements are different: 50% locals: 50% foreign nationals for managers and specialists. No ratio requirements apply to executive positions.
- ICT work permits are issued for up to three years with one extension for one year available.
- ICT work permits are issued under special conditions. The applying company should undertake to provide education/trainings to its local employees at its own expense or hire a certain number of local employees.
- Obtaining ICT work permits is free of charge.
- The process of obtaining ICT work permits is slightly more difficult, as this requires the preliminary notification on a vacancy to be filed with the local employment center. Additionally, the list of documents required includes the employment agreement of the foreigner with the foreign company.

There are a number of additional requirements to obtaining ICT work permits:

- ICT work permits may only be issued where a foreigner is seconded from a foreign company to its subsidiary, branch or representative office.
- The sending company should be registered in a country that is a WTO member.
- The foreigner should be employed by the sending foreign company for at least one year.

Work Visas

Multiple-entry work visas are issued for the term of an applicable work permit, but may not exceed three years in any event. Furthermore, the

expiration date of the foreign employee's passport must be at least six months beyond the expiration date of the work visa.

Work visas are issued on the basis of an approved and valid work permit (if the work permit is required) and an invitation letter from the local sponsor/local employer filed with the Consular Department. The Consular Department then, based on its review of the application materials, makes a recommendation to the applicable visa issuing authorities (embassies/consulates in the case of first time issuances to employees located outside of Kazakhstan). Typically, it takes five business days for the Consular Department to conduct such a review from the moment it accepts the application materials and issues a visa endorsement number.

A visa then can be obtained on the basis of the visa endorsement number from a Kazakhstani consulate or embassy abroad. It is important to consult the specific Kazakhstani consulate or embassy abroad where the work visa application will be filed, as the requirements vary from one country to another.

Post-Entry Procedures

As a general rule, foreign nationals who enter Kazakhstan have to register with the migration authorities.

Generally, the purpose of registration of foreign nationals is to conduct migration control and keep records on the residence address of foreign nationals within Kazakhstan.

Registration rules are not well developed. Although there are at least three separate sets of rules regulating the registration procedure, the process is still not clear in some parts and the rules sometimes do not correspond to each other. As a result, in practice, the process may vary in different regions of Kazakhstan.

Depending on the length of their stay, all foreign nationals (100%) entering Kazakhstan must register with the migration police upon or after entry into Kazakhstan.

As a general rule, the registration requirement is triggered if a foreigner stays in Kazakhstan for more than five days. Citizens of the Eurasian Economic Union may stay in Kazakhstan without registration for up to 30 days.

Automatic Registration

Citizens of 48 countries listed in the “Business Travel” section above are registered automatically upon their arrival in Kazakhstan by border control officers. Registration is conducted using the person’s passport and migration card. The migration card is a document in which a foreigner states the purpose of his visit and planned address of stay. The foreigner is registered at the address according to the information that the foreigner declares in the migration card. The registration is confirmed with a stamp that border control officers put on the migration card.

Two migration cards are given to foreign nationals: at the passport control point when they cross the border, or on the aircraft before landing, and they must return one when they exit Kazakhstan.

Foreign nationals visiting Kazakhstan under visas are also registered automatically upon their arrival in Kazakhstan by border control officers. These foreign nationals are registered at the address specified in the documents filed by the inviting entity for obtaining visas. Registration is confirmed with the visa in the passport.

Non-automatic Registration

Other foreign nationals cannot be registered automatically as described above. Their registration is conducted based on notices that should be filed with the migration police by so-called “host parties.”

Host party is defined by the Law “On Migration of Population” (Article 1.10-1) as an entity or individual that applied for the invitation of the foreigner or is providing accommodation to him. In other words, the host party is: a) an entity that provided the invitation for the foreigner’s visa; or b) a hotel or owner of the premises where the foreigner will live.

The host party is obliged to file a notification with the migration police within three business days after the arrival of the foreigner. The application may be filed electronically through a website (www.vmp.gov.kz) or in paper format at the migration police department according to the residency address of the foreigner in Kazakhstan.

In the case of electronic filing, registration is confirmed by the electronic document, which should be printed out. The foreigner should keep this with him.

In the case of paper filing, the registration is confirmed by a stamp on the migration card or by a certificate of registration (it varies in different regions).

On Notices by Host Parties

Please note that the registration rules oblige host parties to file notices on the arrival of the foreigner with the migration police in all cases where the foreigner visits Kazakhstan, even in the following scenarios:

- where the foreigner visits Kazakhstan for less than five days and, therefore, does not need registration
- where the foreigner is registered automatically
- where one hosting party (say, the inviting company) sends the notice to the migration police, the other hosting party (e.g., the hotel) should still file the notice.

Therefore, it is necessary to file the notice with the migration police in all cases of foreigner visits where the company qualifies as the host party.

Other Comments

Permanent Residence

Permanent residence visas are also issued on the basis of visa endorsement by the Consular Department to persons coming to Kazakhstan for permanent residence, to those who arrived in Kazakhstan on private business, to those who have made a request to stay permanently in Kazakhstan and to those asking for refugee status. Permanent residence visas can be single- or double-entry, which are issued, in each case, for up to 90 days. In addition, permanent foreign nationals must receive a residence permit, which allows them to reside in Kazakhstan for an unlimited period of time.

Liability for Violating Immigration Laws

Depending on the nature and seriousness of the violation, a foreign citizen who violates any visa, work permit or other immigration laws of Kazakhstan, may face the following penalties:

- an administrative fine of up to approximately USD 180
- an invalidation of authorized stay in Kazakhstan
- an administrative arrest for up to 15 calendar days
- forced deportation from Kazakhstan

A foreign national may be deported from Kazakhstan only on the basis of a court decision to this effect. Foreign nationals who are deported from Kazakhstan are precluded from re-entering Kazakhstan for five years from the date of their deportation.

For intentional illegal crossing of the Kazakhstani border, e.g., without a national passport or a proper visa, a foreign national may also be penalized in the form of:

- a fine of USD 6,700
- imprisonment for up to one year

A Kazakhstani company/employer that violates the work permit or other immigration laws of Kazakhstan may face the following penalties:

- an administrative fine of up to approximately USD 6,700
- a suspension or revocation of all valid work permits issued to the company/employer
- a temporary ban on the issuance of work permits for a period of up to two years

An officer/manager, who repeatedly violates the work permit rules of Kazakhstan may face the following penalties:

- an administrative fine of up to approximately USD 670

Luxembourg



Luxembourg's popularity as a destination for business travelers continues to grow. Although brief visits generally pose little to no immigration issues for EU citizens (or those treated as such, i.e., Norway, Liechtenstein, Iceland and Switzerland), for non-EU citizens, working and residing in Luxembourg entails compliance with a number of procedures with various authorities.

Non-EU citizens wishing to work for a period of over three months in Luxembourg will need to obtain a temporary residence certificate and, where relevant, the appropriate visa before entering Luxembourg.

Key Government Agencies

Visa applications are processed at Luxembourg embassies and consular posts around the world or at a diplomatic mission which represents Luxembourg. Personal appearance at the embassy or consular post is generally required.

A request for a permanent residence permit with authorization to work in Luxembourg may only be filed further to receipt of a temporary authorization from the Ministry of Foreign Affairs (*Direction de l'Immigration*). If the foreign national resides in a non-European Economic Area country, the temporary residence certificate and visa request must be made in the foreign national's country of residence and submitted to the Ministry of Foreign Affairs in Luxembourg.

A registration or declaration of arrival will be required at the commune of the place of residence in Luxembourg.

A business which intends to recruit staff must file a job vacancy declaration with the Employment Administration Office (*Administration de l'emploi* (ADEM)) at least three working days before publishing the job offer. The ADEM will carry out a market labor test and, should a suitable candidate not be found within three weeks, the employer may request a certificate entitling the hire of a third-country national (Blue Card candidates are exempt from this requirement). This certificate

will be required for the residency permit processing of certain categories of workers.

Non-EU nationals (or assimilated nationals) who wish to stay for more than three months in Luxembourg must undergo a medical check-up involving a medical examination by a doctor established in Luxembourg and a Tuberculosis screening by the Health and Social Welfare League (Ligue médico-sociale (LMS)).

Current Trends

One ministry is in charge of the immigration procedure in Luxembourg and the timeframe of immigration procedures is therefore fairly short in comparison to other EU countries. Specific status and/or fast-track procedures exist for different categories of applicants, including employees arriving in Luxembourg via an intra-group transfer, highly qualified employees, family members, students, researchers and sportspeople, for example.

The posting procedures of employees to Luxembourg has undergone significant reinforcement and controls.

Business Travel

Short-term Visas (Less Than Three Months)

The nationality of the non-EU national will determine whether or not a visa is required for him to travel to Luxembourg (see <https://maee.gouvernement.lu/dam-assets/services-aux-citoyens/visa-et-immigration/list-of-countries-whose-citizens-require-a-visa.pdf>). In general, and subject to the visa waiver described below, non-EU nationals wishing to visit, transit through or work in Luxembourg for a period of less than 90 days must obtain a Schengen short stay type C visa from Luxembourg embassies and consular posts where the non-EU national resides, or from a diplomatic mission representing Luxembourg, prior to coming to Luxembourg (see <https://guichet.public.lu/en/citoyens/immigration/moins-3-mois.html>).

The type C Schengen visa allows the holder to enter Luxembourg and move freely within other countries in the Schengen Area.

The Schengen visa does not grant its holder the right to visit other EU countries that are not members of the Schengen Area.¹

A short stay type C visa is granted for an uninterrupted period of no more than 90 days or for 90 days accumulated over a 180-day period for a limited number of activities, including business trips, participating in corporate management or shareholding meetings, intra-group service provision and so forth. The visa may be issued for one or multiple entries, depending on the reasons for the stay. The type C visa does not grant its holder the right to carry out a paid activity in Luxembourg. Only a long-term type D visa confers the right to a non-EU citizen to carry out paid activity in Luxembourg (together with a work or residence permit).

The visa application must be accompanied by supporting documentation including evidence of the reason of the visit, health insurance, a hotel reservation and a return travel ticket, as well as evidence of sufficient resources for the stay in Luxembourg.

Visa Waiver

Visas are not required for EU and EEA (i.e., Norway, Liechtenstein, and Iceland) citizens to visit Luxembourg.

In addition, the normal visa requirements are waived for citizens of the following countries: Albania, Andorra, Antigua and Barbuda, Argentina, Australia, the Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Hong Kong, Israel, Japan, Macau, Macedonia,

¹ Currently, the Schengen Area is comprised of: 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.

Malaysia, Mauritius (Isle), Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, San Marino, Serbia, Seychelles, Singapore, South Korea, Taiwan, the US, Uruguay, Vatican City and Venezuela.

Before entering Luxembourg

Citizens of the EU/EEA are entitled to freely train into Luxembourg without a visa.

Save for cases of visa waiver, non-EU citizens must qualify for either a short stay type C visa for professional training if the training is under three months, or a long stay type D visa for private reasons for trainings of a duration of over three months.

A non-EU national wishing to reside in Luxembourg to undergo intra-group training for under three months may be exempted from requiring a work permit. A non-EU national wishing to reside in Luxembourg to undergo intra-group training will be required to apply for a temporary residence permit for private reasons with the Ministry of Foreign Affairs in Luxembourg prior to arriving.

Among the documents annexed to the application, evidence must be made of the training in Luxembourg. The temporary residence certificate is valid for 90 days as of its deliverance, during which time the non-EU trainee must finalize the administrative formalities to receive a permanent residence permit.

A non-EU national holder of a residence permit issued by another EU Member State where said person shall continue to reside during the intra-group training in Luxembourg is exempted from requesting a work permit during the validity of the EU residence permit.

After entering Luxembourg

Declaration of Arrival/Accommodation Form

Non-EU/EEA citizens staying for a period of under three months in Luxembourg will be required to either make a declaration of arrival in

their new commune of residence within three days of their arrival or complete an accommodation form at the establishment where they are staying (hotel, bed & breakfast, etc.).

Non-EU citizens staying over three months in Luxembourg must make a declaration of arrival at their commune of residence.

Registration Certificate (EU Nationals)

EU nationals must register in their commune of residence and will receive a registration certificate at the latest three months after their arrival.

Medical Check (Non-EU Nationals)

A non-EU national must undergo a medical check as soon as possible, which consists of:

- a medical examination by a doctor established in Luxembourg
- a TB screening by the Ligue Médico-Sociale (LMS)

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Residence Permit Application (Non-EU Nationals)

Non-EU nationals must submit an application for a residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The residence permit takes the form of a chip card containing the individual's biometric data.

Employment Assignments

EU/EEA Employees

Citizens of the EU/EEA are entitled to free circulation within the EU, giving them the right to work and live anywhere in the EU.

EU/EEA nationals must hold a valid national identity card or passport.

A business which intends to recruit staff must file a declaration of job vacancy with the ADEM at least three working days before publishing the job offer.

The formalities to be completed depend on whether the EU/EEA citizen intends to stay for over three months. Should he intend to stay for a duration of over three months, then a declaration of arrival must be completed within eight days of arrival in Luxembourg, at the offices of the authorities of the commune where he intends to take up residence.

The EU/EEA national will receive a registration certificate as a result of his application.

Third-country Employee

Before entering Luxembourg

Declaration of vacant position

A business which intends to recruit staff must file a declaration of job vacancy with the ADEM at least three working days before publishing the job offer. If the ADEM cannot provide a suitable candidate within three weeks, the employer may request a certificate entitling the hire of a third-country national.

Temporary residence certificate

Prior to his arrival in Luxembourg the future third-country employee must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate from his country of origin. The

application must be submitted and approved before entering Luxembourg.

The application for a temporary residence certificate must contain, in particular, a police record, a copy of the applicant's diplomas or professional qualifications, and a copy of the employment contract (compliant with Luxembourg law) dated and signed.

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in his country of residence, or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a period of between 90 days and one year, is affixed in the passport in the form of a seal.

After entering Luxembourg

Declaration of arrival

A third-country national must arrive in Luxembourg with valid travel documents (passport and visa, where required) within 90 days of issue of the temporary residence certificate.

A declaration of arrival at the administration of the commune where he intends to establish residence must be completed within three days of arrival in Luxembourg. The applicant will receive a copy of such declaration of arrival.

The copy of the declaration of arrival together with the residence certificate is valid as a work and residence permit until the permanent

residence permit has been processed (or for a stay of less than 90 days).

Medical check

The third-country national salaried worker who intends to stay for more than three months must undergo a medical check as soon as possible which consists of:

- a medical examination by a doctor established in Luxembourg
- a TB screening by the LMS

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Permanent residence permit

Third-country national salaried workers who hold a temporary residence permit must submit an application for a permanent residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The residence permit takes the form of a chip card containing the individual's biometric data.

Intra-company Transferee

The employees in this category are those working under an employment contract for an indefinite duration and who are temporarily assigned by their employing company to a Luxembourg entity which is part of same group as the transferring company. The transferring and the receiving companies must have concluded a transfer contract and a new employment contract must be concluded between the transferred worker and the Luxembourg entity indicating the specific activities and duration covered by the transfer.

Intra-group transfers do not require prior declaration and are not subject to the ADEM local market test.

Short-term transfer of under 90 days

Transferred employees who are EU nationals, or equivalent, foreseeing to stay in Luxembourg for less than three months do not need to carry out any particular formalities.

Third-country national transferred workers who will reside for less than three months in Luxembourg must hold a valid passport and, where applicable, a type C visa before entering the country, and make a declaration of arrival within three days of arriving in their new commune of temporary residence.

Transfer of over three months

Before entering Luxembourg

Temporary residence certificate

Before entering Luxembourg, the non-EU transferred worker must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate. The application for a temporary residence certificate must note in detail the work to be performed and the duration of the transfer. Accompanying documentation must include a birth certificate, a social security registration certificate issued by the country of transfer, a copy of the signed and dated permanent employment contract between the transferred worker and the transferring company, as well as a copy of the employment contract or transfer agreement as signed between the host company and the transferred worker indicating the duration of the transfer. The temporary residence certificate is valid for 90 days.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission

in his country of residence, or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

After entering Luxembourg

For a stay of over 90 days, EU citizens must make a declaration of arrival at the administration of the commune where they intend to establish residence within eight days of their arrival. The transferred worker must also complete a registration form at the commune within three months of arrival with a copy of his employment contract.

The third-country national must fulfill the three conditions detailed above in “Third-country Employee”:

- declaration of arrival
- medical check
- permanent residence permit application as a transferred worker

The permanent residence permit with authorization to work as a transferred worker will be issued for a duration of one year and may be renewed for the same duration.

Employee Seconded in the Framework of a Service Agreement

This category concerns employees temporarily seconded to Luxembourg by their foreign employer to a third-party company for the performance of specific services (i.e., technical assistance) in the scope of a service agreement.

The secondment should not result in the employee’s effective involvement in the daily running of the Luxembourg host company’s

activity and the seconded employee will remain part of the sending business's permanent staff.

Before entering Luxembourg

Although the posting business will not need to file a declaration with the ADEM for a local market test, a number of procedures will need to be fulfilled:

Secondment authorization

The Luxembourg host company must submit a posted work application form to the Luxembourg Inspectorate of Labor and Mines and appoint a temporary holding person who will be charged with providing the mandatory documentation in the event of an inspection by the Luxembourg authorities. The application must be submitted and approved before entering the country. If more than one employee is concerned, a collective secondment application will be filed online.

Social security

The posting entity established in an EU Member State, or equivalent, must demonstrate affiliation to the social security in the country of origin for the full duration of the posted work (notably by requesting an A1 or E101 certificate).

A posting entity established outside the EU must ensure that the seconded employee is affiliated with the social security system in the country of origin if a bilateral social security agreement exists between Luxembourg and the posting company (www.secu.lu/conv-internationales/conventions-bilaterales/). If no bilateral convention exists, the posted worker must be affiliated with Luxembourg social security for the duration of the secondment.

Tax

The posting entity must ensure that the seconded workers' salaries are subject to the income tax of the country in which the posting company has its registered office, if the Luxembourg stay of the

posted worker is under 183 days. If their stay should exceed 183, the posting entity must ensure that the workers' salaries are subject to Luxembourg income tax.

Labor law

Luxembourg labor law provisions must be respected for the duration of the seconded employees' posting, notably regarding working times and minimum salary.

Temporary residence certificate

A non-EU citizen being posted to Luxembourg by a non-EU business will need to apply for a temporary residence permit prior to arriving in Luxembourg. The application for a temporary residence certificate must contain the nature and duration of the work to be performed and the circumstances that justify the issuance of a posting authorization. A copy of an employment contract for an indefinite duration with a minimum of six months' length of service with a foreign employer and a copy of service contract between this foreign employer and the Luxembourg host company will also be required.

As an exception, the undertaking located in any other EU/EEA Member State or in Switzerland may post their workers, within the framework of a service provision agreement, to Luxembourg irrespective of their nationality, insofar as such workers are entitled to reside and work during the posting in the country where the posting entity is located.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in their country of residence or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above in “Third-country Employee”:

- declaration of arrival
- medical check
- permanent residence permit application as a posted worker

The residence permit with authorization to work as posted employee will be issued for the effective duration of the work foreseen to perform the provision of services. It may be extended in exceptional circumstances.

Highly Qualified Employee (EU Blue Card)

A third-country national with high qualifications or experience in a specific sector who: (i) will be employed for a highly qualified position of one year minimum in Luxembourg; (ii) will earn at least 1.5 times the average gross salary in Luxembourg (certain professions have a lower minimum salary requirement of 1.2 times the average gross annual salary); and (iii) can provide proof of having the requisite professional qualifications to carry out the activities indicated in the employment contract, may request an EU Blue Card work and residence permit.

Before entering Luxembourg

The position must be declared with the ADEM, but will not be subject to the local market test.

Temporary residence certificate

The highly qualified employee must submit a temporary residence application to the Luxembourg Immigration Directorate. The

application must be submitted and approved before entering the country.

The application for a temporary residence certificate must contain, in particular, a police record, a copy of an employment contract for a highly qualified position with a minimum of a one-year duration and a minimum salary of at least 1.2 or 1.5 times the Luxembourg gross annual average, and certified copies of the applicant's diploma's or professional qualifications.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above in "Third-country Employee" with no special status:

- declaration of arrival
- medical check
- application for an EU Blue Card residence and work permit

The EU Blue Card is valid for a period of two years, or for the duration of the employment contract plus three months, and may be renewed upon request if all requirements are satisfied. The EU Blue Card provides the highly qualified employee with limited access to the employment market for a period of two years. After two years, the highly qualified worker benefits from equal treatment to Luxembourg nationals as regards highly qualified employment (with certain exceptions).

Training

Luxembourg law differentiates between paid and unpaid training and the immigration requirements differ accordingly. Unremunerated training is generally defined as the obligatory professional training provided by a educational institution or company in Luxembourg in the context of a training course or continuing educational scheme organized and taught by a higher educational institution. The training

must be of an educational nature and may not, in any case, be considered as employment. Intra-group training conducted within companies of the same group is not considered as being an occupation equal to employment and is therefore treated as unremunerated training.

Remunerated training is, on the other hand, considered as equivalent to employment.

Other Comments

After five years of continuous and lawful stay on Luxembourg, third-country nationals may apply for long-term residence status (Carte de resident), if they can prove that they have a regular business activity in Luxembourg (e.g., as corporate executive, regular employee or otherwise) from which they derive stable, regular and sufficient income to support the applicant and any family members. The long-term residence permit is valid for a period of five years and is renewable.

Planned Legislative Change

In view of Brexit, and to preserve the status of English citizens, Luxembourg passed the Law of 8 April 2019 amending the amended law of 29 August 2008 on the free movement of persons and immigration.

This law aims to safeguard the right of residence of British citizens already living in Luxembourg.

The first part of the law describes the procedure that will apply according to the withdrawal agreement. In accordance with the withdrawal agreement, a transition period will apply until 31 December 2020, and UK citizens will be considered EU citizens until this date. UK citizens must apply for residency documents at least three months before the end of the transition period.

The second part of the law provides the applicable procedure in case the United Kingdom withdraws without an agreement: British citizens and their family members legally living in Luxembourg before Brexit will be allowed to stay and work in Luxembourg during a one-year transitory period based on their EU residence permit, pending receipt of the appropriate immigration approvals. UK citizens must apply for residency documents at least three months before the end of the one-year period.

Malaysia



Malaysia

As the domestic economy continues to enjoy foreign direct investments, notwithstanding the current economic climate and the continued requirement for foreign expertise in Malaysia, Malaysian immigration laws provide a range of visas and passes to non-Malaysians to enter and/or remain in Malaysia for business purposes.

Key Government Agencies

While certain government bodies have the authority to approve the employment of non-Malaysians, the Malaysian Immigration Department processes all applications for, and is the issuing body of, all immigration passes and visas. It also enforces immigration laws and policies in Malaysia together with the Royal Malaysian Police Force. Visas are issued by the Malaysian Immigration Department at all points of entry into Malaysia.

Depending on nationality, it may be necessary to obtain a pre-entry visa. Where pre-entry visas are not strictly required, it is nevertheless possible to apply for such visas, which would permit a longer stay in Malaysia. Applications from abroad for pre-entry visas may be sent to a Malaysian embassy/consulate.

Current Trends

Malaysia has always welcomed skilled foreign nationals. The Malaysian government recognizes foreign expertise as instrumental in achieving the goal of increasing the overall income for the population. The Malaysian government has also continued to implement steps to reduce Malaysia's dependency on blue collar foreign employees. While this will largely affect less skilled workers, employers may need stronger justification for bringing foreign nationals into Malaysia, as a whole, in the nearer term. It is expected that this may affect certain industries more than others.

Generally, the Malaysian Immigration Department has not unreasonably withheld approvals for skilled foreign employees who will assume managerial, technical, or executive posts in Malaysia. A

higher success rate in obtaining immigration passes may be seen in certain industries or fields, such as science and medicine, manufacturing and aerospace.

However, with the goal of preserving more job opportunities for Malaysians, the Malaysian Immigration Department is becoming more stringent with respect to approving the immigration passes of foreign nationals for employment in the country (especially foreign nationals who have held immigration passes for 10 years and above). The Malaysian government is also looking into various means to encourage skilled Malaysians who are currently working abroad to return.

In early 2014, the Malaysian Immigration Department implemented an online system for the application of work permits in Malaysia. The system is managed by the Expatriate Services Division (ESD) of the Malaysian Immigration Department and the application for work permits is now a two-step process: a one-off registration of the applicant company with the ESD and, upon approval of the registration, an online application for the work permits for foreign nationals.

These companies that apply to register with the ESD are subject to certain paid-up capital requirements, i.e., at least RM 250,000 for 100% local-owned companies; RM 350,000 for joint-venture companies; RM 500,000 for 100% foreign-owned companies (foreign equity at 51% and above); and RM 1 million for foreign-owned companies carrying out wholesale and retail trade or unregulated services.

The registration process with the ESD can be lengthy due to the Malaysian Immigration Department's queries as well as its requests for letters of approval, letters of support and letters of no objection from other government agencies (the requirements appear to be more stringent now than under the previous regime).

Business Travel

Social Visit Pass

For a short stay in Malaysia for social or business purposes (i.e., other than for employment), a social visit pass may be obtained at the point of entry into Malaysia. The validity period of the social visit pass varies, depending on the nationality of the traveller. Furthermore, depending on the nationality, a pre-entry visa issued from a Malaysian embassy may be required.

The social visit pass is generally for the purpose of social visits. However, as a matter of policy and practice (and not law), a person who has been issued a social visit pass is permitted to carry out the following activities (which are generally preliminary in nature) while in Malaysia:

- attend meetings
- attend business discussions
- inspect a factory
- audit a company's accounts
- sign agreements
- conduct surveys on investment opportunities or set up a factory
- attend seminars

The social visit pass does not permit its holder to exercise employment in Malaysia or undertake any activities which are outside the scope of the above permitted activities.

As the social visit pass permits its holder to remain in Malaysia for a limited period, holders should be mindful of not overstaying the stipulated duration. Generally, extensions will not be granted unless there are special personal circumstances.

Employment Assignments

Employment Pass

By and large, employment passes are divided into categories I, II and III, which have different validity periods ranging from one to five years and are issued based on the employee's monthly salary.

Employment Pass (Category III) is for employees that will be hired with a salary below the standard minimum RM 5,000 monthly salary requirement. A separate exemption application must be submitted to the Ministry of Home Affairs for deviation from the standard minimum salary requirement for companies in unregulated sectors or those falling under the purview of regulatory bodies.

Employment Pass (Category III) holders whose passes have been renewed for two or three years in a row are also subject to specific cooling-off period requirements, where the employment pass is being renewed or there is a change of employer.

An employment pass will allow the holder to engage in a full range of employment activities. Application for an employment pass should be made at least three months prior to the arrival of the foreign employee. The foreign national must be based outside of Malaysia while the employer applies for an employment pass. Upon approval of the application, the foreign national can then enter Malaysia with a copy of the approval letter issued by the ESD. The immigration officer at the point of entry will indicate on the passport the purpose of his entry into Malaysia. Without the said indication on the original passport, the ESD will not attend to the endorsement of the employment pass onto the passport. Pending the issuance of the employment pass, the individual is not permitted to exercise employment in Malaysia but he will be entitled to carry out the permitted business activities under the social visit pass.

A limited number of employment passes may be granted to foreign nationals employed by a Malaysian subsidiary. Generally, the

Malaysian Immigration Department is less willing to grant employment passes to foreign employees of a branch of a foreign company, except with a letter of support from a ministry or government body, and this usually applies where the branch is involved in a government project.

Generally, once the registration with the ESD is approved, the applicant can proceed to apply to the Malaysian Immigration Department for the issuance of the employment pass.

However, note that for certain industries, separate government agencies have been authorized to approve the employment of expatriates. In such circumstances, the applicant does not need to register with the ESD, and the application for the employment pass should instead be sent to these appointed agencies:

- manufacturing and its related services sectors, regional office, operational headquarters and international procurement center – Malaysian Investment Development Authority
- IT sector, specifically companies that have been awarded MSC status — Malaysia Digital Economy Corporation
- financial, insurance and banking sectors — Central Bank of Malaysia
- securities and futures market — Securities Commission
- biotechnology industry — Malaysian Bioeconomy Development Corporation

After the employment pass is approved by the relevant agency, the passport of the expatriate needs to be submitted to the Malaysian Immigration Department for the endorsement of the employment pass.

The employment pass is specific to the employer for which the pass has been approved. If the holder changes employers, the existing employment pass will need to be shortened and the new employer will have to apply for a new employment pass.

An application for renewal before the expiry of an existing employment pass may be submitted but there is no guarantee of approval.

Reference/Journey Performed Visa

All non-Malaysians (save for holders of passports of Commonwealth countries) who are entering Malaysia for the purposes of employment are required to obtain a reference visa prior to entry into Malaysia. A reference visa can be collected from a Malaysian consulate/mission in any country once the issuance of the employment pass is approved by the Malaysian Immigration Department.

Expatriates who do not wish to apply for the reference visa may also enter Malaysia if their employers applying for a journey performed visa on their behalf. In this instance, the journey performed visa will be issued together with the employment pass and a reference visa will not be required.

However, holders of passports from restricted countries such as India, China, Bangladesh, Indonesia and the Philippines are not eligible to apply for journey performed visas and will require a reference visa prior to entering Malaysia.

Training

Professional Visit Pass

Non-Malaysian employers who wish to second their non-Malaysian employee to Malaysia on a temporary basis should arrange for the employee to be issued wa professional visit pass (PVP).

A professional visit pass allows its holder to engage in a professional occupation or work in Malaysia on a secondment basis; there must be no employee-employer relationship with the local sponsor (the Malaysian entity to which the employee is seconded). The PVP will only be valid for a maximum duration of 12 months and no extensions will typically be allowed.

Concurrent with the application for a PVP, the local sponsor is also required to register the intended holder of a professional visit pass with the Malaysian Inland Revenue Board for tax purposes.

In the application for a professional visit pass submitted by the local sponsor, the local sponsor must disclose the activities that the secondee intends to conduct in Malaysia. The local sponsor must also agree to be responsible for the maintenance and repatriation of the PVP holder, should it become necessary. A PVP holder may only conduct the activities for which the pass has been approved. It is a condition of the PVP that any change in the business or professional purposes for which the PVP is issued must only be made with the written consent of the Director-General of Immigration.

To apply for a PVP, the local sponsor must first be registered with the ESD. Upon approval of the registration, the online application for the PVP can be submitted.

Social Visit Pass – Internship (SVP-I)

Besides the professional visit pass mentioned above, there is also a special category of social visit pass – Internship (SVP-I) applicable specifically for internship purposes to facilitate the short-term placements of international students with ESD-registered companies.

Any ESD-registered companies that intend to undertake such placements must first apply for permission for this facility. Types of programs/activities that are covered under SVP-I include student exchange programs, industrial/practical training, mentorship and other similar programs.

The applicant for this SVP-I must be pursuing a degree program or equivalent from recognized universities/institutions abroad at the time of application.

Other Comments

Dependent Pass

Many holders of the employment pass wish to bring their families to Malaysia. Dependent passes are available for the spouse and children (below 18 years of age) of expatriates holding Employment Pass (Category I) or Employment Pass (Category II). Dependent passes are typically applied for together with the application for employment passes.

Dependant pass holders are not allowed to engage in employment activities in Malaysia. They are only allowed to, with special permission from the Malaysian Immigration Department, undertake activities for social and welfare purposes.

Social Visit Pass (Long-Term)

For family members of Employment Pass (Category I) and Employment Pass (Category II) holders that fall outside the scope of eligibility to apply for a dependant pass, a Social Visit Pass (Long Term) (SVP(LT)) is an option.

SVP(LT) is typically issued to unmarried children that are 18 years old and above, as well as parents and parents-in-law of employment pass holders. An application by the common law spouse of the employment pass holder will also be considered by the Malaysian Immigration Department on a case-by-case basis.

Residence Pass-Talent

The Residence Pass-Talent (RP-T) is an initiative by the Malaysian government to attract and retain non-Malaysian talent who are able to contribute to the country's economic transformation. It is essentially a 10-year renewable pass for highly qualified foreign nationals to continue to reside and work in Malaysia.

Unlike the employment pass, the RP-T is specific to the RP-T holder, and not to the employer. Accordingly, an RP-T holder has the flexibility to change employers without having to renew the pass.

Additionally, the spouse and dependents (under 18 years old) of the RP-T holder are also eligible for the RP-T. The spouse who holds a RP-T may exercise employment in Malaysia without having to apply for an employment pass.

Individuals who are eligible to apply for RPs are those who:

- have worked in Peninsular Malaysia for at least three years
- hold a valid employment pass at the time of application
- hold a PhD/Master's Degree or Diploma in any discipline from a recognized university or a professional/competency certificate from a recognized professional institute
- possess a minimum of five years' work experience
- earn a minimum monthly basic salary of RM 15,000
- have an income tax file number in Malaysia and have paid income taxes in Malaysia for a minimum of two years

Malaysia My Second Home Program

For foreign nationals who are not employed in Malaysia and yet would like to reside in Malaysia, the Malaysian government has introduced the Malaysia My Second Home Program ("MM2H").

Under this program, qualified MM2H participants aged 50 and above with specialized skills and expertise that are required in the critical sectors of the economy are allowed to work not more than 20 hours per week.

Additionally, MM2H participants are allowed to invest and actively participate in business, subject to existing government policies,

regulations and guidelines, which are in force for the relevant sectors. Note that this program does not guarantee permanent resident status.

Subject to certain financial requirements, participants are also provided with various incentives during their stay in Malaysia under the program. These include the acquisition of residential units, car purchase and education.

A social visit pass issued to foreign nationals under the MM2H is valid for 10 years, subject to the validity of the holder's passport, with the possibility of extending the pass for another 10 years. Foreign nationals under this program will also be issued multiple-entry visas.

Further Information

Our Immigration to Malaysia Manual provides further information relating to residing in Malaysia and citizenship.

Mexico



This chapter outlines how foreign nationals can remain in Mexico in accordance with the country's immigration procedures and receive authorization to perform activities, remunerated or not.

The Immigration Law ("IL") determines the different conditions through which visas and immigration documents may be authorized. The Regulations ("ILR") and Guidelines ("ILG") determine the processes that need to be followed in order to obtain the various types of visas and documents. The IL, ILR and ILG now require anticipated planning for the issuance of visa and immigration documents as changes to immigration status are no longer authorized for most cases.

Fines for sponsoring companies have also been eliminated; however, fines, deportation and expulsion from Mexico are still penalties applicable to foreign nationals who break the law.

Key Government Agencies

The local, state, and central offices of the National Immigration Institute ("*Instituto Nacional de Migración*" or "INM"), under the Ministry of the Interior ("*Secretaría de Gobernación*"), hold the power to authorize visas for work, renewals and notifications of changes of address, nationality, marital status, and change of place of work, among other processes.

The Ministry of Foreign Affairs ("*Secretaría de Relaciones Exteriores*") is responsible for granting citizenship through the naturalization process, as well as all communication between the INM and Mexican embassies and/or general consulates. Embassies and the general consulates are authorized to issue visas and authorizations to enter the country.

Current Trends

On 1 December 2018, a new political party came into power with Andres Manuel Lopez Obrador as president. MORENA, a left-wing party, has vowed to end corruption in Mexico as well as to change

neoliberalist policies put in place by the PRI and PAN political parties that were previously in power. It is still unclear how this will affect immigration processes; however, increasing immigration caravans from South and Central America with the US as their main destination have shown the INM to be undermanned and corrupt. Although it is still too early to tell if any changes will be made to the IL or its regulations, the caravans have also shown MORENA to be open to mass immigration to Mexico, especially from neighboring countries to the south.

Business Travel

The business immigration form is called the Multiple Immigration Form (“FMM” by its Spanish acronym). This form is used for all visitor visa authorizations.

Visitor Visas

Visitor visas are authorized for non-remunerated activities in Mexico.

Visitor visas for non-remunerated activities allow foreign nationals to undertake any work in Mexico that is not paid by a company located in Mexico, with a maximum authorized stay of up to 180 days per trip. These visas and immigration forms may not be renewed, but may be requested each time a foreign national travels to Mexico.

Permanent residents of the following countries may not need a visa to enter Mexico for tourism, business or transit purposes: Canada, the United States, Japan, the United Kingdom of Great Britain and Northern Ireland, any of the countries of the Schengen Area and any of the member countries of the “Pacific Alliance.” All individuals in this category are required to present their valid and unexpired Resident Card along with their passports upon entry to Mexico. Both documents must be valid during their entire stay in Mexico.

Nationals of the countries found at
<http://www.inm.gob.mx/gobmx/word/index.php/paises-no-requieren->

visa-para-mexico/ must apply for a visitor visa from a Mexican embassy or consulate abroad prior to entering Mexico.

Documents supporting a foreign national's trip into Mexico may be requested by the immigration authorities (i.e., invitation letter, support letter, proof of sufficient funds, and return airplane tickets, among others).

These visas will authorize any activity not remunerated in Mexico, including work, technical activities, and training, as long as the conditions are met. Correctly indicating the intended activity to be performed while in Mexico at the port of entry is essential so that foreign nationals experience no immigration-based legal issues while in Mexico.

Employment Assignments

Visitor Visas

Visitor visas may also be requested for work assignments of less than 180 days in Mexico. This authorization is requested only when a Mexican company or establishment will pay the foreign national's salary or remuneration. These authorizations must first be requested at the INM, which will send the proper authorization to the Mexican consulate abroad ("MC"). The foreign national will receive a visitor visa at the MC, and will then travel to Mexico where he will receive an FMM, which will authorize him to receive remuneration in Mexico for up to 180 days.

This visa and immigration document may not be renewed and the foreign national must leave Mexico after the authorization period has expired.

Visitor visas for remunerated activities in Mexico are seldom requested since foreign nationals usually have problems obtaining social security and tax ID numbers with these immigration forms.

Temporary Residents

Temporary residents are allowed to stay in Mexico for up to four years. These visas and immigration documents also authorize multiple entries into and exits from Mexico. Temporary residents are allowed to enter to perform activities not remunerated from a source in Mexico, as well as activities remunerated from a source in Mexico. If foreign nationals perform non-remunerated activities from a source in Mexico, they must request a visa for a temporary resident at any MC. If, however, they perform remunerated activities from a source in Mexico, authorization must be requested at the INM first, which will send the authorization to the MC abroad so that the MC may issue a visa.

After receiving a temporary resident visa, foreign nationals may travel to Mexico where they will receive an FMM that authorizes a change from FMM to a temporary resident document. Foreign nationals must request this change within the next 30 days; if they do not, their temporary resident authorization will no longer be valid, and a new one must be requested.

Foreign nationals are authorized to remain in Mexico for the entirety of their first year in Mexico as a temporary resident and may request renewals for up to three additional years. After the total authorized time of four years is granted, the foreign national may not extend his temporary resident visa and must either leave Mexico or seek permanent resident status.

Foreign nationals that are not authorized to receive remuneration in Mexico may request a work authorization while in Mexico in order to receive salary or remuneration from a Mexican company or establishment.

Permanent Residents

Permanent residents may remain in the country indefinitely and are authorized to work in Mexico. Permanent resident status may be

obtained by having stayed in Mexico for four consecutive years, by being married to a Mexican national and remaining for two years in the country, or by having Mexican children.

Permanent resident status may also be requested by a special points system that has yet to be published. There is no timeline for these new rules to be implemented.

Other Comments

Mexican Entities Receiving Services from Foreign Employees

Federal Labor Law protects the economic development of the country and Mexican workers. For that purpose, all companies or businesses are obligated to ensure that at least 90% of their workforce consists of Mexican nationals.

In the technical and professional categories, the employees must be Mexican citizens, with exceptions when there are no specialized employees in that field; in such case, the employer may temporarily hire foreign national employees, provided that they do not exceed 10% of the total workforce. The employer and foreign employees in the technical and professional categories have the joint liability of training the Mexican employees in their specialty. In addition, company physicians must be Mexican citizens.

Note that these rules are not applicable in the case of foreign general managers, general administrators or general directors.

The IM also states that there will be a visa quota for specific activities. This has not yet been implemented, and it is still unclear how this will affect immigration into Mexico.

Employer Certificate

A Mexican company or institution that has foreign nationals rendering services must request the INM to open an “Employer

Certificate“ which shall be incorporated with the information of the company or institution and the Mexican and foreign employees working for it. This information must be updated periodically. Local INM offices will request that an Employer Certificate be incorporated as a prerequisite in order to process authorizations for foreign nationals.

Notifications

Foreign nationals must notify the INM of changes in domicile, marital status, nationality and place of work. These changes must be notified within 90 days; otherwise, foreign nationals may be subject to administrative sanctions, may have to regularize their situation in Mexico or may even be deported.

Temporary Permits to Leave and Return to Mexico

Foreign nationals with pending immigration processes may request a temporary permit to leave and return to Mexico in order to travel internationally. This permit may be requested at the INM or at a port of entry, in case of urgent travel.

Foreign nationals that are processing a regularization in Mexico who were discovered to have an irregular document in Mexico (i.e., did not notify changes, did not renew in time, or did not leave Mexico in time) may not request a temporary permit to leave and return to Mexico and may only leave Mexico by canceling their immigration process.

Further Information

Baker McKenzie’s Mexico Immigration Manual provides further information about Mexican business visas, including a broader range of non-immigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Myanmar



Introduction

The Republic of the Union of Myanmar is an emerging jurisdiction for many industries and is generating major employment opportunities for a wide range of international companies. Since opening up to the international community, over five years ago now, the economy has continued to grow at an astronomical rate, creating jobs for both local staff and skilled expatriate employees alike.

This chapter sets out the various regulations which apply to those skilled foreign workers who find themselves headed to one of the fastest-growing and developing South East Asian countries.

Key Government Agencies

In Myanmar, the Ministry of Labor, Immigration and Population (“Ministry of Labor”) is responsible for regulating and monitoring labor-related matters. The Ministry comprises the following departments:

- Minister’s Office
- Department of Labor Relations
- Social Security Board
- Factory and General Labor Laws Inspection Department

Officially, the Ministry of Labor ensures that workers enjoy rights and protections granted under the various labor laws in Myanmar, provides social services for workers, promotes higher productivity of labor and participates in international labor affairs.

On a day-to-day basis, companies deal with the Ministry of Labor through its local offices in each township (similar to a suburb or district), the Township Labor Office.

Disputes relating to labor relation can be escalated to the Arbitration Council. The Arbitration Council is the body tasked with hearing,

considering and resolving any labor complaints which may arise between employers and employees. The Arbitration Council operates as a tribunal forum, rather than a strict court of law, however, the Arbitration Council decisions are still considered binding on the parties.

Current Trends

As noted, Myanmar has recently undertaken significant liberalization around foreign investments as the country goes through major political and economic change. Skill shortages and some knowledge gaps have created a demand for professionals from all around the world. The result is that foreign employment in Myanmar has grown rapidly in last few years.

The Myanmar government has also welcomed former Myanmar citizens, who left the country for various reasons, to repatriate back to the country as skilled laborers on business visas, as well as offering permanent residency opportunities. This trend is expected to continue for some years.

Regardless, a lot of existing Myanmar labor law is targeted at Myanmar citizens and, while the rights and protections offered by the law are open to everyone employed in Myanmar, the main focus has been around ensuring that employment rights are maintained for Myanmar nationals.

Business Travel

All travel into Myanmar for any business purpose, including employment, requires a business visa. There are two types of business visas:

- single entry (including visa-on-arrival)
- multiple entry

A single-entry business visa allows the holder to remain in Myanmar and undertake business-related activities, whether paid or unpaid. However, the holder may only engage in the specific type of business activity stated in the visa application. A single-entry business visa holder may remain in Myanmar for a period of up to 70 days. The length of stay is not extendable in the first visit.

Multiple-entry business visas permit repeated, uncapped entry into Myanmar for the period of the visa. Employees and employers generally opt for this visa type when the employee will be required to return to Myanmar a number of times, or otherwise to reside in Myanmar for an extended period (e.g., when establishing a business entity in Myanmar). The duration of the multiple entry visa depends on a number of factors, including:

- whether the employee has held a multiple-entry visa previously (i.e., someone who has held a multiple-entry visa previously is more likely to be granted a long term multiple entry visa)
- the visa fee – the Ministry of Labor’s website states that a three-month visa is USD 200, a six-month visa is USD 400, and a one-year visa is USD 600, however, the price can vary depending on the location of the embassy that grants the visa

Multiple-entry visa holders must still leave Myanmar every 70 days. To avoid this, multiple-entry visa holders can apply for a stay permit, allowing residence in Myanmar without exit and re-entry for the entire period of the visa.

We strongly advise against business travelers entering Myanmar on any form of tourist visa.

Visa Application

Business visa application may be made:

- physically at a Myanmar embassy

- physically with the Ministry of Labor in Nay Pyi Taw
- electronically on the Ministry of Labor website prior to arrival in Myanmar (<https://evisa.moip.gov.mm/>)
- physically as a visa on arrival at certain airports, although the visa holder will require specific documents for this process. On arrival business visas are permitted for only certain countries and a list of the countries are prescribed on the Ministry of Labor's website.

Visa Exemption

Visa exemption is given to ordinary passport holders from certain countries as follows:

Country	Exemption Period
Brunei	14 days
Cambodia	14 days
Indonesia	14 days
Laos	14 days
Philippines	14 days
Thailand	14 days
Singapore	30 days
Vietnam	14 days

Employment Assignments

Visa requirements for employee assignments require business visas for both skilled and intracompany transfer employees.

The employee will first need to apply for a single-entry business visa, which requires (among other things):

- an invitation letter from the sponsoring company

- relevant local company registration documents (Certificate of Incorporation, Permit to Trade etc.)

The first business visit cannot be extended and the employee will need to leave the country after 70 days.

No approval or invitation from the Ministry of Labor is needed for employment purposes.

Training

An education visa is available for specific applicants (as both teachers and students). The applicant must be invited by a university/foreign language university or school licensed under the Ministry of Education in Myanmar for the purposes of studying a course or lecturing in a specific field.

However, a business visa will be required for on-the-job training purposes (either paid or unpaid).

Post-entry Procedures

Where a foreign employee resides in a private property in Myanmar (i.e., other than residing in a hotel or guesthouse), the employee's landlord will be required to complete a Form C, which declares the foreign resident to the local ward office. This is the landlord's responsibility, and in practice is sometimes not complied with, however, we strongly advise foreign residents to ensure that a Form C has been obtained.

Entry Based on International Agreements

There are Mutual Recognition Agreements ("MRAs") which allow skilled labor movement within the Association of South East Asian Nations ("ASEAN") by recognizing workers' skills, experience and accreditations across Member States. The standards imposed by each agreement depend on the respective profession. ASEAN

currently has MRAs in place for six sectors and framework agreements in place for two more, as follows:

- Engineering
- Nursing
- Architecture
- Medicine
- Dentistry
- Tourism
- Surveying (framework)
- Accountancy (framework)

Planned Legislative Change

There is currently no specific planned legislative change to Myanmar labor laws, although this is a dynamic area and changes frequently. Employees should always contact an immigration specialist, lawyer, or their local Myanmar embassy for the most recent information regarding visas and residency.

The Netherlands



Under Dutch immigration law, there are various procedures available to obtain the required work and residence permits for foreign nationals. These procedures range from temporary business visas to permanent residence permits. Often more than one procedure is worth consideration. Requirements and processing times vary by procedure.

Key Government Agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst or “IND”) is part of the Ministry of Justice and, in general, is responsible for decisions on visa applications and residence permit applications.

The Public Employment Service (UWV WERKbedrijf) handles work permit applications, with investigations and enforcement actions involving employers and foreign nationals being the particular focus of the Labor Inspectorate.

Current Trends

The main topic for 2019 is Brexit and the consequences thereof for UK nationals in the Netherlands. At the time of writing this chapter, there is still no clarity as to whether the UK and EU will reach a deal on withdrawal or whether parties will end up in a ‘no-deal’ scenario. Nonetheless for both scenarios the Dutch government has come up with solutions.

Impact of Brexit

UK nationals who rightfully reside in the Netherlands as of 29 March 2019 can continue their stay in the Netherlands after a no-deal Brexit. During the transition period until 31 December 2020 (or 1 July 2020 in case of a ‘no-deal’ scenario), rights will be retained for both UK nationals and their family members (regardless of their nationality)

who reside in the Netherlands as at the Brexit date. After the transition period, a Dutch residence permit will be required. For the assessment of the permit application, the immigration authorities will treat them the same as EU nationals (i.e., it should be a fairly easy process). The immigration authorities will send invitation letters to apply for a residence permit before 1 April 2020. The residence permit will allow residence, work and study in the Netherlands.

The immigration authorities have sent temporary residence permits to UK nationals and their family members who are registered in the Dutch Personal Records Database (BRP). The employer should make sure to retain a copy of the temporary residence permit in the UK employee's files, because the permit also confirms authorization to perform work in the Netherlands.

UK nationals who were not living in the Netherlands pre-Brexit will be subject to the same permit conditions as every other non-EU national. The transition period does not apply to them and their permit applications will not be treated the same as EU nationals.

Post Brexit Business Visits

The European Parliament backed the draft law to amend Regulation 2018/1806, which will exempt UK nationals from EU visa requirements to enter the EU for short visits.

UK nationals will remain exempt from the requirement to get a visa for stays in the EU, regardless whether it's for business, tourism or family. However, starting from the day after Brexit, the allowed duration of stay will be limited to a maximum of 90 days in any 180-day period. These days do not have to be used up consecutively during one visit.

Business Travel

Not Exceeding Three Months

Foreign nationals coming to the Netherlands from most countries are generally required to have a tourist or a business visa to enter the

Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required, since the countries qualifying for visa waivers can change.

The visa is issued for a maximum period of 90 days, and is not extendable. Furthermore the holder of the visa may remain no longer than 90 days in a 180-day period within the Schengen Area, the Member States of which include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and Switzerland.

Visa Waiver

Passport holders of the following countries do not require a visa for a stay of 90 days or less: Andorra, Argentina, Austria, Australia, Belgium, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania, Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Vatican City and Venezuela.

The above list of countries also includes European countries. Nationals of EU/European Economic Area (EEA) Member States and Switzerland do not require a visa in general, regardless of the duration of stay.

Temporary Stay Visa (MVV)

A foreign national intending to remain in the Netherlands for more than three months must apply for a residence permit. The conditions for obtaining a residence permit depend entirely on the purpose of

coming to the Netherlands. A foreign national wishing to work in the Netherlands must usually obtain three types of documents:

- A temporary residence permit (*Machtiging tot Voorlopig Verblijf* or MVV), which enables the holder to enter the Netherlands (an MVV is not required for citizens of the EEA, the EU and Switzerland, Japan, Canada, Australia, the United States, Monaco and New Zealand. Foreign nationals of these nationalities may enter the Netherlands without an MVV or business visa and may apply for a residence permit)
- A residence permit, which enables the holder to live in the Netherlands
- A work permit, which under certain conditions, enables the holder to work in the Netherlands

The individual can apply for the MVV in his country of residence. The employer in the Netherlands, or the person with whom the foreign national will be staying in the Netherlands, can file the application in the Netherlands.

Depending on the purposes of stay, obtaining an MVV can take between two weeks and six months. The employer in the Netherlands or the person with whom the foreign national will be staying while in the Netherlands can follow a single procedure to apply for an MVV and a residence permit for the foreign national.

Residence Permit

A foreign national who intends to stay in the Netherlands for more than three months is required to obtain a residence permit (*verblijfsvergunning*). A residence permit will not be granted if the foreign national is first required to obtain an MVV.

The residence permit is generally issued for a maximum of one year or - in case of residence for labor purposes - for the duration of employment in the Netherlands, up to a maximum of five years. If no

changes of circumstances have occurred, it is extendable. After possessing a residence permit for five years, the foreign national may apply for a permanent residence permit. This permanent residence permit is renewable every five years.

Employment Assignments

An employer who wishes to recruit a foreign national from outside the EU or EEA usually needs to apply for a work permit for that individual. Note that the Netherlands has temporarily - until 1 July 2020 - opted out of the full mobility of the workforce agreement in respect of the new EU Member State, Croatia, which means that Croatian nationals still require work permits (for one year).

There are different procedures for work permit applications. The applicable procedure depends entirely on the applicant's specific circumstances, the nature of the current employer abroad and the nature of the company offering the work in the Netherlands. Under certain circumstances a combined work and residence permit ("GVVA") can be applied for, via the IND (which in turn liaises with the UWV regarding the conditions for work authorization).

Generally, the Dutch employer must prove that the labor market has been scanned for workers who have priority (workers from the Netherlands and the EEA are prioritized). In this respect, the employer must prove that the vacancy has been reported to the UWV and, usually, to the European Employment Service (EURES) at least five weeks prior to the work permit application. Furthermore, the employer is required to advertise the job in a Dutch national newspaper and a professional journal, and must have engaged a recruitment office. The employer even has to prove that candidates who were registered at the UWV's employment office were approached for the job and indicate the results thereof (i.e., the reason for not hiring a registered candidate). If a company is unsure whether it must report the vacancy, the company is advised to consult an attorney. To avoid unexpected

refusals, companies should be cautious about assuming that a job does not need to be reported to the various authorities.

Work permits that are granted based on the state of the Dutch and European job markets will not be issued for more than one year, meaning that employers will need to renew the work permit each year. The work permit will only be renewed if there are no alternative personnel taking priority in the Dutch and European labor market.

The application procedures for different types of employment require extensive preparation. This is not only necessary for the application as described above, but also for those who want to stay in the Netherlands as self-employed individuals, and for those who want to work in a university or in the field of sports, among others.

The different types of procedures for which a recruitment period as stated above is not necessary are mentioned in the below paragraphs. It is not possible to apply for a GVVA for these categories. Consequently, separate permit application procedures must be followed, unless a separate work permit is not required (e.g., for a knowledge migrant).

Customer-Producer Relationship

The customer-producer relationship allows foreign nationals to work in the Netherlands on a work permit if:

- there is not an actual employer in the Netherlands, but only a customer
- the individual will be sent to the Netherlands to supply/adapt/install goods on a contractual basis as well as to provide instructions on the use of the goods
- the individual has been employed for at least one year
- the salary of the individual is less than the value of the supplied goods

- the supplied goods are produced primarily by the employee's company

The work permit application will take approximately five weeks and the work permit will be valid for a maximum of one year. The residence permit will be granted within approximately one month after the approval of the work permit. The residence permit can be extended as long as all the conditions are still met and work privileges under a work permit continue to be in place.

Permanent Residence

As soon as a foreign employee has been in possession of Dutch work and residence privileges for five consecutive years, work in the Netherlands is permitted without a work permit, provided that the foreign employee obtains a permanent residence permit.

Knowledge Migrant

Skilled and highly educated foreign nationals do not require work permits for employment. To qualify as a so-called "knowledge migrant," one objective criterion is judged: the salary. A knowledge migrant is a foreign national who will be employed in the Netherlands (on a local contract) and receives a gross monthly salary of at least EUR 4,500 (EUR 4,860, including 8% holiday allowance) or at least EUR 3,299 (EUR 3,562.92, including holiday allowance) if younger than the age of 30.

Employers who want to hire knowledge migrants must hold so-called authorized sponsorship with the IND. Authorized sponsors benefit from the IND's assumption that they fulfill all relevant obligations under the Dutch Modern Migration Policy Act. As a result, the IND applies an expedited handling procedure and aims to decide on a permit application within a period of approximately two weeks. Unfortunately, the IND rarely meets its two-week target term in practice. Generally, the procedure takes an additional two to four weeks. Employers who do not yet qualify as authorized sponsors

should consider waiting an additional two to three months to apply for authorized sponsorship first. Provided that the IND grants the request, authorized sponsorship will be granted for an indefinite period, although it must be used regularly (at least every three years) for the IND not to withdraw the status.

The residence permit for a knowledge migrant provides residence and work privileges in the Netherlands. As indicated above, an additional work permit is not required, unless the foreign national no longer qualifies as a knowledge migrant (for example, he no longer meets the salary threshold) or starts work activities for an employer who does not hold authorized sponsorship.

A knowledge migrant may receive a residence permit for up to five years, assuming that his passport and employment contract are valid for at least five years. Should this not be the case, then the residence permit will be issued for the shortest validity period mentioned in the employment contract or assignment letter.

The knowledge migrant may start working in the Netherlands upon receipt of the residence card or - if he requires an MVV entry visa first - upon receipt of the visa with indication that work activities are allowed in anticipation of the residence card. Dependents who accompany the knowledge migrant to the Netherlands will not require a work permit to perform work activities in the Netherlands. Upon receipt of their residence cards, they will obtain residence and work privileges similar to those granted to the knowledge migrant.

Intra-Corporate Transfer

Intra-Corporate Transfer (“ICT”) is for EU employees who reside outside of the EU and who are bound (and remain bound during their secondment) by a work contract with a non-EU entity belonging to the same group of companies which is established in the EU Member State to which they are seconded.

Further - non-exhaustive - terms and conditions are as follows:

- The individual must have been employed within the group of companies for at least three consecutive months immediately prior to the secondment.
- The individual must qualify as a “manager,” “specialist” or “trainee” under the definition thereof stipulated in the European Intra Corporate Transfer Directive (2014/66).
- The individual must have the qualifications and experience required by the host company to which he is seconded as manager or specialist (if the individual is seconded as a trainee, a university degree and training agreement are required).
- The individual must enjoy equal treatment with nationals occupying comparable positions as regards the remuneration he receives during the entire secondment (in principle, the salary thresholds for a Highly Skilled Migrant are considered for this purpose).
- The individual is intended to return to a group company outside of the Netherlands after the secondment.
- If the ICT permit conditions are triggered, other (labor-related) permit categories (e.g., the highly skilled migrant permit) will not be available as alternative means to obtain work and residence authorization.

The maximum duration of the ICT permit is three years (one year for trainees).

Companies do not require authorized sponsor status with the IND to sponsor an ICT permit.

Self-Employment

A foreign national can be classified as a self-employed person upon proof:

- of ownership of more than 25% of the shares in a Dutch limited liability company or of being the sole owner of a company
- that an essential Dutch interest will be served (this latter requirement is extremely difficult to fulfill and, as such, residence permits for self-employed persons are rarely issued)

Although a separate work permit is not necessary, it is required to obtain a residence permit that provides both residence and work privileges. The residence permit will be issued as long as the company serves an essential Dutch interest. To judge this, the Ministry of Economic Affairs has developed a points system based on level of education, experience as an entrepreneur, work experience, the innovative aspects of the business, etc.

Dutch-American Friendship Act

Under the Dutch-American Friendship Act, US citizens are allowed to remain in the Netherlands as self-employed persons without having to serve an essential Dutch interest. To qualify, the US citizen must be coming either to conduct trade and activities related to this trade between the Netherlands and the US or engage in a professional practice in which a considerable amount of money has been invested.

In this context, it should be noted that “professional practice” does not include the “free” professions (i.e., lawyers, dentists, doctors, etc.).

The amount of money that is brought into the company is one of the determining factors as to whether to grant the residence permit. The following is applicable:

- general partnership (*vennootschap onder firma*) - at least 25% of the firm capital, with a minimum of EUR 4,500
- limited partnership (*vennootschap onder commandite*) - for the managing partner, the same as the general partnership is applicable (since the limited partner cannot be classified as a self-

employed person under Dutch immigration law, limited partners cannot qualify)

- private company with limited liability (*Besloten vennootschap*) - at least 25% of the firm capital
- corporation (*Naamloze vennootschap*) - at least 25% of the placed capital, amounting to a minimum of EUR 11,250
- sole proprietor - a minimum investment of EUR 4,500

Training

The following applies for general trainees, not intra-corporate trainees under the Intra-Corporate Transfer permit category addressed above.

A trainee is a foreign national who will receive on-the-job training for a maximum period of 24 weeks. The purpose is to allow the individual to receive training and experience abroad that is required for his function back in his home country.

A work permit application must be filed with the UWV. A detailed training program must be presented as well as declarations from the employer and the Dutch company that the trainee will not fulfill a vacancy in the Netherlands. Compensation for the training is required, on the basis of conditions in line with the Dutch market.

The foreign trainee will require a residence permit, unless he is of visa-waiver nationality and will not reside in the Schengen Area for more than 90 days within 180 days.

Post-Entry Procedures

All residents in the Netherlands (who stay for longer than four months) must register accordingly - in person - with the municipality where they take residence. The process should be started within five days upon arrival in the Netherlands. Often an appointment with City Hall is required.

The recorded information will remain stored in the Municipal Personal Records Database. In case of changes to the individual's information, the registration must be updated (e.g., in case of relocation to another municipality).

Residents who leave the Netherlands for a period of longer than eight months must de-register ultimately within five days of the date of departure.

Other Comments

In addition to the employment-based permits, immigration to the Netherlands is possible through family-based immigrant permits or exchange programs.

Immigrants to the Netherlands are often interested in becoming Dutch citizens. In principle, this is possible after they have had a Dutch residence permit for five consecutive years. It is advised to consult an attorney to determine whether expedited procedures are available.

Peru



Key Government Agencies

The Peruvian immigration system has two important government agencies in charge of foreign national procedures: the Ministry of Labor and the Peruvian Immigration Office. The Ministry of Labor is responsible for the registry and approval of all foreign employment agreements; while the Peruvian Immigration Office is in charge of evaluating visa applications, issuing resident and non-resident visas and supervising the activities performed by foreign nationals in Peru.

Business Travel

According to the New Immigration Act, foreign nationals who apply for a business visa are those who enter Peru to manage commercial, legal, contractual, specialized technical assistance or similar activities, but who do not intend to take up residence in the country.

For many years, immigration regulations have established that a business visa must be requested at the Peruvian consulate of the city in which the foreign national was born or at the Peruvian consulate of the city in which the foreign national has permanent residence.

Nevertheless, there have been modifications regarding the obtaining of this type of visa:

- Foreign nationals from Mexico, Colombia and Chile are not required to request — prior to their entry into Peru — a business visa. These foreign nationals can obtain a business visa for a maximum of 183 days simply by submitting their passports to the Peruvian airport immigration officer, and informing such officer expressly that they are coming to Peru for business purposes.
- As of November 2015, all nationals from the European Union Member States of the Schengen Area traveling to Peru for journalism, study-related purposes or business are no longer required to request — prior to their entry to Peru — a journalist visa, a student visa or a business visa respectively. This

exemption is applicable for a maximum stay of 90 days and is valid for a period of six months.

- Furthermore, since February 2016, the Peruvian government extended the above-mentioned exemption to Iceland, Norway and Switzerland (each of which is a country with Schengen Area membership). In addition, the government also extended the exemption to Bulgaria, Croatia, Cyprus, Liechtenstein and Romania.
- Since September 2016, foreign nationals from the People's Republic of China are not obliged to request — prior to their entry to Peru — a visa for tourism or business purposes. This exemption is applicable for a maximum stay of 180 days (continuous or not), valid for a six-month period, in the following cases:
 - People's Republic of China citizens with a valid visa for at least six months from the US, Canada, United Kingdom, Australia or a State of the Schengen Community
 - People's Republic of China citizens with a permanent residence in the US, Canada, United Kingdom, Australia or a State of the Schengen Community
- Since March 2017, foreign nationals from India are not obliged to request — prior to their entry to Peru — a visa for tourism or business purposes. This exemption is applicable for a maximum stay of 180 days (continuous or not), valid for a one-year period, in the following cases:
 - Indian citizens with a valid visa for at least six months from the US, Canada, United Kingdom, Australia or a State of the Schengen Community
 - Indian citizens with a permanent residence in the US, Canada, United Kingdom, Australia or a State of the Schengen Community

Employment Assignments

Foreign companies have two alternatives for foreign personnel working in Peru: (i) foreign employees with a working visa; or (ii) foreign employees with an assigned employee visa.

Working Visa

For a foreign national to be authorized to work in Peru, he/she must:

- execute an employment agreement and have it approved by the Labor Authority
- obtain a working visa

Foreign nationals may only perform remunerated services once the employment contract is approved and the working visa is obtained.

Execution of an Employment Agreement with Foreign Nationals

Employment agreements with foreign nationals are formal documents that must meet all the requirements stated by Legislative Decree 689 and its Regulations, such as:

Restrictions: The number of foreign nationals shall not exceed 20% of the total of employees of the company; and their salaries shall not exceed 30% of the salaries of its personnel.

The employers may apply exceptions to those limits, among others, in the following cases:

- the foreign national is a high-level professional or high-level specialized technician
- the foreign national is a high-level executive in a new company or corporate reorganization

Peruvian law also provides certain cases in which foreign nationals are not subject to the above-mentioned restrictions, such as:

- Individuals with a Peruvian spouse, ancestor, descendant, or sibling
- individuals with an immigrant visa
- citizens of a country with which Peru has negotiated a dual nationality agreement or other reciprocity agreement, e.g., Spain

The documents required for obtaining employment agreement approval may differ depending on whether or not the employer is applying said exceptions.

Term: The maximum term per contract is three years, however, parties may extend the employment for a similar period. Please note that the duration of the agreement may have consequences for the calculation of the severance in case of termination without cause, which is equivalent to 1.5 times the monthly remuneration per month due until completion of the agreement, up to the amount of 12 monthly salaries.

Mandatory rights: Foreign nationals are entitled to the same rights as any other Peruvian citizen. It is important to verify with local counsel the costs of mandatory labor benefits and social contributions, as well as the corresponding tax rate, when calculating the compensation package. The particular benefits that may be deemed as salary should also be verified.

Migratory status when signing the employment agreement: The agreement is to be signed within the country if the individual enters the country with a business visa. If not, he/she must obtain a special permit for signing contracts from the Peruvian Immigration Office. Please note that due to tax-related issues (please see below), in some cases it may be advisable to sign the agreement abroad.

Timing: Under the previous regulation, all documentation required by law must be submitted and registered before the Ministry of Labor. This procedure of approval could last between 5-15 working days. Since October 2018, the foreign employment agreements will now be considered automatically approved since their registration before the Ministry of Labor.

Obtaining a Work Visa

Once the employment agreement is approved, the foreign national may start the process of obtaining the work visa. This process takes 60 working days from the submission of the visa application.

If the foreign national needs to leave the country during the process, he/she must obtain a special permit to travel abroad every time he/she needs to travel.

Once the foreign national obtains the working visa, the Peruvian Immigration Office will issue the corresponding identification card.

Tax Issues

Non-taxable Income Expenses

In cases where the employment agreement is signed abroad by the foreign national and he/she qualifies as a non-domiciled taxpayer, the following items, if provided by the employer, may not be considered as taxable income:

- airfare tickets at the beginning and conclusion of the employment relationship
- room and board expenses incurred during the first three months of residence in the country
- moving expenses of household goods at the beginning and upon termination of the employment agreement

- annual airfare tickets during vacation leave to his/her home country within the term of the employment relationship

Please note that the employment agreement must stipulate that such expenses will be paid by the employer.

Income Tax Rate

Due to his/her status as a foreign national, the individual is considered a non-resident in Peru and is taxed on Peruvian-source income only in accordance with non-resident income tax criteria. The income tax rate for non-domiciled individuals is a flat 30%.

A non-domiciled individual will be deemed to be a domiciled individual once he/she has resided in Peru for at least 183 days within a 12-month period. The change of status (non-domiciled to domiciled) will be effective as of 1 January of the next fiscal year.

A domiciled employee's income is taxed in Peru on a worldwide income basis. For its determination, a first deduction of 7 tax units (equivalent to PEN 29,400 in 2019) is made from the employee's income. Notwithstanding this, domiciled employees may be deducted an additional amount (up to 3UIT, PEN 12,600 in 2019) due to the following concepts: lease payments; mortgage loan's interests used by the employee to acquire their first house; receipt for fees of doctors or dentists; payments made for professional services; and contributions to social security made on behalf of domestic workers. Subsequently the following annual progressive rate is applied according to the following chart:

Rate	Amount during 2018
8%	For the first five UIT of net income: PEN 21,000
14%	For 5–20 UIT of net income: PEN 84,000
17%	For 20–35 UIT of net income: PEN 147,000
20%	For 35–45 UIT of net income: PEN 189,000

Rate	Amount during 2018
30%	In excess of PEN 189,000

Special Cases

Depending on the individual's nationality, approval from the Labor Authority might not be necessary. For citizens from the following countries, the visa application process might be shorter: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Uruguay and Spain.

According to the Regulation of the New Immigration Act, all Venezuelans citizens with a PTP (special permission to stay in Peru) may obtain "special residence." This residence will allow them to reside and work in Peru.

Assigned Employee Visa

This type of visa is for foreign nationals who enter the country with the purpose of continuing their labor relationship with the foreign employer. In this case, the assigned employee is sent by a foreign employer for a limited and defined term to render a specific duty on behalf of his/her foreign employer to a local entity.

According to the New Immigration Act and its Regulation, there are two types of assigned employee visa:

- Temporary assigned employee visa, which is granted to those foreign nationals who are displaced by their foreign employer to Peru to perform activities in a local company that require specialized professional, commercial or technical knowledge.
- Resident assigned employee visa, which is granted to those foreign nationals who are displaced by their foreign employer to Peru to perform activities related to the repair or maintenance of machinery or technically complex or advanced systems or

mechanisms, as well as for corporate audits and international certifications. They are not allowed to receive Peruvian source income.

In both cases, the foreign nationals remain on the foreign company's payroll.

Restrictions: The assigned employee is allowed to sign contracts and transactions, but he/she is prohibited from performing remunerated or lucrative activities or from receiving Peruvian-source income.

Term: The temporary assigned visa is initially granted for a 183-calendar-day term, valid for a one-year period.

On the other hand, the resident assigned employee visa is granted for one year. The term of this visa is valid as of the date of issuance by the Immigration Office. This visa can be extended for the same term.

Timing: The procedure for obtaining this visa may take about 60 working days, as of the submission of the visa application.

Skilled Workers

If a company decides to incorporate the foreign employee into the Peruvian company's payroll and this employee is a high-level professional or a high-level specialized technician, the Peruvian company has the possibility to request exemption from the legal limitation percentages.

On the other hand, according to Peruvian immigration rules, assigned employees should be highly skilled employees, and such condition must be declared in the visa application documents.

Training

All foreign employment agreements shall include a clause that states the obligation to train national personnel in the same position held by the foreign employee.

Recommendations for Foreign Residents in Peru

Foreign residents in Peru should take into account the following recommendations:

- Foreign nations should renew their visas every year. It is important to renew a visa before it expires. If foreign residents leave the country without renewing their visa, they could lose their residency.
- Foreign nationals with resident status cannot stay outside of Peru for more than 183 consecutive days in a 12-month period, or 365 days in a two-year period. If they stay longer than that, they will automatically lose their residency. Notwithstanding this, foreign nationals may apply for an exception to this period for justified causes, such as illness or work.
- It is mandatory for all residents to inform the Peruvian immigration office of any change to their identification data, such as address, marital status, information about his/her employer, etc., no later than 30 calendar days following the change. If the foreign resident does not comply with this obligation, the Immigration Office will fine him/her.

Entry Based on International Agreements

Foreign nationals from certain countries with which Peru has entered into international agreements have different procedures with respect to work authorization in Peru.

These international agreements are the following:

- MERCOSUR Agreement, signed by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay
- Peru-Argentina Agreement, signed by Peru and Argentina

These agreements provide foreign nationals with a non-renewable temporary residence in Peru of up to two years, without an obligation to be previously engaged under an employment agreement.

Additionally, foreign nationals under these agreements are considered to be local employees, and so will not fall under the limitation percentages established for foreign employees (during the two-year term).

Andean Community of Nations (CAN)

Foreign nationals from CAN countries (Bolivia, Colombia, Ecuador and Peru) are treated as local employees, and so will not fall under the limitation percentages established for foreign employees. As a consequence, their employment contracts may endure for an indefinite- or fixed-term period.

This agreement only allows the Ministry of Labor to exonerate the approval of the employment contract but, to obtain the working visa, foreign nationals should be subjected to an immigration procedure applicable in their particular case.

Philippines



The Philippines has had a relaxed set of immigration policies since 1989, aimed at benefiting foreign nationals who wish to work, invest, retire, or obtain permanent residence in the Philippines.

Key Government Agencies

The Bureau of Immigration (BI) is responsible for visa processing and the monitoring of the entry and exit of foreign nationals in the Philippines. Unlike in other jurisdictions, the work visa application process is usually (and preferably) initiated after the arrival of the foreign national in the Philippines as a tourist or a temporary visitor.

The Department of Labor and Employment (DOLE) is also involved in the process of authorizing a foreign national to work in the Philippines. The DOLE determines whether the foreign national is competent, willing and able to perform the requested services and thereafter issues an Alien Employment Permit (“AEP”) to the foreign national.

The Department of Foreign Affairs, through embassies and consulates around the world, is responsible for granting entry visas to “restricted” foreign nationals.

An Authority to Employ from the Department of Justice is required before a foreign national may be employed by a nationalized or partly nationalized entity (entities in industries where foreign ownership/control is limited).

Business Travel

Temporary Visitor/Tourist Visa

“Restricted nationals” are required to obtain a temporary visitor visa from the Philippine embassy or consulate in their country of origin or residence before entering the Philippines. In addition to a temporary visitor visa, “restricted” nationals must also hold valid tickets for their return journey to the port of origin or next port of destination. Department regulations require that their passports should be valid for

a period of not less than six months beyond the contemplated period of stay.

Visa Waiver

Non-restricted nationals are allowed to enter the Philippines without visas for a limited period, depending on their nationality.

As of April 2019, nationals from the following countries are allowed to enter the Philippines without a temporary visitor visa for a stay of 30 days or less:

Andorra, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Croatia, Colombia, Comoros, Congo, Costa Rica, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, United

Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Vatican City, Venezuela, Vietnam, Zambia, and Zimbabwe.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding 59 days: Brazil and Israel.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding seven days: Hong Kong Special Administrative Region (“SAR”) passports, British National Overseas (“BNO”) passports, Portuguese passports issued in Macau, and Macau Special Administrative Region (“SAR”) passports.

Visa waiver visitors are still required to comply with the passport and return ticket requirements stated above.

A foreign national who wishes to extend his stay must obtain approval from the BI.

If an individual intends to travel to the Philippines, it is suggested that he refer to the Department of Foreign Affairs website (www.dfa.gov.ph) for the latest restrictions.

Employment Assignments

Pre-arranged Employment Visas/9(g) Visa

The most common work visa is the 9(g) visa. The 9(g) visa is available to foreign nationals who intend to occupy an executive, technical, managerial, or highly confidential position in a company in the Philippines. It is also available to foreign nationals who proceed to the Philippines to engage in any lawful occupation, whether for wages or salary or for other forms of compensation where a bona fide employer-employee relationship exists. The petitioning company must establish that there is no person in the Philippines who is willing and competent to perform the labor and service for which the foreign national is hired, and that the admission of the foreign national will be beneficial to the public interest.

The foreign national's dependents who will join him in the Philippines are entitled to the same visa.

Special Non-immigrant 47(a)(2) Visas

The Philippine President is authorized to issue this visa when public interest warrants so. The President, acting through the appropriate government agencies, has exercised this authority to allow the entry of foreign personnel employed in supervisory, technical, or advisory positions in Export Processing Zone Enterprises, Board of Investments-registered enterprises and Special Government Projects.

The employing entity must apply with the relevant government agency for authority to employ foreign nationals. This visa is generally valid for an initial period of one year and is renewable from year to year.

The foreign national's dependents who will join him in the Philippines are entitled to the same visa.

Multiple-entry Special Visa

Multiple-entry special visas are available to:

- foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philippines to operate as such; foreign personnel shall be issued a multiple-entry special visa (also known as a visa under Presidential Decree No. 1034), valid for a period of one year
- foreign personnel of regional or area headquarters of multinational companies which are officially recognized by the Philippine government

These foreign nationals and their dependents may be issued multiple-entry special visas valid for three years, which may be renewed upon legal and meritorious grounds.

The holder of this visa is exempted from obtaining an AEP from the DOLE as a condition to working in the Philippines.

Treaty Traders' or Investors' Visa

A foreign investor is entitled to enter the Philippines as a treaty trader or investor if he is a national of the United States, Germany or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty investors or traders. The local petitioning company must be majority-owned by United States, German or Japanese interests. The nationality of the foreign national and the majority of the shareholders of the employing company must be the same.

The term “treaty trader” includes an alien employed by a treaty investor in a supervisory or executive capacity.

The following must be proved:

- the individual or the employer intends to carry on “substantial trade” between the Philippines and the country in which the alien is a national
- the individual intends to develop and direct the operations of an enterprise in which the foreign national or the employer has invested, or is in the process of investing, a substantial amount of capital

“Substantial trade” refers to a non-nationalized business in which an investment in a substantial amount in Philippine currency has been made. It is important to note, however, that the size of the investment is merely one of the factors considered in determining what is deemed “substantial trade.”

When granted, the visa extends to the investor’s spouse and unmarried children under 21 years of age. It is generally valid for a one-year period subject to extension upon application of the investor.

Alien Employment Permit (“AEP”)

In addition to acquiring the appropriate work or employment visa, a foreign national who wishes to work in the Philippines must, through the petitioning Philippine company, obtain an AEP from the DOLE.

The issuance of an AEP is subject to the non-availability of a person in the Philippines who is competent, able and willing to perform the services for which the foreign national is desired.

There are certain foreign nationals who are exempt/excluded from securing an AEP, such as: (i) members of the governing board with voting rights only and not involved in the management/day-to-day operations of the corporation; (ii) the president or treasurer of a corporation; (iii) an intra-corporate transferee who is a manager, executive or specialist and who has been employed by the foreign service supplier for at least one year prior to deployment to a branch/subsidiary/affiliate or representative office in the Philippines; (iv) a consultant who does not have an employer in the Philippines; (v) a contractual service supplier who is a manager, executive or specialist and an employee of a foreign service supplier which has no commercial presence in the Philippines;¹ and (vi) a representative of the foreign principal/employer assigned in the office of the Licensed Manning Agency in accordance with the Philippine Overseas Employment Administration Law.

Provisional Work Permit (“PWP”)

Aliens who have commenced employment while their applications for an AEP or work visa are still pending, must secure a PWP. The PWP is valid for three months or until the work visa has been issued for the applicant, whichever comes first.

¹ The supplier must: (i) enter the Philippines temporarily to supply a service pursuant to a contract between his employer and a service consumer in the Philippines; (ii) possess the appropriate educational and professional qualifications; and (iii) be employed by the foreign service supplier for at least one year prior to the supply of services in the Philippines.

Authority to Employ

Entities engaged in nationalized or partly nationalized industries can only employ foreign nationals as technical personnel and subject to the issuance by the Department of Justice of an Authority to Employ.

Short-term Employment

Special Work Permit (“SWP”)

An SWP is a special permit issued to a foreign national who intends to work in the Philippines for a short-term not exceeding six months and occupy a temporary position. The SWP is issued for an initial period of three months and is extendible for a final period of another three months. The holder of an SWP must maintain a valid temporary visitor's visa.

Immigrant Visas

Generally, a foreign national may acquire immigrant status in the Philippines if his country reciprocally allows Philippine citizens to become immigrants in that country. This privilege is usually embodied in a reciprocity agreement between the Philippines and the foreign national's country. There are four types of immigrant/resident visas: quota (or preference); non-quota; special resident visas (“SRRV” and “SIRV”); and the Subic Bay Freeport Residency Visas.

Quota Visa

The issuance of quota or preference visas is governed by an order of preference and requires possession of qualification, skills, scientific, educational or technical knowledge that will advance and be beneficial to the Philippine national interest. They are issued on a calendar basis and cannot exceed the numerical limitation of 50 in a given year. The most common type of non-quota visa is one that is issued to a foreign national on the basis of marriage to a Philippine citizen.

Special Resident Retiree's Visa (SRRV)

The SRRV is available to foreign nationals and former Filipinos who are at least 35 years of age and who deposit the minimum amount required by law with an accredited bank, to be invested in any of the specifically designated areas. The required deposit is USD 50,000 or USD 20,000 (maintained balance) for applicants who are aged 35 to 49; and USD 20,000 for applicants above 50 years of age (if the 50-year-old applicant receives a monthly pension, the required deposit is USD 10,000).

Retirees enrolled under the SRRV program (except for those who are aged 35 to 49 and have deposited only USD 20,000) may be allowed to withdraw their deposit for conversion into an investment after a holding period of 30 days from the issuance of the SRRV.

Special Investor Resident Visa (SIRV)

The SIRV is a program offered by the Philippine government to foreign investors wanting to obtain a special resident status with multiple entries for as long as they can make and maintain the minimum required USD 75,000 in qualified investments.

A variation of the SIRV is issued to investors in tourist-related projects and tourist establishments. A foreign national who invests the amount of at least USD 50,000 in a qualified tourist-related project or tourism establishment, as determined by a government committee, shall be entitled to an SIRV.

Subic Bay Freeport Residency Visas

An investor who has made and maintains an investment of not less than USD 250,000 within the Subic Bay Freeport may apply for this visa. Such visa shall be valid as long as the visa holder maintains the investment.

Subic Bay Freeport Residency Visas for Retirees

This visa requires the applicant to be over 60 years old, of good moral character, with no previous conviction for a crime involving moral turpitude, no longer employed or not self-employed, and receiving a pension or passive income which is payable in the Subic Bay Freeport in an amount exceeding USD 50,000 per year.

Naturalization

It is possible for foreign nationals who reside in the Philippines to be naturalized and become citizens. Dual citizenship of former Filipino citizens is permitted.

Further Information

Baker McKenzie's *Philippine Immigration Manual* provides further information about Philippine business visas, including a broader range of non-immigrant visas, the immigration process and immigration-related responsibilities for employers and foreign nationals.

Poland



All nationals of the European Union and European Economic Area Member States, as well as those of Switzerland (jointly “EU citizens”), enjoy freedom of movement and the right of residence. These nationals are also released from the obligation of having a work permit to be employed in Poland.

Citizens of countries that are not members of the EU, EEA, or Switzerland (“non-EU citizens”) who wish to stay and/or work in Poland are subject to a different legal regime than EU citizens. Non-EU citizens must legalize their stay in Poland by obtaining an appropriate visa or residence permit and legalize their work (if this is the purpose of their stay) by obtaining a work permit unless the residence title authorizes them to work (e.g. an integrated residence and work permit is a residence title which authorizes a foreigner to work).

As a general rule, to perform work in the Republic of Poland legally, a non-EU citizen should have a work permit issued by a Polish local authority, known as a “Voivode” (*wojewoda*). Work authorization is required regardless of whether a foreign national is to perform work in Poland on the basis of an employment contract or on the basis of another type of agreement such as a service agreement, or is entrusted with the performance of any other kind of remunerated work in Poland. The exceptions to that rule are detailed in the section concerning employment assignments.

Key Government Agencies

Polish consulates abroad are responsible for processing Polish visas. When crossing the border, a foreign national may be required to prove financial means sufficient to cover the cost of entry, stay and exit from Poland. The decision to refuse entrance into Poland may be issued by the Commander of the Border Guards if the foreign national’s details are included in the register of foreign nationals denied the right to stay within Poland or the foreign national lacks a valid travel document or another valid document certifying their identity and citizenship. The

decision to refuse entry may be appealed with the Commander of the Border Guard Unit.

Applications for issuance of residence permits are submitted to the voivodeship office (department of citizen's affairs) competent for the place of residence of the foreign national in Poland. Applications for issuance of visas are, in principle, submitted to the Polish consular office in the foreign national's country of origin.

The Head of the Office for Foreigners is the central authority of the Polish central government administration. It handles all matters connected with foreign nationals' entry into, transit through, residence in and leaving Poland, granting of refugee status, asylum, tolerated stay and temporary protection with reservation to the competencies of other authorities as provided for in applicable laws. The minister competent for internal affairs exercises supervision over activities of the Head of the Office for Foreigners.

The basic overview of the procedure for obtaining a work permit and categories of foreign nationals exempt from the obligation of obtaining a work permit, are presented below. All information concerning the procedure and obligations is also available at the social affairs departments of voivode offices.

Current Trends

After Poland's entry into the EU on 1 May 2004, all nationals of the EU and EEA Member States, as well as those of Switzerland, can enter Poland without having to obtain a visa simply on the basis of a valid travel document (passport or national identity card) issued by their state of origin confirming the person's identity and citizenship.

The Member States of the EU (currently 28 countries) are: Belgium, France, the Netherlands, Luxembourg, Germany, Italy, Denmark, Ireland, United Kingdom, Greece, Spain, Portugal, Austria, Finland, Sweden, Poland, Slovakia, Slovenia, Lithuania, Latvia, Hungary,

Czech Republic, Estonia, Malta, Cyprus, Bulgaria, Romania and Croatia.

EEA Member States are: all EU Member States, as well as Iceland, Norway and Liechtenstein.

Switzerland is not an EU or EEA Member State.

A total of 26 states, including 22 EU states (except for Ireland, the United Kingdom, Cyprus, Bulgaria, Romania and Croatia) and four non-EU members (Iceland, Norway, Liechtenstein and Switzerland), are bound to the full set of rules in the Schengen Agreement, which deals with the abolition of systematic border controls among the participating countries. On 21 December 2007, Poland joined the Schengen Agreement, which means that as of that date there are no internal borders (on land or water) between Poland and other EU countries. The air borders at airports were internally opened for the other Schengen zone countries on 30 March 2008.

According to Council Regulation (EC) No. 539/2001 of 15 March 2001 (with further amendments), following on from the Schengen Agreement, today nationals of the following countries are not required to possess a visa for entry and stay as tourists for a period not exceeding three months when crossing the external borders of the Schengen Agreement Member States: Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei Darussalam, Bosnia and Herzegovina, Chile, Canada, Costa Rica, Former Yugoslav Republic of Macedonia, Georgia (only individuals with biometric passports), Guatemala, Honduras, Israel, Japan, Malaysia, Mauritius, Mexico, Republic of Moldova, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Salvador, San Marino, Saint Kitts and Nevis, Serbia, Seychelles, Singapore, South Korea, Taiwan, Ukraine (only individuals with biometric passports), United States, Uruguay, Venezuela, Vatican and the Special Administrative Regions of the People's Republic of China: Hong Kong and Macau, as well as overseas British nationals not holding United Kingdom citizenship.

As a basic rule in Polish law, a foreign national who is a citizen of two or more states will be treated as a citizen of the state whose travel document was the basis for entry into Poland.

Business Travel

EU Citizens

EU citizens may enter and reside in Poland for a period not exceeding three months on the basis of a valid travel document or another valid document certifying his/her identity and citizenship. Additionally, an EU citizen who entered the territory of Poland in search of work may reside for a period of not more than six months, unless after this period he/she demonstrates that he/she continues to actively seek employment and has a genuine chance of finding a job. A family member of an EU citizen who is a non-EU citizen may enter Poland on the basis of a valid travel document or visa, if required. During the stay in Poland for a period of up to three months, a family member who is a non-EU citizen must have a valid travel document.

EU citizens should have the right to stay in Poland for a period longer than three months, if he/she fulfills one of the following conditions:

- is an employee or a self-employed person in Poland (in this case the right to stay extends to family members staying in Poland with an EU citizen)
- is covered by general health insurance or is a person entitled to health insurance or is entitled to health insurance benefits on the grounds of the regulations on coordination of health insurance benefits financed from public funds or is covered by private health insurance of a specific scope, and is in possession of enough funds to cover the cost of living in Poland without the need to make use of social insurance benefits (in this case, the right to stay extends to family members staying in Poland with an EU citizen)

- studies or receives vocational training in Poland and is covered by the general health insurance, is entitled to health insurance, or entitled to health insurance benefits on the grounds of the regulations on coordination of health insurance benefits financed from public funds or is covered by private health insurance of a specific scope and has enough funds to provide health coverage in Poland without the need to make use of social insurance benefits (in this case, the right to stay extends to the spouse and children supported by an EU citizen or by the spouse who is staying with or joining the EU citizen in Poland)
- is married to a Polish national

If residency in Poland lasts for more than three months, an EU citizen is obliged to register the residence address in the voivodeship office competent for the place of residence in Poland. A family member who is a non-EU citizen is obliged to obtain an EU citizen family member residence card.

The application for registration or issuance of the residence card for a member of an EU citizen's family must be submitted personally to the competent voivodeship office no later than on the day following the end of three months from the date of entry into the territory of Poland.

Non-EU Citizens

Foreign nationals coming to Poland on short-term business trips will most likely use one of these types of visitors' visas:

- a Schengen Visa, which gives right of entry and continuous stay inside the Schengen Member States or for several consecutive stays for a total period not exceeding three months within the period of six months, counted from the date of the first entry into the stated territory

- a national visa, which gives right of entry and continuous stay in Poland or for several consecutive stays for a total period not exceeding one year during the visa's validity period

A national visa can be issued if the circumstances require a foreign national to stay for more than three months.

Examples of the purposes of entry and stay for both Schengen and national visas include:

- a visit
- carrying out economic activity
- conducting cultural activities or participation in international conferences
- performing official tasks by representatives of authorities of a foreign state or an international organization
- participating in proceedings for granting asylum
- performing work, receiving education or training
- enjoying temporary protection
- participating in a cultural or educational exchange or humanitarian aid program, or holiday job program for students

The period of stay under the national visa must be defined within the limits specified above, according to the purpose indicated by the foreign national.

Employment Assignments

EU Citizens

All EU citizens as well as members of their family are exempt from the obligation to obtain a work permit to be employed in Poland. If the assignment in Poland is expected to last for more than three months,

an EU citizen is obliged to register the residence address as mentioned above in the “Business Travel” section.

As long as EU citizens are in paid employment (or perform work in Poland as an independent service provider or on other basis), they are subject to the same legislation for social contributions and benefit from the same advantages as national employees. Exceptions may apply if the EU citizens perform work in more than one country.

Every EU citizen may make use of public employment services.

Non-EU Citizens

According to Polish law, a foreign national wanting to work legally in Poland must obtain the right to work in Poland, either on the basis of (i) a work permit (*zezwole nie na prace*), issued by one of the Polish voivodeship offices or (ii) a statement on entrusting performing work (*oświadczenie o powierzeniu wykonywania pracy*), which may be applied in some limited cases for a temporary basis, and a document confirming his/her legal stay in Poland with the right to perform work, which is either: (i) a visa (*wiza*) (except certain categories of visas, e.g., for the purpose of tourism) issued by a Polish consulate; or (ii) a temporary residence permit in Poland (*zezwole nie na pobyt czasowy*) issued by the department of citizen’s affairs at the voivodeship office. Please note that, by way of exception, a foreigner’s right to reside and work in Poland may result from the same permit, such as (i) an integrated temporary stay and work permit (*zezwole nie na pobyt czasowy i pracę*) or (ii) a temporary residence permit granted due to intra-group company transfer (*zezwole nie na pobyt czasowy w celu wykonywania pracy w ramach przeniesienia wewnątrz przedsiębiorstwa*), issued by the department of citizen’s affairs at the voivodeship office. Please note that a choice of an applicable permit is limited by the circumstances of the case.

There are several categories of non-EU citizens who are exempted from the obligation of obtaining a work permit. These categories are, in particular:

- foreign nationals with a permanent residence permit
- foreign nationals granted long-term European Community resident status in Poland
- foreign nationals granted a long-term EC resident status in another EU country, with a temporary residence permit in Poland issued on the basis of the declared intention to start business or study in Poland
- refugees, people granted temporary protection, and people granted he tolerated stay status
- foreign nationals holding a valid Pole's Card
- foreign nationals who are allowed to perform work in Poland without having to obtain a work permit according to international contracts and agreements binding the Republic of Poland and signed with the country of their citizenship
- members of international military forces stationed in Poland
- journalists and other foreign mass media correspondents fulfilling specific criteria
- artists (individual or in groups) participating in different kinds of artistic events (not exceeding 30 days per calendar year)
- athletes performing work for institutions registered in Poland in relation to sport events
- people delegated by their foreign employers (provided that they have permanent residence abroad), for a period not exceeding three months, for the purpose of:
 - assembly, maintenance or repairs of the delivered devices, structures, machinery or other equipment, if the foreign employer is a manufacturer thereof

- training the employees of the Polish employer being the recipient of devices, structures, machinery or other equipment referred to above, on its operation or use
- acceptance of devices, machinery, other equipment or parts produced by a Polish company
- assembly and disassembly of exhibition stands, if the exhibitor is a foreign employer who delegates them for this purpose
- people entitled to reside and work in an EU or EEA Member State or Switzerland who are temporarily delegated by their EU employer to provide services in Poland
- management board members of legal entities that have been registered under the respective provisions in Poland, if they enter Poland on the basis of an appropriate visa/residence permit and their stay in Poland does not exceed six months within a 12-month period

A work permit is a specific type of authorization issued following an investigation by labor authorities into the reasons for employing foreign nationals in Poland. There are several types of work permits, depending on the position the employee would take or the place of seat of the employer (in Poland or abroad). As a rule, a work permit is issued if there are no Polish candidates suitable for the given work post to be found in the domestic market (in case of work permit type A), which is called the “labor market test” (*test rynku pracy*). However, the local labor market test requirement is not necessary in case of all work permits (e.g., in case of a work permit granted due to secondment to an affiliated entity, type C, there is no need to go through the labor market test).

Commencing work in Poland without a work permit is strictly prohibited and may result in financial sanctions imposed on the individual concerned and the hosting entity employing the individual.

A work permit is applied for and issued to an employer as permission to employ a specific, named, non-EU citizen, for a specific job and for a specific period of time. Moreover, if a foreign national performs work in various positions at the same employer, a work permit for each position is needed.

In case of work permit type A, the Polish legal entity or person who wants to employ a non-EU citizen (the “employer”) must attempt to fill the vacancy with a Polish national. To do so, the employer is obliged to make an announcement of the free vacancy with the labor agency, i.e., the district labor office competent for the place in which the work is to be performed.

If there are no available Polish citizens suitable for the position, the labor office issues an appropriate confirmation to the employer in writing (the labor market test).

Once the employer obtains confirmation from the district labor office, it submits an application for the issuance of a work permit for a foreign national, attaching the received confirmation, to the local immigration authority (the immigration section of the voivodeship office).

In the work permit application, the employer is obliged to provide documentation regarding its entity, personal details of the foreign national, the details of the passport document and, if needed, information on the foreign national’s qualifications and professional experience.

Furthermore, the employer must specify the proposed post in Poland, the intended period of employment, and the legal basis of employment (e.g., employment agreement, service agreement). All documents submitted to the Polish immigration authorities must be in Polish. Therefore, certain documents, such as the foreign national’s certificates and diplomas, will have to be translated into Polish by a sworn translator.

After submitting the application form, the voivode examines the application in view of the local labor market situation, taking into consideration the confirmation from the district labor office.

In case the confirmation from the district labor office shows that there are no Polish candidates on the local labor market fulfilling the employer's criteria and the application fulfills all the formal requirements, the voivode issues the work permit.

According to the legal rules, the work permit may be granted for a period not exceeding three years. However, in practice, the voivode issues the first work permit for a maximum period of one year, after which it may be extended for longer periods (multiple times).

The work permit document is issued in triplicate, one copy being for the employer, one for the employee and one for the voivode office.

After having obtained the work permit, the employer must deliver it to the non-EU citizen so that he/she may submit it when applying for the work visa.

A national visa for the purpose of performing work may be issued to a non-EU citizen who presents a permit to work in Poland or a statement on entrusting performing work, where possible. This type of visa is issued by the consul competent with respect to the place of permanent residence of the foreign national. It can be issued for the period of stay corresponding to the period indicated in the work permit, but no longer than one year.

In case a non-EU citizen intends to stay in Poland for longer than the period of stay envisaged by the visa, it is possible to apply for a temporary residence permit in Poland. That document can be issued for a maximum period of three years, but no longer than the validity period of the work permit. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreign national is in Poland, the application for that permit is filed with the department of citizen's affairs at the voivodeship office.

In May 2014, new provisions came into force which allow foreign nationals to apply for a integrated permit for residence and work. This new procedure includes the requirements of the separate work and residence permit procedures, with the difference being that it is mainly conducted by the foreign national (in cooperation with the employer); previously obtaining the work permit was a sole responsibility of the employer. A integrated permit for residence and work is issued in one document.

Having completed all the formalities, the employer signs an agreement with the non-EU citizen for the time specified in the work permit (or the integrated permit for residence and work). The contract should strictly reflect conditions in the permit in regard to time, place of work, position, etc. Change of workplace requires immediate notification to the voivode.

After arriving in Poland, the foreign national is obliged to register his/her residence in Poland with the administrative local authority using his/her temporary address in Poland (*zameldowanie*).

Social Security Contributions

According to Polish law, there are four kinds of social security contributions that an employer and employee are obliged to pay in connection with an employment agreement.

In regard to payment of social contributions for non-EU citizens, Polish law states that that the duty arises in the country in which the person is employed and where the work is being performed, the *lex loci laboris* principle.

This means that the employer employing a foreign worker (as an employee or a service provider) in Poland is subject to Polish social security laws and not the social security laws of the country in which the employing entity might be located or of which the foreign worker is a citizen. The effect of this is that a foreign employer who does not have its place of business in Poland is, in principle, obliged to register

with the Social Security Agency and pay all the required social security contributions for any worker employed in Poland. There are several exceptions to the above rule, such as employees who were delegated by their employers (provided they have permanent residence abroad) to perform work in Poland for a specified period of time or nationals of countries which are parties to international agreements, recommendations, conventions and provisions binding on Poland in the scope of social contributions regulations.

EU law also stipulates that social security contributions are paid in principle in the country where work is performed.

Training

There is no specific type of visa designed exclusively for training.

EU citizens have the right to stay in Poland for the purpose of studying according to the regulations described above.

For non-EU citizens, the most suitable solution for training purposes is to obtain a visa (either Schengen or national depending on the type and length of training).

EU citizens do not need any visa or work permit to receive training in Poland. According to the specific regulations, there are also several categories of non-EU citizens who are not required to possess a work permit in Poland in connection with training, such as:

- trainers and qualified advisors participating in programs financed by the EU, other international organizations, or by loans taken out by the Polish government
- foreign language teachers fulfilling additional criteria
- people who occasionally give lectures and presentations (not exceeding 30 days a year), if they have permanent residence abroad

- students of Polish universities (however only "daily" studies), studying on the basis of a visa or an applicable residence permit;
- students on internships arranged by international student associations
- students within a framework of cooperation between Polish employment services and their partners abroad
- foreign students on paid internships (for a maximum period of six months during one calendar year)
- scientists in research and development institutions.

If a non-EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of education, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but for no longer than three years. When staying abroad, an application for a temporary residence permit should be filed via the consular office. If the foreign national is in Poland, an application for that permit is made to the department of citizen's affairs at the voivodeship office in the capital city of the respective voivodeship.

Other Comments

All applications for visas and residence or work permits must be written in Polish on official forms. Documents drawn up in languages other than Polish attached to the application (if necessary), must be submitted with their translations into Polish by a sworn translator.

All foreign nationals staying in Poland register on their own with the administrative local authority at their temporary registered address in Poland (*zameldowanie*). This registration must be done no later than after four consecutive days in Poland (apart from EU citizens for whom the deadline is currently 30 days). To be registered, a foreign national will be required to present the document confirming his/her

legal title to the apartment in which he/she resides (e.g., a lease agreement) and the relevant work visa/residence or work permit or, in case of EU citizens, a passport or an ID card.

The national visa of a foreign national staying in Poland can be extended if all of the following conditions are met:

- there is an important professional or personal interest of the foreign national or humanitarian considerations in favor of it
- the events which are the reason for applying for a visa extension were beyond the foreign national's control and could not be foreseen at the time the visa was issued
- the circumstances of the case do not indicate that the purpose of the foreign national's stay in Poland will be different from the declared one
- there are no circumstances against issuing a foreign national a visa

The period of stay in Poland on the basis of an extended visa may not exceed the period of stay envisaged for the given type of a national visa. This means that a national visa issued for a maximum period of one year may not be extended, even if the above conditions are met.

If a foreign national intends to stay in Poland for longer than the period of stay envisaged by the visa instead of extending the visa, the foreign national can apply for a temporary residence permit. This document is issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but not longer than three years, and is issued for various purposes, such as:

- performing work
- carrying out economic activity pursuant to the provisions applicable in this field in Poland

- studying at a university
- conducting scientific research

A temporary residence permit may also be granted to a foreign national who is married to a Polish citizen and for other reasons specified in the Foreigners Act of 12 December 2013.

Legal stay in Poland is also guaranteed by obtaining:

- a permanent residence permit, issued generally to a foreign national who:
 - has a valid Pole's Card and intends to settle in the territory of Poland
 - has been married to a Polish citizen for at least three years before filing the application and, immediately before that had continuously stayed in Poland for at least two years on the basis of a temporary residence permit
 - immediately before filing the application had continuously stayed in Poland for a period not shorter than 10 years on the basis of a consent of tolerated stay
 - is a child of a Polish citizen who exercises parental authority over him/her
- a long-term EC resident stay permit, which may be granted to a foreign national who has legally and continuously stayed in Poland for at least five years immediately before filing the application, and who has:
 - a stable and regular source of income sufficient to cover the costs of maintenance for himself/herself and dependent family members (and secured place to live)

- health insurance within the meaning of provisions on public health insurance or insurer's confirmation of coverage of the costs of medical treatment in Poland

The above rules do not apply to foreign nationals who:

- stay in Poland to undergo studies or professional training
- are workers delegated by a service provider for the purpose of cross-border provision of services

Polish citizenship can be granted by decision of the President of the Republic of Poland. Additionally, a foreign national may be declared a Polish citizen after residing in Poland for at least three years on the basis of having a permit to settle, long-term EC resident status or right of permanent stay, a stable and regular source of income in Poland and the legal title to their occupied premises, provided that the foreign national has a certificate confirming his/her knowledge of the Polish language, or in certain other cases specified by the provisions of law.

Russian Federation



Under Russian law, an employer planning to employ a foreign national must obtain the necessary work permit before this individual may start performing job duties in Russia. Foreign nationals from countries enjoying a visa-free regime with Russia must obtain a permit for work (except for nationals of Belarus, Armenia, Kyrgyzstan and Kazakhstan who can freely work in Russia). Foreign nationals requiring a visa to enter Russia, in addition to a work permit, must also have a work visa. These requirements do not apply to foreign nationals who hold a temporary or permanent Russian resident permit.

Citizens from certain countries, including the US, Canada, China, India, Japan and Korea, as well as most Latin American and all European Union countries, need to obtain a visa to enter Russia.

Foreign nationals who enter Russia on business visas have the right to participate in negotiations, training and similar activities, but cannot be legally employed prior to obtaining both a work visa and work permit.

The employer is responsible for obtaining work permits and work visa invitations from the Russian migration authorities. The term for processing a work permit and a work visa invitation, as well as their maximum validity period, depends on the procedure used by the employer. Additionally, depending on the position for which a work permit is applied for, the employer may be required to have a quota for the employment of foreign nationals (migration quota). The migration quota is approved annually by the Russian government. To obtain a quota for an upcoming year, the employer should file the relevant application with the Russian public employment authorities in the current year.

Thus, employing a foreign national in Russia requires advance planning to allow sufficient time to complete such procedures. The procedures for obtaining the relevant migration documents for work in Russia for foreign national employees are comparable in their complexity and duration to those in the US or Western Europe.

Key Government Agencies

Currently, the enforcement of regulations governing all aspects of foreign nationals' activities in Russia is under the remit of the Russian Ministry of the Interior, Division for Migration Matters. The Ministry of the Interior ensures a high level of compliance with applicable migration rules and regularly makes amendments to the relevant Russian migration legislation. Therefore, the migration procedures involved can be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

Current Trends

To obtain work permits under a standard procedure, foreign nationals are required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, and medical certificates to the migration authorities of Russia.

There is also a special category of foreign employee – a highly qualified foreign specialist (“Specialist”). Specialists can take advantage of a simplified procedure for obtaining work permits and work visa invitations. Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, or medical certificates to the migration authorities of Russia (for further details, see “Skilled Workers“ below).

The foreign employee is obliged to have a valid medical insurance policy or be entitled to medical help on the basis of an agreement concluded with a medical organization. Medical insurance policies for Specialists and their family members should be sponsored by the employer. A certain base for medical treatment constitutes an essential term of the employment agreement with the foreign national.

Business Travel

Ordinary Business Visa

Generally, a Russian business visa can be obtained at a Russian consulate abroad on the basis of a visa invitation sponsored by the inviting party.

Business visa invitations may be obtained:

- through the Russian migration authorities; and
- on the basis of bilateral treaties, but only for foreign nationals from certain countries (i.e., citizens of the European Union (except for the UK), Japan, South Korea, the US, and the Indian Republic).

The foreign national should present the original invitation together with other required documents (passport, application form, etc.) to the relevant Russian consulate to apply for a visa.

Foreign nationals coming to the Russian Federation on short-term business trips may use an ordinary business visa. Generally, visitors with business visas visit Russia to participate in key negotiations on business and economic matters, for professional training at Russian joint ventures or accredited representative offices of foreign commercial entities, or to attend exhibitions or other events. In all of these cases, such business-purpose visits are assumed to be short (up to 90 days).

There are three types of business visas:

- single-entry
- double-entry
- multiple-entry

Single and double-entry business visas may be issued for up to three months. A multiple-entry business visa may be issued for up to one

year, but can only be used for a limited period of time, as set out below. According to recent practice, if the business visa invitation is obtained through the migration authorities (though not on the basis of a bilateral treaty) and the business visitor has never visited Russia before, the visa invitation for a first visit to Russia will be issued only for three months and will provide for a single or double entry.

Multiple-entry visas for citizens of the European Union (except for the UK) and South Korea can also be issued for a term of two or five years, but only after a foreign citizen has visited Russia under a one-year multiple-entry visa or a two-year multiple-entry visa, respectively. Russian consulates consider applications for visas for a term of more than one year on a case-by-case basis.

Any foreign national can stay in Russia on the basis of a one-year multiple-entry business visa, without having to leave Russia, for up to 90 days in a period of 180 days. Thus, the maximum period of uninterrupted stay in Russia on the basis of such a business visa is currently 90 consecutive days, and the maximum period of stay in Russia is 180 days in total per year. Every 90 days, foreign nationals on a one-year multiple-entry visa have to leave the country. Upon re-entry, they can stay in Russia for no longer than another 90 days.

According to the Russia- US treaty regarding simplified visa procedures, visas for US citizens can be valid for up to 36 months. The duration of each trip to Russia for a US citizen may be up to six months. However, the period of time that a US business visitor may stay in Russia on a business visa should be determined in accordance with the restrictions indicated on his visa, i.e., it may provide for a restriction of 90 days within a period of 180 days.

Pursuant to the migration legislation, a foreign national is prohibited from being employed or working under a civil law contract based on a business visa. Therefore, to legitimately enter Russia for the purpose of being employed or to provide services under a civil law contract, a foreign national should hold a work visa and obtain a work permit. Additionally, it is impossible to change the type of visa, e.g., to switch

from a business visa to a work visa. Entering Russia with a business visa for the purpose of employment is considered a misrepresentation of the purpose declared for visiting Russia. Such misrepresentation is considered an administrative violation and is severely prosecuted if discovered.

The party-sponsored visa invitation to a foreign national (obtained either through the migration authorities or on the basis of a bilateral treaty) should ensure that these foreign citizens:

- are in compliance with the government rules;
- abide by the terms and conditions of their Russian visa; and
- depart from Russia on time.

Visa Waiver

There are several narrow exceptions where a visa is not required for entering the Russian Federation. These exceptions apply, in particular, to the following foreign nationals:

- citizens of CIS countries, except for Georgia and Turkmenistan
- permanent residents of Russia holding a permanent residence permit
- refugees
- citizens of countries that have bilateral treaties with Russia on simplified visa procedures (entry on the basis of such agreements does not imply the purpose of study, employment and residence)

Employment Assignments

Generally, all employers operating in Russia who plan to engage in a labor or civil law contract with foreign nationals who enter Russia under a visa regime must obtain the following:

- work permit – for each foreign employee
- invitation for a work visa – for each foreign employee

The term for processing a work permit and a work visa invitation, and their maximum validity periods depend on the procedure used by the employer. Currently, two procedures are available for obtaining a work permit:

- a standard procedure
- a simplified procedure for Specialists

Foreign nationals from countries enjoying a visa-free regime with Russia must obtain a patent for work (except for nationals of Belarus, Armenia, Kyrgyzstan and Kazakhstan). When hiring such foreign nationals, employers must ensure that they have a valid patent for work.

Current Russian legislation provides for several exemptions where the employer is not required to obtain a work permit (or a patent) (for further details, see “Work Permit or Patent Waiver” below).

Employers who enlist the services of foreign nationals (including those who enter Russia with or without visas, and Specialists) must complete a number of migration formalities, including notifications to the migration authorities within the prescribed terms on the conclusion and termination of employment agreements or civil law contracts with foreign citizens, notifications on salary payment to Specialists, etc.

Intra-company Transfer

Russian law does not envisage the concept of secondment. Therefore, foreign nationals seconded to Russia must be hired by the Russian subsidiaries subject to compliance with Russian labor and migration rules. A foreign national who intends to work in the Russian Federation as an intra-company transferee and who does not hold a temporary or permanent Russian resident permit must either have a

work visa and work permit or obtain a patent (for those foreign nationals who do not require a visa to stay in Russia) allowing employment in the Russian Federation (except for citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan).

Standard Procedure for Obtaining a Work Permit

The standard procedure for obtaining the above documents involves several consecutive steps, and typically takes about four to six months to complete.

Additionally, the total number of foreign nationals that can be legally employed in Russia each year, i.e., the quota of foreign employees – migration quota – is established annually by the Russian government. Therefore, employers planning to employ foreign nationals in the next year should file information on their need for foreign employees to Russian public employment authorities in the current year.

At the same time, the Russian authorities have adopted a list of quota-exempt professions/positions, which allows employers to hire foreign employees without observing the migration quota requirement. In particular, the list contains the following positions: general director and director of a joint stock company, director of a representative office, director of a factory, chair and deputy chair of an executive committee, director of economics, department director and information security engineer, among other positions.

The standard procedure for obtaining a regular work permit consists of the following steps:

- **Step one:** The employer informs Russian public employment authorities of the need for a foreign employee, i.e., of the open vacancy. In the event the Public Employment Service provides the employer with a local candidate for any such vacancy, the employer would have to hire the candidate or prepare the reason for rejecting such candidate to be able to justify its need for specifically a foreign national. A further application to the

migration authorities can be submitted no earlier than one calendar month after the above-mentioned information on the need for foreign employees is filed with the employment authorities.

- **Step two:** The employer applies to the migration authorities for a permit to hire and use foreign employees (“permit to hire”). A further application to the migration authorities can be submitted no earlier than one calendar month after the permit to hire is issued by the migration authorities.
- **Step three:** The employer applies to the migration authorities for an individual work permit for a foreign employee. The set of documents that should be filed with the migration authorities includes the following: (i) a legalized/apostilled copy of the foreign national’s university degree certificate; (ii) original medical certificates; (iii) certificates confirming knowledge of the Russian language, Russian history and basic legislative principles; and (iv) Russian employment agreement.

The medical certificates should confirm that the foreign national does not suffer from any of the following: (i) leprosy (Hansen’s disease); (ii) tuberculosis (white plague); (iii) syphilis; (iv) HIV; and (v) drug addiction. The medical certificates should be obtained by the foreign national at medical establishments in Russia holding the relevant licenses. The foreign national employee is required to personally show up at the medical establishment for medical tests and an examination. Medical certificates cannot be obtained outside Russia.

Importantly, medical certificates only have an effective term of three months; therefore, they should be issued no earlier than three months before filing an application for a work permit.

As mentioned above, the relevant procedures can be modified by the Russian migration authorities at any time. It is highly recommended to verify the procedures and documentary requirements in advance on a case-by-case basis.

A work permit is normally issued for a term of up to one year from the date the permit to hire was issued, but it can be renewed for a subsequent one-year term. Renewal of a work permit involves the same procedure and takes the same amount of time as obtaining the first work permit.

A work permit is only valid for a single employing entity, in a single constituent region of the Russian Federation (e.g., Moscow), and for holding a single job (e.g., general director). Thus, two work permits would be required for a foreign employee holding two jobs in Russia, and another work permit would be required if the employee changes employers. If the employee is transferred to another job (e.g., promoted) or to a different region in Russia (not on a business trip) he will be required to obtain a new work permit.

However, there are certain exclusions from the rule allowing foreign nationals to work in another region. They are established by a decree of the Russian government and fall into two main categories:

- if the employee is sent on a business trip
- if the work is of a traveling nature or if work is done en route (which must be specified in the employment agreement)

After obtaining the permit to hire and work permit, the employer needs to document the commencement of employment of the foreign national in accordance with Russian labor law requirements. Thus, the employer should issue an internal HR order on the employee's hiring to a particular job position, make an entry in the individual's labor book on his hiring, complete the employee's personal data card and arrange other HR paperwork. All these documents must be issued in the Russian language (bilingual versions are also allowed).

Skilled Workers

As mentioned above, Russian legislation on foreign nationals recognizes a special category of foreign employees – highly qualified

foreign specialist (“Specialist”). A Specialist can enjoy a simplified procedure for obtaining of a work permit and a work visa.

The main criterion for recognizing a foreign employee as a Specialist is a salary level of RUB 167,000 (approximately USD 2,600) per month or more. Defining the required qualification level and the assessment of the competence of foreign national as a Specialist is left to the employers themselves. The employers must file quarterly reports of the salary paid during the whole period of employment of the Specialist.

Employers seeking work permits for Specialists are exempt from:

- obtaining a migration quota
- registering vacancies with the employment authorities
- obtaining a permit to hire

A work permit for a Specialist may be valid for three years, with the possibility of repeatedly extending it as long as the Specialist has a valid employment contract. The validity territory for the work permit may include more than one region in the Russian Federation, provided that the employer has registered sub-divisions in those regions.

The whole process of obtaining a work permit for a Specialist takes about one-and-a-half months. Specialists need to personally visit the migration authorities and collect the work permit, as the work permit will only be valid after it is collected from the migration authorities.

Certain employers, particularly non-profit and religious organizations, and those employers who have been penalized for illegal employment of foreign nationals in Russia within the last two years, cannot use the simplified procedure for obtaining work permits and work visas for a Specialist.

Ordinary Work Visa

The current procedure for obtaining a work visa for a foreign national is briefly outlined below.

- **Step one:** The employer registers with the migration authorities as an inviting party for visa-invitation purposes. Registration is only possible simultaneously with filing the application for a visa invitation. This step normally takes about one to three weeks to complete. The migration authorities may require the employer's CEO to visit the migration authorities. The application for a work visa invitation may be filed no earlier than when the employer files the application for a permit to hire (step three of the standard procedure for obtaining a work permit).
- **Step two:** The employer obtains an invitation for a single-entry visa from the migration authorities. This step usually takes at least three to four weeks to complete. The maximum validity of the invitation is three months.
- **Step three:** On the basis of the invitation provided by the employer, the foreign national obtains a single-entry visa at the Russian consulate outside Russia in the country of the foreign national's citizenship or residence (provided that the foreign national has a document certifying the ground for the stay in such country for a period exceeding 90 days (e.g., a residence permit)). The foreign national's current Russian visa (if applicable) will be canceled by the Russian consulate at the same time as issuing the new single-entry visa.
- **Step four:** The foreign national exchanges the single-entry visa for a multiple-entry work visa upon arrival in Russia. This procedure takes up to three weeks, during which the foreign national cannot leave Russia without aborting the work visa exchanging procedure.

Importantly, if a foreign employee applies for a work permit for a Specialist, the employer obtains the multiple-entry visa invitation for a Specialist and step four of the procedure above is not required.

Accredited representative or branch offices of foreign firms may also apply for visa support to the Chamber of Commerce and Industry instead of registering as the inviting party with the migration authorities. In this case, instead of step one above, the representative/branch office of a foreign firm registers with the Chamber of Commerce and Industry pursuant to a special registration procedure for the purposes of visa support and obtains a personal accreditation card for the foreign national. In this case, the representatives of the Chamber of Commerce and Industry will collect the visa invitations from the migration authorities. The issued visas will indicate the Chamber of Commerce and Industry as the inviting party. Steps three and four above would be the same.

Importantly, branch offices and representative offices of foreign non-commercial organizations can only apply for visa invitations for their foreign employees through the Chamber of Commerce and Industry after the special registration procedure for the purposes of visa support.

The maximum duration of a work visa is one year and three years for Specialists, but can be limited by the expiry term of other documents (e.g., passport, work permit or personal accreditation card). The procedure of renewing a work visa may be performed in Russia.

Work Permit or Patent Waiver

Current Russian legislation provides for several narrow exceptions where the employee is not required to obtain a Russian work permit or patent. These exceptions apply to the following foreign nationals:

- citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan

- temporary and permanent residents of Russia holding a temporary resident permit or a permanent resident permit respectively
- employees of diplomatic and consular institutions of foreign countries in Russia, or employees of international governmental organizations enjoying diplomatic status, and their private domestic employees
- participants in the State Program for Assistance to the Voluntary Movement to the Russian Federation of compatriots residing abroad and their family members
- employees of foreign legal entities (producers or suppliers) performing installation (contract supervision) works, servicing and after-sales service of technical equipment supplied to the Russian Federation by their employers
- journalists duly accredited in the Russian Federation
- students at Russian educational institutions working only during vacations
- students at Russian educational institutions who work in their educational institutions as auxiliary educational staff
- lecturers invited to Russia to give lectures in educational institutions, except for persons who perform pedagogical activities in professional religious educational institutions (in ecclesiastical educational institutions)
- duly accredited employees of Russian representative offices of foreign legal entities, but only on the basis of the principle of reciprocity under international treaties concluded with foreign states

Training

Foreign nationals visiting Russia to participate in professional training can obtain an ordinary business visa. However, these foreign nationals entering Russia under a business visa are not allowed to be employed or work in Russia. Therefore, if a foreign national participates in on-the-job training, the hosting party should prepare a training plan and other formal documents confirming the educational nature of the training program. Furthermore, foreign nationals participating in training programs should not be paid salaries or any other fees by the hosting party; otherwise, their participation in such training programs could be considered as employment.

Post-Entry Procedures

Migration Records

Under Russian law, the Russian migration authorities should be notified of the arrival of every foreign national entering Russia under any type of visa or enjoying a visa-free regime (i.e., the migration notification requirement should be observed). Specifically, foreign nationals are required to be registered for migration monitoring purposes at the place of their actual residence (with the landlord acting as the hosting party) by filing a formal written notice from the hosting party with the migration authorities within seven business days of the arrival date (the day of arrival is included in this term if it is a business day). A foreign employee may register at his employer's office address only if he actually resides there.

If a foreign national enters Russia for less than seven calendar days, migration registration is not required.

Russian migration legislation provides for some exceptions to the term during which the migration notification requirement should be observed. For instance, migration registration of a Specialist or his family members is not required if the Specialist or his family members stay in Russia for less than 90 calendar days. Upon expiration of the

90-day period, the hosting party should complete the registration of the Specialist and his family members within seven business days. After the Specialist and his family members are registered, they may travel within the territory of the Russian Federation for a term of up to 30 days without having to obtain a new registration. If they leave their registered address for a longer period, they will need to be registered at their new temporary address.

If a Specialist owns residential property in Russia, he may be the hosting party for his family members (his spouse, children, children's spouses, parents (including foster parents) and their spouses, grandparents and grandchildren) and register them at the address of the residential property.

Deregistration is carried out by the migration authorities automatically upon receipt of information from the border control authority that a foreign national has left Russia, or upon registration of a foreign national at a new address. The hosting party may also de-register a foreign national. The grounds for migration de-registration include the loss of contact with the foreign citizen, termination of labor relations, etc.

Entry Based on International Agreements

Citizens of the following countries can stay in the Russian Federation for up to 90 days without a visa (total number of days in Russia not exceeding 90 in each 180-day period): Abkhazia, Azerbaijan, Argentina, Armenia, Belarus, Bolivia, Brazil, Vanuatu, Venezuela, Guyana, Guatemala, Honduras, Grenada, Dominica (Commonwealth of Dominica), Israel, Kazakhstan, Kyrgyzstan, Colombia, Cuba, Macedonia, Mexico, Moldova, Nicaragua, Panama, Paraguay, Peru, El Salvador, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Tajikistan, Uzbekistan, Ukraine, Uruguay, Fiji, Chile, Ecuador, South Africa, South Ossetia, Jamaica.

Citizens of the following countries can stay in the Russian Federation for up to 60 days without a visa (total number of days in Russia not

exceeding 90 in each 180-day period): Republic of Korea, Mauritius, Samoa, Turkey.

Citizens of the following countries can stay in the Russian Federation for up to 30 days without a visa (total number of days in Russia not exceeding 90 in each 180-day period): Bosnia and Herzegovina, Macau, Laos, Mongolia, Palau, Seychelles, Serbia, Thailand, Montenegro.

Permanent residents of Hong Kong, Brunei Darussalam or Nauru can stay in the Russian Federation for up to 14 days without a visa (total number of days in Russia not exceeding 90 in each 180-day period).

Entry based on international agreements does not imply the intention to carry out employment activities, study in educational institutions or reside in the territory of Russia.

Other Comments

Other Types of Ordinary Visas to Enter Russia

Foreign nationals can obtain different types of visas depending on the purpose of their visit (it is essential for the type of visa to match the actual purpose of the visit):

- an ordinary private visa, which can be obtained upon an invitation from a Russian citizen, a foreign national permanently residing in Russia, a Russian legal entity, etc.
- an ordinary tourist visa, including a group tourist visa
- an ordinary study visa, which can be obtained by students at Russian educational institutions
- an ordinary humanitarian visa, which can be obtained by a foreign national entering Russia for the purpose of scientific, cultural, sporting or religious contacts, charity activity or delivery of humanitarian aid

- an ordinary refugee visa, which can be obtained by a person seeking refuge
- a temporary residence visa, which can be obtained by a foreign national who has received temporary residence in Russia

Sanctions for Infringing Migration and Visa Law Requirements

Work permit and work visa requirements are enforced by the Russian migration authorities with increasing vigor. Non-compliance with these requirements may entail imposition of significant penalties envisaged by the Russian Administrative Offenses Code. Moreover, administrative sanctions for violating Russian migration rules may be imposed on the employer, its officers and the foreign national employee, and may include heavy fines and, in the worst cases, deportation from Russia of foreign nationals who do not have the relevant work permits or have the wrong type of visa, and suspension of the employer's operations.

Below are comments on the administrative sanctions that can be applied if immigration requirements are not complied with.

Provision of Services in Russia without the Required Permit to Hire and/or the Work Permit

The employer and/or its officers could become subject to the following administrative fines for violation of immigration requirements:

- a fine of up to USD 800 and, if the violation is committed in Moscow, St. Petersburg, or the Moscow or Leningrad Regions, up to USD 1,100, can be imposed on the employer's officers who are found to be responsible for use and employment of foreign nationals without the relevant permits
- a fine of up to USD 12,500 and, if the violation is committed in Moscow, St. Petersburg, or the Moscow or Leningrad Regions, up

to USD 15,700, can be imposed on the employer for the same violation

Moreover, separate fines may be imposed for each individual violation, e.g., one fine for the absence of a permit to hire, another fine for the absence of a work permit, etc. In the worst-case scenario, violating Russian migration laws could lead to the annulment of the employer's permit to hire or even temporary suspension of the employer's activities for up to 90 days. At the same time, the foreign national could become subject to an administrative fine of up to USD 80 and, if the violation is committed in Moscow, St. Petersburg, or the Moscow or Leningrad Regions, up to USD 110, and deportation from Russia.

Deportation or imposition of administrative fines on foreign nationals may cause them difficulties when visiting Russia and/or obtaining work permits and work visas in the future.

Failure to Comply with the Visa Regime Requirement

A foreign national entering Russia to provide services under a civil law contract or to be employed on the basis of a visa other than a work visa (for example, a business visa) may be considered to be infringing the visa regime. The employer and/or its officers could become subject to the following administrative fines for this infringement:

- a fine of up to USD 800 can be imposed on the employer's officers responsible for either the use of the above services or employment of the foreign national without having obtained the relevant visa
- a fine of up to USD 8,000 can be imposed on the employer
- the foreign national could also become subject to an administrative fine of up to USD 80 and, in the worst-case scenario, deportation from Russia

- deportation or imposition of administrative fines could also cause difficulties in visiting Russia and/or obtaining work permits and work visas in the future

Failure to Notify the Migration Authorities on Employment/Contracting of a Foreign National

According to Russian migration legislation, the employer should notify the migration authorities upon receipt of a work permit or conclusion of an employment (civil-law) agreement with a foreign national (including those who enter Russia with or without visas and Specialists), or termination of an employment (civil-law) agreement with a foreign citizen within three business days from the day the employment (civil-law) agreement is concluded/terminated or the regular work permit is received.

Failure to comply with the requirement to notify the migration authorities upon receipt of a work permit or conclusion/termination of an employment (civil-law) agreement with a foreign national can result in the imposition of additional administrative fines of up to USD 800 and, if the violation is committed in Moscow, St. Petersburg, or the Moscow or Leningrad Regions, up to USD 1,100, on the employer's officers and up to USD 12,500 on the employer and, if the violation is committed in Moscow, St. Petersburg, or the Moscow or Leningrad Regions, up to USD 15,700 on the employer or, in the worst-case scenario, administrative suspension of the employer's operations for up to 90 days.

Planned legislative change (if applicable)

The Russian government is preparing a list of actions that will need to be undertaken by the inviting party, i.e., a company or an individual who has sponsored a visa invitation to a foreign national (irrespective of the type of visa).

Further Information

The procedure and the documentary requirements for the employment of foreign nationals in Russia are subject to constant change and should be verified in advance on a case-by-case basis.

Baker McKenzie's Moscow office provides its clients with regular legal alerts on the latest amendments to the Russian migration and employment law.

Singapore



Singapore's receptiveness to foreign talent is evident in its immigration laws, which offer many solutions to help employers of foreign nationals. Such solutions range from non-immigrant visas to permanent immigrant visas, although requirements, processing times, employment eligibility and benefits for accompanying family members necessarily vary by visa classification.

Key Government Agencies

The Work Pass Division (WPD) of the Ministry of Manpower (MOM) facilitates and regulates the employment of foreign nationals in Singapore. This is achieved through the administering of three main types of work passes, namely: Employment Passes, S Passes and Work Permits. In addition to these, there are other passes used only for specific cases.

The Immigration & Checkpoints Authority (ICA) is a government agency under the Ministry of Home Affairs. The ICA is responsible for the security of Singapore's borders against the entry of undesirable persons and cargo through Singapore's land, air and sea checkpoints. The ICA also performs other immigration and registration functions, such as issuing travel documents and identity cards to Singapore citizens and various immigration passes and permits to foreign nationals. It also conducts operations against immigration offenders.

Other relevant agencies may include SPRING Singapore, a governmental board overseeing Singapore's productivity standards and quality, and the Economic Development Board.

Current Trends

In the light of the current economic downturn, many professionals, managers and executives ("PMEs") in Singapore have been retrenched or terminated from their jobs. The retrenched or terminated PMEs are largely over the age of 40, many of whom find it difficult to be re-hired in an equivalent or similar role.

In line with the government's policy, employers of foreign employees will face tighter MOM regulation in relation to the number of foreign employees they may employ if their workforce lacks a strong Singaporean core and they are not making a significant contribution to the economy of Singapore. Nevertheless, Singapore is well placed in the region to conduct business. Besides offering ample financial opportunities, the city-state boasts a high standard of living in the essential areas of healthcare, education, accommodation, order and security.

To mobilize their workforce, employers must first familiarize themselves with the immigration laws relevant for global mobility assignments. In this regard, this Singapore chapter offers an introductory insight.

Business Travel

Visit Pass

Foreign nationals visiting for short business negotiations and discussions may generally enter Singapore on a visit pass. Visit passes are issued on arrival in Singapore and the permitted period of stay is usually either 30 or 90 days. Extensions are considered on a case-by-case basis.

With the limited exception in some cases for diplomatic and official passport holders, foreign nationals holding travel documents issued by the following countries will require a valid entry visa prior to arrival in Singapore:

Level I Countries

Armenia, Azerbaijan, Belarus, Democratic People's Republic of Korea, Georgia, India, Kazakhstan, Kyrgyzstan, Moldova, Russia, People's Republic of China, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Holders of a Hong Kong Identity Document and Holders of a Macau Special Administrative Region Travel Permit.

Level II Countries

Afghanistan, Algeria, Bangladesh, Egypt, Iran, Iraq, Jordan, Kosovo, Lebanon, Libya, Mali, Morocco, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, and Yemen, Holders of a Palestinian Authority Passport, Holders of Temporary Passport issued by the United Arab Emirates, and Holders of Refugee Travel Documents issued by Middle-East countries.

Miscellaneous Work Pass

The Miscellaneous Work Pass is for eligible foreign nationals on short-term work assignments, such as:

- a foreign national who is involved in activities directly related to the organization or conduct of any seminar, conference, workshop, gathering or talk concerning any religion, race or community, cause, or political end
- a foreign religious worker giving talks relating directly or indirectly to any religion
- a foreign journalist or reporter, or accompanying crew member, not supported/sponsored by any Singapore government agency to cover an event or write a story in Singapore

The Miscellaneous Work Pass enables a foreign national to take on assignments of up to 60 days in Singapore.

Work Permit (Performing Artists)

This is applicable to foreign artists performing at any public entertainment licensed bar, discotheque, lounge, night club, pub, hotel, private club, or restaurant for a maximum duration of six months.

Work Pass Exempt Activities

A work pass is generally necessary to carry out any work in Singapore. However, for certain activities, the government exempts foreign nationals from this requirement. These exempted activities are divided into various different categories.

Arbitration or Mediation Services

A work pass is not required if the individual is providing arbitration or mediation services (e.g., as an arbitrator or a mediator) in relation to any case or matter which:

- does not relate directly or indirectly to any religious belief or to religion generally
- does not relate directly or indirectly to any race or community generally
- is not cause-related or directed towards a political end

Exhibitions

A work pass is not required for participation in any exhibition as an exhibitor. The individual must be registered with the organizer of the exhibition to:

- provide information on, or put up a performance, or give a demonstration of anything related to the subject of the exhibition
- display or sell goods or services that are the subject of the exhibition

These activities can only take place during the exhibition's official opening hours.

Note: This does not include trade fairs which require a Trade Fair Permit issued under Section 35 of the Environmental Public Health Act, Cap 95, or the activities at any makeshift stalls therein (such as

Pasar Malams (street markets)). This also does not include providing peripheral services for the event (e.g., cleaning and catering services); or setting up, maintaining, repairing and dismantling the exhibition sites or booths.

Journalism Activities

A work pass is not required for journalism activities (including media coverage for events or media tours) supported by the government, or any statutory board constituted by or under any written law for a public purpose.

Judicial or Legal Duties in the Singapore International Commercial Court (SICC)

A work pass is not required for an International Judge of Supreme Court who is:

- sitting in the SICC to hear cases, as specified by the Chief Justice
- sitting in the Court of Appeal in an appeal from any judgment or order of the SICC
- carrying any other work or activity (such as consultancy, advisory or promotional work) related to their appointment with the Supreme Court and the SICC

This is also applicable for registered foreign lawyers with the SICC who are:

- granted full registration under Section 36P of the Legal Profession Act to represent, plead, or provide any form of assistance in any relevant proceedings or subsequent appeals
- granted restricted registration under Section 36P of the Legal Profession Act to give advice and prepare documents to make submissions in any relevant proceedings or appeals, which are permitted by the relevant courts

Junket Activities

A work pass is not required for activities relating directly to the organization, promotion or conduct of a junket in a casino and performed by:

- junket representatives employed by a junket promoter whose principal place of business is situated outside Singapore, or whose principal business activity is conducted outside Singapore; junket representatives are required to hold a valid junket representative license issued by the Casino Regulatory Authority.
- self-employed junket promoters whose principal place of business is situated outside Singapore, or whose principal business activity is conducted outside Singapore (junket promoters are required to hold a valid junket promoter license issued by the Casino Regulatory Authority).

Location Filming and Fashion Shows

A work pass is not required for activities relating to any location filming leading to a television or movie production or fashion show (including involvement as an actor, model, director, member of the film or technical crew, or photographer).

Note: Foreign artists performing at entertainment outlets certified with a public entertainment license (i.e., bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants) are required to hold work permits for performing artists.

Performances

A work pass is not required for:

- performing as an actor, singer, dancer or musician, or involvement as key support staff in an event supported by the government or any statutory board

- performing as an actor, singer, dancer or musician, or involvement as key support staff in an event, in a venue to which the public or any class of the public has access (gratuitously or otherwise), including any theater or concert hall

Note: Foreign artists performing at entertainment outlets certified with a public entertainment license (i.e., bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants) are required to hold work permits for performing artists.

Provision of Specialized Services Related to a New Plant/Operations/Equipment

A work pass is not required for providing expertise or specialized skills, including in:

- the commissioning or audit of any new plant and equipment (including any audit to ensure regulatory compliance or compliance with one or more standards)
- the installation, dismantling, transfer, repair or maintenance of any equipment or machine, whether in relation to a scale-up of operations or otherwise
- the transfer of knowledge on processes of operations in Singapore

Note: The expertise or specialized skills shall be of a kind that is not available in Singapore or is to be provided by the authorized service personnel of the manufacturer or supplier of the equipment.

Seminars and Conferences

A work pass is not required for activities relating directly to the organization or conduct of any seminar, conference, workshop, gathering or talk, which:

- does not have the sale or promotion of goods and services as its main purpose
- does not relate directly or indirectly to any religious belief or to religion generally
- does not relate directly or indirectly to any race or community generally
- is not cause-related or directed towards a political end, including involvement as a speaker, moderator, facilitator or trainer

Sports

A work pass is not required for persons involved in any sports competition, event or training (e.g., an athlete, coach, umpire, referee or key support staff) supported by the government or any statutory board constituted by or under any written law for a public purpose, other than being engaged as an athlete of any Singapore sports organization pursuant to a contract of services.

Tour Facilitation

A work pass is not required for activities relating directly to the facilitation of a tour and performed by tour leaders or tour facilitators employed by a foreign company, i.e., a company whose principal place of business is situated outside Singapore or whose principal business activity is conducted outside Singapore.

Note: Tour facilitation refers to the provision of logistical support to the visiting tour group and ensuring that the activities in the tour itinerary are carried out according to plan, but does not include guiding tourists for remuneration. To facilitate a tour, a valid tourist guide license, issued by the Singapore Tourism Board, must be obtained.

Procedure

Foreign nationals performing work pass exempt activities are required to submit an e-notification to the MOM before engaging in these activities. They can perform these activities for the duration of their short-term visit pass, subject to a maximum of 90 days in a calendar year. Beyond that, they will need to obtain a work pass. Those carrying out work pass exempt activities without notifying the MOM can be prosecuted under the Employment of Foreign Manpower Act.

In addition, the waiver of the work pass requirement does not exempt foreign nationals from having to comply with other specific legal requirements in Singapore.

Employment Assignments

In General

All matters pertaining to the employment of foreign nationals in Singapore come under the review of the MOM.

The MOM adopts a graduated approach towards foreign talent, offering the most attractive terms to those who can contribute the most to the economy to help draw them to Singapore.

Top talent, including professionals, entrepreneurs, investors and talented specialists, such as world-class artists and musicians, are allowed to come to Singapore with their spouses, children and parents. This privilege, however, is not extended to all workers.

Employment Pass

Employment Passes are issued to foreign nationals who work in managerial, executive or specialized roles, earn a fixed monthly salary of at least SGD 3,600 (though more experienced candidates need higher salaries), and have acceptable qualifications, usually consisting of a reputable university degree, professional qualifications or specialist skills.

The spouse and children under 21 years of age of Employment Pass holders who earn at least SGD 6,000 are eligible for Dependents' Passes to stay in Singapore. In addition, those earning SGD 12,000 or more may also bring their parents on long-term visit passes.

To apply and hire Employment Pass holders, a company is required to place an advertisement for the relevant job position with the Jobs Bank, a free job portal established by the Singapore government. Certain exceptions apply to small companies, high-level or short-term employees, and intra-corporate transferees.

S Pass

The S Pass is meant for mid-level skilled workers who earn a fixed monthly salary of at least SGD 2,300. The minimum salary to qualify will increase to SGD 2,400 from January 2020. Applicants are assessed on a points-based system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. Employers need to pay a monthly levy and also purchase medical insurance coverage of at least SGD 15,000 per year for each S Pass worker. The MOM currently places a quota on the number of S Pass holders a company may employ, being a percentage of the company's total workforce depending on the industry sector (such as service, construction or manufacturing).

Similar to Employment Pass holders, an S Pass holder must earn a fixed monthly salary of at least SGD 6,000 to be eligible for Dependents' Passes for his spouse and children under 21 years of age.

Additional Information

Applications for Employment Passes and S Passes can be made for a duration of up to two years. These work passes can be renewed six months before their expiry date. The duration granted in the first instance and for renewals is up to the discretion of the MOM. The maximum duration is extended to three years for renewals.

The Singapore government aims to reduce Singapore's dependence on foreign labour in the services sector. In line with this, it announced reductions to the quota of S Pass and Work Permit holders that companies in the services sector may hire. These changes will be carried out in two phases, in 2020 and 2021.

EP Online

This is a one-stop portal for companies and organizations to perform transactions such as the following:

- submit new applications for Employment Passes (excluding sponsorship schemes), S Passes, Dependents' Passes, long-term visit passes, letters of consent and training employment passes (not applicable to employment agencies)
- renew applications for Employment Passes (excluding the sponsorship scheme), S Passes, Dependents' Passes, long-term visit pass and letters of consent
- upload relevant supporting documents for work passes/related pass applications
- appeal rejected applications
- check applications and renewal statuses
- issue Employment Passes, S Passes and related passes
- cancel Employment Passes, S Passes and related passes
- view rejection reasons for most of the unsuccessful applications
- access and print application outcome letters and notification letters
- check an organization's S Pass quota and tier information

Business employers who have not applied for S Passes before are required to set up an account with the Central Provident Fund (“CPF”) Board, ensure that they contribute CPF for their local employees for at least one month before declaring their business activity for the account.

Work Pass Account Registration

The Work Pass Account Registration is a portal for business employers to register for various work pass online accounts, including EP Online and WP Online, and also to declare their business activity.

An administrative user must be appointed. As an account for SingPass (the Singapore government’s online portal) is required to log in, this person should be either a Singapore citizen, Singapore permanent resident (“PR”) or work pass holder.

It takes about five working days for the EP online account(s) selected to be set up. Once this is processed, the administrative user will be able to perform the various transactions immediately.

Applications submitted via EP Online take approximately three weeks to be processed. This reduced processing time is the main benefit of using EP Online, as manual applications can take up to eight weeks. If a pass application is approved, the MOM will issue an in-principle approval letter.

EntrePass

The EntrePass is an employment pass for foreign entrepreneurs who would like to start a new business in Singapore. Applications must be made manually by completing the application form and submitting the required documents in support of the application at a SingPost branch. The MOM will issue EntrePasses for successful applicants.

The EntrePass holder must be actively involved in the operations of the Singapore company or business. At the point of submission for the EntrePass application, the applicant must not have registered the

business with the Accounting and Corporate Regulatory Authority for longer than six months.

Applicants must also fulfil at least one of the following requirements:

- the applicant received funding or investment from a recognized third-party venture capitalist or business angel who is accredited by a Singapore government agency
- the applicant holds intellectual property that is registered with an approved national IP institution
- the applicant has an ongoing research collaboration with a research institution recognized by the Agency for Science, Technology and Research (A*STAR) or institutes of higher learning in Singapore
- the applicant is an incubatee at a Singapore government supported incubator
- the applicant has significant business experience or network and promising entrepreneurial track record of starting highly-scalable businesses and wants to establish, develop and manage a new or existing business in Singapore
- the applicant has exceptional technical or domain expertise in an area related to the proposed business
- the applicant has an outstanding track record of investing in businesses and wants to grow new or existing businesses in Singapore

Renewal of the EntrePass is something which should be taken into consideration at the outset. For each year that the applicant holds an EntrePass, both the number of local jobs he needs to create and the required minimum total business spending by the business venture increases.

The proposed business venture must not be engaged in illegal activities. In addition, businesses not of an entrepreneurial nature (e.g., coffee shops, hawker centers, food courts, foot reflexology, massage parlors, karaoke lounges, money changing/remitting services, newspaper vending, geomancy, tuition services, employment agencies) will not be considered for an EntrePass.

Personalized Employment Pass

The Personalized Employment Pass (“PEP”) is a premium work pass for top-tier foreign talent. The difference between the PEP and a normal Employment Pass is that the latter is linked to a specific employer and any change in employer requires a fresh application for a new Employment Pass. As such, unless an Employment Pass holder is able to find employment with a new company, he may be required to leave Singapore if he does not hold any other relevant entry permits, such as a visit pass. In contrast, the PEP is linked to the individual and will be granted on the strength of an individual’s merits. The processing time for a PEP application is estimated to be about eight weeks.

The PEP will allow holders to remain unemployed in Singapore for up to six continuous months to search for employment opportunities, after which the PEP will expire. PEP holders can generally take on employment in any sector, with the exception of some jobs which may require prior permission.

The following groups of foreign nationals are eligible for the PEP:

- Employment Pass holders whose fixed monthly salary is at least SGD 12,000
- overseas-based foreign professionals whose last drawn fixed monthly salary was at least SGD 18,000 and who has not been unemployed for longer than a continuous period of six months at the point of application

If approved, the PEP will be valid for three years and is non-renewable. PEP holders must earn a minimum annual salary of at least SGD 144,000 during this period. A PEP applicant may bring his spouse, children under 21 years of age, and parents. PEP holders and their employers will need to keep the MOM informed of any changes in the PEP holders' employment status and contact particulars and will have to agree to reveal their annual basic salary to the MOM.

Work Permit

A Work Permit may be issued to lesser skilled or unskilled foreign workers (e.g., foreign factory workers, construction workers, domestic maids, etc.). It is, however, generally necessary for the employer to show that there is a shortage of local labor and/or that no suitably qualified Singaporeans are readily available. The number of Work Permit holders a company can employ is limited by industry-specific quotas.

Generally, Work Permits are issued for a period of two years depending on the validity of the applicant's passport, the duration of the security bond and the period of employment.

Work Permits will be issued to semi-skilled foreign workers with suitable qualifications, as well as unskilled foreign workers.

Foreign workers holding Work Permits are not allowed to bring their immediate family members to live with them in Singapore.

Unless the company has a levy waiver in respect of a foreign worker, companies employing Work Permit holders are required to pay a foreign worker tax, the amount of which varies from industry to industry, and depends on whether the worker is skilled or unskilled, as well as the number of Work Permit holders already employed by the company.

Similar to the S Pass, employers need to purchase medical insurance coverage of at least SGD 15,000 per year for each Work Permit holder.

Employers also need to purchase a security bond for each non-Malaysian Work Permit holder they want to employ, in the form of a banker's insurance or insurance guarantee to support the security bond.

An application for a Work Permit is submitted to the Work Permit Department of the MOM and takes approximately one week to process.

Work Holiday Pass

Work Holiday Programme ("WHP")

The Work Holiday Pass issued under the WHP is for university undergraduates and graduates who wish to work and holiday in Singapore. Applicants must be studying or have graduated from recognised universities in selected countries such as Australia, France, Germany and Hong Kong, among others. Undergraduates who wish to apply must have been a resident and full-time student of the university for at least three months before the time of application. The WHP is valid for six months and is not renewable.

Work Holiday and Visa Programme ("WHVP")

The Work Holiday Pass issued under the WHVP is a similar pass catering to Australian citizens who are studying in or have graduated from university. Applicants would need to be holding a university degree, or have completed the equivalent of two years of full-time university study at any university. The WHVP is valid for up to 12 months and is not renewable. There are some limitations for holders of this pass, such as being unable to take up freelance employment.

Training

Training Employment Pass

The Training Employment Pass is intended to cater to corporate trainees from overseas undergoing practical training in Singapore for professional, managerial, executive, or specialist jobs for their eventual work back in their own country. The Training Employment Pass is also applicable to foreign undergraduates or graduates who wish to gain internship experience for professional or specialist jobs.

This pass is eligible to foreign students and trainees from foreign offices or subsidiaries who earn a fixed monthly salary of at least SGD 3,000 and the graduate or trainee must be sponsored by a well-established Singapore-registered company. For foreign students, the training attachment must also be part of their degree program and they must be studying at an acceptable university.

The Training Employment Pass is valid for up to three months and is not renewable.

Training Work Permit

The Training Work Permit is for unskilled/semi-skilled foreign nationals undergoing training in Singapore and also for foreign students studying in Singapore. The Training Work Permit is valid for up to six months and is not renewable. The foreigner cannot get another Training Work Permit until six months after the expiry or cancellation of the last Training Work Permit.

Other Comments

Global mobility today has wider connotations than merely working abroad. The phrase also encapsulates the idea of taking up permanent residence in another country and, ultimately, citizenship.

Non-Singaporeans who fall under one of the following categories may be eligible to apply to become Singapore PRs:

- the spouse with/without unmarried child (below 21 years old) of a Singapore citizen or PR
- aged parents of a Singapore citizen
- Employment Pass/S Pass holders (applying under the Professionals/Technical Personnel and Skilled Workers Scheme)
- foreign students studying in Singapore (residing for more than two years, have passed at least one national exam or are in the Integrated Program)
- investors (under the Global Investor Program)

The grant of PR status is at the sole discretion of the Singapore authorities and no reasons or explanation will be given in the event that an application is not approved.

To maintain PR status, all PRs who intend to travel outside of Singapore must first obtain Re-entry Permits (“REP”) and must return to Singapore within the validity period of the permit. A Singapore PR will risk losing his PR status if he remains outside of Singapore without a valid REP.

A REP is usually valid for multiple journeys for a period of five years. A REP may not be issued or renewed if the PR does not continue to be gainfully employed in Singapore or does not maintain sufficient connections with Singapore.

Singapore citizenship may be acquired by birth, descent, registration or naturalization. The waiting period for PRs to qualify for Singapore citizenship is currently two to six years. Applicants must be of good character, be financially able to support themselves and their dependents, and intend to reside permanently in Singapore. The evaluation criteria takes into consideration how the rest of the applicant’s family (e.g., the applicant’s spouse and children) can integrate into Singapore society, the applicant’s demonstrated educational qualifications and his immediate economic contributions.

The decision to confer citizenship is discretionary and will be decided on the merits of each case. Dual citizenship is not permitted, so applicants must be prepared to renounce citizenship for all other countries.

All male PRs and citizens in Singapore, aged 16 to 40 years (or 50 years for officers and members of certain skilled professions), are subject to the Enlistment Act. Male ex-Singapore citizens and ex-Singapore PRs who are granted Singapore PR status are liable to be called upon for national service.

A first generation male PR is automatically exempted from National Service if he applied under the Professionals/Technical Personnel and Skilled Workers Scheme or the Investor Scheme. However, he will be required to register himself with the Central Manpower Base if he is below 40 years of age. The male children of a first generation PR are, however, liable for National Service.

Spain

Spain



Law 14/2013, dated 27 September (“Law for Entrepreneurs”), was approved by the government in an effort to attract foreign investment and talent to Spain and to facilitate the movement of personnel within multinational companies. The Law for Entrepreneurs runs in parallel with the general Spanish Immigration Act and its rules of implementation (“general immigration law”), which continue to be valid.

With the Law for Entrepreneurs, Spanish immigration procedures for highly skilled professionals or for intra-company transfers are far more flexible and more adapted to business needs than the general immigration law, which should not be contemplated, in general, as an option in the case of intra-company transfers or work permits for highly skilled professionals. In this chapter, two legal options will be addressed: (i) work permits under the Law for Entrepreneurs; and (ii) work permits under the general immigration law that may be of interest to multinational companies. Given the benefits introduced by the Law for Entrepreneurs, only a couple of options under the general immigration law will be referenced.

Key Government Agencies

Under both the Law for Entrepreneurs and the general immigration law, there are several public institutions involved in the processing of visas and/or work and residence authorizations. The Ministry of External Affairs, Directorate of Consular Affairs (“Ministry”) is responsible for visa processing at Spanish consular posts abroad. Spanish consulates abroad have the authority to directly grant temporary visas for business visitors, students (if certain timeframes are not met by the immigration office in Spain) and tourists. Such visas do not entail resident status for the foreign national.

All residence visas or labor-related visas first require the approval of the Large Companies Unit (“LCU”) in the case of the Law for Entrepreneurs; while the approval of the applicable Government Delegation, Sub-delegation or Autonomous Community Authority

located at the province where the foreign national will live in Spain must be sought for permits under the general immigration law.

Current Trends

Border protection activity and the enforcement of immigration-related laws that impact employers and foreign nationals have increased in Spain and in Europe. The government is making greater efforts to avoid illegal immigration by significantly increasing the amount of the fines for immigration sanctions. Sanctions for the general immigration law and the Law for Entrepreneurs are set out both in the general immigration law and in Spanish labor legislation (the Law for Breaches and Sanctions in the social order, commonly referred to as “LISOS” in Spain). General immigration law establishes the implementation of computer systems at ports of entry to better control the entries and departures of foreign nationals. Employers of foreign nationals unauthorized for employment are increasingly subjected to administrative and criminal penalties. Concerns about the impact of foreign workers on the Spanish labor market, given the still high unemployment rate in Spain and the lack of personnel to handle the procedures, are frequently the reasons stated to justify longer processing times and the increase in refusals of petitions under the general immigration law. Employers should evaluate alternatives prior to hiring foreign nationals as they should not rely on past practices for continued success.

Employers involved in mergers, acquisitions or reorganizations must also bear in mind the status of foreign employees and the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence in evaluating the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

The Law for Entrepreneurs has provided a completely new perspective to immigration procedures in Spain, in a clear effort to better adapt to multinational companies’ needs on the immigration

front. But implementation of the new law is still evolving, despite the fact that the law has been in force for over five years.

Business Travel

Foreign nationals coming to Spain on short-term business trips may use short-term or multiple short-term stay visas, details of which are set out below. In both cases, the purpose of the foreign national's stay in Spain must be either business or tourism-related but under no circumstance should it be for work.

Unfortunately, the Law for Entrepreneurs has failed to clearly establish what activities fall under the jurisdiction of "business" as opposed to "work," although the line between one and another may be determined based on the duration of the foreign national's stay in the country. A business visitor may carry out commercial and professional activities in Spain, such as business meetings, conferences, negotiations and general administration activities. Employment and work-related activities in Spain are prohibited.

Short-term stay visas are valid for a maximum three-month stay within a six-month period in Spain. They may be issued for single, double or multiple entries.

Multiple short-term stay visas authorize the foreign national for multiple entries into Spain but such stays may not exceed 90 days (continuous or cumulative) within a six-month period. The visa is normally valid for a year but may, in exceptional cases, be issued for a period of several years.

Visas may be extended in Spain but only if the visa authorizes a stay that does not exceed 90 days. For instance, when the visa granted to the individual is valid for one month only, the foreign national may try to obtain an extension prior to the visa's expiry but may only be granted an additional 60 days.

Unless the foreign national qualifies as a student, for stays over 90 days within a six-month period the foreign national must obtain a residence visa.

To extend the visa, the foreign national must prove that he has sufficient funds to cover expenses during the stay, medical insurance, accommodation, proof of intent to depart Spain (e.g., a departure ticket) and, finally, proof of the business purpose of the stay in Spain.

Visa Waiver

The normal requirement of first applying at a Spanish consular post for the short-term stay visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as for short-term stay visas or multiple short-term stay visas. The length of stay is up to 90 days within a six-month period only, without the possibility of a stay extension or status change. A departure ticket is required together with proof of financial means during the stay in Spain, medical insurance and accommodation.

The following non-EU/EEA countries are presently qualified under this program: Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia Herzegovina, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mauritius, Mexico, Monaco, Nicaragua, New Zealand, North Macedonia, Panama, Paraguay, Saint Kitts, Salomon, Samoa, San Marino, Serbia, Seychelles, Singapore, South Korea, , Trinidad and Tobago, United States, Uruguay, Vatican City, Venezuela, Special Administrative Region of Hong Kong (People's Republic of China), and Special Administrative Region of Macau (People's Republic of China).

The exemption from the visa requirement has been extended to cover citizens from Albania, Georgia, Moldavia, Montenegro and Ukraine, if they are holders of biometric passports.

Employment Assignments

Normally, a labor market test must be completed before a work permit may be granted. Permits processed under the Law for Entrepreneurs do not require the labor market test.

The options regarding the type of work permit to be obtained are the following:

Law for Entrepreneurs

Intra-company Transfer

The intra-company transfer visa is available to employees transferring temporarily to Spain from a related company outside the European Union.

This type of permit applies both to company employees and to independent contractors, and can be granted for a maximum duration of two years (as long as the duration of the assignment in Spain is also equal to that time period) and may be extended for equal periods. However, in practice, social security treaties between Spain and other countries will establish the maximum time period the individual may remain in Spain under this type of permit (for example, the agreement on social security between Spain and the US establishes a maximum five-year period). In the case of countries that do not have a treaty on social security with Spain, the current limitation as to how many times the permit may be renewed is three years. Certain conditions must be met as follows:

- the individual's length of service in a company of the multinational group must be at least three months, prior to his assignment to Spain, and he must have a university degree or, alternatively, at least three years' general work experience in the same field of activity.
- during the individual's temporary transfer, his employment or service agreement relationship (payroll and social security

payments) must be maintained in the transferring country, if possible.

The intra-company transfer work permit may be processed while the individual is in Spain in a legal capacity (as a business visitor or tourist) although, until the work permit is approved he would not be authorized to work.

Local Hire Highly Skilled Professional Work Permits

This type of permit applies to individuals holding a university-level degree or a post-graduate degree issued by a business school, irrespective of the country in which the degree was issued.

The salary and position of the employee should be consistent with a highly skilled professional and must comply with the minimum wage established by the collective bargaining agreement applicable to the Spanish company for positions that require a university level degree. If the employee is traveling with his family then his salary should be sufficient to sustain his family as well. In addition, contributions to the Spanish social security must be consistent with a highly skilled professional group.

Beneficial treatment, in terms of documentation involved in the processing of highly skilled professional work permits, applies to employers that meet certain criteria related to:

- employment — more than 250 employees in the company group in Spain in the three months preceding the work permit application
- business turnover – annual net business turnover in Spain of over EUR 50 million, or volume of own funds or equity or net worth in Spain exceeding EUR 43 million
- foreign investment — annual average minimum of EUR 1 million gross investment in the three years prior to the work permit application

- stock value – investment stock value or position of over EUR 3 million
- activity — regardless of the size of the company, if the company's activity is related to a certain line of work, for instance, aeronautics or aerospace, or renewable energies

General Immigration Law

Long-term resident permits (permanent resident permits) are a viable option in the following situations:

Individuals who have held legal resident status for more than five years have the right to apply for a long-term resident permit. As a general rule, absences from Spanish territory should not exceed 10 or 12 months, depending on specific circumstances, in the five-year period preceding the long-term resident permit application.

In Spain there are two types of long-term resident permits: (i) the ordinary long-term resident permit that does not provide mobility benefits within the EU; and (ii) the EU long-term resident permit that does provide these benefits. The EU long-term resident permit may be processed by those who have been legal residents for five years (either in Spain or in other EU countries under an EU Blue Card) of which the last two years should have been in Spain. There are also income requirements as the individual must have a salary of at least 150% of the IPREM (Public Indicator of Income approved yearly by the government, which is listed as EUR 7,455.14 gross yearly for 2017 — the IPREM has not changed in the last three years), for a family of two. The IPREM amount increases by 50% for each additional family member. The individual should also prove that he has medical coverage in Spain. As previously mentioned, the EU long-term resident permit provides mobility benefits to its holder in the sense that long-term resident status may be acquired in other EU countries following a very simplified procedure. Also, the holder of an EU long-term resident permit issued in another EU country may acquire long-term resident status in Spain if the conditions are met. A

labor market test for those who intend to work as employees in Spain is not required.

Family Members

Family members (spouses, de facto couples, children under 18 years of age, or other dependents, where justified reasons for residing in Spain can be provided) may obtain a residence permit that authorizes those of legal age to work in Spain, in the following circumstances:

- Via the Law for Entrepreneurs. The spouse, de facto couple and children under 18 years old (or over that age who are financially dependent and have not formed a family unit of their own) may apply for a residence permit simultaneously or successively to the individual's work permit application.
- Via family reunion. The foreign employee who has applied for the renewal of the residence permit may apply for the family's residence authorizations at the Government Delegation or Sub-delegation with jurisdiction over the residence in Spain. If the residence authorizations are approved, family members will have 30 days to submit their residence visa applications at the Spanish consulate located in their country of origin or country of legal residence. Once the visas have been issued on the applicants' passports they may travel to Spain and apply for their foreign national ID cards.
- Via ordinary non-lucrative residence authorizations. Family members of top management employees may submit their visa applications at the same time as the employee. However, their residence visas will be approved in one to two months after the employee's permit is approved. The estimated timescale for processing this type of residence permit application has recently improved due to electronic processing currently in use. Of all three cases, only if the family members obtain their residence permits via the Law for Entrepreneurs or family reunion would they be able to work in Spain directly without having to additionally obtain

a work permit. With respect to the other procedure to obtain a family residence permit, it does not authorize work, but family members (in the case of children, they must be of legal age, i.e., 16) may process work permits at a later stage if they are offered a position by a company established in Spain. Depending on the circumstances, a labor market test may be required.

Training

If the purpose of the foreign national's stay in Spain is to study, or to carry out either scientific or medical investigations or training-related activities that are not professionally remunerated, it is appropriate to obtain a student visa at the Spanish consulate in the country of origin or country of legal residence abroad; however, in specific cases, the application can be submitted directly in Spain.

The student visa applicant must provide proof of enrollment in official studies or investigation centers, both private and public, with an approved attendance schedule and studies/training or investigation plan. The foreign national qualifying as a student must show proof of having sufficient funds to support himself during the studies or investigation activities (scholarships or personal funds). Once the student is in Spain, if the duration of his studies is over six months, an application for a student card must be submitted. The card will be valid for the duration of the studies/training program up to one year, or even two years when the studies program will lead to the obtention of a university degree. The student card may be extended if the studies/training or investigation continue. The student's spouse and minor children may also obtain a student visa and a student card.

Holders of student cards may work in Spain under certain conditions:

- students of medicine and surgery, psychology, pharmacy, chemistry, or biology holding a degree officially authorized by the Ministry of Culture and Education in Spain and that are enrolled to study specialized studies in Spain may carry out remunerated

work as required by such studies (the labor authorities in Spain must be notified about such activities).

- holders of student cards may obtain a work authorization conditioned on the validity of the student card, to work on a part-time basis or full-time basis during vacation periods; however, in the latter case, the work authorization will only be valid for a maximum of three months, as long as the student card is valid for that time period.

Holders of student cards for at least three years may convert the student card into a work and residence authorization if the following conditions are met:

- the student has finished his studies/research activities satisfactorily
- the student has not been granted a scholarship inherent to cooperation or country development programs (private or public)
- the conversion petition is filed while the student card is still valid or during the processing of the extension of the student card

Family members of students who meet the above requirements to convert their student cards into work and residence permits may also convert their student cards into non-lucrative residence permits.

Due to the transposal into Spanish legislation of Directive (EU) 2016/801 of the European Parliament and of the Council, a new residence permit for training purposes has recently been introduced in the Law for Entrepreneurs, available for foreign citizens who have graduated in the two years prior to submitting the application or are enrolled in studies that lead to a university degree in Spain or abroad. This residence permit may be applied to participate in a non-employment training program under a company-university agreement, or to work under a training employment contract exempt from labor market tests.

By transposing Directive (EU) 2016/801, a residence permit has also been introduced for job-searching purposes. This residence permit is available for holders of student cards who have obtained a university degree and submitted the application within the 60-day period before expiration of the student card, or within the 90-day period following said expiration. The permit allows them to remain in Spain for a maximum period of 12 months to search for a job appropriate to the level of studies completed. Once the holder of the student card has found a job, the appropriate work permit must be applied for among the ones provided for in the general immigration law or in the Law for Entrepreneurs.

Entry Based on International Agreements

EU citizens have the right to freedom of movement throughout EU Member States such as Spain. Those wishing to work or reside in Spain for more than three months must register as residents in the Central Registry of Foreign Nationals, for which it will be required to prove the availability of sufficient financial means to support the applicant and accompanying family members, as well as health assistance insurance covering all risks in Spain.

Also, the EEA agreement allows nationals of Iceland, Liechtenstein and Norway to enjoy the same treatment and rights provided for in the Spanish general immigration law for EU citizens.

Finally, the international treaty existing between Switzerland and the EU also allows Swiss nationals to enjoy the same immigration rights as EU citizens in Spain.

Other Comments

Electronic Proceedings

Changes to administrative law in Spain have led to electronic filing of applications. This has sped up procedures and is beneficial in terms of

proving the documentation provided, so that nowadays most procedures may be done electronically without appointments.

Other Authorizations

On the other hand, there are additional authorizations that may apply to specific cases, such as work permit exceptions and residence authorizations that apply to directors or professors of foreign or local universities, or to entrepreneurs. Also, Spanish immigration regulations establish a way to obtain a work and residence authorization based on the years a foreign national has remained in Spain and on his integration into Spanish society. In effect, work and residence authorizations based on exceptional circumstances (*arraigo social*) may be obtained if a foreign national has remained in Spain for more than three years and has been offered employment for more than a year.

Capital Investors

Capital investors' visas and residence permits also allow the holder to reside and work in Spain without any restriction.

Naturalization

Immigrants to Spain are often interested in becoming Spanish citizens. Naturalization to citizenship requires, as a general rule, 10 years of legal, continuous and effective residence after immigrating. However, this general period is shorter for nationals of certain countries, for example: Morocco or the Philippines (five years); nationals of all South and Central American countries (two years); and spouses of Spanish nationals or the children or grandchildren of Spanish nationals (one year). Currently there is a beneficial procedure to obtain Spanish citizenship for Jewish descendants of the Sephardim. This beneficial procedure is open until 30 September 2019. After this date, the Sephardim will not be able to apply for Spanish nationality via this beneficial and fast track procedure. They will have to apply following the ordinary naturalization process.

Contingency Measures for a No-deal Brexit

The government of Spain has recently passed a number of contingency measures in preparation for the potential withdrawal from the European Union by Great Britain and Northern Ireland, in the event the agreement stipulated under Article 50 of the Treaty on European Union is not reached.

In terms of immigration, when the United Kingdom leaves the European Union, UK citizens will become citizens of third-party countries. These UK nationals and their families will no longer be eligible for the EU regime but will be subject to the general immigration regime.

The Royal Decree Law 5/2019 of 1 March creates an ad hoc regime for their documentation as citizens of third countries. The corresponding approved instructions establish the documentation procedure that will be followed, which will be applicable to UK citizens and their family members who were residents in Spain or cross-border workers, prior to the withdrawal.

The Instructions establish a 21-month period, as from the date of the potential non-deal Brexit, for such individuals to substitute or apply for new documents.

After a period of two months from the entry into force of the Royal Decree-Law, the measures regulated therein will be suspended, when expressly provided for by agreement of the Council of Ministers, if the competent British authorities do not grant reciprocal treatment to Spanish nationals.

Sweden



Sweden

Foreign nationals must acquire the proper authorization to enter and/or remain in Sweden. Authorization differs depending on the foreign national's country of origin and the activities that will be performed while in Sweden. The Swedish government has simplified the rules for immigrants to bring their knowledge and experience to the Swedish labor market.

Key Government Agencies

The Swedish State Department is responsible for receiving visa applications at Swedish embassies or consulates abroad. The visa applications are either processed by the Swedish embassy or consulate abroad or, in certain cases, by the Swedish Migration Board. The Swedish Migration Board is responsible for processing applications for work and residence permits in Sweden. Applications for work permits normally require that a certain form, i.e., an offer of employment, has been completed by the Swedish employer before an application is made. In the offer of employment, the relevant union(s) shall state their opinion regarding the proposed salary, insurance coverage and other terms of employment that will be offered.

A decision rendered by the Swedish Migration Board may, in certain cases, be appealed to a migration court. Similarly, a decision rendered by a migration court may, under certain circumstances, be appealed to the migration court of appeal.

Inspection and admission of travelers is conducted by customs and border police at Swedish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals are handled by the Swedish police.

The Swedish regulation concerning immigration and foreign nationals in Sweden is principally found in the Aliens Act (2005:716), the Aliens Ordinance (2006:97) and the Schengen Borders Code (EU/2016/399). Furthermore, a temporary law limiting the possibilities of being granted a residence permit in Sweden (2016:752) was introduced in 2016 and limits the scope for asylum seekers and their relatives to obtain

residence or work permits in Sweden. The regulation came into force in July 2016 and first applied for a fixed term of three years until July 2019. It has now been extended to July 2021.

Current Trends

The Swedish Migration Board has been criticized for its long processing times, resulting from its heavy workload over the past couple of years. Although they aim to shorten the processing time in 2019, they continue to advise that all work permit applicants to complete their application online on the Swedish Migration Board's website to avoid the long processing time. If the application contains all the required (and correct) information, the processing time is normally four to six months. However, in certain cases, applications can have a processing time of more than 19 months.

After the entry into force of the law limiting the possibilities of being granted a residence permit in Sweden there has been a noticeable decrease in the applications for asylum in Sweden. For work permit applications, certain certified service providers may provide a swifter application process.

Business Travel

Visa

A visa is a permit which is required to enter and/or remain in Sweden and the other Schengen countries for a limited period of time. A visa granted by any of the Schengen countries is valid throughout the Schengen area. However, in exceptional cases the visa may be limited for entry merely to the issuing country or certain countries, and this applies primarily if the holder's passport is not approved by all Schengen countries.

A visa may be granted for a number of reasons, e.g., visits to friends and/or relatives, to businesses or conferences and for medical treatment. A visa is usually granted for a stay in the Schengen area

for a maximum period of three months during a six-month period. This means that a person who has stayed in any of the Schengen area for three months cannot be granted a new visa until the six-month period has elapsed, nor is it possible to extend a visa permit. However, provided that special circumstances are considered, a visa may be granted for up to one year.

Special circumstances may be considered if a person needs to travel to Sweden several times a year for business purposes or needs to visit children in Sweden. If there are such special circumstances, it is possible to extend a visa.

The requirements for a visa may vary from time to time and among the Schengen countries. Up-to-date information regarding the requirements may be found at the website of the Swedish Embassies and Consulates: www.swedenabroad.com/.

The principal prerequisite is that the person applying for a visa intends to leave Sweden after the visit and that the purpose of the visit is the one specified in the application. Moreover, the person must have a passport that is valid for at least three months after the expiration of the visa and which has been issued within the last 10 years. Another condition is that the person applying for a visa must have the monetary means to support himself during the stay and the journey back to his home country. The Swedish authorities have established that a person should have approximately EUR 45 for each day of the stay, however, in certain circumstances this amount may be lower, e.g. in the case of a young child. A person must also present proof that he has medical travel insurance which covers any cost that may arise in conjunction with emergency medical assistance, emergency hospital care, and transport to their home country due to medical circumstances. The insurance should cover costs of at least EUR 30,000 and be valid in all of the Schengen area countries.

If a person applies for a visa for business or conference purposes, the applicant shall submit an invitation letter from the company or the person arranging the stay in Sweden. The invitation letter should

contain the following information: the invitee's personal details; the reason for the visit to Sweden; the duration of the stay in Sweden; and the person responsible for the invitee's financial support for their stay in Sweden.

Visa Waiver

Most non-EU/European Economic Area citizens are required to hold a visa before entering Sweden. However, citizens of the following countries are currently exempted from the visa requirement: Andorra, Antigua and Barbuda, Argentina, Australia, the Bahamas, Barbados, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, Dominica, Grenada, Guatemala, Honduras, Israel, Japan, Mauritius, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Palau, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, El Salvador, Samoa, San Marino, Seychelles, Singapore, South Korea, Switzerland, Taiwan (with a passport with identity card number), Timor-Leste, Tonga, Trinidad and Tobago, the United States, Uruguay, Vanuatu and Venezuela.

Since the introduction of biometric passports, the exemption from the visa requirement has been extended to cover citizens from Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia and Ukraine, if they are holders of biometric passports.

Employment Assignments

Non-EU/EEA nationals and non-Swiss nationals who want to live and work in Sweden need to be granted a work permit. Certain countries have agreements with Sweden under which young people in ages 18-30 years old can live in Sweden for a holiday for up to a year. During that time, they are allowed to work. For others, a residence permit is also required should the duration of their stay in Sweden exceed three months. Furthermore, some foreign nationals must also hold a visa to enter Sweden. The requirement to obtain a work and residence permit

and a visa applies regardless of whether or not the employee is employed by a Swedish company.

Employers that deliberately or negligently hire someone who does not have the right to stay or work in Sweden may have to pay a penalty, have their rights to all public support, grants and benefits rescinded for five years, or may be ordered to repay previous grants and/or be sentenced to a fine or even imprisonment.

There are a number of exemptions from the requirement to hold a work permit. This applies to certain large categories of people, such as EU/EEA citizens. In these cases, the exemptions apply to all types of work. There are also exemptions for certain professional categories that only plan to work for a short period of time in Sweden. Specialists in an international group of companies who are working temporarily in Sweden for the group (in total less than one year) are exempted from the work permit requirement. Also, an employee who participates in practical experience, internal training or other skill development at a company in an international group for a maximum period of three months in aggregate over a period of 12 months is exempted from the work permit requirement.

Seasonal Workers

As of 1 June 2018, a new regulation on seasonal employment came into force in Sweden based on the so-called Seasonal Employment Directive (2014/36/EU). The requirements of the directive have been incorporated into the Aliens Act, and applies to citizens of countries outside the EU/EEA and Switzerland who intend to work in Sweden as seasonal workers for an employer who is established in Sweden. Provided that the applicant fulfils the legal conditions, he will be granted a work permit for seasonal work for a maximum of six months within a 12 month period. Furthermore, if his stay will exceed 90 days, it is possible to receive a residence and work permit for seasonal work.

Intra-company Transfer

As of 1 March 2018, a new regulation on intra-corporate transfer came into force in Sweden based on the so called ICT-Directive. The requirements of the directive have been incorporated in the Aliens Act, and entitles citizens of a country outside the EU/EEA and Switzerland to receive an ICT (intra-corporate transfer) permit so they can enter and remain in Sweden to work as a manager, specialist or trainee at a company that is established in Sweden but belongs to the same corporate group as the host company. Furthermore, the new regulations entitles those who have already been granted an ICT permit in another EU state but are going to work in Sweden, the possibility to receive an extended-stay mobility ICT permit. Decisions on ICT permits and ICT permits for long-term mobility are made within 90 days from the time at which the application is received and registered by the Migration Board. The decision process must be complete before the applicant travels to Sweden.

Skilled Workers

Visiting research fellows or teachers at higher educational institutions who participate in research, teaching or lecturing activities in Sweden for a maximum of three months during a 12-month period are exempted from the requirement.

Job Advertisement

Swedish, Swiss, and EU/EEA nationals have preference over other nationals to obtain work in Sweden. For new recruitments, an employer shall make it possible for residents of the above-mentioned nationalities to apply for the vacancy. The easiest way for an employer to do so is to advertise the employment with the Public Employment Service (*Sw. Arbetsförmedlingen*). The vacancy will then also be accessible on the European Job Mobility Portal (EURES). The vacant position must have been advertised for a period of 10 days before the position can be offered to a non-EU/EEA national.

According to recent case law, however, vacancies that are only relevant to a limited group of individuals may under certain circumstances be exempted from the requirement to advertise the vacancy through channels which target all people in the EU/EEA and Switzerland.

Requirements for Work Permit

To be granted a work permit, the following requirements apply: (i) there must be an offer of employment from an employer in Sweden; (ii) the employee must have a valid passport; (iii) the employee must earn enough from the employment to support himself, which in Sweden is at least EUR 130 per month; (iv) the terms of employment have to be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry; (v) the relevant union must be given the opportunity to state an opinion on the terms and conditions of employment; (vi) the vacant position must, in case of new recruitment, have been advertised in Sweden and the EU; and (vii) the employer must intend to sign health insurance, life insurance, job security insurance and occupational pension insurance for the employee when the employment begins. Family members may be granted a residence permit for the same duration as the term that the principal residence and work permit are granted.

Certain industries are subject to more stringent control before the Migration Board grants a work permit for cleaning, hotel and restaurants, construction, trading, agriculture and forestry, automobile repair, service and staffing.

Validity of a Work Permit

If the employment is temporary, the foreign national may be granted a residence and work permit valid for the period of employment, up to a maximum period of two years at a time. The initial work permit may be extended multiple times. However, the period of validity for the work permit may not exceed four years in aggregate. After four years, the

employee will be eligible for a permanent residence permit. The Migration Board may withdraw the work and residence permit if a person loses his job and provided that the person has not found new employment within three months after the expiration of the previous employment.

In certain cases, a new application for a work permit must be submitted. For the first two years, the residence and work permit is restricted to a specific employer and a specific occupation. If a change of employer is made during the first two years, a new work permit is required. If a residence and work permit is extended after two years, the permits will be restricted only to a specific occupation.

Self-employed Persons

To remain in Sweden for more than three months, to start a company or enter into a company partnership, a residence permit is required. A self-employed person does not need a work permit. However, citizens of certain countries are required to hold a visa before entering Sweden.

To obtain a residence permit for a self-employed person in Sweden, the person is required to establish that: (i) the person holds a valid passport; (ii) the person is running the business, has the ultimate responsibility for the business and that the ownership is at least 50% of the company; (iii) the business' services or goods are sold and/or produced in Sweden; (iv) the person has significant experience in his field and previous experience of running his own business; (v) the person possesses documentary evidence of having the necessary capital to establish or purchase a company; (vi) the person has proof of ability to support himself and his family during the first two years; (vii) the person has details of annual accounts for the previous two years (if the business has been in operation earlier); (viii) an income statement and a balance sheet are in existence; and (ix) the person has details of customer references, banking connections, and/or former experience in the business. Moreover, a contract for business

premises and a contract with customers or suppliers must be included with the application.

EU Blue Card

It is possible for a non-EU citizen to apply for an EU Blue Card in all EU Member States. To be eligible for an EU Blue Card, which is both a work and residence permit, the individual must have been offered a highly qualified position for a minimum of one year and a salary requirement of at least one and a half times the average gross salary in Sweden. Being granted an EU Blue Card means that the person can apply for another EU Blue Card immediately after entry into another EU Member State and credit the years in both Member States when applying for status as a long-term resident.

The basic requirement is to have a university education equivalent to 180 credits or five years of work experience and to be offered a highly qualified position for the minimum extent of one year. To be eligible for the EU Blue Card the salary has to be at least approximately EUR 5,000 per month. The applicant must also have a valid passport and apply for complete Swedish health insurance.

Notification to the Swedish Tax Agency

Sweden has implemented EU directive (2009/52/EC) on sanctions and measures against employers of illegally staying third-country nationals. The rules require employers to notify the Swedish Tax Agency (*Skatteverket*) when hiring third-country nationals to work for them in Sweden.

The term “third-country national” refers to a person who is not a citizen of the EU, an EEA country or Switzerland and is not a family member of a citizen of the EU, an EEA country or Switzerland.

Notification must be made to the Swedish Tax Agency no later than the 12th day of the month after the calendar month in which the employment started. The notification should contain the name and the address of the employer and the employee, the employee’s Swedish

personal identification number, or coordination number, the employer's corporate identification number and the start date of employment.

Notification to the Swedish Work Environment Authority

Foreign employers that post workers in Sweden for more than five days are obliged to notify the Swedish Work Environment Authority (Arbetsmiljöverket) in writing. When registering, the foreign employer must appoint a contact person in Sweden. The contact person must be able to provide documents that show that the employer is complying with the requirements in the Swedish implementation of the European Posting of Workers Directive. The registration must be made before the employee starts work in Sweden. Failure to timely report a posting and a contact person for registration may subject the company to a fine of approximately EUR 2,250.

Application Procedure for Work Permit

As a rule, a person must apply for a work permit from the country where he resides. However, in certain cases, an individual may apply for a work permit in Sweden. This applies if the individual would like to extend a current permit, the individual needs a new permit because he is switching employers or occupations, the individual's application was denied while being an asylum seeker but has been offered continued employment, the individual has a residence permit to attend a college or university, or if the individual is visiting an employer (only if there is a high demand for workers in the occupation).

If the application is made from outside of Sweden, it can either be done electronically on the Migration Board's website (www.migrationsverket.se) or at a Swedish agency abroad (embassy or consulate) in the country of residence. An application made from Sweden can be filed electronically on the Migration Board's website, by mail to the Migration Board, or at any Migration Board permit unit. A copy of the passport, offer of employment and receipt showing that the application fee is paid must be attached to the application.

An application for an EU Blue Card can be made from the applicant's country of residence or a country outside of Sweden where the individual resides by filing an application electronically via the Migration Board's website (www.migrationsverket.se) or by sending the application to a Swedish embassy or consulate general. However, if the applicant already has a valid EU Blue Card issued in another EU country, the application may be submitted in Sweden to one of the Swedish Migration Board permit units.

Training

An employee who participates in training, testing, preparation or completion of deliveries, or similar activities within the framework of a business transaction for an aggregate period of three months during a 12-month period is also exempted from the work permit requirement.

Post-entry Procedures

If an employee has obtained a permit to work in Sweden for more than three months, the employee will also be granted a residence permit card. The card proves that the employee has permission to reside in Sweden. It also contains information such as the employee's fingerprints and photograph. As soon as the employee arrives in Sweden, the employee must visit the Swedish Migration Board to be fingerprinted and photographed (provided that the employee did not need a visa to enter into Sweden, in which case this would have been included in the visa application).

The employer is obliged to keep copies of any documents proving that the person has the right to stay and work in Sweden. The employer must also save a copy of these documents throughout the employment as well as 12 months after the termination of the employment.

Entry Based on International Agreements

An EU/EEA national who is an employee; a self-employed person; a provider or recipient of services; a student; or a person who has sufficient funds to support himself is entitled to reside in Sweden. This means that such persons and their family members have the right to stay, live, and work in Sweden for more than three months without a residence or work permit. As of 1 May 2015, EU/EEA nationals do not need to register with the Swedish Migration Board even if their stay in Sweden will be for more than three months. If any of the family members are not an EU/EEA national, that family member needs to apply for a residence card. Citizens of Switzerland and their family members are not required to apply for a work permit but must apply for a residence permit. Nordic citizens do not need to register or hold a residence permit.

Planned Legislative Change

The Swedish government and the Council on Legislation has proposed that the fixed-term regulation that was introduced in 2016 will remain in force until July 2021. Furthermore, as of 1 January 2020, the Swedish Migration Board will be processing all visa applications that are now processed by the Swedish embassies or consulates abroad.

Switzerland



Switzerland

The rate of immigration in Switzerland is among the highest in Europe. With more than one-fifth of the total population consisting of non-citizens, Switzerland has one of the largest resident foreign populations in the world.

The federal government has been gradually adapting its policy on foreign nationals and migration to more modern standards, taking into account international developments. Its policy is embodied in the Federal Act on Foreign Nationals ("FNA"), in force since January 2008, and in the Bilateral Agreement on the Free Movement of Persons concluded with the EU, which came into force on 1 June 2002.

Key Government Agencies

The State Secretariat for Migration (*Staatssekretariat für Migration/Secrétariat d'Etat aux migrations/Segretariat di Stato della migrazione*) is responsible for all concerns related to aliens and asylum in Switzerland.

The Cantonal Migration Authorities are responsible for extending visas and granting residence permits.

Swiss foreign consulates abroad issue different immigration visas, including entry permits for restricted nationalities.

Current Trends

Under the Federal Act on Foreign Nationals which took effect on 1 January 2008, there remain large restrictions on the employment of foreign nationals from non-EU/European Free Trade Agreement (EFTA) Member States for activities other than those pertaining to specialists, management and qualified personnel. Regulations on salaries, working conditions and limits on visas for third country citizens must be observed.

Business Travel

Foreign nationals who provide cross-border services or carry out a gainful activity in Switzerland upon the instruction of a foreign employer must hold a work permit if they perform either of these activities for more than eight days per calendar year. Foreign nationals not taking up any form of employment in Switzerland may remain in the country without a residence or work permit for as long as three months. After three months, foreign nationals are required to leave the country for at least one month. Foreign nationals are not authorized to stay in Switzerland for more than six months in a 12-month period. Individuals who require a visa can stay for the duration specified on their visa.

Visa Waiver

Depending on the foreign national's citizenship, the normal requirement of an entry visa may be waived. The list of countries qualifying for such benefits is subject to change. For current information, please visit www.bfm.admin.ch.

Employment Assignments

Switzerland introduced a dual system of recruiting foreign labor in 2002. Under this system, nationals from EU and EFTA Member States, regardless of their qualifications, are granted access to the Swiss labor market while nationals from all other states (third country nationals) are admitted in limited numbers, provided that certain conditions are met.

Priority

Third country nationals may only be admitted if a candidate cannot be recruited from the labor market of Switzerland or another EU/EFTA Member State. Swiss citizens, foreign nationals with either a long-term residence permit or residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded

the Bilateral Agreement on the Free Movement of Persons (i.e., EU and EFTA Member States), are granted priority. Employers must prove that they have not been able to recruit a suitable employee from these priority countries despite intensive efforts.

Vacant positions must be registered with regional employment offices together with a request to register the vacancy in the European Employment System (EURES). Once a potential employee has been put in contact with the employer and subsequently turned down, the employers generally receive a questionnaire in which they can state the reasons the potential employee was not hired.

In addition, the employer must explain to the authorities why the search for a suitable candidate by means of the recruitment channels typically used in the specific industry (e.g., specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers, written confirmation from employment agencies, or other kinds of documentation. Often it is helpful for authorities if the employer submits a brief overview of all candidates with a short explanation of which qualifications for a particular job were lacking. In special cases, the authorities can request an employer to intensify recruitment efforts.

Salary/Terms and Conditions of Employment Customary in the Region and in the Business

The salary, social benefits and terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular sector. Some sectors and businesses lay down these conditions in a collective labor agreement which is legally binding either on a national or cantonal level. When applications are submitted from businesses that do not have a collective labor agreement, the Swiss authorities usually request information directly from the employers' and employees' associations on the terms customary in a particular sector. By examining the salary rates and terms of employment beforehand, the authorities can ensure that

foreign workers are not exploited and that Swiss workers are protected against social dumping.

When submitting an application, the employer must enclose an employment agreement that has been signed by both the employer and the employee and that contains a note reading “contract only valid on condition that the authorities grant a work permit.” This provides both contracting parties with legal certainty.

With the exception of seconded employees who remain employed by their foreign employers, Swiss employers are obliged to register all employees with the statutory social security institutions.

Foreign nationals who do not have a long-term residence permit are subject to tax at source and must therefore be registered with the tax authorities. It is then the responsibility of the employer to deduct the amount of tax each month from the employee’s wage and pay the sum to the tax authorities.

The new Federal Act on Illegal Employment (“LTN”) facilitates, on the one hand, the payment of social security contributions for smaller, employed jobs. On the other hand, it contains new measures and more severe penalties to prevent and combat illegal employment. One provision that remains unchanged for both the employer and foreign employee is that everyone — whether in paid or unpaid employment — requires a permit.

Non-compliance with minimum salary requirements and with other terms of employment customary to a particular region or sector of industry is investigated first and foremost by the cantonal immigration authorities or, in some sectors, by offices established mainly for this purpose. Employers found not to comply with the legal requirements may be blacklisted and may not receive any further work permits for foreign workers for a period of up to five years.

Personal Qualifications

Executives, specialists and other qualified employees will be admitted if no suitable candidate is found on the local market. “Qualified employee” means, first and foremost, a person with a degree from a university or institution of higher education, as well as several years of professional experience. Depending on the profession or field of specialization, other people with special training and several years of professional work experience may also be admitted if this is in the economic interest of the region.

Besides professional qualifications, the applicant may also be required to fulfill certain other criteria, which would facilitate long-term professional and social integration. These include professional and social adaptability, knowledge of a national language, and age.

The Swiss authorities examine the applicant’s qualifications on the basis of his/her resume, education certificates and references. Applicants must submit copies of original documents, including a translation if the original documents are not in German, French, Italian, English or Spanish.

If an applicant comes from a nation whose education system or system of professional training greatly differs from that of Switzerland, it is useful for the immigration authorities if documents are submitted containing additional information on the institution and the length and content of the education or training course. Documents that may be helpful include a resume and education certificates showing which exams were taken and what the results were.

Exceptions to the Admittance Requirements

Exceptions to the admittance requirements may be granted in specific situations. The following is a partial list of the most frequent exceptions:

- employment pursuant to cooperation agreements/projects, i.e., joint ventures

- service and guarantee work for products from the country of origin
- temporary duties as part of large projects for companies with their headquarters in Switzerland (international assignments)
- pursuit of special mandated practical training and further education with professional associations and international business enterprises
- transfer of executives or specialists within a multinational company or pursuant to reciprocity agreements
- employment in certain professions where it is difficult to recruit in the labor market
- highly qualified scientists with a degree obtained in Switzerland in areas or sectors in which there is a lack of potential labor
- certain employment following the conclusion of a person's studies

Family members of Swiss nationals and persons with a long-term residence permit do not require authorization for self-employment. However, family members of other foreign nationals staying in Switzerland do require a permit.

Foreign nationals may only be admitted for employment if they have suitable accommodation and if they have health insurance covering them in accordance with statutory requirements.

Training

Trainees are eligible for a short-term residence permit. These permits are granted for a maximum period of 18 months.

Trainees are persons aged 18 to 35 who have completed their occupational training, and want to undergo some advanced occupational or linguistic training in the context of gainful employment in Switzerland. Trainees are subject to rules, which have been laid down in special treaties. Thus, they are subject to special quotas. The

legal provisions concerning issues of national priority are not applicable to them.

Trainee permits are granted on the basis of a written employment agreement with an integrated training program.

Trainees should receive salaries comparable to those of host country nationals in the same job and with similar qualifications, and should, in any case, be able to cover their living expenses.

Employers are free to look for candidates in their own subsidiary companies abroad or through business connections. If they prefer, however, they may ask the government officials responsible for the scheme to help them find suitable trainees for any positions available.

Nationals from EU/EFTA Member States in Switzerland

Nationals from EU/EFTA Member States have the right to reside and work in Switzerland.

For the pre-2004 EU Member States (EU 15), Malta, Cyprus and EFTA (Norway, Iceland and Liechtenstein), there were transitional restrictions regarding access to the labor market that were removed on 1 June 2007. Protocol II, extending the Agreement on the Free Movement of Persons to Romania and Bulgaria, came into force on 1 June 2009. According to this Protocol, Switzerland maintained restrictions on immigration from Bulgarian and Romanian nationals until 31 May 2016. Since 1 June 2016, nationals from these two states no longer face any restrictions to accessing the Swiss labor market. T

Up until May 2019, Switzerland was still entitled to set quotas for nationals of Bulgaria and Romania in the situation where immigration from these two countries exceeds a certain threshold.

Protocol III, extending the Agreement on the Free Movement of Persons to Croatia, came into force on 1 January 2017.

According to this Protocol, nationals from Croatia are subject to transitional restrictions regarding access to the Swiss labor market until 31 December 2023. The delivery of work permits is subject to the following conditions:

- Economic needs test – a permit is only granted if no equivalent candidate is already available on the Swiss labor market.
- Control of wage and working conditions – a permit is only granted if local wage levels and working conditions are respected.
- Quota – a permit is only granted if the respective quota for the L or B permit has not yet been met. Cross-border work permits and permits with a validity of less than four months are not subject to a quota.

These restrictions only apply to first admission. Once admitted to the labor market, nationals of Croatia benefit from full professional and geographical mobility. Apart from the specific restrictions above, nationals from Croatia have the same rights and obligations as all other EU/EFTA nationals.

Between 1 January 2014 and 31 December 2026, Switzerland will still be entitled to set quotas for nationals of Croatia, provided immigration from this country exceeds a certain threshold.

Nationals of the EU 15, Malta, Cyprus and EFTA Member States Employed in Switzerland

A work and residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; it is only necessary to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Nationals of Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Lithuania and Latvia (EU-8) Employed in Switzerland

A work and residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; there is only an obligation to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Employment of Less than Three Months per Calendar Year

No permit is required. The employer can simply announce the presence of the foreign national using the online registration procedure of the Federal Office for Migration.

Employment Contracts Between Three Months and 364 Days

A short-term L EC/EFTA permit will be issued for the duration of the contract. Upon presenting a new contract it can be prolonged to a maximum duration of 364 days or renewed.

Employment Contracts of One Year or More (Including Open-ended Contracts)

A B EC/EFTA residence permit is issued with an initial validity of five years.

Cross-border Workers

Workers living in an EU/EFTA Member State and employed in Switzerland on the basis of a Swiss employment agreement can receive a G EU/EFTA frontier worker permit, provided that they return

home at least once a week. Due to the fact that they stay in Switzerland during the week, they must register with the communal authorities where they are staying.

Settlement Permit (C-EU/EFTA)

The settlement permit is not regulated by the Agreement on the Free Movement of Persons. It is currently granted to pre-2004 EU and EFTA nationals after five years of residence in Switzerland, on the basis of settlement agreements or considerations of reciprocity. As currently no such agreements exist for the new EU Member States, their citizens receive the C permit after the regular residence period of 10 years. The C permit has to be renewed every five years. It is not subject to restrictions with regard to the labor market, and its holders are essentially placed on the same level as Swiss nationals (holders can invoke the freedom of trade and industry), with the exception of the right to vote and elect.

Nationals of all EU/EFTA Countries Planning to Start a Business in Switzerland

The rules for independent entrepreneurs are the same for nationals of all EU and EFTA Member States.

Nationals of EU/EFTA Member States wishing to start a business in Switzerland can apply for a five-year B EU/EFTA permit with the respective cantonal authorities. This permit will be granted if there is proof of an effective independent activity. The cantonal authorities determine what documents must be presented. As a general rule, these include some or all of the following: a business plan; proof of capital for starting the business; proof of specific preparations for launching the business, such as a rental agreement for real estate; and a registration with the register of commerce.

Nationals of Third Countries in Switzerland

Permit B: Residence permit

Resident foreign nationals are foreign nationals who are resident in Switzerland for a longer period of time for a certain purpose with or without gainful employment.

As a rule, the period of validity of residence permits for third country nationals is limited to one year when the permit is granted for the first time. First-time permits for gainful employment may only be issued within the limits of the ceilings and in compliance with the Federal Act on Foreign Nationals ("LEtr"). Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offenses, dependence on social security or labor market conditions. A legal entitlement to the renewal of an annual permit only exists in certain cases. In practice, an annual permit is normally renewed as long as its holder is able to draw a daily allowance from the unemployment insurance. In such cases, however, the holder is not actually entitled to a renewal of the permit.

Permit C: Settlement permit

Settled foreign nationals are foreign nationals who have been granted a settlement permit after five or 10 years' residence in Switzerland. The right to settle in Switzerland is not subject to any restrictions and must not be tied to any conditions. The Federal Office of Migration fixes the earliest date from which the competent national authorities may grant settlement permits.

As a rule, third country nationals are in a position to be granted a settlement permit after 10 years of regular and uninterrupted residence in Switzerland. US nationals are subject to a special regulation. However, third country nationals have no legal entitlement to settlement permits. Apart from the provisions of settlement treaties, such a claim can only be derived from the LEtr. Persons who hold a settlement permit are no longer subject to the Limitation Regulation, are free to choose their employers and are no longer taxed at source.

Permit Ci: Residence permit with gainful employment

The residence permit with gainful employment is intended for members of the families of intergovernmental organizations and for members of foreign representations. This concerns spouses and children up to 25 years of age. The validity of the permit is limited to the duration of the main holder's function.

Permit G: Cross-border commuter permit

Cross-border commuters are foreign nationals who are resident in a foreign border zone and are gainfully employed within the neighboring border zone of Switzerland. The term "border zone" describes the regions which have been fixed in cross-border commuter treaties concluded between Switzerland and its neighboring countries. Cross-border commuters must return to their main place of residence abroad at least once a week.

Permit L: Short-term residence permit

Short-term residents are foreign nationals who are resident in Switzerland for a limited period of time — usually less than a year — for a certain purpose with or without gainful employment.

Third country nationals can be granted a short-term residence permit for a stay of up to one year, provided the quota of the number of third country nationals staying in Switzerland has not been met. This is fixed annually by the Federal Council. The period of validity of the permit is identical to the term of the employment contract. In exceptional cases, this permit can be extended to an overall duration of no more than 24 months if the holder works for the same employer throughout this time. Time spent in Switzerland for a basic or advanced traineeship is also considered short-term residence. Permits issued to foreign nationals who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation.

Permit F: Provisionally admitted foreign nationals

Provisionally admitted foreign nationals are persons who have been ordered to return from Switzerland to their native countries, but in whose cases the enforcement of this order has proved inadmissible (e.g., violation of international law), unreasonable (e.g., concrete endangerment of the foreign national), or impossible for technical reasons of enforcement. Thus, their provisional admission constitutes a substitute measure. Provisional admission may be ordered for a duration of 12 months and can be extended by the canton of residence for a further 12 months at a time. The cantonal authorities may grant provisionally admitted foreign nationals work permits for gainful employment irrespective of the situation of the labor market and in the economy in general. A residence permit granted at a later date is subject to the provisions of the LEtr.

Other Comments

Holders of an EU/EFTA permit are entitled to a family reunion, regardless of the nationality of their family members. Qualifying family members may include the spouse, the registered partner in same-sex couples, and children under 21. Parents and children over 21 also qualify, provided they are financially dependent on the main permit holder. If family members of EU/EFTA nationals do not have EU/EFTA nationality, they may be subject to visa requirements when entering Switzerland before having received their family reunion permits.

Recent Legislative Change

On 9 February 2014, Swiss citizens adopted a modification of the Federal Constitution aimed at stopping mass immigration. This amendment required that immigration policies be restricted by the introduction of quantitative limits and quotas. These limits and quotas should apply to all permits covered by the legislation on foreign nationals, including cross-border commuters and asylum seekers, and was geared towards Switzerland's overall economic interests. In sum, when hiring, employers should give priority to Swiss nationals.

On 16 December 2016, the Swiss national parliament amended the Foreign National Act and added a new Art. 21a, para. 1 to implement Art. 121a Cst. This provision does not impose further restrictions on the delivery of work permits. It does, however, impose an additional obligation on employers who plan to hire foreign employees to first contact the local employment authority to check that there is no candidate available on the local market.

Taiwan, Republic of China



Taiwan, Republic of
China

Taiwan has a three-tier immigration protocol that differentiates between foreign nationals in general, nationals of the People's Republic of China (PRC), and citizens of Hong Kong SAR and Macau SAR. To better reflect the evolving needs of its globalized economy, the government of Taiwan has taken steps to streamline many of its entry and immigration requirements, such as simplifying the qualifications that non-Taiwanese citizens must meet to obtain a work permit and relaxing the entry rules for PRC nationals and citizens of Hong Kong SAR and Macau SAR. In this chapter, the term “foreign nationals” means non-Taiwanese nationals, apart from nationals of the PRC, Hong Kong SAR or Macau SAR.

Most foreign national business travelers may obtain short-term Visitor Visas through a Taipei Economic and Cultural Office or Republic of China (Taiwan) embassy or consulate, unless they are from countries that participate in Taiwan's visa-exempt program. Foreign nationals who intend to work in Taiwan must meet certain requirements to obtain a work permit. Nationals of the PRC and citizens of Hong Kong SAR and Macau SAR may travel to and work in Taiwan, provided they meet the special immigration and entry requirements.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for ROC (Taiwan) visas, whether processed through ROC (Taiwan) embassies and consulates, Taipei Economic and Cultural Offices, or overseas representative offices.

The National Immigration Agency of the Ministry of the Interior is responsible for immigration and naturalization services for foreign nationals, PRC nationals and citizens of Hong Kong SAR and Macau SAR.

The Workforce Development Agency of the Ministry of Labor of the Executive Yuan is responsible for processing and issuing work permits.

Current Trends

The governments of Taiwan and the PRC executed the Economic Cooperation Framework Agreement on 29 June 2010. Therefore, exchanges between the Taiwan Strait in many fields are speedily increasing. However, despite this, the PRC government is acting in an unfriendly manner and has shut down the official communication window with Taiwan's president, Tsai Ing-Wen, and the Democracy Progress Party – the current ruling party of the ROC (Taiwan). Under such circumstances, the Taiwan government is continuing to relax its restrictions on immigration, short-term visits and relevant procedures applicable to PRC nationals in a steady manner.

Business Travel

Visitor Visas

Foreign nationals who intend to travel to Taiwan for business visits should apply for a Visitor Visa at an overseas ROC (Taiwan) embassy, consulate, or trade office, unless they are from countries that participate in Taiwan's visa-exempt program.

Passport holders from certain countries are eligible for a visa waiver for visits not exceeding 30 days. The visa-exempt program currently includes Belize, Dominican Republic, Guatemala, Malaysia, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and Grenadines and Singapore.

In addition, passport holders from certain countries are eligible for a visa waiver for visits not exceeding 90 days. The visa-exempt program currently includes Andorra, Australia (effective from 1 January 2015 to 31 December 2018), Austria, Belgium, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Nicaragua, Norway, Poland, Paraguay,

Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United States of America, and Vatican City State (“Visa-Exempt Countries”).

Travelers entering Taiwan on a visitor visa must hold return or onward air tickets. Emergency or temporary passport holders of Visa-Exempt Countries who wish to stay up to 30 days and whose emergency or temporary passport is valid for at least six months may apply for landing visas upon arrival.

Employment Assignments

Intra-company Transfers

Foreign nationals’ intra-company transfers must comply with the same criteria and standards applicable to skilled workers (so-called “white-collar workers”), except in the case of short-term (not exceeding 30 days) contract performance. If the scheduled period of contract performance is between 31 days and 90 days, the foreign national still has to apply for a valid work permit within a period of 30 days after entering Taiwan. If the scheduled period of contract performance exceeds 90 days, the foreign national’s work permit application must comply with the same criteria and standards applicable to skilled workers. The Taiwanese legal entity to which the foreign national will be transferred must take the role of an employer in the foreign national’s work permit application.

Skilled Workers

Both foreign nationals who wish to work in Taiwan and their employers in Taiwan must meet the qualifications criteria before the foreign nationals will be granted work permits. The Workforce Development Agency (WDA) serves as the country’s one-stop shop for work permits for foreign professionals. The WDA aims to reduce the confusion that existed when different government organizations were separately responsible for processing and issuing foreign work

permits for professionals in industries under their purview. The WDA processes work permits in the following areas:

- architecture and civil engineering
- transportation
- taxation and financial services
- real estate agencies
- immigration services
- attorneys-at-law (legal services)
- technicians
- medical and health care
- environmental protection
- cultural, sports and recreation services
- academic research
- veterinarians
- manufacturing
- wholesaling
- other jobs designated by the central governing authorities and central competent authorities as determined after a joint consultation between the authorities

Employer Qualifications

An employer seeking to engage foreign technical and professional personnel to work in Taiwan must serve as any one of the following:

- A local company established for less than one year with an operating capital of at least TWD 5 million or with average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000.
- A company established for more than one year with an annual revenue of TWD 10 million for the most recent year or an average annual revenue of TWD 10 million for the past three years.
- A company established for more than one year with average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000.
- A foreign branch office established in Taiwan for less than one year with an operating capital of more than TWD 5 million or with average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000.
- A foreign branch office established for more than one year with an annual revenue of at least TWD 10 million for the most recent year or an average revenue of TWD 10 million for the past three years, or with average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000.
- A representative office of foreign companies that has been approved by the competent authorities at the central government level and has an actual performance record in Taiwan.
- A research and development center and business operations headquarters that has applied to establish its business and has been approved by the relevant competent authorities concerned at the central government level.
- An employer that has made a substantial contribution to domestic economic development. Alternatively, the employer has a special circumstance that is treated as a special case by the central governing authorities and the central competent authorities and,

after the joint consultation between the authorities, the authorities have approved the circumstance.

Employment Quotas

There are no established quotas for foreign workers in Taiwan. The Ministry of Labor will, along with specific industry authorities, decide on the number of work permits that it will grant each year based on an evaluation of the employment market, the employers' industries, and the social and economic development of the country.

A new points-based scoring system was instituted by the Ministry of Labor for foreign students, overseas compatriot students and other overseas students of Chinese descent if they have graduated and obtained a bachelor's degree from a public or private university in Taiwan. This operates despite the fact that these students would not normally qualify for a work permit as a result of most of them lacking the minimum two years of work experience in the related field. However, the new system will calculate an applicant's scores by taking into account a range of factors, including whether: (i) the foreign national is adequately fluent in Chinese, English or any other language; (ii) the foreign national has lived in another country for more than six years or whether he has any creative talents which qualify him under the government authorities' industrial development policy; and (iii) the foreign national meets the minimum monthly salary requirement in the case of a white-collar work permit application (the minimum monthly salary requirement is TWD 47,971, equivalent to around USD 1,600). If his final scores reach 70 points or greater, the foreign national will qualify for work permit approval. The employment quota for the scoring system in the 2019 calendar year is 2,500.

Foreign National Employee Qualifications

Foreign nationals, other than a company's managerial representative, must meet certain education and experience requirements before being granted a permit to work in Taiwan. As applicable, these requirements are:

- to acquire a certificate, license, or operational qualifications through the procedures specified in the examinations required for specific professionals and technical specialties
- to earn a master's degree or above in a relevant field
- to earn a bachelor's degree in a relevant field and possess more than two years of working experience in a specific field
- to have been employed with a multinational company for more than one year and assigned by that company to work in Taiwan
- to be a professionally trained or self-taught specialist with more than five years of work experience in his specialization and who has demonstrated creative and outstanding performance

The above-mentioned qualifications are not required for a foreign national employed as a registered executive or managerial officer (e.g., general manager or branch manager) of a foreign company in Taiwan.

Act for the Recruitment and Employment of Foreign Professionals

The Taiwan government began enforcing a new act named “Act for the Recruitment and Employment of Foreign Professionals” (the “Act”) on 8 February 2018. Its purpose is to attract more foreign professionals to work in Taiwan. In this regard, the government authorities have initiated many of measures including a tax incentive program and retirement benefits, etc. for those foreign nationals who meet any one of the criteria for the listed professional fields. There are a total of eight special professional fields, as follows:

- Science & Technology
- Economics
- Education

- Culture and Arts
- Sports
- Finance
- Legal
- Architecture

The Act contains many benefits under certain terms and conditions as follows:

1. **Applicability:** the Act will apply to: (i) foreign professionals; (ii) foreign special professionals; and (iii) foreign senior professionals, as defined under the Act, the Employment Services Act and relevant laws and regulations.
2. **Extended employment term and Employment Gold Card:** for “foreign special professionals” the maximum employment period has been extended to five years under the Act, and this five-year period is applicable to their dependents as well. The government authorities’ new innovation, the Employment Gold Card, enables foreign nationals to file an application as a one-stop service through the government authority’s online system. Also available to foreign special professionals is an Employment Gold Card which combines their work permit, resident visa, alien resident certificate and re-entry permit, although this Employment Gold Card must be renewed after a maximum period of three years.
3. **Employment-seeking visa:** foreign professionals looking for jobs in Taiwan are eligible to apply for an employment-seeking visa so that they can search for a job in Taiwan. The visa is a multiple-entry visa valid for up to six months from issuance.
4. **Minimum stay for permanent residency:** previously, a foreign national who resided in Taiwan for less than the 183 days per year minimum of stay requirement would have his Alien

Permanent Resident Certificate (“APRC”) revoked. Now, under the Act, this requirement has been substantially relaxed so that the government will only revoke an APRC after the foreign national has been away from Taiwan for more than five years.

5. **Easing of provisions regarding stay or residence of parents, spouses and children:** the requirements for dependents of foreign professionals with permanent residence has been relaxed, and so the dependents of any age must only continually and lawfully reside in Taiwan for a period of five years, and more than 183 days in each of those years, and there is no longer a requirement to produce proof of assets.
6. **Tax, insurance and retirement benefits:** foreign professionals who are employed and approved for the APRC may now subscribe to the pension system under the Labor Pension Act. This is applicable to employees who have obtained employment after the enactment of the Act, whereas employees who obtained employment prior to the enactment of the Act will have six months to notify their employers if they want to continue to remain in the pension system under the Labor Standards Act. The requirement for a six-month minimum stay for dependents of foreign nationals to become eligible as beneficiaries under the National Health Insurance Act has been removed. Foreign special professionals in Taiwan who earn an annual salary over TWD 3 million will be eligible for a tax break on half of any amount that exceeds TWD 3 million. For example, a multi-national software company hires an APAC Regional Director with an annual salary package of TWD 5 million. In accordance with this generous tax break, the new hire would **be taxed on only TWD 4 million, with TWD 1 million determined to be tax-free**. However, to be considered eligible, foreign special professionals will first be required to reside in Taiwan for more than 183 days in a calendar year.

Training

Under the current policy, the Taiwan government only permits Taiwan companies/factories engaged in the businesses of outbound investment and whole plant output to provide training to foreign nationals on behalf of a foreign company. The permitted foreign nationals may obtain a visitor visa to undertake training courses in Taiwan. If a foreign company wishes to send its employee for a short-term training course in Taiwan, the foreign employee can only use a visa-exempt program or visitor visa for business purposes. The duration of stay allowed under a visitor visa could be from 14 to 90 days at the discretion of the visa official in an overseas ROC (Taiwan) embassy, consulate, or trade office.

Resident Visa and Alien Resident Certificate (“ARC”)

Resident visas may be granted to foreign nationals who intend to stay in Taiwan for more than six months for the purposes of joining family, pursuing studies, accepting employment, making investments, doing missionary work or engaging in other activities. A resident visa is valid for three months, covers a single entry or multiple entries, and allows a stay in Taiwan for a period of more than six months.

Applicants coming to Taiwan for employment or investment purposes are required to submit relevant documents to the competent authorities of the central or local government for approval. Resident visa holders for various purposes must apply for an ARC within 15 days of their arrival in Taiwan. A multiple re-entry permit will be automatically included in the ARC so that ARC holders may leave and re-enter the country as many times as they require. The length of residence will depend on the validity date of the ARC.

A foreign national who holds a visitor visa that allows a stay in Taiwan for more than 60 days (which is not otherwise annotated by the issuing authority to prohibit extensions) can directly apply to the National Immigration Agency for an ARC, provided at least one of the following requirements is satisfied:

- the individual is married to a ROC (Taiwan) citizen who resides in Taiwan and has a valid household registration or is allowed to reside in Taiwan
- the individual is younger than 20 years of age and has immediate relatives who are ROC (Taiwan) citizens who have valid household registrations or are allowed to reside in Taiwan
- the individual has obtained employment/work permit approvals issued by the Workforce Development Agency or other relevant competent authorities and the remainder of the approved employment/work permit period is more than six months from the ARC application date
- the individual is permitted by the Ministry of Foreign Affairs for diplomatic reasons

Other Comments

Foreign nationals may apply for an APRC after a period of at least five years of legal and continuous residence, during which period the foreign national must have resided in Taiwan for more than 183 days each year. A waiver of many of the requirements of the APRC may be granted to foreign nationals who have made special contributions to Taiwan or have acquired high technical knowledge, as well as to qualified investors. Citizenship through naturalization is possible.

Hong Kong SAR and Macau SAR citizens

The Taiwan government does not treat Hong Kong SAR and Macau SAR citizens as PRC nationals or foreign nationals. This special category includes persons who hold permanent identity certificates and passports issued by the governments of Hong Kong SAR or Macau SAR, British National (Overseas) passports proven to have been acquired before 1997, or Portuguese passports proven to have been acquired before 1999. Citizens of Hong Kong SAR or Macau SAR who visit Taiwan or seek to become residents of Taiwan must

apply for entry and exit permits. In Hong Kong SAR, applications can be made at the Taipei Economic and Cultural Office (Hong Kong). In Macau SAR, applications can be made at the Taipei Economic and Cultural Office (Macau).

Citizens of Hong Kong SAR or Macau SAR who were born locally, hold valid entry and exit permits, or have previously been admitted to Taiwan, may apply for a 30-day temporary entry and stay certificate upon arrival. This certificate may be extended under certain circumstances.

Since 2005, expedited 30-day temporary entry and stay certificates have been available online through the website of the National Immigration Agency. Approved applications will automatically generate reference numbers that enable the applicants to pick up their temporary entry and stay certificates from the Taipei Economic and Cultural Office (Hong Kong) or the Taipei Economic and Cultural Office (Macau) in person. The certificate covers a single entry within three months from the date of issue and with a duration of stay of 30 days starting from the next day of arrival. Please note that this online application is not applicable to holders of foreign passports, except Hong Kong residents with British National (Overseas) passports proven to have been acquired before 1997 or Macau residents with Portuguese passports proven to have been acquired before 1999.

Entry and Exit Permit

To qualify for a multiple entry and exit permit, an applicant must:

- have been to Taiwan before
- be a Hong Kong SAR or Macau SAR permanent resident who holds a passport that is valid for more than six months
- submit one passport-sized photo, a self-addressed return envelope, and both an original copy and photocopy of Hong Kong SAR or Macau SAR permanent identity card

The processing time at the Taipei Economic and Cultural Office (Hong Kong) in Hong Kong SAR is approximately two weeks. A Taiwan entry and exit permit, valid for six months, is usually granted for an initial period of stay of three months. Thereafter, renewals are granted for various periods.

Republic of Turkey



Foreign nationals entering the Republic of Turkey for employment, regardless of the length of stay, must obtain a work permit. Work permits are granted by the Turkish Ministry of Family, Labor and Social Services.

The employee should initiate the work permit application by visiting the Turkish consulate/embassy in his country of nationality or legal residence, in person, with the necessary supporting documents. In certain countries, however, applicants are required to first visit the authorized visa agency in their country of nationality or legal residence in person, with the necessary supporting documents. The documents will then be sent to the relevant Turkish consulate/embassy. An employee who holds a residence permit with a validity period of at least six months in Turkey (for any reason, except education) can directly apply to the Ministry for a work permit within this validity period.

Key Government Agencies

Turkish consulates/embassies are responsible for processing visa and work permit applications abroad.

The Ministry is responsible for granting work permits.

Although the Foreign Nationals and International Protection Code ("Immigration Code") states that residence permit applications should be made to the relevant Turkish consulate/embassy, in practice, these applications have been made to the Directorate of Immigration ("Dol") since May 2015. The Regulation on the Implementation of the Immigration Code ("Immigration Regulation"), which entered into force on 17 March 2016, is now the legal basis of this anomalous practice, as it sets forth that this practice will continue until residence permit applications are taken over by Turkish consulates/embassies.

The Dol's and the Ministry's practices are open to changes and are also dependent on the relevant officer's discretion.

Census Offices (*Nüfus Müdürlükleri*) are responsible for address registrations, which is a post-entry procedure.

The Social Security Institution (“**SSI**”) is responsible for the social security registrations of work permit holders, which is a post-entry procedure as well.

Current Trends

According to the International Labor Force Law (“**Law**”), which entered into force on 13 August 2016 and abolished the Law on Work Permits for Foreigners, business inspectors from the Ministry, inspectors from the SSI and social security controllers conduct audits under the Turkish Labor Code to determine whether foreign nationals and their employers have fulfilled their respective obligations under the Law.

Public administrations’ inspectors and law enforcement officers also carry out inspections at workplaces to determine whether employers that employ foreign nationals and the foreign nationals themselves fulfill their obligations arising from the Law. Findings from the inspections are sent to the Ministry.

If a foreign national engages in work while unregistered and without a work permit, the circumstances are determined by an official report. To implement the administrative penalty outlined in the Law applicable to the foreign national and the employer or employer’s representative, the official report is sent to the Ministry’s district offices. During the investigation, matters concerning the unregistered foreign national’s entry into Turkey, visa, passport and residence permits are investigated, and the foreign national’s deportation procedure is initiated.

Under the Immigration Code, a foreign national who works in Turkey without a work permit will be deported. According to the Law, administrative fines will be applied to foreign nationals who work without a work permit and/or to their employers. If the action is repeated, the administrative fine will be doubled each time.

According to the Law, the employer must not only pay the fines imposed against the employer and foreign national, but also their accommodation costs, travel costs to return to their countries, and the cost of medical treatment, if necessary, for the foreign national and foreign national's spouse and children (if any).

Business Travel

Business visas are not separately regulated under current legislation. The Immigration Regulation, however, states that tourist visas will be granted to those who would like to come to Turkey for touristic purposes or official meetings, business meetings, conferences, seminars, meetings, festivals, fairs, expositions, sports activities, and cultural and art activities.

A foreign national who would like to come to Turkey for business with a tourist visa should, however, not engage in any work-related activity in Turkey.

Foreign nationals wishing to travel to Turkey for tourism or business purposes should apply for an e-visa via www.evisa.gov.tr or apply to the authorized visa agencies in person. Only citizens of the countries listed on the e-visa website are eligible for an e-visa. If a foreign national's country is not on the list, he is either exempted from the visa requirement or need to visit the authorized visa agency or the Turkish embassy/consulate in his country of nationality or legal residence for a visa application.

Further information on this application method can be found at www.mfa.gov.tr/consular-info.en.mfa. Visa applications can also be made by mail in exceptional cases, especially in geographically large countries and when the applicant is well known by the Turkish embassy/consulate where the application is lodged.

Visa Exemptions

In principle, foreign nationals traveling to Turkey must obtain a visa. There are, however, some countries whose nationals are exempt from the visa requirement up to a certain period of time. An explanation of the visa regime to which foreign nationals are subject can be found at <http://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa>.

In addition, under Article 12 of the Immigration Code and Article 13 of the Immigration Regulation, the following persons are exempt from the visa requirement:

- those exempt from the visa requirement pursuant to agreements to which the Republic of Turkey is a party, or under a decree of the President of the Republic of Turkey
- holders of a residence permit or work permit valid on the date of entry into Turkey
- holders of certificates which grant exemption from a residence permit
- holders of a valid “reserved for foreign nationals” passport issued under Article 18 of Passport Law No. 5682
- those who fall within Article 28 of Turkish Citizenship Law No. 5901, i.e., those who were Turkish citizens by birth but lost citizenship by obtaining a renunciation permit, along with their lineal kin to the third degree
- holders of a Migrant Certificate under the Law No. 5543

Under the same article of the Immigration Code, a visa might not be sought from foreign nationals who:

- disembark at a port city from a vehicle that was required to use Turkish air or sea ports due to force majeure

- arrive at sea ports for touristic visits to the port city or nearby cities, provided their visit does not exceed 72 hours

Residence Permits

A visa enables the holder to stay in Turkey for the duration stated on the visa, which can be a maximum of 90 days in a 180-day period. If the foreign national intends to or must stay in Turkey for longer than the duration permitted by the visa or for longer than 90 days during a 180-day period, he must obtain a residence permit.

The Immigration Code states that applications for residence permits should be made to the Turkish embassy/consulate. Yet, in practice, these applications are made to the DoI. Pursuant to the Immigration Regulation, this practice will continue until residence permit applications are taken over by Turkish consulates/embassies.

Residence permit applications consist of two phases, namely: (i) completing an online form and requesting an appointment date on the DoI's website; and (ii) visiting the relevant local immigration office or the DoI in person on the scheduled appointment date with the required documents. Applications can also be made by foreign nationals' legal representatives, and their attorneys if proxy is provided. Yet, the relevant local immigration office or the DoI may (and generally do) require the foreign national to be present on the appointment date. It is therefore best if the applicant is also present at the local immigration office or the DoI at the time of the residence permit appointment.

In addition, the DoI requests certain documents that are required for residence permit applications to be apostilled (or attested, if the country where the document was originally issued is not one of the contracting parties of the Hague Convention on Abolishing the Requirement of the Legalization for Foreign Public Documents), in addition to being translated into Turkish by a sworn translator. These documents will then need to be notarized by a certified Turkish notary public.

The validity period of residence permits differs depending on the type. Short-term residence permits, for example, are generally issued and renewed for one-year periods and can be issued and renewed for maximum two-year periods. Family residence permits are issued and renewed for maximum three-year periods, and their validity periods cannot exceed the validity period of the supporter's residence or work permit. If, therefore, a foreign national obtains a residence permit based on his spouse's work permit, the validity of his residence permit will depend on the validity of his spouse's work permit.

Once a person is granted a residence permit, he can enter Turkey multiple times if the residence permit is valid, without a visa requirement. If an extension of the residence permit is required, the request for an extension must be made in due time before the expiration date of the existing permit. Extension applications can be made starting from 60 days before the expiration date. It is recommended to extend the validity of the residence permit before leaving Turkey if the residence permit is due to expire.

Employment Assignments

Conducting business in Turkey requires the establishment of a Turkish entity, and a foreign national employee requires a work permit to work for a Turkish entity. During the establishment period, one can argue that the foreign national is traveling back and forth from his country to Turkey (with a tourist visa) to assist with the formation of the Turkish entity.

If the intention is for a foreign company to do business in Turkey prior to the establishment of its Turkish entity, the company may consider entering into a Technical Service Agreement or a Consultancy Agreement, whereby the foreign national provides services to a third-party Turkish entity.

Foreign nationals who have already been granted residence permits valid for at least six months (for any reason, except education) in Turkey, can directly apply for a work permit at the Ministry from within

Turkey with the relevant supporting documents. Otherwise, the employee should initiate the work permit application by visiting the Turkish consulate/embassy in his country of nationality or legal residence in person with the necessary supporting documents.

In certain countries, however, applicants are required to first visit the authorized visa agency in their country of nationality or legal residence in person, with the necessary supporting documents. The documents will then be sent to the relevant Turkish consulate/embassy.

Applications for a work permit may entitle the applicant to a work permit for a definite period of time or other types as detailed below.

Work permits can be limited to agricultural, industrial or service sectors, certain professions, lines of business, or territorial and geographical areas for a specific time period where required due to the status of the labor market and developments in working life, sectorial and economic conjuncture conditions regarding employment reserving the rights granted by bilateral and multilateral agreements to which the Republic of Turkey is a party and based on the reciprocity principle.

Work Permit for a Definite Period of Time

A work permit for a definite period of time is granted for a maximum of one year for the foreign national to work in a certain workplace or enterprise and in a certain job. In determining the validity period of this work permit, the Ministry considers the conditions of the business market and the employment agreement or work.

Following the expiration of the legally valid working period of one year, this work permit can be extended first for an additional maximum period of two years, and then, for an additional maximum period of three years, provided the foreign national works for the same employer.

In order to file work permit applications, the foreign national's workplace must be registered in the Ministry's electronic permit

system. Those responsible for the employer's social security notifications can create an online account via <https://ecalismaizni.ailevecalisma.gov.tr/#/eizin> and access this system through their electronic signature device (e-imza). Such responsible individuals can authorize third parties who can submit further work permit applications on behalf of the employer for the same workplace. Once the relevant registration is completed, the employer can submit work permit applications for other foreign nationals to be employed in this workplace with the existing registration. The employer can update the information of an already registered workplace at any time on this system. However, if a new workplace is established, this workplace must be registered in the electronic permit system in order to proceed with the work permit application for a foreign national who will work in the new workplace.

All required documents must be submitted to the Ministry via an online application made by the employer or the authorized third parties, through the online account of the workplace, which must be created as stated above, by visiting the Ministry's website <https://ecalismaizni.ailevecalisma.gov.tr/#/eizin> within 10 business days following the date on which the foreign national applies for this work permit through the Turkish embassy/consulate or the visa agency, and receives the necessary reference number from the Turkish embassy/consulate.

If the foreign national has the right to apply to the Ministry for a work permit directly in Turkey, an online application should be made by the employer or the authorized third parties on the Ministry's website <https://ecalismaizni.ailevecalisma.gov.tr/#/eizin>. All required documents must be submitted to the Ministry within six business days following the online application.

Under the Law, work permit applications are processed in 30 days if all required documents are complete and submitted to the Ministry. In practice, however, it usually takes 30–45 days for the applications to be processed by the Ministry, and can even take longer depending on

the Ministry's workload. The Ministry informs the employer via email of the approval of the work permit application.

The Ministry may require additional documents. All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish notary public prior to their submission to the Ministry.

The Turkish embassy/consulate also typically informs the foreign national either by phone or email of such approval. We therefore recommend that the foreign national contact the Turkish embassy/consulate once the Ministry informs the employer that the work permit application has been approved. When the Ministry approves the work permit, the employee should take his passport, with the applicable visa fees, to the Turkish embassy/consulate where he initiated the work permit request to obtain a work visa (which is given to work permit holders and is issued for a single entry) to facilitate his entry into Turkey.

A person must visit the Turkish embassy/consulate to obtain the work visa, generally within 90 days after the Ministry informs the employer of the approval of the work permit application. However, the period to obtain the work visa might differ, depending on the practice of each embassy/consulate.

The employee who has been granted a work visa must enter Turkey within, at most, six months starting from the validity date of the work permit; otherwise, the work permit will be cancelled.

The purpose of the abovementioned single-entry work visa is to facilitate the employee's entrance into Turkey upon approval of his work permit application, and enable the employee to pick up his work permit card, which is issued by the Ministry and sent to the workplace where the employee will work.

Once the employee comes to Turkey with a single-entry work visa, he should not leave Turkey before picking up his work permit card from

the workplace where he will work. The work permit card will give the employee the right to enter and exit Turkey multiple times, as long as it is valid. The employee must carry the work permit card at all times and show it to the border police, and other public and private authorities when required.

The Ministry evaluates the following criteria for each work permit application:

1. It is obligatory to employ a minimum of five Turkish nationals at the workplace for each foreign national requesting a work permit (“1:5 rule”). In practice, however, if an employer has more than one workplace, the Ministry takes into account the total number of employees working in all of these workplaces within the same legal entity, and applies the 1:5 rule to such total number.

If the foreign national requesting a work permit is a shareholder in the company, the condition of employing five persons applies for the last six months of the one-year work permit to be given by the Ministry. Where work permits are requested for more than one foreign national, the 1:5 rule will apply to the second foreign national, not the first.

Based on our experience and verbal confirmation of the authorities, if a company is newly incorporated, the first work permit application made in the first six months starting from the date of incorporation is held exempt by the Ministry from the 1:5 rule. The employee’s position, i.e., whether the employee is a shareholder or an ordinary employee, makes no difference. If, however, further work permit applications are made within the first six-month period, the 1:5 rule will be applied separately for each further application.

If the Turkish company would like to file extension applications upon expiry of the relevant foreign nationals’ work permits, the Ministry requires five Turkish employees to have been employed for each of the foreign nationals during the last six months of their

one-year work permits. That is to say, even though it is not required for a company to satisfy the 1:5 rule while applying for a work permit for its first foreign employee during the six-month period starting from its incorporation date, the company must hire an additional five Turkish employees during the last six months of the foreign employee's work permit validity if it wishes to apply for an extension of the foreign national's work permit.

2. Concerning the prospective Turkish employing entity, the paid-up capital should be at least TRY 100,000, or its gross sales should be at least TRY 800,000, or the exports in the previous year should total at least USD 250,000.
3. Article 2 above will not apply where work permits are requested for foreign nationals to be employed in associations and foundations. Articles 1 and 2 do not apply for the assessment of work permit applications made by foreign nationals who will work for the agencies of airlines owned by foreign states in Turkey, in the education sector or in home-related services.
4. Any Turkish company shareholder who applies for a work permit should hold at least 20% of the company's share capital, which should be valued at no less than TRY 40,000.
5. The declared monthly wage the employer pays the foreign national should be at a level that corresponds to the foreign national's duties and capabilities. By considering the minimum wage applicable as of the date of application, the monthly wage to be paid to the foreign national should be at least:
 - six-and-a-half times the minimum statutory monthly wage for top-level executives, pilots, and engineers and architects requesting preliminary work permits
 - four times the minimum statutory monthly wage for unit or branch managers, engineers and architects

- three times the minimum statutory monthly wage for employees who will work in positions that require specialization and mastery, teachers, psychologists, physiotherapists, musicians and stage performers
 - two times the minimum statutory monthly wage for foreign nationals who will work as a massage therapist, spa therapist or acrobat at a tourism animation organization
 - one-and-a-half times the minimum statutory monthly wage for foreign nationals who will work in professions other than those listed above (such as sales persons and marketing-export officers)
 - minimum statutory monthly wage for foreign nationals who will work in home-related services, i.e., domestic help
6. Articles 1 and 2 above are not applicable in the review of work permit applications in the field of purchasing goods and services through a contract or tender by public bodies and institutions, or under conditions where a bilateral or multilateral treaty to which Turkey is a party contains a provision that allows such employment.
7. Articles 1 and 2 above are not applicable in the review of work permit applications for positions that require advanced technology expertise, or if a Turkish expert with the same qualifications does not exist and the Ministry approves the foreign national's employment.
8. For foreign nationals to be employed in roles other than as a key employee in enterprises that meet the conditions of a Direct Foreign Investment with Specialty, the criterion in item 1 applies, and the number of Turkish nationals working in all workplaces of the enterprise in Turkey is considered in this regard.

9. In four-star and higher-rated tourism establishments and holiday resorts with massage areas, such as hotels, the work permit applications for jobs requiring specialization and mastery, (e.g., massage and spa therapist positions) will be assessed by the Ministry. The Ministry will not approve the applications of establishments and workplaces falling outside of such scope.
10. The 1:5 rule does not apply to foreign national positions requiring mastery and specialization in tourism-animation or entertainment companies that have hired a minimum of 10 Turkish nationals.

Pursuant to the Law, foreign nationals who have graduated from an engineering or architecture faculty in Turkey or completed these studies at a higher education institution located abroad, which has been recognized by the relevant foreign authorities and also by the Council of Higher Education, can work as an engineer or an architect in Turkey for a certain project, or on a temporary basis provided that they obtain a valid work permit. Since, however, the Law's secondary legislation is not yet issued and, thus, the provisions of the existing regulations which are not contrary to the Law continue to apply, the current system for professional services is followed until such secondary legislation is initiated. Below is an explanation on how the work permit application process is currently carried out for engineers, architects and urban planners.

In applications for work permits within the scope of professional services, i.e., engineering, architecture and urban planning, where the education of the foreign national falls within the scope and meets the objectives of the Turkish entity and the foreign national has graduated from a university abroad, a foreign diploma equivalent to a Turkish diploma in the same field must be submitted to the Ministry.

There are, however, special procedures to be followed for foreign nationals who have an engineering/architecture/urban planning diploma from a university abroad, and would like to carry out these activities in Turkey. These persons may be given a preliminary work permit valid for one year only, during which they will not be allowed to

engage in engineering/architecture/urban planning activities. Before expiry of the preliminary work permit, the foreign employee will need to obtain an equivalent diploma from the Turkish Higher Education Institution so that the employee can apply for a work permit. In practice, however, it might take longer than one year to obtain this diploma and the work permit application can become a cumbersome process.

The foreign employee should also apply for temporary membership to the relevant professional chamber within one month of his date of entry into Turkey. In addition, to employ a foreign engineer/architect/urban planner, the Turkish employer must already be employing a Turkish engineer/architect/urban planner on its payroll.

While issuing work permits for engineers, architects and urban planners, the Ministry gets opinions from certain authorities such as the Ministry of Environment and Planning and the Presidency of the Turkish Chamber of Engineers and Architects.

Considering the above, work permit applications of engineers, architects and urban planners who would like to engage in these activities in Turkey and processing thereof, lasts longer compared to ordinary applications.

If, however, the foreign employee will not actively engage in engineering/architecture/urban planning activities in Turkey, but will rather be involved in management and supervision, then the employee and the Turkish employer need to sign undertakings. In these undertakings, the employee and the employer will need to demonstrate that the employee will not engage in engineering/architecture/urban planning activities in Turkey. In this case, however, the employee's position cannot be stated as "engineer/architect/urban planner" in the documents to be submitted to the Turkish consulate/embassy and the Ministry during the work visa and work permit applications.

There are also certain professions which cannot be practiced by foreign nationals, such as pharmaceuticals, attorneyship, notariate, dentistry etc.

Work Permit for an Indefinite Period

Foreign nationals with long-term residence permits or a work permit of a minimum of eight years can apply for a work permit for an indefinite period.

Foreign nationals who have a work permit for an indefinite period enjoy the same rights granted to Turkish citizens. However, they do not enjoy the right to vote or stand for election, provide public services, or the right to import vehicles free of tax. These individuals are also not under the obligation to perform military service.

Independent Work Permit

An independent work permit can be granted for a definite term for foreign nationals qualified as professionals, yet the time restrictions for the work permit for a definite period will not be applicable for this type of work permit.

While granting an independent work permit, the Law takes into account numerous criteria, such as the foreign national's education level, professional experience, contribution to science and technology, the impacts of his activities or investments on the economy and employment in Turkey and share of capital, if he is a shareholder in a company.

Work Permits of Company Shareholders

Until the entry into force of the Law, it was not clear whether foreign nationals who are board of directors' members or statutory managers of Turkish companies must obtain a work permit. The Law now makes it clear that the below listed foreign nationals must obtain a work permit to work in Turkey:

- statutory managers of limited liability companies who are also shareholders of the relevant company
- board of directors' members of joint stock companies who are also shareholders of the relevant company
- commandite shareholders of a partnership in commendam, the capital of which is divided into shares (sermayesi paylara bölünmüş komandit şirketlerin komandite ortakları)

Exceptional Cases and Exemptions from Work Permits

The Law sets out certain groups of individuals who might enjoy exceptions relating to the Law's provisions on work permit applications and evaluation thereof, rejection of work permit applications and types of work permits.

Such individuals are those who are:

- deemed as part of the “qualified labor force” due to their education level, salary, professional experience, contribution to science and technology and similar characteristics
- deemed a “qualified investor” due to their contribution to science and technology, level of investment or export, the volume of employment opportunities they will be able to provide and similar characteristics
- employed by their employer in a certain project conducted in Turkey for a definite period
- declared as individuals of Turkish origin by the Ministry of Interior or the Ministry of Foreign Affairs
- citizens of the Turkish Republic of Northern Cyprus
- citizens of EU Member States

- international protection applicants, conditional refugees, under temporary protection, stateless or human trafficking victims who participate in relevant support programs
- married to a Turkish citizen and who lives within a conjugal community in Turkey
- working in Turkey in the representative offices of foreign countries and international institutions, without being entitled to diplomatic immunity
- internationally well-known in their field of activities and present in Turkey for science, culture, arts or sports related purposes
- cross-border service providers (foreign nationals who are in Turkey on a temporary basis to provide services and who receive their salary from a source in or outside Turkey)

The Law provides work permit exemptions for (i) board of directors' members of joint stock companies who do not reside in Turkey; (ii) shareholders of other companies who do not hold managerial positions; and (iii) cross-border service providers whose services in Turkey do not exceed 90 days in a 180-day period.

Those who are exempt from work permits must obtain a "Work Permit Exemption Certificate" from the Ministry. This official document grants its holder the right to work and reside in Turkey during its validity period, without the need for a work permit.

Similar to work permit applications, the applications for work permit exemption certificates can be filed both within and outside Turkey. The Ministry will evaluate the application and issue the work permit exemption certificate if it deems the application appropriate.

An individual who has been granted a work permit exemption certificate must enter Turkey within, at most, six months starting from the validity date of the work permit exemption certificate; otherwise the work permit exemption certificate will be cancelled.

We are awaiting the issue of a secondary regulation to understand the exact scope of persons who are exempt from work permits.

Intra-company Transfer

The concept of “intra-company transfer” or “secondment” does not exist under Turkish immigration law. Therefore, foreign national employees transferred or seconded to their employer’s Turkish subsidiary must obtain a work permit and be fully employed by the Turkish subsidiary to enable the employee to work for the Turkish entity.

The work permit itself will be proof that an employment relationship exists between the foreign national and the Turkish company. It will therefore not make a difference whether the employee is sent to Turkey based on an intra-company transfer.

The establishment of an employment relationship between the foreign national and the Turkish company, however, does not mean that the continuation of the employment agreement in the foreign company is not allowed. Turkish authorities are not interested in whether the employment agreement is maintained abroad; this will only be important in terms of social security related obligations. Therefore, it is possible to keep the employment agreement in the foreign country and, at the same time, obtain a work permit to work as the Turkish company’s employee.

Since a work permit will be required in intra-company transfers and secondments, we refer to “Work Permits” above.

Skilled Workers

Skilled workers must also obtain a work permit to engage in work-related activities in Turkey. We therefore refer to “Work Permits” above.

In addition to the above, one of the new items introduced by the Law is the so-called “Turquoise Card.” The holder of a Turquoise Card

enjoys the rights granted to holders of a work permit for an indefinite period. Additionally, the spouse and dependent children of the Turquoise Card holder will each be given a document indicating their relationship to the Turquoise Card holder, which will act as a residence permit.

The Turquoise Card is granted to foreign nationals whose applications are considered appropriate pursuant to the international labor force policies, the International Labor Force Policy Advisory Board's suggestions, and the procedures and principles determined by the Ministry. In addition to these, the Ministry will take into account the applicant's education level, professional experience, contribution to science and technology, and the impacts of his activities or investments on the economy and employment in Turkey.

The Turquoise Card is initially granted for a three-year transition period, during which the Ministry can request information and documents from either the employer or the foreign national related to their activities. If the transition period is properly completed without cancellation of the Turquoise Card, then upon the request of the foreign national, the foreign national will be given a Turquoise Card for an indefinite term. Such a request can be filed starting from 180 days prior to the expiry of the transition period, and must in any case be filed prior to the expiry of such period.

Training

Under the current visa regime, there is no type of visa in Turkey designed exclusively for training. For classroom-type training, a foreign national can enter Turkey with a tourist visa. For on-the-job training, the same procedure for employment assignments subject to the work permit procedure applies. Each such activity will need to be considered according to its specific term, type of activity, etc. Furthermore, different to previous legislation, the Law covers foreign nationals who apply for or are doing an internship in Turkey, which means that the abovementioned procedure for work permits will also apply to internship duties.

Post-entry Procedures

According to the Immigration Code, work permits act as a residence permit, i.e., the foreign national will not have to obtain a separate residence permit.

The Turkish employer must register the foreign national with the SSI within 30 days starting from the start date of work permit validity or within 30 days of the notification of the work permit card to the Turkish employer if these dates are different. Also, a petition must be submitted to the Ministry within 15 days as of the date on which the employee has been registered with the SSI.

Law No. 5510 on Social Security and General Health Insurance regulates the social security registration of foreign nationals. It states that, save for international agreements on social security, persons sent to Turkey by a corporation established in a foreign country to work on behalf and in the account of the corporation for no more than three months, and who document that they are covered by social security in this foreign country, do not need to be registered with the SSI in Turkey.

Therefore, if the assignment period will exceed three months, the foreign national will be required to be registered with the SSI unless otherwise agreed in an international agreement on social security signed between Turkey and the foreign national's home country.

The Turkish employer's payroll obligations start on the commencement date of the foreign employee's employment.

Since the concept of intra-company transfer or secondment does not exist under Turkish immigration law, there is a requirement for foreign employees to be employed/paid by the Turkish employer to enable the Turkish entity to make the necessary payments to the authorities.

Also, within no more than 20 business days of entering Turkey, the foreign national must be registered with the Census Office. The

Census Office does not accept hotel reservations for this purpose; the foreign national must declare a home address as the residence address. To complete the address registration, along with other documents (such as a passport, work permit card, gas/electricity/water bill issued in the name of the foreign national for such address, if someone is already registered at that address), the foreign national's foreign national ID number will be required.

Entry Based on International Agreements

Turkey is party to both bilateral and multinational international agreements that contain provisions regarding work permits and exchange of workforce between the parties. Below is a brief summary of these provisions.

Agreement on Exchange of the Workforce Between the Government of the Republic of Turkey and the Government of the State of Kuwait: Article 7 states that the employer in the host country shall give the employee a work permit issued by the competent authority along with the documents submitted at the time of seeking approval, as well as a copy of the authenticated employment agreement, within two months of the employee's arrival in the country. Clearly, this agreement does not provide for an easy procedure to obtain work permits.

Agreement on the Mutual Employment of the Workforce Between the Government of the Republic of Turkey and the Government of the Republic of Azerbaijan: The agreement does not provide for an easy procedure to obtain work permits. It states, however, that work permits will first be issued for one year, and will be renewed for periods of not less than one year, and that residence permits will be issued within a month. Since, however, work permits also act as residence permits, an Azerbaijani citizen coming to work in Turkey will not need a separate residence permit if he has a valid work permit.

Agreement on the Workforce between the Government of the Republic of Turkey and the Government of the Kingdom of

Jordan: This agreement includes no specific provision regarding the issuance of work permits for citizens of the Kingdom of Jordan. These citizens, therefore, need to obtain work permits as explained above. Separately, the agreement states that guest employees will benefit from all rights and privileges given to the citizens of the other party under that party's laws.

Agreement on the Workforce between the Government of the Republic of Turkey and the Government of the Turkish Republic of Northern Cyprus: This agreement states that the employer must apply for a work permit at the latest within 10 days starting from the date on which the employee enters the relevant party's country. Under the agreement, the authorities must conclude these applications as soon as possible. Also, the term of the work permit cannot be less than the term of the employment agreement.

Turkey and other states (e.g., Germany, Australia, Austria, Belgium, Indonesia, France, the Netherlands, Sweden, Qatar and Libya) have also signed bilateral agreements on exchange of the workforce.

Other Comments

The Law entered into force on 13 August 2016 and it states that secondary legislation will be issued to regulate in detail various issues such as the conditions for applying for work permits and work permit exemptions, documents required for such applications, and exceptional cases in work permit applications. However, the secondary legislation has not yet been issued and the provisions of the existing regulation, mainly the Regulation on the Implementation of the Law on Work Permits for Foreign Nationals ("Regulation"),¹ which are not contrary to the Law, continue to apply. This causes

¹ Although certain provisions of the Regulation are still in force due to the lack of secondary legislation issued per the Law, we did not base our explanations on the Regulation since we expect it to be soon abolished by the new secondary legislation.

confusion in practice, such as whether the work permit exemptions regulated in the Regulation shall continue to apply.

In Turkey, rules relating to work permit applications are also being criticized. For example, the above-mentioned “work permit assessment criteria” are not regulated under the Law or current regulations, but are rather published on the Ministry’s website. The Ministry has set out these criteria at its own discretion and applies them while evaluating work permit applications.

The most problematic criterion is the 1:5 rule, i.e., the obligation to employ five Turkish nationals for each foreign national to be employed. In practice, most of the time, the Turkish company has no employees on its payroll and thus registers a sufficient number of Turkish citizens on its payroll to satisfy this criterion. The Ministry has the discretionary power to hold applicants exempt from the 1:5 rule, but such exemption is usually granted for a limited number of foreign national employees and a limited term.

Also problematic can be the documents to be provided to the Ministry during work permit applications. Although the current secondary legislation outlines the set of required documentation, the Ministry may request additional documents during the application.

Finally, the main issue regarding Turkish immigration laws is that the laws and regulations and their application do not fully match each other. Authorities might use wide discretionary power, which further causes immigration practice to vary between them.

Recent Regulatory Changes

The most important development in Turkish immigration law in the last years has been the entry into force of the Law on 13 August 2016. The Law is important, as it brings responses to flexible and temporary working schemes and the main legislation on work permits in line with the Immigration Law, which regulates residence permits and related procedures. The Law also introduces a grading system for work

permit applications, which will be another tool while issuing work permits.

There are, however, many areas that need further regulation in secondary legislation. Such secondary legislation should be issued and enacted as soon as possible. One of the areas that should be regulated clearly and in detail is the criteria applied by the Ministry for granting work permits and work permit exemptions. Currently, the criteria applied by the Ministry of Labor in work Permit applications are causing difficulties for many employers in Turkey.

Ukraine



Ukrainian immigration law requirements applicable to foreign nationals entering Ukraine for business and employment purposes are quite nonrestrictive when compared to many other developed or post-Soviet states.

However, in view of the harsh possible consequences of any migration law violations, up to and including deportation of the foreign national and heavy fines for the inviting party, business travelers and their corporate hosts should not rely on past lenient attitudes and enforcement practices of Ukrainian authorities.

Key Government Agencies

The State Migration Service is a standalone state agency subordinate to the Cabinet of Ministers through the Minister of Interior Affairs. In addition to its central headquarters, it also has local migration offices in major cities, regions and administrative districts and is the key authority with respect to immigration, in particular, regarding combating illegal immigration, issues connected with citizenship and residency permits.

The Ministry of Social Policy, through its employment centers in cities and administrative districts, is the authority responsible for issuing work permits and monitoring compliance with Ukrainian labor law.

The Ministry of Economic Development and Trade is the authority responsible for registration of representative offices of foreign companies in Ukraine and for issuing service cards, which are a substitute for work permits, to foreign nationals employed in representative offices in Ukraine.

The consulates of the Ministry of Foreign Affairs are responsible for the issuance of visas outside Ukraine.

The State Border Guard Service is the authority that admits foreign nationals into Ukraine at the point of entry.

The executive body of the local councils within the territory of the administrative-territorial unit that is under the authority of the local council is responsible for registration of the place of residence of citizens of Ukraine, foreign nationals and stateless persons.

Current Trends

Since 2005, Ukraine has liberalized its rules of entry for foreign nationals (cancelling visa requirements for certain travelers entering Ukraine for less than 90 days) and moved towards stricter enforcement of its existing rules (e.g., the requirement to register at the place of residence and the limitation of the allowed length of stay).

Due to certain amendments to the rules for entry and stay of foreign nationals introduced in 2011, foreign nationals employed in Ukrainian branches of foreign companies (rather than in subsidiaries) are not eligible for Ukrainian work permits. However, this does not affect their ability to work and reside in, and travel into and out of, Ukraine, as they are eligible for service cards and Ukrainian temporary residence permits.

Since February 2015, the procedure for obtaining a work permit for foreign nationals has been simplified. In particular, the state authorities are required to make a decision on whether or not to issue or renew a work permit within seven business days (previously 15 business days) and to convey that decision to the employer within two business days.

Since April 2016, the new rules regarding the registration of the place of residence have set the procedure for registering the place of residence (or stay) of individuals in Ukraine. Currently, local councils will carry out registration (or deregistration) of places of residence (or stay) within the territory of the administrative-territorial unit that is under the authority of the local council. In addition, the new rules extend the period of time within which the registration of the place of residence must be performed. Now this period is equal to 30 calendar

days following deregistration at the previous address and arrival at the new place of residence.

Since February 2017, foreign nationals can be employed by more than one employer in Ukraine (e.g., if such foreign national occupies the position of the director in two or more Ukrainian legal entities).

Since April 2017, certain legislative amendments have simplified the procedure for obtaining a Ukrainian visa. Also, the procedure provides for an option to apply for a Ukrainian visa for business or tourist purposes online and obtain an e-visa. Since January 2019, foreign nationals may also apply for a Ukrainian visa online for private purposes, as well as for the purpose of receiving medical treatment; performing activities in the fields of culture, science, education, and sports; and the fulfillment of official duties by a foreign correspondent or mass media representative. Such visa may be issued as a single-entry visa allowing the holder to stay in Ukraine for up to 30 days. In addition, the periods for visa issuance were reduced (a visa should be issued within five business days from the day of submission of the visa application documents to the consulate pursuant to expedited procedure and within 10 business days pursuant to the normal procedure). Moreover, the term of validity for the long-term D Visa was increased to 90 days and this visa now enables multiple entries.

Since the end of September 2017, significant amendments to the procedure for obtaining work permits have become effective. In particular, to obtain a work permit, employers no longer have to file a medical certificate evidencing that the foreign national does not have certain diseases and a clean criminal record certificate. In addition, work permits can now be issued for up to three years for “special categories” of employees (i.e., highly paid foreign professionals, founders, participants and/or beneficiaries of a Ukrainian legal entity, graduates of certain top universities, foreign IT professionals and employees of the art profession). Also, to obtain a work permit, employers must pay their foreign employees (except for “special categories” of foreign employees) a minimum salary. This minimum

salary depends on the category of the employer and may be equal to five times the minimum monthly salary established by law (currently UAH 20,865 , approximately USD 783), or 10 times the minimum monthly salary (an amount of UAH 41,730 , approximately USD 1,566).

Moreover, a new ground to obtain a temporary residence permit has been introduced. Currently, founders, participants and/or beneficiaries of a Ukrainian company may obtain a temporary residence permit for two years if they come to Ukraine to control the activities of that company and directly or indirectly (e.g., through another legal entity) own a share of at least EUR 100,000 of the charter capital of such Ukrainian company.

From 1 June 2018, temporary residence permits are issued in the form of a card with a contactless electronic chip. The procedure for issuing temporary residence permits has been slightly changed. In particular, the foreign national is required to file the application for a temporary residence permit in person. This is because the chip in the temporary residence permit contains certain biometric data (digitalized signature, photo and fingerprints of the foreign national), which are obtained at the time of filing the application. However, residence permits issued before 1 June 2018 (i.e., permits that have been issued in the form of a paper booklet and do not contain a contactless electronic chip) will be valid until they expire.

Since January 2018, citizens of certain states representing high-risk countries (e.g., Egypt, Lebanon, Morocco, Russia, etc.) are subject to mandatory scanning of their biometric data, specifically, scanning of their fingerprints, when crossing the border into Ukraine, regardless of the purpose of their visit.

Since February 2018, the procedure for obtaining e-visas has become effective. Now, citizens of certain states (e.g., Australia, Columbia Malaysia, New Zealand, Singapore, etc.) may apply for a Ukrainian visa for business or tourist purposes online and obtain an e-visa. Since January 2019, it has also become possible to apply for a

Ukrainian visa online for private purposes, as well as for the purpose of obtaining medical treatment; performing activities in the fields of culture, science, education, and sport; and the fulfillment of official duties by a foreign correspondent or mass media representative. This visa is issued as a single-entry visa allowing a stay in Ukraine for up to 30 days.

Business Travel

Unless a visa waiver is available, foreign business travelers require a visa to enter Ukraine. Ukrainian legislation provides for three types of visa: (i) a transit B Visa for a stay of up to five days; (ii) a short-term stay C Visa for a stay of up to three months; and (iii) an entry D Visa, valid for up to 90 days (this visa is a pre-requisite for applying for a temporary residence permit).

The D Visa is issued to foreign nationals who are eligible to apply for a Ukrainian temporary residence permit (e.g., students, holders of Ukrainian work permits, their spouses, etc.) and is valid for up to 90 days, within which period the temporary residence permit must be applied for and received. Such visas are available from any consulate of Ukraine abroad. However, the original work permit issued to the Ukrainian corporate host is necessary as part of the visa application package. The work permit is returned upon filing the application. For foreign nationals who will be employed in a Ukrainian representative office (branch) of a foreign entity, instead of the certified copy of the work permit, the employment agreement between the relevant foreign national and the company should be submitted. Although it is not expressly required by law, in practice, the consulate may also request a certified copy of the Service Card (which is issued by the Ministry of Economy and serves as a substitute for a work permit).

Generally, foreign nationals who need a visa to enter Ukraine may stay in Ukraine for the term of their visa validity. Citizens of states that are signatories to agreements on visa-free travel with Ukraine may enter and stay for up to 90 days within a 180-day period, which is

calculated retrospectively from the date of their latest entry into Ukraine. These limitations do not apply to holders of temporary residence permits (or permanent residence permits). A temporary residence permit enables the holder to enter and leave Ukraine as desired and stay in Ukraine for the entire term of the validity of the temporary residence permit (subject to the completion of certain registration formalities required by law).

Visa Waiver/Visa Exemptions

Citizens of states that are members of the European Union, the Swiss Confederation, the Principality of Liechtenstein, the US, Canada, Japan, Israel, Brasilia and some other states may enter Ukraine without a visa or any invitation letter for business and may remain for up 90 days within a 180-day period.

Visa-free entry for private purposes or tourism is also allowed for citizens of the abovementioned developed states, which makes it possible for business travelers to take their spouses, children and other family members along. However, this waiver of visa requirement is not intended for foreign nationals coming to Ukraine for employment purposes.

In addition, foreign nationals need to present evidence that they have sufficient means to sustain themselves for the entire period of their visit to Ukraine (e.g., have money in cash, bank cards, bank account statements, a valid hotel reservation, return tickets with fixed dates, a letter of commitment of the inviting party and so on). If such evidence is not provided, the person may be denied entry into Ukraine and his visa may be cancelled.

Employment Assignments

Ukrainian immigration regulations used to contain gaps and were unclear with respect to the procedures and documents necessary to receive certain permits or registrations. That led some foreign nationals to ignore the legislation and enter Ukraine for employment

purposes either on the basis of a short-term stay C Visa, or on the basis of the “no-visa” entry regime (visa waiver available for business travelers from certain states). However, the loopholes that made such an approach possible in the past (but in no way compliant with existing law) have been eliminated.

Intra-company Transfer

Intra-company transferees and seconded employees are entitled to work in Ukraine upon receipt of a work permit by the relevant Ukrainian employer. The procedure for obtaining a work permit is very similar to that described below for other foreign nationals.

The application for the work permit and the relevant supporting documents are to be submitted by the employer to the relevant employment center. As part of the application for a work permit for an intra-company transferee, the employer must submit the decision of the foreign company regarding the transfer of the foreign national to work in Ukraine. In addition, a copy of the contract between the foreign national and the foreign entity regarding his transfer to Ukraine (indicating the period of work in Ukraine) must also be submitted.

The law expressly provides that work permits for intra-company transferees may be obtained for the period of the validity of the decision of the foreign company regarding the transfer of the foreign national to work in Ukraine and the contract between the foreign national and the foreign entity regarding his transfer to Ukraine with an option to be extended an unlimited number of times. However, the issuance of such work permits is not widespread. Although the law does not expressly provide for a maximum term for which such work permit may be issued, as a matter of practice, the work permits are issued for no more than three years.

As part of the application for a work permit for a seconded foreign employee, the Ukrainian employer must submit a copy of the agreement (or contract) completed between the Ukrainian entity and the foreign entity providing for the use of foreign labor in Ukraine.

Work permits for seconded employees may be extended an unlimited number of times.

Skilled Workers

In general, all foreign employees are entitled to work in Ukraine upon receipt of a work permit by the relevant employer (see sections below). Before 27 September 2017, the application for the work permit would be successful if the employer could prove that there were no skilled workers in Ukraine (or in the relevant region) who were able to perform the necessary work. However, the postings usually listed very specific and exclusive skills and education as requirements for the position, making it next to impossible for the employment center to find local candidates. Now, this requirement has been abolished, allowing, in principle, all foreign nationals to compete for work in Ukraine on equal terms with Ukrainian citizens.

Special Categories of Foreign Employees

Since September 2017, special categories of foreign employees have been introduced. These include highly paid foreign professionals, founders (participants and/or beneficiaries) of a Ukrainian company, graduates of certain top universities, foreign IT professionals and artists. For these employees, the employer may obtain a work permit for up to three years.

In addition, a highly paid foreign professional (i.e., a foreign employee whose salary exceeds 50 times the minimum monthly salary established by law, i.e., currently UAH 208,650 or approximately USD 7,830), under certain conditions, may hold more than one office without an additional work permit.

Obtaining Work Permits

Unlike many other jurisdictions, Ukraine has not introduced any quotas for foreign labor, either by type or worker categories or by citizenship. In general, all foreign nationals working for a Ukrainian

legal entity (including subsidiaries of foreign companies) must have work permits before they start performing their job duties.

Entering into employment relations with a foreign national prior to the company obtaining a work permit for such foreign national may result in significant fines for the company.

The application for a work permit, among other documents, must include a copy of the draft employment agreement (contract) (certified with the company's seal) that will be concluded with the foreign national upon obtaining of the work permit. Also, filing of additional documents may be required (e.g., graduates of certain top universities must submit a copy of their apostilled/legalized university diploma with a notarized Ukrainian translation).

Since February 2017, two or more Ukrainian legal entities can obtain work permits for the same foreign national (e.g., if such foreign national occupies the position of director for several Ukrainian legal entities).

Employers must pay foreign employees a certain minimum salary. Foreign employees of civic associations, charitable organizations or certain educational institutions should receive at least five times the minimum monthly salary established by law (currently UAH 20,865 or approximately USD 783). Other categories of foreign employees, except for the abovementioned "special categories," should have a salary of at least 10 times the minimum monthly salary established by law (currently UAH 41,730 or approximately USD 1,566 at the current exchange rate).

The relevant employment center should make its decision within seven business days from the filing date of the application. Its decision should be both mailed to the applicant via traditional mail and email, as well as posted on the website of the relevant employment center within two business days. The employer must pay the fee for issuance of a work permit within 10 business days from the date of receiving the decision on the issuance of the work permit, otherwise

the decision will be cancelled. From September 2017, the fee for issuance of the work permit depends on the term for which such work permit is issued.

The company has to conclude a written employment agreement (or contract) with the foreign national no later than within 90 calendar days after the work permit is obtained and to submit a certified copy to the relevant employment center within 10 calendar days after its conclusion with the relevant foreign national. The company's failure to submit a certified copy of the signed employment agreement is a ground for cancellation of the work permit.

The term for which a work permit is issued depends on the category of foreign national for which the employer obtains the work permit, in particular:

- for **“special categories“ of foreign nationals** (e.g., highly paid foreign professionals, founders, participants and/or beneficiaries of a Ukrainian legal entity, graduates of certain top universities, foreign IT professionals and employees of art profession) work permits are issued for a period for which the employment agreement (or contract) is concluded, but for not more than three years.
- for **seconded foreign employees**, work permits are issued for the term of the agreement (or contract) concluded between a Ukrainian entity and the foreign entity providing for the use of foreign labor in Ukraine, but for not more than three years.
- for **intra-company transferees**, work permits are issued for the period of validity of the decision of the foreign company regarding the transfer of the foreign national to work in Ukraine and the contract between the foreign national and the foreign entity regarding his transfer to Ukraine.

- for **other categories of foreign nationals**, work permits are issued for the period for which the employment agreement (or contract) is concluded, but for not more than one year.

This term may be prolonged for the same period an unlimited number of times by filing an application that includes all required documents with the relevant employment center not later than 20 calendar days prior to the expiration of the current work permit.

Obtaining Service Cards

Foreign nationals employed in Ukrainian branches of foreign companies (i.e., representative offices) are not eligible for Ukrainian work permits. However, they are entitled to work in Ukraine as they are eligible for service cards. They are also eligible for Ukrainian temporary residence permits, which allow foreign nationals to reside in, and travel into and out of Ukraine.

Service cards are obtained from the Ministry of Economic Development and Trade before the foreign nationals start performing their functions in Ukraine. The procedure for obtaining service cards is not burdensome. The representative office only has to submit an application, a copy of the document certifying the registration of the representative office in Ukraine, and a list of the foreign employees of the representative office indicating their period of stay in Ukraine, together with two photos of each relevant foreign national. Service cards are issued for a period of up to three years within 15 business days following the submission of all relevant documents.

Obtaining a Work Visa

After the work permit/service card has been obtained, the foreign employee has to obtain a D Visa issued by a diplomatic mission or a consulate of Ukraine abroad to be eligible for a Ukrainian temporary residence permit. Generally, it takes a few days to obtain the visa after all the documents are submitted. However, the relevant consulate of Ukraine has up to 10 working days to approve its issue (and this term

may be extended by up to 30 working days if further examination of the application and submitted documents is required). Since March 2017, an expedited procedure for issuing visas is available, according to which a visa should be issued within five business days from the day of submission of the visa application documents.

Training

Unpaid trainees can enter Ukraine either without a visa or on the basis of a visa as may be applicable and described in further detail in the “Business Travel” section above.

A trainee who receives any remuneration from the Ukrainian corporate host and whose functions are akin to those of an employee of the Ukrainian host requires a work permit and a D Visa together with a temporary residence permit, regardless of the duration of the training.

Post-entry Procedures

Upon obtaining the D Visa, the foreign national must enter Ukraine on its basis and obtain a stamp on the visa when crossing the border into Ukraine. As of April 2017, the D Visa is issued as a multiple-entry visa that is valid for 90 days. As soon as the foreign national enters Ukraine, he must apply for a Ukrainian temporary residence permit. Children under 16 years old are also required to obtain a separate temporary residence permit. A temporary residence permit can be obtained within 15 days after the relevant application is submitted to the relevant Local Migration Service. Within 30 days after receipt of the temporary residence permit, the foreign national must register at the place of his residence in Ukraine (which must be a house or an apartment, not a hotel).

After all these steps are completed, the foreign national may travel in and out of Ukraine on the basis of his temporary residence permit at any time and as many times as necessary during the term of validity of the work permit (and of the temporary residence permit).

Other Obligations of the Employer

A foreign employee must also receive a Ukrainian tax ID before the company can make salary or any other payments to the foreign employee. The company acts as the tax withholding agent with regard to the withholding and remittance into the Ukrainian budget of the foreign employee's taxes and social contributions related to the salary. The employee, if he is a tax resident in Ukraine, is responsible for filing annual tax returns on the employee's worldwide income with the Ukrainian authorities.

The employer is also obliged to file an application for amending the work permit to the relevant employment center to reflect: (i) changes in the employer's name; (ii) receipt of a new passport or change of name by the foreign employee; and (iii) changes in the employee's position and/or transfer to another position. Such application must be submitted no later than within 30 days after the occurrence of any of the circumstances mentioned above.

If the employer terminates the employment early, they must notify the relevant employment center of the termination, which in turn will cancel the work permit.

Extension of Stay

If a traveler needs to remain in Ukraine beyond the allowed term of stay, he needs to file an application for the extension of stay with a relevant Local Migration Service no later than within three business days but not earlier than within 10 business days before the expiry of the allowed term of stay.

Extensions are normally granted if: (i) there are valid reasons to extend the validity of the stay, including illness precluding travel, very important family events, unexpected business needs, or forced stop in Ukraine due to emergency, etc.; and (ii) all documents are valid and submitted in a timely manner. Extensions are granted to foreign nationals who arrived on the basis of a visa (including a transit visa),

or from a state with which Ukraine has an agreement on visa-free travel, and if the local host supports the application.

It is important to remember that the extension is solely related to permission to remain in Ukraine. Therefore, even if granted for the next several months, it will expire the moment the foreign national leaves Ukraine. As a result, the foreign national (i.e., those from a state with which Ukraine has an agreement on visa-free travel) should be aware that when next entering Ukraine, the relevant State Border Guard Service of Ukraine at the point of entry will review the foreign national's activities in the preceding 180-day period. If, within this 180-day period such foreign national was present in Ukraine for 90 days, he will be denied entry into Ukraine.

Other Comments

Specific considerations apply to the appointment of a foreign national to the position of CEO of a newly established Ukrainian company.

Although there is no express prohibition established in law, as a matter of practice, a foreign national may not be the first director of a newly created Ukrainian legal entity. This is due to the fact that a foreign national may not sign any documents on behalf of the newly created company until the foreign national has obtained a Ukrainian work permit, but a number of papers must be signed by the director in the process of establishing a new company, including the application(s) for the work permit(s) of foreign employee(s). Therefore, a Ukrainian citizen has to be appointed to temporarily act as the director of the subsidiary until a work permit is obtained for the foreign national appointed to that position.

Also, as a prerequisite for registering the director as an authorized signatory to operate the bank accounts of a company, some Ukrainian banks require a copy of the work permit and the temporary residence permit for the director evidencing the registration of the director at the place of his residence in Ukraine. The absence of such registration normally occurs only if the director does not physically reside in

Ukraine, but manages the company remotely or through short visits and, as a consequence, does not have any accommodation or a registered address in Ukraine. For that reason it is best not to appoint a foreign national to the position of director if it is clear that this person will not actually reside in Ukraine.

Planned Legislative Change

From 1 January 2019, the list of grounds for application for a Ukrainian visa online and obtaining an e-visa has been broadened. Now, a foreign national may apply for a Ukrainian visa not only for business or tourist purposes, but also for private purposes, as well as for the purpose of treatment; performing activities in the field of culture, science, education, and sports; and the fulfillment of official duties by a foreign correspondent or a representative of the foreign mass media.

From 1 January 2019, foreign nationals entering Ukraine for business or tourist purposes may no longer obtain a visa at crossing points on a state border. Earlier, such a possibility was provided for citizens of certain states (e.g., Australia, India, New Zealand, Saudi Arabia, etc.).

United Kingdom



The United Kingdom completely overhauled its immigration system for employment-related visa applications in 2008. The introduction of a points-based system, sponsorship licenses and compulsory identification cards for foreign nationals was all part of the biggest shake-up to immigration and border security in 45 years.

The UK government also introduced a cap on the number of non-EU migrants coming to the UK. Since April of 2011, there has been an annual limit on the number of non-EU migrants coming to the UK under the Tier 2 (General) category for Skilled Workers.

Key Government Agencies

The UK Border Agency (UKBA), which was formed in 2008, was abolished in early 2013 and was split into two new organizations, the Border Force and UK Visas & Immigration.

UK Visas & Immigration is responsible for processing applications for permission to enter and stay in the country. Officials are located in the UK and at British embassies and consular posts abroad to process visa applications. The Border Force is responsible for enforcing and securing the UK border by carrying out immigration and customs controls.

Current Trends

The points-based system replaced almost all of the different employment- and study-related categories, reducing the previous 83 entry routes to five broad tiers: Tier 1 for high value migrants; Tier 2 for skilled workers with a job offer; Tier 3 for low skilled workers (although this tier was indefinitely suspended); Tier 4 for students; and Tier 5 for temporary workers.

Overview

British citizens, Commonwealth citizens with the right of abode in the UK and Irish citizens are not subject to immigration control and do not

require permission to enter or remain in the UK. Their passports will not be stamped on entry and they are free to return to the UK however long they stay outside.

Nationals of European Economic Area countries, i.e., nationals of the European Union countries: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, plus nationals of Iceland, Liechtenstein and Norway, are, in general, free to come to the UK with their dependents to reside and work in the UK without any prior formalities. Swiss nationals also benefit from the same rights as most EEA nationals, although Switzerland is not a member of the EEA.

Aliens, Commonwealth citizens without the right of abode in the UK and UK passport holders who are not British citizens (i.e., British Overseas Citizens) are subject to immigration control and must obtain permission to enter or remain in the country. Their passports will normally be stamped to indicate how long they can remain and what conditions are attached to such permission.

Citizens of certain countries are termed “visa nationals” and require mandatory entry clearance before traveling to the UK for any purpose, even as visitors. Other nationals only require entry clearance if they wish to travel to the UK for a particular purpose. Entry clearance is the process by which a person applies to a British diplomatic post in his country of residence for prior permission to enter the UK.

A foreign national who takes up employment in the UK without authorization is liable to removal and, under provisions introduced on 29 February 2008, could be barred from re-entering the UK for a period of up to 10 years.

Since January 1997, UK employers have faced sanctions (under the Asylum and Immigration Act 1996 (“1996 Act”)) for employing people who did not have the right to work. The 1996 Act provided a defence

for UK employers who made an offer of employment conditional upon the production of one of a list of specified documents. The list included an EEA passport or other passport containing an appropriate endorsement that evidenced the foreign national's right to work in the UK. Provided that such a document was produced and appeared to be genuine, the UK employer would be protected from prosecution if a copy of that document had been made and retained on the foreign national's personnel file.

The right to work requirements were replaced by Sections 15 to 25 of the Immigration, Asylum & Nationality Act 2006. Under Section 15, an employer may be liable for a civil penalty of up to GBP 20,000 per illegal worker. These provisions also introduced a criminal penalty for knowingly employing an illegal worker, which includes an unlimited fine and/or imprisonment of up to five years.

Business Travel

Standard Visitor Visa (Business Visitor Category)

As of 24 April 2015, the visitor visa categories have been consolidated into four new categories with the intention of increasing the flexibility of the visitor route. Foreign nationals coming to the UK under the business visitor route should normally be granted permission to stay for a maximum period of 180 days/six months. As previously mentioned, nationals from certain designated "visa national" countries must apply for a visa before traveling to the UK as visitors.

Persons entering under this category must be based abroad and must not be receiving a salary from a UK source. Foreign nationals will only be allowed to undertake certain permissible activities under this category for example, transacting business (e.g., attending meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). Business visitors must not "intend to provide goods or services within the UK, including the selling of goods or services direct to members of the public."

Permitted Paid Engagements

In 2012, the UKBA introduced a list of permitted paid engagements that could be undertaken by visitors, including examiners, lecturers, lawyers, arts entertainers and sporting professionals. This has been further expanded under the rules in place as of 24 April 2015.

Please note that those entering under the visitor category are not otherwise authorized to do paid or unpaid work in the UK.

Employment Assignments

The general rule is that any person who is subject to immigration control cannot take up employment in the UK without a valid work permit or other form of work authorization. The main exceptions to this general rule concern EEA nationals and Swiss nationals.

Commonwealth Citizens with United Kingdom Ancestry

Upon proof that one grandparent, paternal or maternal, was born in the UK (including the Channel Islands and the Isle of Man), a Commonwealth citizen who wishes to take or seek employment will be granted entry clearance for that purpose and does not require a work permit. Individuals entering under this category will be admitted for an initial period of five years and should be eligible to apply to remain permanently after residing in the UK for five years.

Representative of an Overseas Business

This category allows companies without an active UK operation to send a senior employee to the UK to establish a presence. This category includes employees of overseas newspapers, news agencies or broadcasting organizations.

Entrants under this category are admitted for an initial period of three years and the visa also leads to indefinite leave to remain (permanent residence) after five years.

Tier 1 High Value Migrants

The Tier 1 category is intended for “high value” migrants. Tier 1 visas are not job-specific and do not require sponsorship from an employer. The main sub-categories are:

Tier 1 (Investor)

The Tier 1 (Investor) category is designed for high-net-worth individuals who are able to make a substantial financial investment in the UK. The base entry-level requirements are that applicants have to provide evidence that they have capital of GBP 2 million in their own name, which can be transferred to the UK. The qualifying investments include UK government bonds, share capital or loan capital in active and trading UK registered companies (with certain restrictions).

Applicants who invest at the GBP 2 million level should qualify for permanent residence after five years in the UK. If the applicant wishes to gain permanent residence more quickly, he can invest at the higher investment bands of GBP 10 million or GBP 5 million. An investment of GBP 10 million could mean the applicant qualifies for permanent residence in just two years. Similarly, those prepared to invest GBP 5 million could qualify after three years. All applicants, regardless of the level of investment, are required to spend just over 50% of their time in the UK over their qualifying period. Investors can spend up to 180 days outside of the UK each year and still qualify for permanent residence.

If UK citizenship is the aim, it should be noted that the residence requirements are very different for nationality applications; in particular, far fewer absences are permitted for nationality applications than for permanent residence applications. This should therefore be taken into account from the outset.

Investors are admitted for an initial period of 40 months (36 months if the application is made in the UK).

As of 1 September 2015, investors are required to provide an overseas criminal record certificate for any country they have resided in continuously for 12 months in the 10 years prior to their application.

On 29 March 2019, new changes took effect to the Tier 1 (Investor) route and will apply to all new applications submitted on or after this date.

The changes are as follows:

Source of funds — Previously, applicants had to provide proof of where their funds came from if they held the money for less than 90 days. This has now been increased to two years.

UK bank account due diligence — In their letter proving that the applicant has opened an FCA-regulated bank account for the purpose of making his UK investment, banks must now confirm in the letter that they have carried out all required money-laundering checks.

UK government bonds — These will no longer be an acceptable form of investment.

Pooled investments — Investment in a pooled investment vehicle will be permitted if the vehicle also receives funding from the UK government or a devolved government.

Active and trading UK companies — To counter potential abuse through an investment in a company that does not actually undertake any trade in the UK, an “active and trading UK company” is now defined as one that:

- is registered with UK Companies House
- is registered with HMRC for corporation tax and PAYE
- has accounts and a UK business bank account showing regular trade of its own goods and services
- has at least two UK-based employees who are not directors

Price of investments — The Home Office has clarified that “price of investment” means the amount paid by the applicant for the investment, not the face value.

Longer grants of leave — Where an extension is granted by way of Entry Clearance, the grant of leave will now be two years and four months, extended from two years.

Ongoing suitability test — The suitability test is being extended so that it will also apply to both extension and ILR applications. Therefore, the Home Office may refuse an extension or ILR application if it later receives information that would have led it to refuse the initial application if this information had been available at the time.

Tier 1 (Entrepreneur)

You can no longer apply for a Tier 1 (Entrepreneur) visa.

If you want to set up or run a business in the UK you might be able to apply for an Innovator visa or a Start-up visa.

If you already have a Tier 1 (Entrepreneur) visa,

You can still apply:

- to settle in the UK (indefinite leave to remain)
- to extend your visa
- to switch from a Tier 1 (Graduate Entrepreneur) visa
- for family members to join you

Innovator Visa

The innovator category is designed for those setting up or running a business in the UK. Applicants must have his business or business idea endorsed by an approved body. The applicant must also have at

least GBP 50,000 in investment funds to apply for an Innovator visa. Funding can come from any source.

The investment funds are not required if the applicant's business is already established and has been endorsed for an earlier visa.

An applicant in this category can stay initially for three years, and there is no limit on the number of times the applicant can extend this visa. Applicants are eligible to apply for permanent residence once he has been in the UK for five years.

Tier 1 (Graduate Entrepreneur)

- From 5 July 2019, applicants will not be able to apply for a Tier 1 (Graduate Entrepreneur) visa. Applicants can apply for a [Start-up visa](#) instead.

Start-up Visa

This category is for those wanting to set up a business in the UK. The applicant must be endorsed by an authorised body that is either a UK higher education institution or a business organisation with a history of supporting UK entrepreneurs. This visa category allows the applicant to stay in the UK for two years on a Start-up visa; however, it is not possible to apply to extend this visa. After two years, the applicant can switch into Innovator Visa category from inside the UK if the applicant is able to meet the requirement.

Tier 1 (Exceptional Talent)

The Tier 1 (Exceptional Talent) category is intended to encourage exceptionally talented leaders in the fields of science, humanities, engineering, medicine, digital technology and the arts to come to the UK. This category is available to those who have already been recognized in their fields and also to those with the potential to become recognized leaders in their respective fields.

Those wishing to apply under the Tier 1 (Exceptional Talent) category do not need to be sponsored by an employer, but will need to be

recommended by one of five competent bodies appointed by the government. Each competent body will select those who will qualify for recommendation.

There is a limit of 2,000 places per year. The first 1,000 places in the limit are allocated between the designated competent bodies. The remaining 1,000 places are unallocated and are available to any designated competent body once it has used its allocated places. Availability runs from 6 April–5 April each year.

Individuals under the exceptional promise criteria can apply for settlement after five years. However, individuals under the designated competent bodies' exceptional talent criteria can apply for settlement after three years.

Sponsor License – Tier 2 and Tier 5

Employers are required to have a license to employ nationals from outside of the EEA. The so-called “Licensed Sponsor” is then authorized to use the Sponsor Management System. This online platform allows companies to sponsor non-EEA nationals to work in the UK.

Once an employer is registered as a Licensed Sponsor, it will be ready to sponsor employees from overseas to work in the UK under the Tier 2 and Tier 5 visa categories. Under this system, it is up to the employer to make an assessment as to whether or not an individual meets the published criteria for a Certificate of Sponsorship (a work permit) to be issued. The company will then be able to issue a certificate and send it to the employee to apply for a visa.

To apply for a license, each employer will need to appoint an individual to the following prescribed roles: (i) Authorizing Officer (“AO”); (ii) Key Contact; (iii) Level 1 User; and (iv) Level 2 User (not essential). All four roles can be filled by the same person, by four different people or by a combination of the two. The AO role must be undertaken by a permanent member of staff who is based in the UK

and at least one Level 1 User must be an employee of the company. and a settled UK-based member of staff.

Background checks and checks on the Police National Computer will be undertaken on key personnel. Each of these roles carries some degree of responsibility for the functioning of the new system.

The AO is the most senior role within the Sponsor Management System and is responsible for assigning other key personnel and for supervising their conduct (including both employees and any appointed representatives). However, the AO does not have to be involved in the day-to-day operation of the Sponsor Management System and does not have automatic access to this system, but could also be a Level 1 or Level 2 User, which would give him access, as the AO is required to carry out regular checks on the sponsor's certificate of sponsorships usage on a monthly basis.

The Key Contact acts as the main point of contact with UK Visas & Immigration. This individual may be contacted by UK Visas & Immigration for any queries with applications (e.g., requests for documents or payment enquiries). The Key Contact does not have automatic access to the Sponsor Management System, but can be a Level 1 or Level 2 user as well, which would provide him with access.

The Level 1 User deals with the day-to-day administrative activities of the Sponsor Management System (e.g., assigning Certificates of Sponsorship to employees/prospective employees, reporting changes of circumstances). The Level 1 User can also create and remove users from the Sponsor Management System.

Level 2 Users undertake the same type of administrative tasks as the Level 1 User, but cannot create and remove users. Any number of Level 2 Users can be appointed.

In return for being granted a license and the ability to issue Certificates of Sponsorship, the employer must agree to undertake a number of duties (e.g., recording certain specified information,

reporting certain facts to UK Visas & Immigration, complying with relevant legislation and cooperating with UK Visas & Immigration).

As part of the licensing process, UK Visas & Immigration will make an on-site visit to the employer's business premises to check that it has the systems in place to meet the new obligations that arise from being granted a license. It is therefore recommended that any employer considering applying for a license should undertake a compliance audit before filing a license application.

Licensed employers are required to assess whether an employee meets the minimum points threshold for a certificate to be obtained. Points are allocated for two criteria: "attributes" and "maintenance" with an additional criterion for "English language" where relevant.

"Attributes" includes sponsorship and prospective earnings. The individual must score a minimum of 50 points under the attributes section, an additional 10 points for maintenance and 10 points for English language where applicable.

It is worth noting that, although the company is responsible for issuing Certificates of Sponsorship under the system, UK Visas & Immigration can undertake a review of any decisions made after a certain number of certificates have been issued. If the company is found to have incorrectly issued the certificates or to have been non-compliant with any of the obligations, it could have its license downgraded from an "A" rating, or even withdrawn. If its license is withdrawn, any existing employees working under a certificate could be required to leave the UK within 60 days. Therefore, it is important for any company using the system to ensure that it is fully compliant with the requirements.

Tier 2 — Skilled Workers

Tier 2 came into force in 2008 under the Sponsor Management System. Employers are required to have a license to employ nationals

from outside of the EEA. Most skilled nationals will require a Tier 2 visa. The main sub-categories are:

Tier 2 (General)

As previously described, to qualify under the Tier 2 (General) visa category, applicants must score a minimum of 50 points for attributes, which includes “prospective earnings” and “sponsorship.” In addition, applicants must score 10 points for “financial maintenance” and 10 points for “English language” ability.

To achieve 50 points for attributes, employers must (with limited exceptions) carry out a resident labor market test. In general, the post must be advertised on the Find a Job and on one other relevant medium for a four-week period. The salary offered must also match the appropriate rate in the UK Visas & Immigration’s published Standard Occupational Classification Codes. Applicants must meet the English language requirement either by passing an approved English test, being a national of a majority English-speaking country or by holding a degree that was taught in English (which is equivalent to a UK Bachelor’s degree or above). The financial maintenance can be certified by an A-rated employer on the Certificate of Sponsorship.

On 6 April 2011, the government introduced an annual limit on Tier 2 (General) applications from outside of the UK. This means that in most cases an employer must file a request for a restricted Certificate of Sponsorship for each migrant applying from outside the UK under this category. Only if the certificate is granted by UK Visas & Immigration can the visa application be filed. The number of restricted Certificates of Sponsorship is limited to 20,700 globally per year and applications are only considered once a month, meaning this process can be both uncertain and lengthy.

On 6 April 2017, the government introduced a requirement for Tier 2 (General) applicants to provide a criminal record certificate as part of their visa application if they are to be involved in education, healthcare, therapy or social services. They also introduced a waiver

for the Resident Labor Market Test and an exemption from the Tier 2 (General) limit for posts associated with the relocation of a high value business to the UK or a significant new inward investment project where the sponsor is a newly- registered (within the last three years) branch or subsidiary of an overseas business and the investment involves new capital expenditure of GBP 27 million or the creation of at least 21 new jobs.

The Tier 2 (General) visa can lead to permanent residence after five years, but an individual cannot stay under this category for more than six years in total, unless they entered the UK before April 2011.

Tier 2 (Intra-company Transfer)

This category allows multinational companies to transfer employees from their overseas organizations into a UK branch or subsidiary to undertake a skilled job. Applicants must score a minimum of 50 points for attributes (as under the Tier 2 (General) category) and 10 points for maintenance. However, applicants do not have to satisfy the English language requirement under the Tier 2 (Intra-company Transfer) category.

The Tier 2 (Intra-company Transfer) category is split into two subcategories: (i) Long-term Staff; and (ii) Graduate Trainee.

Under the Long-term Staff category, a sponsoring organization can normally only transfer an overseas employee to the UK if they have been employed by a related company overseas for 12 months or more. This prior employment requirement is waived if the employee is to earn over GBP 73,900 per annum.

Intra-company Transfer Long-term Staff

Employees must earn a minimum of GBP 41,500 per annum and can apply for a maximum initial visa of up to three years or five years.

- At the end of the visa (see “Cooling-off Period” below) or earlier repatriation, the migrant will receive a 12-month exclusion from re-entry to the UK under any Tier 2 category.
- Visas issued for less than five years can be extended up to five years (or nine years for any migrants earning at least GBP 120,000 a year).
- Exclusion runs from the date of expiry of the visa unless the individual can produce evidence of earlier departure from the UK (see above).

Intra-company Transfer Graduate Trainee

Under the Graduate Trainee category, overseas companies can transfer recent graduates to the UK branch for training as part of a structured graduate training program with clearly defined progression to a managerial or specialist role within the organization on an accelerated promotion scheme. The graduate must have been employed by the overseas company for at least three months before coming to the UK. The maximum period of leave that can be granted under the Graduate Trainee category is 12 months and switching into other immigration categories is not permitted. An exclusion from returning to the UK in or under the Tier 2 (General) categories will be effective from the end of the Graduate Trainee visa.

Indefinite Leave to Remain

Since 6 April 2010, applicants coming to the UK under the Tier 2 (Intra-company Transfer) visa category have not been eligible to apply for indefinite leave to remain (permanent residence) after five years' residence in the UK. However, any foreign national who entered the UK under the rules in place before 6 April 2010 and has extended or will extend his leave under the Intra-company Transfer category will still be able to continue on track to be granted indefinite leave to remain.

Tier 2 holders eligible for permanent residence can spend up to 180 days outside of the UK in each year and still qualify for permanent residence. Absences must be connected to the foreign national's sponsored employment. As with Tier 1 high value migrants, it should be noted that the residence requirements are very different for nationality applications. In particular, far fewer absences are permitted for nationality applications than for permanent residence applications, so taking full advantage of the 180-day absence allowance can adversely affect a citizenship application.

For settlement applications made from 11 January 2018, both main applicants and dependants are not permitted to be outside the UK for more than 180 days in any rolling 12-month period during the qualifying period for settlement. If the applicant's qualifying period includes leave granted before this date, any absences during that leave will be considered under the previous rules – in separate 12-month periods ending on the date of application.

Cooling-off Period

As of April 2015, the 12-month "cooling-off period" has been removed for those individuals whose Certificate of Sponsorship was valid for a period of three months or less, generally increasing the flexibility of this category.

Tier 5

Under the Tier 5 category, an applicant can enter the UK for a limited period if, where applicable, he has a job offer from a Licensed Sponsor and meets the eligibility requirements. There are five sub-categories under this route:

Tier 5 (Youth Mobility Scheme)

This replaced the previous Working Holidaymaker Scheme. The Youth Mobility Scheme allows young people from participating countries to experience life in the UK. Currently only the following countries are participating in the scheme: Australia, Canada, Hong

Kong, Japan, Monaco, New Zealand, South Korea and Taiwan. British Overseas Citizens, British Overseas Territories Citizens and British National Overseas passport holders are also allowed to apply.

The Tier 5 (Youth Mobility Scheme) category is quota-based. Visa applications from the above-listed countries will be accepted until their country's annual allocation has been reached. However, there is no quota for applications from British Overseas Citizens, British Overseas Territories Citizens and British National Overseas passport holders. Applicants will be able to take up any work in the UK except self-employment (subject to certain exceptions), working as a professional sportsperson or working as a doctor in training. Self-employment will only be permitted if the individual does not own the permanent premises from which he does business, the total value of the equipment he uses does not exceed GBP 5,000 and there are no employees.

Tier 5 (Temporary Worker) Creative and Sporting

This category is granted to creative artists, sports persons and entertainers coming to fulfil short-term contracts/engagements in the UK.

Tier 5 (Temporary Worker) Government Authorized Exchange

This category offers migrants a route to enable a short-term exchange of knowledge and best practice through employment while experiencing the wider social and cultural setting of the UK.

Tier 5 (Temporary Worker) International Agreement

This category authorizes migrants who are legally entitled under international law to come to work in the UK for a limited period of time.

Tier 5 (Temporary Worker) Charity Worker

This category authorizes migrants to do unpaid voluntary work for a charity.

Tier 5 (Temporary Worker) Religious Worker

This category authorizes migrants to do religious work, e.g., preaching or working in a religious order.

Training

The visitor category permits foreign nationals to undertake some limited training in techniques and work practices used in the UK. There are strict limits on the scope of training that can be provided under this category, which must normally be restricted to watching demonstrations and classroom instruction only. On-the-job training in a productive work environment is not permitted and visitor visa holders cannot be paid from any UK source, although they can receive reimbursement for certain expenses.

As of 24 April 2015, overseas employees may receive training from UK-based entities on work practices and techniques required for their employment overseas. Additionally, overseas trainers can deliver a short series of training to UK employees of an international corporate group when a global training contract exists.

Post-entry Procedures

Biometric Residence Permit

From 18 March 2015, biometric residence permits (“BRP”) for entry clearance applicants were rolled out over a four-month period. Previously applicants applying for entry clearance (a visa) were issued with a vignette which was placed in their passport and confirmed the full period of leave they had been granted. This has been replaced with a 30-day “short validity travel vignette” to allow employees to enter the UK if coming here for more than six months. However, once such employees have arrived in the UK and before the 30-day period elapses, they must collect their credit card-sized BRP from a designated post office, which will confirm their full period of leave and which they will need to keep with their passports.

For migrant workers (e.g., those coming under the Tier 2 category), after arrival in the UK they may commence work by presenting their “valid” short validity travel vignette to their employer. However, they will need to obtain their new BRP before the vignette expires or within 10 days of arriving in the UK, whichever is later. The BRP will need to be presented to their employer in order to maintain their right to work.

Immigration Health Surcharge

On 6 April 2015, the government introduced an annual immigration health surcharge. Unless exempt, all visa applicants are required to pay the above surcharge. The surcharge is in addition to the visa application fee and the total payable surcharge is based on the length of visa requested.

Immigration Skills Charge

On 6 April 2017, the government introduced an annual immigration skills charge. The skills charge applies to a Tier 2 worker assigned a certificate of sponsorship (CoS) of six months or more on or after the 6 April 2017 in the “General” or “Intra-company Transfer” routes. The charge will not apply to PhD-level jobs and students switching from student visas.

The amount of the skills charge payable depends on the size of the organisation and the length of employment stated on the workers’ certificate of sponsorship. The skills charge is GBP 1,000 per person, per year. If you have charitable status or you are subject to the small companies regime, you are eligible to pay the “small” charge of GBP 364 per person per year.

The charge is payable at the same time that you pay to assign a certificate of sponsorship to sponsor someone to do a skilled job in the UK. In addition to a certificate of sponsorship of less than six months, there are other limited exemptions to the skills charge.

The Immigration Skills Charge must not be passed on to the worker.

Other Comments

Spouses, civil partners or unmarried partners of entrants under all of the categories reviewed in this article (except the visitor and some Tier 5 categories) must satisfy the following conditions to enter as dependents: (i) they must be married, have entered into a civil partnership or be the unmarried partner of the entrant; (ii) they must intend to live with each other during their stay; and (iii) they must obtain entry clearance to enter as a dependent spouse, civil partner or unmarried partner. Dependent children under the age of 18 are also eligible.

In addition, non-EU migrants coming to the UK to join their spouses who are British citizens or who have been granted indefinite leave to remain (permanent residence) are required to pass an English language test and must also meet a financial requirement.

Anyone entering the UK in one of the employment-related categories or as the spouse, civil partner or unmarried partner, with the exception of Tier 5 and the Tier 2 (Intra-company Transfer) categories, will qualify, along with his dependents, to apply for permanent residence after completing five years of residence in the UK. Upon being granted permanent residence, they will be free to live and work in the UK without any restrictions.

Planned Legislative Changes

Brexit

- Shortly after the Brexit referendum result was announced, the UK government issued an announcement confirming that the rights of EEA and Swiss nationals in the UK would remain unchanged until after the UK has departed from the EU.
- At the time of writing (April 2019) the UK has still not left the EU. However, if the deal is ratified, EU citizens who are lawfully residing in the UK, or who started residing in the UK during the

transition period (currently to 31 December 2020), will be allowed to remain in the UK on a long-term basis and, after living here for five years, will qualify for settled status. The same rules apply to UK citizens living in the EU. The right to settled status will only be lost if the individual leaves their country of residence for a period of five years or more.

The UK government has implemented these provisions through a new EU Settlement Scheme. EU citizens can apply for “settled” status if they have been here for five years or longer. If they have been here for less than five years, they can apply for “pre-settled status” to take them up to the point when they can apply for settled status. All EU nationals in the UK (except Irish nationals) will have to apply for their status before the end of the transition period even if they have existing documentation.

The government has indicated that even if a deal isn’t reached, EU citizens already living in the UK will still be able to apply to remain under the EU Settlement Scheme. However, as there will be no transition period in the event of a “no-- deal” scenario, EU citizens will need to be lawfully residing in the UK on the date the UK leaves the EU. After the UK leaves the EU, EU nationals will be able to enter the UK for up to three months without a visa.

They will also be free to work in the UK during this period, but if they wish to remain in the UK to work for longer, they will need to apply for a new three-year visa under temporary provisions, pending a new immigration system.

The Future of the UK’s Immigration System

The UK government published its White Paper on the future of the UK’s immigration system on 19 December 2018. This sets out a shift in emphasis to bring migration down to “sustainable levels” rather than the target of the “tens of thousands”. The White Paper set out a number of significant reforms, which are due to take effect after 31 December 2020:

- The Resident Labour Market Test, which requires employers to advertise roles for a 28-day period before offering them to a migrant worker, is to be abolished.
- The cap on non-EU migrants coming to the UK, which is currently set at 20,700 per annum, is also to be removed.

The current system creates an unnecessary and time-consuming layer of bureaucracy which delays the recruitment process and puts UK employers at a competitive disadvantage in the global market for talent. Employers will, after the new system is introduced, be able to sponsor migrants from overseas much more quickly and in line with business needs.

The White Paper also sets out a plan to devise a “single immigration system” for skilled talent that will be equally applicable to non-EU and EU migrants alike. The aim is to create a system where “it is workers’ skills that matter, not which country they come from”. This is very much in line with the recommendations earlier in the year of the Migration Advisory Committee. The government also plans to expand the current scheme to include medium skilled roles (in addition to highly skilled workers) and has indicated that it will undertake a consultation exercise in relation to the minimum salary threshold that should be applied under the scheme, currently at GBP 30,000. In order to reduce the impact of losing low-skilled migrants from the EU, low-skilled migrants from “low risk countries” will be allowed to enter the UK for a limited period of up to one year, but they will then be subject to a “cooling off” period and prohibited from returning to the UK for 12 months.

The White Paper also indicates that the system will be flexible enough to provide for differing treatment of certain migrants where there is an international or bilateral agreement, so a wider trade deal with the EU could still provide for some preferential treatment of EU nationals, e.g., perhaps in relation to the level of fees payable.

The new system is due to be implemented in January 2021, although new categories could be introduced from autumn 2020.

United States of America



United States of
America

United States law provides many solutions to help employers of foreign nationals. These range from temporary, non-immigrant visas to permanent, immigrant visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

US immigration laws and policies are implemented and enforced by three key federal agencies: the Department of Homeland Security, the Department of State, and the Department of Labor. The Department of Homeland Security includes US Citizenship and Immigration Services (USCIS), US Immigration and Customs Enforcement (ICE), and US Customs and Border Protection (CBP). USCIS is responsible for adjudicating immigration benefits, such as petitions for work authorization and applications for permanent resident status or US citizenship. ICE is responsible for investigating immigration violations, including those made by US employers, and enforcing the removal of foreign nationals who are unlawfully present in the United States. CBP is responsible for inspecting and admitting all persons and goods arriving through US ports of entry.

The Department of State is responsible for processing visas at US embassies and consulates outside of the United States.

The Department of Labor is responsible for protecting the US workforce by ensuring that US employers (when required by US immigration law): (i) offer the same wages and working conditions to certain foreign workers as to US workers; and (ii) conduct a fair test of the labor market before sponsoring certain types of foreign workers for permanent residence status.

The US Department of Justice (DOJ) is also involved in the enforcement of the anti-discrimination provisions of the Immigration and Nationality Act (“INA”).

Current Trends

Immigration law and policy remains at the forefront of American politics. The current administration has made immigration a cornerstone of its policy and the enforcement of employment-based immigration has changed significantly.

Nearly all aspects of employment-based immigration have come under additional scrutiny over the past year. This includes petitions for non-immigrant status, particularly H-1B, attempted entry at the US border or ports of entry, and applications made for visas of all types at a US embassy or consulate abroad. There has been a dramatic increase in the issuance of Requests for Evidence (“RFE”) for all USCIS filings and widespread reports of increased denials at the US border and US embassies and consulates abroad.

The DOJ has increased its investigation of US employers for citizenship-based discrimination, often at times alleging discrimination against the US workforce. In May of 2018, the DOJ and USCIS issued a Memorandum of Understanding which confirms that the two agencies will share information to combat discrimination and fraud.

Under US immigration law, employers are responsible for verifying that all employees are authorized to work in the United States. Employers that hire or employ persons without authorization to work in the United States can be subject to civil and criminal sanctions. Additionally, employees who work without proper authorization can be subject to removal from the United States.

In recent years, the Department of Homeland Security has focused its immigration law enforcement efforts on employers who violate criminal statutes. While the criminal prosecution of employers is still a priority, the Department of Homeland Security and its enforcement bureau, ICE, are committed to using all civil and administrative tools to penalize and deter the employment of unauthorized workers. Such tools include unannounced worksite inspections and civil fines, and debarment proceedings.

Additionally, the USCIS's Office of Fraud Detection and National Security (FDNS) has significantly increased its focus on the L-1 (intra-company transfer) and H-1B (specialty occupation) visa programs. As part of this initiative, FDNS officers are making unannounced worksite visits to L-1 and H-1B employers to verify the accuracy of the information contained in L-1 and H-1B petitions regarding the terms and conditions of L-1 and H-1B workers' employment. It is expected that the number of worksite visits will double over the next year.

The USCIS has issued several policy memoranda as part of the "Buy American, Hire American" 2017 Executive Order. This includes additional requirements for third-party placement of H-1B non-immigrants and changes to the accrual of unlawful presence for individuals who violate student visas.

Employers involved in mergers, acquisitions, reorganizations, etc., must also evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate immigration-related liabilities associated with an acquisition is especially significant as enforcement activity increases.

Although comprehensive immigration reform remains at a standstill, the immigration debate carries on throughout the country. In an era of rapid change in the world of immigration policy, the business and human resource community are on the watch for significant changes — both positive and negative — to affect employee mobility to the United States in the coming years.

Business Travel

B-1 Business Visitor Visa


Foreign nationals coming to the United States on short-term business trips may use the B-1 business visitor visa. The B-1 authorizes a broad range of commercial and professional activity, including consultations, negotiations, business meetings, conferences and

taking orders for goods made abroad. Employment is not authorized. This means that: (i) the services provided while in the United States must be on behalf of a non-US employer; (ii) any profits resulting from those services must accrue to the non-US employer; and (iii) any compensation received for those services must also be paid directly or indirectly by the non-US employer.

B-1 visa applications are processed at US consular posts abroad. When applying for a B-1 visa, the foreign national must establish that he: (i) has a residence in a foreign country which he does not intend to abandon; and (ii) intends to enter the United States for a specific and limited period of time. A letter from the non-US employer confirming: (a) the activities to be performed in the United States; (b) the direct benefit of those activities to the non-US employer; and (c) the continuation of the individual's direct and indirect compensation by the non-US employer is also typically required. B-1 visas are valid for a fixed amount of time — generally 10 years — and may be valid for multiple or a specified number of entries. The CBP officer at the port of entry makes the determination of whether to admit the foreign national and for how long.

B-1 visa holders are normally admitted for up to six months and may be able to extend their stay for an additional six months or change to another visa status. An accompanying spouse and unmarried, minor children under 21 can be admitted under the B-2 tourist visa.

Visa Waiver

The United States has a Visa Waiver Program that allows foreign nationals from certain countries to visit the United States for legitimate business purposes without a B-1 visa. To use the Visa Waiver Program, qualifying foreign nationals must have an e-Passport containing the following symbol:  Qualifying foreign nationals must also apply for an electronic travel authorization from the Electronic System for Travel Authorization (“ESTA”) website (<https://esta.cbp.dhs.gov>) before traveling to the United States. The

ESTA authorization is valid for two years or until the foreign national's passport expires, whichever is first.

If ESTA authorization is not granted, the foreign national must obtain a non-immigrant visa from a US embassy or consulate before traveling to the United States. ESTA authorization will not be granted to foreign nationals from Visa Waiver Program countries who: (i) have traveled to or been present in Iran, Iraq, Libya, Somalia, Sudan, Syria or Yemen on or after 1 March 2011 (with limited exceptions); or (ii) are also dual nationals of Iran, Iraq, Sudan or Syria.

The permitted scope of activity is the same as under the B-1 visa. The length of stay is up to 90 days only, without the possibility of an extension or status change. Foreign nationals who overstay the 90-day period will be permanently barred from using the Visa Waiver Program.

The following countries are presently qualified under this program: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan and the United Kingdom.

Employment Assignments

Overview

Foreign nationals who are not lawful permanent residents of the United States (i.e., "Green Card" holders) must have authorization to work in the United States before commencing employment. Typically, the US employer must request approval for a particular type of work authorization based on the job offered to the foreign national and the foreign national's credentials. In most cases the request is made in the form of a "petition" that is filed with the USCIS and, in other cases, the request is made in the form of an application that is filed directly

with the US embassy or consulate. For some types of work authorization, the Department of Labor must also grant its approval for the employer to sponsor the foreign worker. In those cases, the Department of Labor's approval is needed before the USCIS (or US embassy or consulate) will process the sponsoring employer's petition or application. The complexity of the preliminary approval process, and the time required for the US employer to receive the approval, can vary greatly depending on: (i) the particular type of non-immigrant or immigrant status sought; and (ii) quota-based restrictions imposed on certain types of visa classifications. In general, the approval process for a non-immigrant status that includes work authorization takes at least two months.

Once the employer's request for work authorization has been approved, most foreign nationals must also obtain a visa at a US embassy or consulate. Under the US immigration system, visas are travel documents that allow a foreign national to seek admission to the United States in a particular status. The issuance of a visa does not guarantee admission to the United States, and it does not function as the foreign national's work or residence permit after entering the United States. Rather, the documents issued by CBP at the port of entry or by the USCIS after entering the United States serve as the work and residence permit.

Intra-Company Transfer (L-1 Visa)

Multinational companies seeking to temporarily transfer foreign employees for assignment to US operations most often rely on the L-1. This visa is initially valid for assignments of up to three years and can be extended in two-year increments for a total period of five or seven years, depending upon the nature of the US job duties. Executive and managerial-level employees can hold L-1A status for up to seven years, whereas employees working in a capacity involving specialized knowledge have a maximum stay of five years under L-1B status.

The spouse and unmarried children under the age of 21 of an L-1 visa holder may be issued L-2 status for the same period. The L-2 spouse (but not L-2 children) may apply for employment authorization after arrival.

Qualified foreign nationals must have been outside the United States for at least 12 months during the three years immediately preceding the L-1 visa request and, during that period, employed by the US petitioning employer or a company with a qualifying intra-company relationship. There are a number of relationships that qualify, but all generally rely on common majority control (e.g., parent-subsidary, subsidiaries of a common parent, branch, or representative office). The qualifying corporate relationship need not have existed throughout the period of required employment.

Executive and managerial-level employment is generally shown through the management of subordinate employees or through the management of an essential function within the organization. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization's products, services, research, equipment, techniques, management, etc., or an advanced level of expertise in the organization's processes and procedures.

Additional rules apply to companies during the first year of business operations in the United States and to those who intend to place the foreign employee at a job site not controlled by the sponsoring employer (e.g., placement at client site).

Large multinational companies may take advantage of special "blanket" L-1 rules for faster government processing if they meet the specific criteria relating to revenue and/or number of US employees and international business operations.

Specialty Occupation (H-1B Visa)

US employers of foreign professionals have long relied on the H-1B visa. H-1B status is initially valid for up to three years, with extensions in three-year increments available for up to six years' total stay. Extensions beyond the six-year limit may be granted to foreign professionals for whom employment-based permanent residence applications are pending. The spouse and unmarried children under the age of 21 of an H-1B visa holder may be issued the H-4 visa for the same period.

Certain H-4 dependent spouses can obtain work authorization, if the principal is the beneficiary of an approved Immigrant Petition or has been granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act. The H-4 work authorization program is currently the subject of federal litigation and the long-term viability of the program is unclear. The administration has proposed a regulation to rescind the H-4 work authorization program. The regulation is currently pending review with the Office of Management and Budget.

The job offered must be in a specialty occupation, which are roles that normally require at least a bachelor's degree in a specific field. The foreign national must hold the required degree from an American university or the equivalent. A foreign degree, employment experience, or a combination thereof, may be considered equivalent.

Employers must attest that they will provide H-1B professionals wages, working conditions and benefits equal to or greater than those normally offered to similarly employed workers in the United States. A strike or labor dispute at the place of employment may impact eligibility. Employers of H-1B visa holders must comply with detailed recordkeeping requirements, and government agencies often conduct worksite inspections to ensure compliance.

The USCIS has heightened its scrutiny of H-1B Petitions with the widespread issuance of RFEs and a significant increase in denials. It

issued a policy memorandum which calls for certain documentary requirements for H-1B Petitions involving the third-party placement of employees. The memorandum clarifies the existing regulations and reiterates the requirement of maintaining a legitimate employer-employee relationship when the beneficiary is working at a third-party client site.

Only a limited number of new H-1B visa petitions can be granted each fiscal year. Historically, the limited supply has been quickly exhausted. In recent years, the annual quota has been reached within the first five days of the filing period, resulting in a lottery. Generally, this quota applies to first-time H-1B visa holders, with some exceptions for those offered employment by qualified educational institutions, affiliated research organizations, non-profit, and government research organizations.

The USCIS amended the regulations governing H-1B petitions to require petitioners to electronically register during a specified period. Only individuals who comply with the registration requirement are eligible for selection to file an H-1B cap petition. While the USCIS suspended the electronic registration requirement for fiscal year 2020, the agency anticipates that the new requirement will reduce costs and increase efficiency in the H-1B cap petition process. This rule also reversed the order by which the USCIS selects H-1B petitions in an attempt to increase the overall number of US Master's Degree applicants to be selected. The new H-1B lottery system first counts all petitions toward the quota, including Master's Cap petitions, and subsequently selects petitions toward the advanced degree exemption.

Training

J-1 Exchange Visitor Visa

The J-1 exchange visitor visa is used for a number of different purposes, including business trainees. The purpose is to allow foreign

nationals to receive training that will facilitate their career when they return to their home country. A detailed training program is required.

The J-1 program does not require employers to submit an application through the USCIS, as they would for most employment visas. Rather, the prospective trainee requests training authorization directly from a sponsoring organization that has been authorized by the Department of State to administer J-1 training programs. There are many professional associations and third-party organizations authorized as J-1 sponsors. Corporations that routinely use the J-1 visa to accommodate trainees may also register themselves as sponsoring organizations.

The length of stay for such training assignments can be for up to 18 months, including all possible extensions. Compensation for training is permitted. The spouse and minor, unmarried children of a J-1 exchange visitor visa holder may be issued J-2 visas. The J-2 spouse may apply for employment authorization after arrival.

Some, but not all, J-1 and J-2 exchange visitors are subject to a requirement that they return to the home country for at least two years at the end of the J-1 training before becoming eligible to return to the United States to work under a different type of visa. The country of residence, field of training, and source of any government funding for the training can give rise to this requirement. Waivers of the two-year homestay requirement are available in certain circumstances.

H-3 Trainee Visa

The H-3 visa is designed for foreign nationals coming to the United States for training that is not available in the trainee's home country and that will benefit the trainee's career abroad. H-3 trainees cannot engage in productive employment, unless merely incidental and necessary to the training. Additionally, H-3 trainees cannot be placed in a position that is in the normal operation of the business and in which local workers are regularly employed.

In practice, H-3 visa requests are more readily granted for formal, classroom-type trainings and are more likely to be denied when an on-the-job training element is included, regardless of statements that such work may be incidental and necessary. A detailed training program is required.

The maximum duration of the H-3 visa is two years. The spouse and unmarried children under the age of 21 of an H-3 visa holder may be issued the H-4 dependent visa to accompany the H-3 trainee.

Although the H-3 visa does not impose specific compensation requirements, low salaries are sometimes criticized for the possibility of exploiting foreign labor, while high salaries can be criticized for possibly indicating productive labor.

B-1 Visa in lieu of H-3

Foreign nationals may be admitted to the United States to participate in H-3 type training programs using the B-1 visa, provided that they have been customarily employed by and will continue to receive a salary from the foreign sending company.

Post-Entry Procedures

Individuals who are admitted to the United States with a non-immigrant visa will be issued a Form I-94, arrival/departure record, at the port of entry. The Form I-94 is issued and maintained electronically. In limited cases, the Form I-94 may also be issued in paper format and stapled into the passport. Foreign nationals are advised to print their Form I-94 from the CBP website (<https://i94.cbp.dhs.gov>) after each entry to the United States.

The Form I-94 is the official record of the foreign national's non-immigrant status and the period of stay granted. As such, the printed Form I-94 serves as the individual's temporary work and residence permit.

Individuals who are admitted to the United States under a non-immigrant visa are not required to register their residence with local police authorities. However, they are required to notify the USCIS in writing within 10 days of any change in address after entering the United States. Failure to do so can result in removal from the United States.

Entry Based on International Agreements

H-1B1 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Singapore and Chile may take advantage of additional quota allocations and more streamlined processing rules. Although limited in number, the supply of these visas is consistently greater than demand making them more readily available. The scope of authorized work is essentially the same as the H-1B. The spouse and unmarried children under the age of 21 of an H-1B1 visa holder may be issued the H-4 for the same period. This visa requires proof of the foreign national's non-immigrant intention to depart the US.

E-3 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Australia can take advantage of similar Free Trade Agreement benefits using the E-3 visa. While subject to an annual quota of 10,500 visas, this quota has never been met and E-3 visas are commonly available. The scope of authorized work is similar to the H-1B, but status is granted for up to 24 months, with available extensions in increments of up to 24 months. The spouse and unmarried children under the age of 21 of an E-3 visa holder may be issued the E-3 for the same period. The E-3 spouse may apply for employment authorization after arrival. This visa requires proof of the foreign national's non-immigrant intention to depart the country.

TN North American Free Trade Agreement Visa

Employers of foreign professionals who are citizens of Canada and Mexico can take advantage of different Free Trade Agreement benefits using the TN visa. There are no numerical limits, so the supply of these visas is always available. The job offered must be in one of the professions covered by NAFTA, each of which has its own education or experience requirements. TN status is granted for up to three years, with a potentially unlimited number of three-year extensions available. The spouse and unmarried children under the age of 21 of a TN visa holder may be issued a TD visa for the same period. This visa requires proof of the foreign national's non-immigrant intention to depart.

Some of the more commonly used professions covered by the TN include: computer systems analyst, engineer (all types), economist, lawyer, management consultant, biologist, chemist, industrial designer, accountant, and scientific technician. A complete list of NAFTA professions can be found at:

<https://travel.state.gov/content/visas/en/employment/nafta.html>.

E-1 and E-2 Treaty Trader and Investor Visas

Foreign-owned companies doing business in the US may temporarily employ qualified foreign workers to facilitate international trade or investment activities. E visa status is granted for up to five years, with a potentially unlimited number of extensions in five-year increments. The spouse and unmarried children under the age of 21 of an E-1 or E-2 visa holder may be issued the E visa for the same period. The spouse may apply for employment authorization after arrival.

The list of countries with E-1 trade and E-2 investment treaties changes often and the government's regularly updated list can be found at: <https://travel.state.gov/content/visas/en/fees/treaty.html>. Qualifying companies must be at least 50% owned by citizens of the same treaty country. E visa status is only available to citizens of that same country. Not all countries hold treaties or agreements for both E-

1 trade and E-2 investment visa status, and many countries hold neither, as can be seen on the following table:

Countries with E-1 Treaty Trader Visa Eligibility

Argentina	Australia	Austria	Belgium	Bolivia
Bosnia & Herzegovina	Brunei	Canada	Chile	China, Republic of (Taiwan)
Colombia	Costa Rica	Croatia	Denmark	Estonia
Ethiopia	Finland	France	Germany	Greece
Honduras	Iran	Ireland	Israel	Italy
Japan	Jordan	Korea (South)	Kosovo	Latvia
Liberia	Luxembourg	Macedonia	Mexico	Montenegro
The Netherlands	Norway	Oman	Pakistan	Paraguay
The Philippines	Poland	Serbia	Singapore	Slovenia
Spain	Suriname	Sweden	Switzerland	Thailand
Togo	Turkey	United Kingdom	Yugoslavia	

Countries with E-2 Treaty Investor Visa Eligibility

Albania	Argentina	Armenia	Australia	Austria
Azerbaijan	Bahrain	Bangladesh	Belgium	Bolivia
Bosnia & Herzegovina	Bulgaria	Cameroon	Canada	Chile

Countries with E-2 Treaty Investor Visa Eligibility

China, Republic of (Taiwan)	Colombia	Congo (Brazzaville)	Congo (Kinshasa)	Costa Rica
Croatia	Czech Republic	Denmark	Ecuador	Egypt
Estonia	Ethiopia	Finland	France	Georgia
Germany	Grenada	Honduras	Iran	Ireland
Israel	Italy	Jamaica	Japan	Jordan
Kazakhstan	Korea (South)	Kosovo	Kyrgyzstan	Latvia
Liberia	Lithuania	Luxembourg	Macedonia	Mexico
Moldova	Mongolia	Montenegro	Morocco	The Netherlands
Norway	Oman	Pakistan	Panama	Paraguay
The Philippines	Poland	Romania	Senegal	Serbia
Singapore	Slovakia	Slovenia	Spain	Sri Lanka
Suriname	Sweden	Switzerland	Thailand	Togo
Trinidad & Tobago	Tunisia	Turkey	Ukraine	United Kingdom
Yugoslavia				

The E-1 requires proof of substantial trading activity between the United States and the treaty country. The level of trade can be measured by its value, frequency and volume. Only trade between the United States and treaty country is considered, and that must account

for at least 50% of the trade of the sponsoring employer. Items of trade range from goods to services, transportation, communications, data processing, finance, etc.

The E-2 requires proof of substantial capital investment that has either already been made or that is in the process of being made when the visa is requested. No minimum value threshold is set for the investment. The amount is measured in relation to the total cost of the US business. Only funds or the value of property committed to capital investments are considered, and not the cost of operating expenses. E visa status is available to individual investors with a majority ownership interest, as well as to employees coming to work in either a supervisory role or a position involving skills essential to the venture.

Other Comments

There are many additional non-immigrant visas less frequently used for global mobility assignments worth a brief mention. Foreign students with the F-1 visa are often granted authorization for employment related to their studies before and after graduation. Certain F-1 students who receive science, technology, engineering and mathematics (STEM) degrees, and who meet other specific requirements, are able to apply for a 24-month extension of work authorization after graduation.

The O-1 visa authorizes the employment of foreign nationals of extraordinary ability. Foreign nationals with skills in short supply in the United States may be able to obtain the H-2B visa for temporary, seasonal, or peakload type of work.

Immigrant visas generally take longer to obtain, but in some situations compare favorably to non-immigrant visas. Permanent resident status is often a goal for foreign nationals, and US employers rely on immigrant visas to continue to have access to their work after the limited duration of non-immigrant visas is exhausted. Selecting a non-immigrant visa that is consistent with a long-term immigrant visa option can be crucial. US employers are well advised to develop

policies and practices that recognize the value of the immigration process to recruit and retain skilled foreign professionals, while ensuring corporate compliance with US law.

In addition to employment-based immigrant visas, immigration to the US is possible through family-based immigrant visas by qualified US citizen or permanent resident relatives.

Immigrants are often interested in later becoming US citizens. Naturalization to citizenship generally requires five years of continuous residence after immigrating, for at least half of which time the immigrant must be physically in the country. Lengthy travel abroad, therefore, can detrimentally impact eligibility.

Further, immigrant status itself can be lost through lengthy travel abroad. US permanent residents may be reluctant to accept assignments outside the United States for this reason. It is often possible to address these concerns. The USCIS can issue re-entry permits to help immigrants maintain status while abroad. Further, immigrants working abroad for US-owned companies or their foreign subsidiaries may qualify to protect their eligibility for citizenship. Both requests are time sensitive and should be made before the assignment abroad begins.

US law generally requires immigrants to continue to file federal income tax returns, even when all income is earned abroad. Moreover, immigrant status can be impacted if a non-resident tax return is filed or if no US return is filed.

Venezuela



Venezuelan immigration laws are an increasingly important and sensitive consideration when planning an investment in Venezuela. Careful planning of employees' transfer to Venezuela is a key factor to achieve a successful business venture in Venezuela.

Compliance with Venezuelan immigration laws will safeguard companies from sanctions and penalties. While other applicable provisions exist, immigration laws are primarily in the Law on Foreign Nationals and Migration, which became effective in November of 2004 ("Migration Law"). The Migration Law regulates all matters related to the admission, entry and permanence of foreign nationals, as well as their rights and obligations in Venezuela, and it applies to all foreign nationals regardless of whether they are in Venezuelan territory legally or illegally. In addition to the Migration Law, the Joint Resolution ("Resolution") issued by the Ministry of the People's Power for Internal Relations, Justice and Peace ("Ministry of Internal Relations and Justice"), the Ministry of the People's Power for Foreign Affairs ("Ministry of Foreign Affairs") and the Ministry of the People's Power for the Social Process of Work ("Ministry of Labor"), have set forth the rules and procedures for the issuance of visas (Official Gazette dated January 2000). Although this Resolution was enacted and became effective in 2000, it remains in force and effect for all matters not specifically abrogated by the Migration Law. Finally, it is very important to consider the current administrative policies, rulings and interpretations given from time to time by officials and other authorities in charge of the relevant governmental agencies responsible for immigration matters, particularly the Ministry of Labor and the Ministry of Internal Relations and Justice, as part of the immigration laws.

Venezuelan legislation provides many solutions to help employers of foreign nationals. Requirements, processing times and employment eligibility vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for certain areas of visa processing at Venezuelan consular posts abroad. The Ministry of Labor, with the purpose of protecting Venezuelan workers, is involved in the process when a work visa (“TR-L”) is requested. Inspection and admission of travelers is conducted by the Ministry of Internal Relations and Justice’s agency at Venezuelan ports of entry.

Current Trends

Under the Migration Law, employers of foreign nationals unauthorized for such employment are currently subject to administrative and criminal penalties. Employers should therefore not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, etc., must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as a result of the risks of penalties provided for in the Migration Law.

Business Travel

Business Visitor Visa (“TR-N”)

This type of visa is granted to foreign executives or business persons that wish to enter Venezuela to perform financial, commercial or business activities, or any other profitable and legal activity related to their business. The TR-N is valid for one year and confers the right to enter and depart from Venezuela without limitation, although one may only remain in Venezuela for a continuous term of 180 days. Once such term has elapsed, the person must depart from Venezuela, otherwise the visa will not be renewed. Notwithstanding the foregoing, a person may enter and stay for less than 180 days as many times as needed during the effectiveness of the TR-N.

The TR-N is currently granted by the Ministry of Foreign Affairs through the Venezuelan consulates in the country where the person who wishes to obtain the visa resides. Generally, each of the Venezuelan consulates is autonomous in terms of determining the procedure for the issuance of the TR-N, as well as additional documentation required for such purposes. Additionally, the consulate will analyze the purposes for which the company wishes to invite the individual requiring the TR-N visa to come to Venezuela, as well as the nature of the activities to be performed by that individual in Venezuela. Once the consulate has reviewed the relevant documents required, it will authorize the issuance of the TR-N to the person requesting it. Once the TR-N has expired, it may be extended for an equal period as many times as the relevant consulate may decide.

Please note that since the TR-N is not granted by the Ministry of Labor, a work permit is not required and it is not necessary to establish a corporate entity in Venezuela as an in-country sponsor, although an invitation letter from an established Venezuelan company is usually required. Furthermore, since the TR-N is a business visa, the person to whom it is granted cannot be an employee of the company for which services will be performed in Venezuela. In this respect, the person cannot be included on the payroll of, or receive benefits from, such company.

Employment Assignments

Work Visa (“TR-L”)

This type of visa is granted to any employee, business executive or corporate representative that may be performing services in Venezuela for a period of at least one year under an employment agreement executed with a company in Venezuela, as explained below. It is valid for one year and confers the right to enter and depart from Venezuela without limitation. If the applicant will be accompanied by family (i.e., husband or wife, children, parents and father or mother-in-law), the TR-L will extend to each family member. It is important to

note that even though the Resolution refers to a working period of at least one year, the TR-L is necessary to legally work in Venezuela even for periods of less than one year.

The procedure to obtain a TR-L is divided into three stages:

- The first stage is before the Ministry of Labor, where the purpose for which the company in Venezuela wishes to hire a foreign employee, as well as the nature of the services to be performed in Venezuela, are analyzed. At this stage, an offer of employment is made by the company before a Notary Public (“Employment Offer”). This document will then be considered as an employment agreement between the applicant and the company. The Ministry of Labor will review whether or not the company that will employ the services of the foreign employee will be in compliance with the restrictions for the hiring of foreign employees set forth in Article 27 of the Venezuelan Organic Labor and Workers’ Law (“OLWL”). According to this provision, at least 90% of the company’s workers must be Venezuelan. Consequently, though certain exceptions could be obtained in a few cases, no more than 10% of the company’s workforce may be composed of foreign nationals. If the Ministry of Labor finds that all requirements are met, this first stage finalizes with the issuance of the work permit by the Ministry of Labor.
- The second stage is carried out at the Identification, Migration and Foreign Administrative Service (“SAIME”) (*Servicio Administrativo Identificación, Migración y Extranjería*), where the aforementioned work permit and some additional documents are analyzed. This stage is finalized with the issuance of the authorization to the Venezuelan consulate to grant the TR-L or work visa.
- During the third stage, the applicant must appear before the Venezuelan consulate of his/her country of origin or residence. The consulate shall issue and stamp the TR-L in the applicant’s passport. Please note that each Venezuelan consulate is autonomous in determining its own procedure for stamping the

visa, as well as in terms of the documentation that must be submitted for such purposes. Generally, the applicant and his/her family will be subject to medical tests and examinations at the consulate, and a certification of police records and a cash deposit may also be required.

The TR-L may be extended for an equal period once it has expired. In addition, please note that the foreign national could start validly working in Venezuela once the corresponding TR-L has been issued.

As indicated above, any individual who, by virtue of an employment agreement, must enter into Venezuela shall obtain a work permit from the Ministry of Labor and then the TR-L which must be obtained by the employer, who must be domiciled and registered in Venezuela. However, Article 17 of the Migration Law provides that, in the following situations, the respective individual employees are exempt from requesting the work permit:

- scientists, professionals, technicians, experts and specialized personnel who temporarily come to Venezuela to advise, train or provide temporary services for a period not exceeding 90 days
- technicians and professionals invited by public or private entities to perform academic, scientific or research activities, provided that such activities do not exceed 90 days
- individuals entering the country to perform activities covered by cooperation and technical assistance agreements
- employees of mass media from other countries duly credited to carry out journalism activities
- members of international scientific missions who perform research work in the country with authorization from the competent Venezuelan authorities

Training

There is no type of visa designed exclusively for training. For on-the-job training that involves productive work, the same visa used that authorizes employment for most employment assignments is the most likely solution. However, there is a student's visa that, according to the Resolution, would also apply to internships.

Entry Based on International Agreements

Based on certain International Cooperation Agreements or Treaties ("Cooperation Treaties") executed between Venezuela and certain other countries, it would be possible for foreign employees assigned to work in Venezuela under the provisions of said Cooperation Treaties to work in Venezuela without having necessarily obtained a work permit or visa. Among others, Venezuela has signed Cooperation Treaties related with: (i) Agriculture (Vietnam, Haiti, Bolivia, and Uruguay, Poland, Lebanon, Republic of Chad, Burkina Faso, Tunisian, Guinea, Republic of Congo, Republic of Cameroon); (ii) Energy (France, Switzerland, Poland, Republic of Chad, Burkina Faso, Tunisian, Guinea, Republic of Congo, Republic of Cameroon and Turkey); (iii) Hydrocarbon, Petrochemical and Mining (China); (iv) Hydrological Resources (Sahrawi Arab Democratic Republic); (v) Sport (Argentina); (vi) Iron and Steel (Ecuador); (vii) Technology (Switzerland, Lebanon and Bolivia); (viii) Ground Transportation (Argentina); (ix) Culture (Palestine, Republic of Chad and Angola, Burkina Faso, Tunisian, Guinea, Republic of Congo, Republic of Cameroon); (x) Economy, Finance and Commerce (Switzerland, Poland, Lebanon, Angola, Republic of Chad, Burkina Faso, Tunisian, Guinea, Republic of Congo, Republic of Cameroon, (xi) Scientific (Switzerland, Lebanon, Angola, Burkina Faso, Tunisian, Guinea, Republic of Congo, Republic of Cameroon); (xii) Health (Switzerland and Republic of Chad); (xiii) Environment (Switzerland, Republic of Chad, Poland); (xiv) Infrastructure (Poland); (xv) Tourism (Poland and Vietnam); (xvi) Education, Communication (Lebanon); (xvii) Power

sector (Islamic Republic of Iran); (xvii) Film and Audiovisual Industry (Ecuador), (xviii) Security (Turkey), and (xix) Drugs (Ecuador).

Other Comments

Other types of visas for entry into Venezuela, which were not the focus of this article, could be applied for and obtained (for example, a resident's visa). If you would like to obtain information about those, please contact us.

According to Article 3 of the OLWL, the OLWL applies to services performed or agreed upon in Venezuela, irrespective of the nationality of the employee. Consequently, when a foreign national employee is transferred to work in Venezuela, especially if the work will be performed on a habitual basis in Venezuela, the provisions of the OLWL and the Venezuelan labor and social legislation apply.

In this respect, the OLWL and the Venezuelan labor and social legislation in general contain a set of mandatory conditions, contributions, obligations and labor and severance benefits that must generally be provided, complied with and paid by the employer to the benefit of its employees. The employer's failure to do so would subject the employer to potential liabilities. It is important to obtain legal advice in connection therewith, preferably well in advance of transferring or hiring the employee to work in Venezuela. Based on recent rulings from the Venezuelan Supreme Court of Justice, there might be other legal options for companies to comply or deal with the Venezuelan labor and social security provisions while reducing the implied risks and we encourage you to contact Venezuelan legal counsel to obtain legal advice on this matter well in advance of transferring or hiring an employee to work in Venezuela.

Last edited June 2019

Socialist Republic of Vietnam



Vietnam has agreements with many countries permitting visa exemption for visitors coming into Vietnam for a short period of time. Other visitors must secure the proper visa before entering the country.

As regulations change frequently, verification of the following information is highly recommended.

Key Government Agencies

The Ministry of Public Security (“MPS”) is responsible for the approval of entry visas to most foreign nationals who wish to enter Vietnam. Applications by other individuals, such as state officials and foreign representatives or diplomats, are addressed to the Ministry of Foreign Affairs (“MOFA”).

Most foreign nationals who wish to work in Vietnam must obtain a work permit.

In general, the Provincial-Level Department of Labor, War Invalids and Social Affairs has the authority to grant work permits or certificates of work permit exemption to foreign nationals working for a company located outside an industrial zone and an industrial zone authority will issue work permits to foreign nationals working for companies located in an industrial zone (“Local Labor Authority”).

In addition to Local Labor Authority, Ministry of Labor, War Invalids and Social Affairs (“MOLISA”) has the authority to issue, revoke work permits or certificates of work permit exemption, mainly for foreign nationals who come to Vietnam to work for state authorities, NGOs, international organizations, business associations, etc.

Current Trends

The Law on the Entry, Exit, Transit, and Residence of Foreign Nationals in Vietnam came into effect in 2015 and aimed to streamline the immigration process. Various visa types have been introduced to better fit the various purposes of entry.

Vietnam has introduced E-visa, E-work permit and E-residence registration in the effort to set up an E-Government.

Business Travel

Visa Types

The visa type is determined by the foreign national's purpose of entry into Vietnam. The visas include:

- diplomatic visas (NG1-NG4)
- visas for people working with state authorities, socio-political organizations, social organizations, and the Vietnam Chamber of Commerce and Industry (LV1-LV2)
- visas for people foreign investors and foreign lawyers (DT)
- visas for foreign nationals working with enterprises (DN)
- visas for foreign nationals who:
 - are heads of the representative offices or project offices of international organizations or NGOs in Vietnam
 - are the heads of representative offices or branches of foreign traders or representative offices of economic, cultural or other specialized organizations
 - come to Vietnam to work with NGOs, the representative offices or branches of foreign traders, representative offices of economic, cultural or other specialized organizations (NN1-NN3)
- visas for foreign nationals coming to intern or study (DH)
- visas for foreign nationals attending seminars and conferences (HN)
- visas for reporters (PV1-PV2)

- visas for foreign nationals working in Vietnam (LD)
- visas for tourists (DL)
- visas for foreign nationals who are the spouse or children under 18 years of age of foreign nationals issued with LV1, LV2, DT, NN1, NN2, DH, PV1, LD or the parent, the spouse or children of Vietnamese citizens (TT)
- visas for foreign nationals coming to visit relatives or other purposes (VR)
- visas for foreign nationals coming for the purpose of market survey, tourism, visiting family members or medical treatment and falling under specific circumstances, as explained in detail under the section “Foreign Nationals Without Sponsorship” below (SQ)

Foreign nationals may apply for single- or multiple-entry visas. The majority of visas are valid for no more than 12 months, with the exception of SQ (not more than 30 days), HN and DL (not more than three months), VR (not more than six months), LD (not more than two years), and DT (not more than five years) visas. On 1 February 2017, a two-year pilot program was launched, whereby foreign nationals from 40 countries can apply for Vietnam’s electronic visas for multiple purposes. Electronic visas are valid for a single entry with the maximum stay of 30 days. Applicants can make application and fee payments online, and the visa will be issued via the website <https://www.immigration.gov.vn/>. Electronic visas are accepted at 28 border gates of Vietnam, including all of its international airports.

To be eligible for the issuance of a visa, among other criteria, the foreign national must either be sponsored by an agency, organization or individual in Vietnam or, in the absence of such sponsorship, must fall under categories of entry.

Individuals that come to Vietnam to engage in religious or cultural activities and members of the media must obtain approval from the relevant authorities of the government for their visit before entry.

Foreign Nationals Sponsored by Non-State Agencies or Individuals Living in Vietnam

Foreign nationals can be sponsored for visas by:

- enterprises established pursuant to Vietnamese laws
- diplomatic missions, consular agencies, representative offices of international organizations affiliated to the United Nations or intergovernmental organizations in Vietnam
- representative offices, branches of foreign traders, or representative offices of other foreign economic, cultural and professional organizations in Vietnam
- other organizations with legal status as prescribed by Vietnamese laws
- Vietnamese citizens residing in Vietnam, or foreign nationals who hold temporary or permanent residence cards

The head of the host organization or the host citizen must file a request and all the necessary supporting documentation with the immigration authority under the MPS for the issuance of the entry visa. The immigration authority undertakes to make a decision within five working days of receiving the request. Upon approving the request, the immigration authority will direct the relevant overseas Vietnamese diplomatic mission to issue the entry visa to the foreign national.

Visa On Arrival

Organizations may request the immigration authority to issue an entry visa at an international point of entry, provided that the name of the

point of entry and the time of entry are specified in the application. To be eligible for such issuance, the foreign national must fall under one of the following cases:

- the foreign national departs from a country that does not have any visa-issuing authority of Vietnam
- the foreign national has to stop by multiple countries before arriving at Vietnam
- the foreign national comes to Vietnam to take a tour organized by an international tourism company in Vietnam
- the foreign national is a crewmember of a ship anchoring at a Vietnam port who wishes to leave Vietnam through another border checkpoint
- the foreign national comes to Vietnam to attend a funeral of his/her relative, or to visit a gravely ill relative
- the foreign national comes to Vietnam to participate in dealing with an emergency, rescue, prevention of natural disasters, epidemics, or for another purpose at the request of a competent authority of Vietnam

Foreign Nationals Without Sponsorship

Foreign nationals without an invitation letter from a local individual or organization in Vietnam will only be granted visas for the maximum term of 30 days. To be eligible, the foreign national must enter Vietnam for the purpose of market survey, tourism, visiting family members or medical treatment, and fall under one of the following cases:

- a foreign national who has a working relationship with an overseas visa-issuing authority of Vietnam, his/her spouse and children

- a foreign national who presents a written request by a competent agency of the MOFA of the host country
- a foreign national who presents a diplomatic note of sponsorship by a foreign diplomatic mission or consular office at the host country

Visa Exemptions

Vietnam grants a visa exemption for the following cases:

- pursuant to a treaty to which Vietnam is a contracting party
- foreign nationals who hold APEC Business Travel Card (“ABTC”)
- foreign nationals who hold temporary or permanent residence cards
- entry to border economic zones or special administrative-economic units
- pursuant to a decision of the government to unilaterally grant a visa exemption to citizens of a certain country
- Vietnamese residing overseas who have passports or international “laissez-passers” issued by the foreign authorities
- foreign nationals who are the spouse or children of Vietnamese people residing overseas who hold a passport or an international “laissez-passer” issued by foreign authorities
- foreign nationals who are the spouse or children of Vietnamese citizens as prescribed by the government

Temporary Residence

Foreign nationals who are members of diplomatic missions, consular offices, representative offices of international organizations of the UN, and intergovernmental organizations in Vietnam, as well as their

spouses, children under 18 years of age, and domestic staff that accompany them during their term of office shall be issued NG3 temporary residence cards. Otherwise, holders of LV1, LV2, DT, NN1, NN2, DH, PV1, LD and TT visas are eligible for corresponding temporary residence cards.

The term of a temporary residence card does not exceed: (i) five years for NG3, LV1, LV2, DT and DH cases; (ii) three years for NN1, NN2 and TT cases; and (iii) two years for LD and PV1 cases. Upon the expiry of the temporary residence card, foreign nationals can apply for a new temporary residence card.

A holder of a temporary residence card is exempt from visa requirements throughout the term of the card.

Permanent Residence

Under the Law and its implementing regulations, permanent residence cards permit foreign nationals to reside in Vietnam for an unlimited amount of time. Only the following cases in which the foreign nationals have legal residence place and stable income to ensure their lives in Vietnam may be considered for permanent resident status:

- foreign nationals who have contributed to the development and protection of Vietnam and have been granted medals or honorary titles by the Vietnamese government
- foreign nationals who are: (i) scientists or experts currently residing temporarily in Vietnam; and (ii) proposed by the minister or the head of ministerial agencies or governmental agencies in the corresponding field
- foreign nationals who: (i) are sponsored by parents, spouses or children who are Vietnamese citizens, currently residing permanently in Vietnam; and (ii) have continuously resided in Vietnam for at least three years

- foreign nationals without nationalities who have continuously resided in Vietnam from 2000 or before

Foreign nationals who would like to apply for permanent residency may do so with the immigration authority under the MPS. Once given permanent resident status, a permanent residence card will be issued to the concerned person. A person holding a permanent residence card will be exempt from any visa requirements.

Employment Assignments

Acquiring an entry visa and a temporary residence card only addresses the entry, exit and residence rights of foreign nationals in Vietnam. Any foreign national, including overseas Vietnamese individuals, who want to work in Vietnam must obtain work permits unless they qualify for any of the exemptions mentioned below. The Local Labor Authority or MOLISA is responsible for the issuance of work permits to foreign nationals who wish to work for enterprises and organizations in Vietnam.

Foreign nationals working in Vietnam in the following forms are subject to the regulation of foreign labor management:

- pursuant to a labor contract
- in the context of an intra-company transfer
- performance of any of the following types of contracts: economic, commercial, financial, banking, insurance, scientific and technical, cultural, sporting, educational or medical health contracts
- service providers pursuant to a contract
- offering services
- working for a foreign non-governmental organization, or an international organization in Vietnam which is permitted to operate pursuant to the law of Vietnam

- volunteers
- establishing a commercial presence in Vietnam
- managers, chief executive officers, experts and technicians
- implementing a contract or project in Vietnam

In case the foreign nationals are subject to work permits, the sponsor (with the exception of foreign bidders for the foreign national's work permit) must:

- notify the Local Labor Authority or MOLISA about the sponsor's foreign labor usage plan at least 30 days prior to the date the sponsor intends to recruit/use the foreign national
- obtain an approval of the foreign labor usage plan issued by the Chairman of the People's Committee through the Local Labor Authority, or by MOLISA
- submit an application for a work permit at least 15 working days prior to the date the foreign national intends to start working

The sponsor does not need to submit and get approval for a foreign labor usage plan in the following cases:

- foreign students studying in Vietnam who also work in Vietnam
- foreign students studying at foreign schools/institutions who enter Vietnam pursuant to an internship contract signed with agencies, organizations or enterprises in Vietnam
- foreign nationals entering Vietnam to work as a manager, executive director, expert or technician for a period of less than 30 days, provided that the accumulative time of working in Vietnam in a year does not exceed 90 days
- foreign nationals entering Vietnam for a period of less than three months to offer services

- foreign nationals staying in Vietnam for less than three months to deal with complicated technical or technological problems that: (i) adversely impact or are at risk of exerting an adverse impact on production and business activities; and (ii) cannot be handled by Vietnamese and foreign experts who currently reside in Vietnam

The conditions for work permits vary according to the categories of foreign nationals as mentioned above. However, the general conditions generally required of foreign nationals are that they must have suitable health certified by a health certificate, a clean criminal record, and be “managers, executives, experts or technicians” meeting certain conditions regarding relevant experience or qualifications, as detailed in the “Skilled Labor” section below.

In the case of implementation of a bid won by a contractor, there are certain requirements to be met:

- before recruiting foreign employees, the contractor must declare its foreign labor demand to the People’s Committee in the province where the project is being implemented, with such declaration certified by the investor (project owner), and request the People’s Committee to approve the recruitment of such foreign employees
- the People’s Committee will assign the labor service providers, among others, to find suitable local employees for the contractor
- after one to two months, if the demand cannot be satisfied, the People’s Committee will consider allowing the contractor to recruit foreign employees

By law, the approval of the foreign labor usage plan takes place within 15 days from the date of receipt of the notification from the sponsor, while the licensing process of the work permit issuance will take only seven working days from the date of submission of a properly completed application dossier. However, the document preparation may take several months. Therefore, companies planning the intra-

company transfer of an employee to Vietnam or the local recruitment of a foreign employee should prepare the work permit application and apply for the work permit well in advance of the intended date of arrival of the employee to Vietnam.

The application for a work permit must include substantial supporting documents, such as criminal record, health certificate and certificates regarding the skills of the foreign national. Documents that are written or issued in a foreign language must be translated into Vietnamese and the translation must be notarized for submission.

For locally hired employees, the employer and the foreign employee may only enter into an employment contract after a work permit has been issued by the Local Labor Authority or MOLISA.

The term of the work permit will be set as the term of work in Vietnam but shall be no longer than 24 months. Work permits can be extended with the maximum same term, subject to the term of work in Vietnam.

Foreign nationals who work in Vietnam without first obtaining a work permit may face expulsion from Vietnam. Furthermore, employers who recruit foreign nationals who are working without proper work permits or who are barred from working in Vietnam may be subject to a monetary fine. With respect to exemptions and required documents, an employer wishing to apply for a work permit for its foreign employee should seek professional assistance with regard to their particular circumstances, because regulations frequently change and authorities may also change their interpretation of existing regulations.

Work Permit Exemption

Certain professions, among others, are exempt from obtaining a work permit, including:

- capital-contributing members or owners of limited liability companies
- members of the management board of joint-stock companies

- chiefs of representative/project offices of international organizations or non-governmental organizations in Vietnam
- foreign nationals staying in Vietnam for under three months to offer services for sale
- foreign lawyers having a professional practice license in Vietnam in accordance with the Law on Lawyers
- foreign nationals that are intra-corporate transferees within enterprises engaged in any of the following 11 service industries in the commitment on services between Vietnam and WTO: business, communication, construction, distribution, education, environment, finance, health, tourism, entertainment, and transportation as described in details under the section “Intra-Company Transfer” below
- foreign volunteers certified by diplomatic missions or international organizations in Vietnam

Each situation would need to be evaluated to determine if the intended activities in Vietnam could be exempt from the work permit requirement.

In most of the above cases, for those foreign nationals who are exempted from work permit requirements, their employer must request the Local Labor Authority or MOLISA in the locality of the foreign national’s workplace to issue the work permit exemption certificate (with a maximum term of two years subject to the working term of foreign national in Vietnam) and provide supporting documentation. In some cases, the requirement to obtain an approved foreign labor usage plan still applies.

However, in some particular cases, it is not necessary to obtain a work permit exemption certificate, as follows:

- foreign nationals entering Vietnam to work as managers, executives, directors, experts or technicians for a period of less

than 30 days, provided that the accumulative time of working in Vietnam in a year does not exceed 90 days

- foreign nationals entering Vietnam for a period of less than three months to offer services
- foreign nationals entering Vietnam for a period of less than three months to deal with complicated technical or technological problems that: (i) adversely impact or are at risk of exerting an adverse impact on production and business activities; and (ii) cannot be handled by Vietnamese or foreign experts who are currently in Vietnam, for a period of less than three months

Intra-Company Transfer

An intra-company transfer from a foreign enterprise to that enterprise's direct commercial presence in Vietnam is possible after the foreign national has worked at the foreign enterprise for at least 12 months prior to the transfer. The commercial presence exclusively includes the foreign invested economic entity; representative office, branch of foreign trader in Vietnam and operational office of foreign investor in a business cooperation contract. Unless the foreign national falls under the categories of work permit exemption, the foreign enterprise's commercial presence in Vietnam must submit an application dossier (which, aside from the generally required documents, must include documents proving that the foreign national has worked at the foreign enterprise for at least 12 months) to obtain a work permit for the foreign national. Even in case of work permit exemption, a work permit exemption certificate would still be required.

In this scenario, the foreign national can still maintain the employment relationship with the parent company, and does not sign any local employment contract. The advantage of this is that, while it is very difficult for an employer to terminate employees under Vietnamese law, the parent company can transfer the foreign national back to their home country and easily terminate him/her under the foreign law (assuming that termination at will is allowable in foreign countries).

Also, the foreign national can maintain their current benefits (such as participation in pension and social security scheme) in their home country.

However, some of the common difficulties in sending a foreign national to Vietnam under an intra-company transfer is that the foreign national is working for an affiliate, rather than the parent company of the commercial presence in Vietnam, or the foreign national has not worked for at least 12 months prior to the submission date of the application for a work permit.

Skilled Workers

The policy of the government is still to limit the use of foreign nationals in positions/jobs which can be handled by Vietnamese persons. As such, foreign nationals cannot take manual jobs. In the past, the government had imposed a cap on foreign employees and required employers to train local employees to gradually replace foreign nationals. Now, in order to prevent low-quality foreign labor, the government asks for the pre-approval of a foreign labor usage plan before the official submission of work permit applications. Therefore, the authorities have a chance to refuse the use of foreign nationals in a job/position that a Vietnamese person can handle. Contractors are also required to give priority to Vietnamese employees in their projects in Vietnam as described above. In practice, there have been cases where the relevant authority did not allow companies to recruit foreign nationals for certain positions; however, there are no clear criteria on jobs that can be handled by Vietnamese employees.

In addition, among the various criteria for a work permit, a foreign worker must be a manager, executive, expert or technician.

The work permit application for managers and executives must include documents proving that foreign nationals are managers or executives. They can be labor contracts, or appointment letters or corporate licenses/certificates showing that they are working in managerial/executive positions.

A “manager” includes: (i) the term “manager,” defined by the Law on Enterprises as the manager of a company or manager of a private company, who is either an owner of a private company, a partner of partnership, the chairperson of the board of members, a member of the board of members, the company’s president, the chairperson of the board of directors, a member of the board of directors, the director/general director, or a person holding another managerial position who is entitled to enter into the company’s transactions on behalf of the company according to the company’s charter; or (ii) the head or deputy head of the agency or organization. An “executive” is the head and direct manager of units/departments of organizations or enterprises.

The application for experts must include: (i) documents proving that the foreign national holds the requisite academic qualification and at least three years’ experience in the field they have been trained in, which is suitable to the work duties in Vietnam; or (ii) confirmation of being experts issued by relevant foreign organizations or authorities, or companies.

For technicians, the application must include documents proving or certifying that they have been trained on a technical field for a duration of at least one year, as issued by relevant organizations or authorities or foreign companies, and have three years’ of experience in the field in which they have been trained, which shall be suitable to the work duties in Vietnam.

Post-Entry Procedures

Any foreign national that temporarily resides in Vietnam must, via the manager of the lodging establishment, declare his/her temporary residence status at the local police authority.

The manager of the lodging establishment shall complete the declaration form and submit it to the local police authority within 12 hours (or within 24 hours if the administrative division is in a remote area) of the foreign national’s arrival at the lodging establishment.

Lodging establishments that are hotels must file temporary residence information through an online account at the provincial level Immigration Department's website ("Information Portal") where the foreign national resides. Other lodging establishments may choose to declare the temporary residence via the Information Portal or via the declaration form as prescribed by the MPS and submit the same information to the communal-level police. If the foreign national changes his/her temporary residence address or resides at a place different from that written on his/her temporary residence card, he/she must submit a new declaration of temporary residence.

Entry Based on International Agreements

APEC Business Travel Card Program

By a decision of the Prime Minister in 2006, Vietnam began participation in the ABTC program, for APEC countries. The ABTC is a travel card granted to businessmen of APEC countries that participate in the program to facilitate their business travel among the APEC countries. Under this program, Vietnam committed to grant a visa waiver for ABTC holders. The ABTC is valid for five years from the date of card issuance and cannot be extended. When the issued card expires, the card holders may apply for a new card, if necessary.

Visa Waiver

Vietnam has a visa waiver program for foreign nationals of many countries, both through unilateral and bilateral commitments. Vietnam has entered into various bilateral visa waiver treaties and agreements with other countries. It should be noted, however, that these commitments vary with regard to length of stay permitted, type of visa, and various other conditions, and so it is advisable to check with your nearest Vietnamese consular office, or visit the website of the Consular Bureau of MOFA for more detailed and current information.

Planned Legislative Change

Vietnam-European Union Free Trade Agreement

On 2 December 2015, the Minister of Industry and Trade of Vietnam and the European Union Trade Commissioner declared the official closure of negotiations on the Vietnam-European Union Free Trade Agreement (“EVFTA”). The EVFTA is now under the domestic ratification process of the parties and is expected to come into effect in 2018.

According to the almost-final version released between both parties, commitments under Chapter 8: Trade in Services, Investment and E-commerce may require Vietnam to amend its laws regarding entry and temporary residence, namely:

- Introduction of new categories of natural persons:
 - “Trainee Employees” is additionally defined among persons of “Intra-corporate transferees” with three requirements including: (i) having been employed by the organization for at least one year; (ii) possessing a university degree; and (iii) being temporarily transferred for career development purposes or to obtain training in business techniques or methods
 - “Independent Professionals” is specified as persons satisfying the following criteria: (i) offering a service; (ii) being self-employed; (iii) having concluded a bona fide contract other than through an agency for placement; and (iv) the provision of its services requires their presence on a temporary basis in Vietnam to fulfil the contract
- Broader description of “Business Sellers”: The definition extends to both services and goods suppliers, rather than only services suppliers as currently prescribed as under Vietnamese laws.
- Duration of entry and temporary stay for each natural person:

- intra-corporate transferees and business visitors — up to three years for manager/executives and specialists; one year for trainee employees; and 90 days for business visitors for establishment purposes
- business sellers — up to 90 days
- contractual service suppliers — a cumulative period of not more than six months per 12 months
- independent professionals — duration is not provided

Online work permit submission

On 28 December 2016, the MOLISA promulgated a draft Circular detailing online work permit application procedures applicable to foreign nationals working in Vietnam (ie, approval on requests of utilizing foreign employees; issuance/re-issuance of work permits; and affirmation of work permit exemptions) (the “Draft”). Under this draft Circular, several notable provisions are as follows:

- the online work permit application procedures must be carried out via an account registered by the employer on <http://dvc.vieclamvietnam.gov.vn>
- all written documents must be converted into electronic form — if such written documents are legally invalid, the respective electronic forms are legally invalid
- the online procedures take less time in comparison with existing paper-based procedures

Although the Draft specifies that an online work permit application is an option for the period from 1 January 2017 to 30 June 2017 and mandatory from 1 July 2017 onwards, this Draft has not been officially issued and enforced. It seems that the MOLISA would like to propose an optional application method (either online or paper-based) for the first six months from the date on which the Draft is officially issued.

FOR MORE INFORMATION:

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