BAKER & McKENZIE

Immigration Manual

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Immigration Manual

INTRODUCTION

This manual is designed to provide a general overview of the immigration laws and procedures of various countries. Please note that the immigration laws and procedures are constantly changing and are subject to new policies and developments. Therefore, this manual is not intended to be exhaustive and specific questions should be directed to the Executive Transfer and Immigration Department of Baker & McKenzie, Hong Kong. Should you require any additional information, please do not hesitate to contact Mr. William Kuo at +852 2846 1952 (email: william.kuo@bakernet.com). Unless otherwise indicated, the law is as stated on 1 November 2006.

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IMMIGRATION TO AUSTRALIA

INTRODUCTION

A person may travel to Australia as an immigrant or non-immigrant. Under the non-immigrant category, a person may apply for a visitor visa or a visa for temporary residence. An immigrant visa may be issued for family migration, skilled migration, business skills migration, and humanitarian migration.

NON-IMMIGRANT VISAS

General

Non-immigrant visas are divided into three types: visitor, business and non-business temporary resident. The visitor visa is appropriate for persons such as tourists. A business visa is available to a person to undertake business in Australia and the non-business temporary residence visa is for persons undertaking specific cultural, training or employment related projects in Australia.

A. Visitor Visas

A person may apply for a visitor visa allowing a 3 to 12 month stay, depending on the circumstances of the individual. Under this category, a person may enter Australia for:

- holiday;
- sightseeing;
- social or recreational reasons;
- visiting relatives or friends; or
- other short-term, non-work purposes.

Under this visa category, a person may not take up employment or formal study while visiting Australia.

To apply for a visitor visa, the following should be submitted to the nearest Australian consulate or embassy overseas:

- application form;
- passport;
- employment reference letter;
- evidence of funds (such as bank statements and tax receipts).

In certain cases, a visitor visa may also be obtained over the Internet by following the links on the Department of Immigration and Multicultural Affairs (DIMA) home page at www.immi.gov.au.

In July, 1998, the Australian Government introduced an Electronic Travel Authority ("ETA") system. Passport holders of the following 33 countries intending to stay in Australia for up to 3 months as tourists or business visitors are eligible for the ETA:

Andorra	Iceland	Portugal
Austria	Ireland	Republic of San Marino
Belgium	Italy	Singapore
Brunei	Japan	South Korea
Canada	Liechtenstein	Spain
Denmark	Luxembourg	Sweden
Finland	Malaysia	Switzerland
France	Malta	Passports issued by the Taiwan authorities
Germany	Monaco	United Kingdom (including BNO)
Greece	Netherlands	United States of America
Hong Kong SAR	Norway	Vatican City

The benefit of an ETA is that it is issued within seconds via a computer link between DIMA in Canberra and thousands of airlines and travel agents around the world. There will be no visa label or stamp in the applicants' passports. Applicants can apply for the ETA when they make travel arrangements through

appointed airlines or travel agents. The ETA can also be obtained over the Internet on the DIMA home page at www.immi.gov.au.

B. Business Visas

1. Temporary business visa (short-stay)

The Temporary Business Entry (subclass 456 business/short stay) is permitted for persons seeking a short-term stay in Australia for business purposes. This visa can be granted for travel to Australia for multiple visits over an extended period (such as one or more years) with a stay of three months on each arrival.

A Business ETA, valid for 12 months or for the life of the passport, is available for business visits to Australia and permits a stay of three months from date of arrival. A multiple entry version of this ETA is available for travel to Australia for multiple visits with a stay of three months on each arrival.

Holders of Asia Pacific Economic Co-operation ("APEC") Business Travel Cards are allowed to stay for three months on each arrival and must be citizens of one of the participating countries which include Chile, Hong Kong SAR, Korea, Malaysia, New Zealand, Philippines and Thailand.

2. Temporary business visa (long-stay)

The business visa (long-stay) subclass 457 is a temporary visa allowing the holder to remain in Australia for a period of more than three months but not more than four years, with multiple re-entry privileges to Australia. This visa can be renewed several times. The applicants can be:

- skilled personnel (i.e. managers and administrators; professionals; associate professionals and skilled tradespersons and related workers) of companies operating in Australia;
- skilled personnel of offshore companies seeking to establish a representative office or branch in Australia, participate in joint ventures, or fulfill a contract awarded to an offshore company; or
- skilled personnel coming under a labor or regional headquarters agreement.

Applying for a temporary business visa (long-stay), is a three-stage process as follows:

(i) The employer completes a sponsorship application.

- DIMA assesses the suitability of the employer to sponsor expatriate staff by considering various issues including the company's financial standing, whether the business provides training and professional development opportunities to Australian staff; and whether the sponsorship of expatriates will result in a benefit to Australia.

(ii) On approval of the sponsorship, a nomination application in respect of the position is assessed by DIMA.

- employers sponsoring visa applicants must meet a minimum salary and skills threshold. That is, the employee's salary must be equal to or greater than the average Australian salary of AUD 41,850. This figure is increased yearly to reflect indexation. Information and Computing Technology Professionals have a separate minimum salary level of AUD 57,300;

- employers are permitted to sponsor skilled employees only. Semi-skilled employees cannot usually be sponsored unless the employer can demonstrate there is a labor shortage in that occupation.

(iii) Once the sponsorship and nomination are approved, the applicant's visa application is assessed and finalized.

- applicants must demonstrate they are suitably experienced and qualified for the position. The applicant and their family are also required to undertake health checks and answer questions to establish whether they are of good character;

- for businesses operating in Australia, the visa application must be lodged at a DIMA office in Australia. However, for foreign companies, the visa application must be lodged at an Australian embassy or consulate in the relevant country;

- the spouse or defacto partner of the main applicant obtains the same visa and is therefore entitled to work in Australia. From 1 July, 2006,

same sex partners may be included on the main applicant's visa application.

C. Temporary Residence

This type of visa is for persons who intend to enter Australia temporarily, in the short or long-term, to engage in specific training activities, employment related activities, or certain cultural activities. This visa allows persons into Australia who can contribute to the economic, cultural and social development of the Australian community.

A visa for temporary residence can be sought for:

- business/employment (e.g., professional staff, company directors);
- cultural/social (e.g., media and film, entertainment, sport, religious workers);
- educational (e.g., foreign government agency, visiting academics, public lecturers, occupational trainees);
- domestic workers;
- family relationship;
- retirement;
- supported dependants;
- expatriates; or
- working holiday.

Note that these sections are further subdivided. Additional information should be sought before applying.

Spouses and dependent children may accompany the applicant for the same period of time as the applicant is permitted to remain in Australia. However, the applicant must provide proof that he/she can financially support the dependents during their period of stay in Australia. In most cases, spouses and dependents of temporary resident visa holders are not entitled to work in Australia unless they independently qualify to do so.

To apply for a visa for temporary residence, the following must be submitted:

- application form;
- one passport sized photograph;
- health examination results, if required (this is normally required if the period of stay is for more than 12 months);
- sponsorship, if applicable;
- passport; and
- application fee.

Note that the required documents for this visa will vary depending on the type of activity the applicant seeks to perform in Australia. This list is not exhaustive and further information should be sought for the precise requirements under each category.

On 10 September, 2001, Hong Kong SAR and Australia established a bilateral working holiday scheme to benefit young people from both places. Under the scheme, young people are granted Working Holiday Visas for a stay of 12 months. They can take up employment of not more than six months with any one single employer or engage in any studies or training for not more than four months. The applicants must be aged between 18 and 30 and hold a Hong Kong Special Administrative Region or BNO passport. In addition, applicants must possess return travel tickets or sufficient funds to purchase such tickets and reasonable funds for their maintenance in Australia.

Nationals of the following countries have similarly entered into this scheme with the Australian Government and therefore have access to the same work and study/training rights:

- Belgium, Canada, Denmark, Finland, France, Italy, Norway, Sweden The Netherlands, Ireland, United Kingdom, Estonia, Germany, Japan, Malta, Cyprus, South Korea, and Taiwan.

IMMIGRANT VISAS

General

The Australian immigration program is divided into five streams as follows:

A. Family Migration

- applicant must have a close relative living in Australia who can sponsor him/her; or
- applicant must be married to, be in an interdependent, or de facto relationship with an Australian citizen, permanent resident or eligible New Zealand citizen.

B. Skilled Migration

- general skilled migration:
  - independent;
  - skill matching; or
  - family sponsored.

C. Employer Sponsored Migration

D. Business Skills Migration.

E. Humanitarian Migration

- this stream comprises of refugees.

A. Family Migration

Applicants for family migration classes must be sponsored by a close relative, spouse, interdependent partner, or de facto spouse who is an Australian citizen, permanent resident living in Australia and at least 18 years of age.

One can be sponsored as a family migrant if one falls within one of the following visa classes:

- spouse;

- dependent unmarried children;
- children under 18 years of age coming to Australia to be adopted;
- orphaned, unmarried relatives under 18 years of age;
- a relative of the sponsor to assist with a serious family crisis brought about by death, disability, prolonged illness or some other serious circumstances;
- fiancé(e)s;
- parents with the balance of their families in Australia, i.e. applicants must have an equal or majority of their children living in Australia versus overseas or majority residing in Australia versus any single overseas country. The sponsor must have also resided in Australia for at least two years before the sponsorship. The parents visa class is subject to capping; or
- last remaining brother, sister or non-dependent child if he/she has no close family ties living in countries other than Australia.

There is a two-year probationary period for the spouse and fiancé(e) classes.

B. Skilled Migration

1 Independent

Applicants must be highly skilled and have education, skills and employability which will contribute to the Australian economy.

Applicants under this category will be assessed against a points test.

Points are awarded for the following:

- Skill - the occupation that the applicant nominates must be on the Skilled Occupations List ("SOL") current at the time of the application. Applicants must have their skills assessed by the relevant assessing authority.
- Age - applicants must be under 45 years of age at the time of application.
- English language ability - applicants must have sufficient ability in the English language.

- Specific work experience – applicants must have work experience in the nominated occupation.
- Occupation in demand - if the nominated occupation is on the Migration Occupations in Demand List ("MODL"), extra points will be awarded.
- Australian qualifications - applicants can receive extra points if they have completed an Australian qualification from an Australian educational institution.
- Spouse skills - additional points will be awarded if applicant's spouse is able to satisfy the requirements and has obtained a suitable skills assessment from the relevant assessing authority.
- Bonus Points - up to five bonus points may be awarded for capital investment in Australia, Australian work experience and fluency in one of Australia's community languages other than English.

Applicants must obtain a positive skills assessment from the relevant Australian assessing authority for the nominated occupation prior to submitting the application to the Adelaide Skilled Processing Centre in Australia.

Applicants must gain sufficient points to reach the pass mark in effect at the time their applications are made. Applicants are generally assessed on their circumstances at the time of application. For example, points for age are awarded on the basis of the applicant's age at time of lodgment, not at the time of assessment.

Applications which achieve a score below the pass mark, but equal or better than the "pool mark", will be held in reserve for up to two years after assessment. If the pass mark is lowered in that two-year period and the applicant's score is equal to, or higher than, the new pass mark, the application will be processed.

The current pass mark is 120 and pool mark is 70. Applicants should check with the Australian embassy or consulate overseas for the current marks at the time of application.

2. Skill-matching

This category is not points tested.

Skill-matching has been designed to help overcome regional skill shortages by allowing applicants to settle in parts of Australia where their skills and abilities are in demand. This is done by placing all applicant details in a skill-matching database. The database is made available to State and Territory governments and employers who may then nominate an applicant for migration. Applicants' details will be placed in the database for two years. Thereafter, unsuccessful applicants will have their details removed from the database. Applicants under the skill-matching category must still satisfy the basic requirements for skill, age and English language proficiency.

3. Family Sponsored

Certain relatives, who do not qualify under the Family Category, may nevertheless be able to migrate to Australia if their relatives are prepared to sponsor their skilled migration application.

3.1 Designated area sponsored

The Australian Government encourages skilled migrants to settle in certain designated regional areas. Applicants sponsored by the following relatives who reside in a designated area will not be points tested:

- a child;
- a parent;
- a brother or sister;
- an uncle or aunt;
- a first cousin; or
- a grandparent.

While applicants do not have to pass the points test under this category, they or their spouse must still satisfy the basic requirements of age, English language, qualifications, nominated occupation and recent work experience.

This particular skilled migrant visa underwent a change on 1 July, 2006 requiring holders of this visa to undergo a two year probationary period in a designated area prior to obtaining permanent residence.

3.2 Designated area sponsored overseas student in Australia

Eligible overseas students in Australia can apply for permanent residence under this category if sponsored by a relative listed in paragraph 3.1 above. Applicants must provide a satisfactory skill assessment in addition to satisfying the usual character and health requirements.

3.3 Australian sponsored

This category is designed for skilled migrants whose sponsor lives outside the designated areas. If the sponsor resides in Sydney or a Selected Area, then the applicant is restricted in the type of skilled occupation they may nominate.

Applicants or their spouse who are related to the following sponsors in Australia will receive an additional 15 points under the current points test applicable for independent category migrants:

- a child;
- a parent;
- a brother or sister; or
- an uncle or aunt.

The current pass mark for the Australian family sponsored class is 110 and the pool mark is 105.

4. Independent overseas student in Australia

Eligible overseas students in Australia are able to apply for permanent residency under this category without the need for sponsorship by an Australian relative. Applicants receive concessions with regard to the work experience requirements for their nominated occupation and are able to apply for a bridging visa to remain in Australia while their application is being processed.

Applicants must satisfy the basic requirements and nominate at least a 50 point occupation from the SOL.

Applicants are also required to pass the points test. The current pass mark and pool marks are both 120 points.

C. Employer Nomination Scheme

Australian employers can also sponsor highly skilled employees for permanent residence under the Employer Nomination Scheme (ENS). Due to changes to the law as of 2 April, 2005, there is no requirement for the employer to demonstrate that they cannot find a suitably qualified Australian resident or citizen.

Application process

The application process is similar to the process for a Long Stay Business visa (457) in that the employer must apply for approval from DIMA to sponsor an employee for permanent residence and the employee must demonstrate they are suitably qualified and experienced for the position. However, there are a number of additional specific requirements in ENS applications, as outlined below.

- *Position* — the employer must offer a full-time, fixed-term appointment of at least three years that does not exclude the possibility of renewal. Alternatively, the employer must offer a permanent position.
- *Highly skilled* — the employee must be highly skilled. That is, their occupation must be one that appears on a specified list issued by the Government. Currently there are over 450 occupations appearing on this list. In addition, the employee must:

    1. Have held a qualifying visa for at least two years prior to making a permanent residence application and must have worked for their sponsoring employer for 12 months of these two years immediately prior to lodgment; OR

    2. Have at least three years of post-qualification work experience in their nominated occupation and have obtained a positive skills assessment; OR

3. Have an annual base salary of at least AUD 165,000.

- *Age and English language ability* — the employee must have vocational English and be under the age of 45, unless the appointment is exceptional. Senior management or executive positions are generally seen to be exceptional appointments and therefore, in such cases, the age requirement can be waived.

D. Business Skills Migration

Applicants must have recent experience of running a successful business (as an owner or part-owner), or in managing a substantial investment portfolio. Alternatively, applicants must have been a senior executive in a large company. All applicants must be committed to managing a business and/or investment in Australia in which they have substantial ownership.

Provisional visa holders are able to apply for permanent residence after a minimum of 12 months (with the exception of the Investor visa category where the visa holder cannot apply before two years). Permanent residence will be granted if the visa holder is able to demonstrate, in addition to other requirements, that he/she has successfully established the proposed business or investment.

1. Sponsorship

Applicants are encouraged to set up businesses in regional, rural or low growth areas of Australia. As such the Australian government will provide sponsorship for applicants who can assist in the economic development of certain areas and the creation of employment opportunities. Substantial concessions are available for sponsored applicants.

2. Categories of application

Applicants can apply for business entry to Australia under the following categories:

- business owner or State/Territory sponsored business owner - for owners or part-owners of businesses;

- senior executive or State/Territory sponsored senior executive - for senior executive employees of major businesses;
- established business in Australia - for owners or part-owners of an established business in Australia;
- business talent – for high calibre business owners; or
- investor or State/Territory sponsored investor - for investors who are willing to make a substantial investment in a government approved designated investment for at least four years.

From 1 March, 2003, all applicants must be under the age of 45 and have vocational English, unless sponsored by a State or Territory government in which case they must be under the age of 55 and need not demonstrate vocational English.

Most successful Business Skills Entry applicants are granted a provisional visa for four years and only after demonstrating that they have undertaken their proposed investment or business activities can they apply for permanent residence. The only exceptions to this are applicants for Business Talent and Established Business in Australia visas who can obtain permanent residence straight away.

2.1 Business owner or State/Territory sponsored business owner visa

Owners/part-owners of businesses and state/territory sponsored business owners must demonstrate:

- successful business careers;
- net assets in a recent qualifying business of not less than AUD 200,000 (not applicable if sponsored);
- an ownership interest in a main business that had an annual turnover of at least AUD 500,000 (AUD 300,000 if sponsored);
- combined personal and business assets with a net value of AUD 500,000 (AUD 250,000 if sponsored); and
- a realistic commitment to establishing a new business in Australia or purchasing equity in an existing business, and maintaining

a substantial ownership interest and direct and continuous involvement in the running of that business.

2.2 Senior executive or State/Territory sponsored senior executive visa

Senior executives and state/territory sponsored senior executives must demonstrate:

- recent employment in the top three levels of management of a major business with an annual turnover of at least AUD 50 million (AUD 10 million if sponsored);
- combined business and personal assets of AUD 500,000 (AUD 250,000 if sponsored); and
- a realistic commitment to establishing a new business in Australia or purchasing equity in an existing business in Australia and maintaining a substantial ownership and direct and continuous involvement in the management of that business.

2.3 Business talent (Migrant) visa

This is for high calibre business owners under the age of 55. Applicants are granted permanent resident visas immediately. Applicants must meet the following requirements:

- sponsorship by a State or Territory Government;
- net assets in a recent qualifying business in which the applicant had an ownership interest of at least AUD 400,000;
- an annual turnover of at least AUD 3,000,000 in recently operating main businesses; and
- combined business and personal assets which have a net value of AUD 1,500,000.

2.4 Established business in Australia (Migrant) visa

Applicants must meet the following requirements:

- lived in Australia with a valid visa for a minimum of nine months cumulatively in the 12 months before the date of application;

- have at least a 10% interest in a qualifying business in Australia for at least 18 months immediately before the date of application;
- have net assets in a qualifying business in Australia of not less than AUD 100,000;
- have total net assets in Australia of not less than AUD 250,000;
- have been actively involved in the management of the business; and
- meet other standard immigration requirements, which include age and language ability.

2.5 Investor or State/Territory sponsored investor

A successful applicant under the Investor class must demonstrate:

- at least three years experience of direct involvement in managing a "qualifying business" or an "eligible investment" as defined by the governing regulations;
- for at least one year out of the last five, have had at least a 10% ownership interest in the qualifying business, or have managed an eligible investment worth at least AUD 1,500,000 (AUD 750,000) if sponsored);
- ownership of assets which have a net value of at least AUD 2,250,000 (AUD 1,125,000 if sponsored);
- make an investment of AUD 1,500,000 (AUD 750,000 if sponsored) in a state/territory issued security for a minimum period of four years; and
- have the intention to maintain an investment in Australia.

E. Humanitarian Migration

The Humanitarian Program comprises four components:

i. Refugee: for people who are subject to persecution and have been identified in conjunction with UNHCR as in need of resettlement.

ii. Special Humanitarian Program ("SHP"): for people who have suffered discrimination amounting to gross violation of human rights and who have strong support from an Australian citizen or resident, or a community group in Australia.

iii. Special Assistance Category ("SAC"): for people who, while not meeting the refugee or Special Humanitarian criteria, are nonetheless in situations of discrimination, displacement or hardship. Most SACs require proposers of applicants to be close family members resident in Australia.

iv. Onshore Protection Visa: for people already in Australia who need protection in accordance with the UN Refugees Convention.

MIGRANT VISA AND RESIDENT RETURN VISA

Australia provides great flexibility for migrants to travel during their early years in Australia. Upon approval of the migration application, a migrant visa together with a five-year multiple Resident Return visa will be issued to the migrant.

The migrant visa requires the migrant to travel to Australia by a specified date. If the migrant does so, the multiple Resident Return visa will enable the migrant to leave and return to Australia on any number of occasions within the validity of the resident return visa. During these five years, the migrant will maintain permanent resident status in Australia and at the same time, can travel freely in and out of Australia. This is particularly important to people who need to travel after their migration.

Anyone who is not an Australian or New Zealand citizen needs a valid resident return visa if he/she intends to return to Australia after a period overseas.

RENEWING THE RESIDENT RETURN VISA

The Migration Regulations provide that subsequent resident return visas, after the initial resident return visa, may be issued in the following circumstances:

- an applicant may be granted a five-year resident return visa if the applicant has been physically resident in Australia for at least two of the five years immediately before making the application, or if the applicant:

a. is employed outside Australia by the Australian government or an organization that has its principal office in Australia; or

b. the applicant has significant employment, business, cultural or personal ties that are of benefit to Australia.

- an applicant may be granted a three month resident return visa if the applicant was physically resident in Australia for a period of less than two years during the period of five years immediately preceding the application and the applicant establishes substantial reasons for leaving and re-entering Australia in the next three months.

The spouse and dependent children may also be granted resident return visas to accompany the applicant in the above cases. Other rules apply if the applicant seeks to accompany an Australian citizen spouse overseas. Generally in those cases, the applicant will receive a five-year resident return visa.

CITIZENSHIP

Australian citizenship is a broad and complex field, which covers areas that concern all Australian permanent residents and citizens.

The most common ways to become an Australian citizen are by:

- being born in Australia (to either Australian citizens or permanent residents);
- applying for the grant of Australian citizenship (formerly called naturalization);
- being born overseas to an Australian citizen parent;
- being legally adopted in Australia by an Australian citizen; or
- resuming Australian citizenship.

A. General Criteria

Australian citizenship cannot be automatically acquired simply by having lived in Australia for a certain time, or by marriage to an Australian citizen. One must apply for it.

Basically, a permanent resident must be of good character, have a basic knowledge of English, understand the privileges and responsibilities of an Australian citizen and fulfill residential requirements, before he/she can successfully apply for Australian citizenship.

Australia requires her citizens to be able to speak and understand basic English (but does not require them to be able to read or write in English), although exemptions from this rule exist for the following people:

- anyone over 50 years of age;
- anyone who is incapable of understanding the nature of the application due to a permanent physical or mental incapacity; and
- anyone who is suffering permanently from a loss or substantial impairment of hearing, speech or sight.

B. Residential Criteria

Generally, a permanent resident who has resided physically in Australia for a total of two years in the five years immediately preceding the date of application and, of which one out of those two years is accumulated within the two-year period immediately preceding the date of application, is eligible to apply for the grant of Australian citizenship.

Therefore, the fastest period in which Australian citizenship can be obtained is two years continuous physical presence in Australia after arrival as a migrant.

The Australian Citizenship Act does provide the Minister to consider days outside Australia as days in Australia, for the purpose of calculating the two-year physical presence requirement. In these situations, the applicant must be able to prove that the time absent from Australia was for the benefit of Australia.

C. Dual Citizenship

From 4 April, 2002, Australian citizens are now able to acquire the citizenship of another country without losing their Australian citizenship.

CHAPTER 2
IMMIGRATION TO BELGIUM

IMMIGRATION TO BELGIUM

INTRODUCTION

Nationals from the European Economic Area ("EEA") countries, i.e. the European Union ("EU") member states plus Iceland, Norway and Liechtenstein, do not require a work permit to be employed in Belgium. However, they will be required to obtain a residence permit if their stay extends for longer than three months.

Other non-EEA nationals, with a few exceptions, must obtain a work and residence permit prior to entering Belgium for work and residence. Recently, the Belgian Government made access to the Belgian labor market easier for highly qualified employees and managerial employees. It is now possible to extend the work permit for highly qualified employees beyond four years. Furthermore, under certain conditions, executive staff can receive a work permit which is valid for an unlimited period of time.

While the federal government is the competent authority for issuing residence permits, the regional labor authorities are the competent authorities for issuing work permits. The two authorities are linked to each other. In principle, without a work permit, no residence permit will be issued.

WORK AND RESIDENCE PERMITS

General rule

As a general rule, foreign employees require a work permit for any work performed in Belgium. An employer must first issue an offer of employment and then file an application with the competent regional labor authority where the employer has its place of business. 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.

Upon receipt of the work permit, the employee will need to obtain a visa, i.e. the authorization to stay in Belgium for more than three months, at the Belgian consulate or embassy overseas where the employee had his/her latest place of

legal residence. The visa and the work permit must be obtained prior to the start of employment in Belgium.

Within three days of arrival in Belgium, the foreign employee needs to register with the local municipality where he/she will reside in order to obtain a residence permit. This residence permit is generally granted within a few days of the application.

Exceptions to the general rule

Some categories of citizens are exempt from obtaining a work permit:

1. Citizens from the European Economic Area

The EEA came into force on 1 January, 1994, following an agreement between the European Union and the European Free Trade Association ("EFTA"). The following 18 countries belong originally to the EEA: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom (the original 15 EU Member States) plus Iceland, Norway and Liechtenstein (3 EFTA Member States).

According to Article 2, 1° of the Royal Decree of 9 June, 1999, EEA-nationals coming to work in Belgium are exempt from obtaining a work permit as well as their spouse and children under the age of 21 (who are not themselves EEA-nationals). These family members are required to obtain a "family reunion visa" to accompany or join the EEA-national coming to work in Belgium. EEA-nationals and their family members are free to be employed by a company or to work self-employed without work authorization being required. If, however, an EEA-national plans to stay in Belgium for longer than three months, then the individual must apply for a residence permit for EEA-nationals with the local municipality where he/she resides. The local municipality will issue a residence permit which will be valid for five years and may be renewed automatically.

Although Switzerland does not form part of the EEA, since 31 May, 2004, Swiss nationals are also allowed to freely reside and work in Belgium without any prior formalities.

2. The 10 new Member States

On 1 May, 2004, 10 new countries joined the EU: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The 1994 EEA Agreement explicitly states that a country that becomes a member of the EU, shall also become a member of the EEA. The EEA 18 became the EEA 28. The free movement of persons within the EEA should theoretically also apply to the citizens of the new Member States. However, in practice, the majority of the original Member States have restricted access to their labor markets.

On 1 May, 2004, the Belgian government decided to apply for a two-year transition period in relation to nationals of the following eight new Member States who seek to enter the Belgian labor market to undertake paid employment: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. During the two-year transition period, nationals of these eight new Member States will still need to obtain a work permit to enter the Belgian labor market. Only citizens of Cyprus and Malta currently enjoy free access to the Belgian labor market (Royal Decree of 12 April, 2004).

Upon extension of this initial two year transition period on May 1, 2006, the Belgian government has recently decided to facilitate entry into the Belgian labor market for nationals of the aforementioned eight new Member States. According to the new regulations, the labor market criterion (see Non-EEA nationals hereinafter) is not taken into account for such nationals to the extent that their work permit application is related to professions for which the competent regional government has recognized that there is a shortage of available workers on the labor market (the so-called "bottle-neck professions"). The three regional governments in Belgium (Flanders, Brussels, Walloon region) have issued separate lists of "bottle-neck professions". At the same time, a specific registration system for international employment is being developed in order to avoid abuses in this respect. On 1 May, 2009, Belgium can apply to the European Commission for authorization to continue the transition period for a further two years should the migration cause serious disturbances to the Belgian labor market (referred to as 'safeguard' in the Accession Treaty). After a total of seven years, i.e. no later than 1 May, 2011, the Belgian government will no longer be able to restrict access to the Belgian labor market.

3. Business trips and sales representatives

No work permit is required if the employee's activities are restricted to business travel and provided the stay in Belgium does not exceed three months during a six-month period. In addition, citizens of certain privileged countries do not need a visa when they travel to Belgium for business. They will be allowed to enter Belgium on the basis of their nationality and upon presentation of their international passport. The concept of business trip is interpreted restrictively to include visits to trade fairs or company board meetings, and to meet manufacturers or traders. The trip must be limited to meetings and discussions. It is forbidden to perform any work activity in Belgium. Performing work activity while on a business trip could imply a technical violation of the Belgian immigration law.

Sales representatives having their main residence abroad who meet with customers in Belgium on behalf of foreign companies that do not have a branch or legal entity in Belgium, do not require a work permit provided their stay in Belgium does not exceed three months during a six-month period.

4. Coordination center

A coordination center is defined as a Belgian corporation, or branch of a foreign corporation, which is part of a group of corporations, and whose exclusive object is the development and centralization of one or several of the following activities for the sole benefit of the group: marketing, assembling and gathering information, insurance and re-insurance, relations with national and international authorities, centralization of accounting, administrative and computer operations, centralization of financial operations, and of the covering of risks resulting from the fluctuation of exchange rates and all other activities having a preparatory or auxiliary character for the corporation or the group.

Foreign national executive staff and researchers, who are local hires (i.e. on the Belgian payroll) of a recognized Belgian coordination center, are exempt from obtaining a work permit during their employment in the coordination center provided that the coordination center employs at least ten full-time employees subject to Belgian social security after two years of activity. In such cases, the coordination center, as employer, is also exempt from the requirement to obtain an employment authorization. The executive staff and researchers are entitled

to obtain a Belgian residency permit directly at the local municipality where the employer has its place of business.

The applicant must demonstrate that a coordination center will employ him by submitting a copy of the publication in the Belgian Official Gazette stating that the company is a coordination center and by submitting a proof of the appointment by the coordination center, a document "Annex 19bis".

There has been uncertainty for a long time as to whether seconded executives and researchers, who are not EEA-nationals and who are temporarily seconded to a Belgian coordination center need a work permit or not. The competent authorities have recently taken position on this issue. Foreign executives and researchers who are seconded by their foreign employer to a recognized Belgian coordination center, and remain employees of the foreign entity (and not of the Belgian coordination center) need to be in the possession of a work permit in order to work for the Belgian coordination center. In the past, the competent authorities used to turn a blind eye to this category. The new regulation can be enforced on a retroactive basis for those foreign nationals currently seconded to a Belgian coordination center without a work permit.

The European Commission has ruled that coordination centers should disappear by the year 2010 given that coordination centers would benefit from unfair tax advantages and therefore would be incompatible with European state aid rules.

5. Belgian "van der Elst visa"

No work permit is required for individuals eligible for the so-called "van der Elst visa". The van der Elst visa is not based on Belgian law but rather on a ruling by the European Court of Justice. According to this ruling, a non-EEA employee regularly working for a company in one Member State A does not need to obtain an additional work permit if this employee is transferred to another Member State B. The employee must be working on a temporarily based project, on a contractual basis, for the supply of services by its employer established in Member State A, to a company established in Member State B.

The Royal Decree of 9 June, 1999, on the employment of foreign workers has implemented this ruling of the European Court of Justice in its Article 2, paragraph 14. According to this Article 2, paragraph 14, non-EEA employees

which are employed by a company established in a Member State of the European Economic Area and who come to Belgium to provide services are exempt from obtaining a Belgian work permit provided that:

a. these employees 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 residence;

b. these employees are lawfully employed in the Member State where they have residence and hold a permit which is at least valid during the period of the work to be carried out in Belgium;

c. these employees possess a valid employment contract;

d. these employees have been working for at least six months in the Member State or origin.

6. Students and trainees

Students, who are residing legally in Belgium and are registered as full-time students with a recognized higher education or university institution in Belgium, do not require a work permit for work activities performed during official school holidays. For work activities performed during the academic year, a work permit type C is required. This work permit is granted for a maximum period of 12 months and is limited to the duration of the student's stay in Belgium. The work permit C allows the student to work a maximum of 20 hours per week during the academic year.

Students who are taking a traineeship in Belgium within the context of their study program and trainees employed by the Belgian government or by a recognized international institution are not required to possess a work permit.

Non-EEA Nationals

In general, work permits are issued only when there are not enough workers available in the European labor market within a reasonable period of time for the sector in question or for the specialization concerned (labor market criterion), and in the case of workers who are nationals of countries linked to Belgium by international agreements or conventions on the employment of workers.

For certain categories of non-EEA nationals, work permits may be issued without the labor market criterion having to be met, which considerably simplifies the process for obtaining a work permit. Most work permits in this category are issued to the following individuals eligible for a type B work permit:

1. Highly qualified employees or executives

The labor market criterion is not taken into account where the foreign employee is considered to be a (1) highly qualified employee or an (2) executive and earns respectively at least EUR 33,082 or EUR 55,193 gross salary per year as of 1 January, 2006. The validity of their residence will depend on the validity of their work permit:

For highly qualified employees:

- if the employee earns at least EUR 33,082 gross salary per year, the work permit shall be valid for four years and shall be renewable once for an additional period of four years. In a renewal application, the regional labor authority may impose additional conditions with regard to the proportional representation of risk groups in the company and the shortage of highly qualified employees on the Belgian labor market.
- if the employee is not seconded and comes from one of the member states of the EU, the work permit will be valid without limitation.
- if the employee is not seconded and earns a gross salary of at least EUR 55,193 , the work permit will also be valid without limitation.

For executives:

- executives earn at least EUR 55,193 gross salary per year (as of 1 January, 2006). There is no limitation on the duration of the work permit.

The application process to obtain a type B work permit takes about four weeks. The employee will have to provide, amongst other documents, a medical certificate, an employment agreement, a recent certificate of good conduct and copies of his/her academic certificates and professional qualifications. Each work permit has to be validated every 12 months, even in cases where the work permit is granted for an unlimited period of time.

2. Family members of highly qualified employees or executives

The non-EEA family members of highly qualified employees or executives (if more than 18 years old) are entitled to apply for a work permit type B. The validity of their work permit will be limited to the duration of the work permit of the non-EEA national they are joining (new Articles 9, 16° and 17° of the Royal Decree of 9 June, 1999, on the employment of foreign workers). Unlike the minimum salary requirements that exist for highly qualified employees or executives, there are no such requirements for the spouse and children. The minimum salary of the sector must, however, be complied with.

3. Specialized technician work permit

The specialized technician work permit is specifically aimed at specialized technicians or engineers coming to Belgium for a maximum period of six months in order to install, start-up, or repair an installation (or software application) developed or manufactured abroad. Please note that (a) the study and analysis of the factual situation at the location of the Belgian customer, the so-called "requirement capturing stage", prior to (b) the development of the installation (or software application) does not comply with the criterion stated above. A foreign employee coming to Belgium to perform such preparatory services (study and analysis) should obtain a normal work permit.

In addition to the general requirements to obtain a work permit, the application for a specialized technician work permit requires the following additional documents:

1. the employment agreement demonstrating that the technician is employed by the employer-manufacturer of the installation abroad;
2. the (sales) agreement entered into between the manufacturer abroad and the Belgian company in which it is demonstrated that the installation must be installed, started up, or repaired in Belgium.

4. Trainee permit

A trainee is defined as an individual who immediately after receiving a diploma or degree, undertakes a practical training with an employer as continuation of the previous education which led to the diploma or degree.

In addition to the general requirements to obtain a work permit, the application for a specific trainee work permit requires the following documents and conditions to be met:

1. the trainee must be between 18 and 30 years old;
2. the training needs to be full-time;
3. the training may not exceed 12 months;
4. a training agreement needs to be signed and translated in the mother tongue of the employee-trainee (or a language which he understands) and needs to indicate the number of hours of training and the salary which cannot be lower than the legal minimum of the sector;
5. a training program needs to be presented;
6. a legalized copy of the diploma or degree.

Penalties

Belgian employers who employ foreign workers without valid work permits may be subject to severe penalties. If an employee performs work in Belgium without a work permit or a right to stay in the country for a period exceeding 90 days, the following exposure exists for the employer: working with a residence permit but without a work permit is considered a minor offence, and working with a work permit but without a residence permit is considered a serious offence.

In case of a serious offence, the criminal sanction amounts to EUR 15,000 to 75,000 per employee and possible imprisonment between one month and one year. While for a minor offence, the criminal sanction amounts to EUR 4,250 to 15,000 per employee and imprisonment between eight days and one year. The administrative penalties amount to EUR 3,750 to 12,500 per employee (serious offence) or EUR 375 to 2,500 per employee (minor offence). In addition, the violation of Belgian immigration laws may also affect the ability of the employer to obtain future work permits for its employees.

Identity Card for Foreigners

A non-EEA citizen is entitled to request a so-called "identity card for foreigners" after residing for five consecutive years in Belgium, even though the foreigner has paid social security contributions in his/her country of origin. To substantiate the application, the foreign citizen is required to provide evidence that he has stayed for an uninterrupted period of five years in Belgium.

The authorization must be applied for at the local municipality where the applicant resides. Once the applicant has obtained the authorization, he/she must be registered in the population register after which he/she will receive an identity card for foreigners. This identity card will allow the applicant to work in Belgium without having to obtain a new work permit every year. The validity of the identity card for foreigners can be extended for a renewable five-year period.

Professional Card

Non-EEA nationals require a professional card for any self-employed activity in Belgium, i.e. any private individual who performs work activities in Belgium and is not bound by an employment contract. The card is applied for at the Belgian consulate or embassy closest to the foreigner's latest place of legal residence abroad, together with the visa application, or in Belgium in case the foreign citizen resides in Belgium.

The basis for granting a professional card is much more discretionary than the basis for granting a work permit. Demonstrating economic importance will play a major role in obtaining a professional card. The procedure takes from three to six months. The procedure may be more rapid if the foreign citizen is a board member of a company in Belgium and requests a professional card in such capacity. It is possible that a hearing will be held at the Ministry of Small Enterprises and Traders. In case of a positive decision, the card will be granted for a renewable five-year term. The professional card will allow the foreign citizen to obtain a Belgian residence permit.

As a self-employed person, one must affiliate oneself with a social security agency and pay, on a quarterly basis, self-employed social security contributions.

CITIZENSHIP

The Code of Belgian Nationality stipulates how Belgian nationality can be awarded. Most individuals acquire Belgian citizenship as follows:

A. By Birth or Adoption of a Belgian Parent

Belgian citizenship is acquired by birth if at the time of birth, the father or mother is a Belgian citizen. It does not matter whether the child was born in Belgium or in a foreign country. A child born in Belgium to a foreign parent, who was born in Belgium, can acquire Belgian nationality if the foreign parent has lived in Belgium for at least five years during the ten years preceding the child's birth.

B. By naturalization

One can acquire Belgian citizenship through naturalization. To apply, the person must be over 18 years of age. Foreign nationals can apply for naturalization after living legally in the country for at least three years although there is no guarantee citizenship will be granted. In addition, the application must be in either Dutch, French, or German. Living legally in Belgium means maintaining main residence in Belgium. Moreover, foreign nationals who have maintained their residence in the country for seven years may acquire citizenship simply by declaring their intent to their local municipal authorities.

The request for naturalization must be filed with the local municipality of the place of residence of the applicant or directly with the Belgian Parliament. If the applicant resides outside of Belgium, the request must be filed at a Belgian consulate or embassy overseas. The file will be submitted to the clerk of the Chamber of Representatives and the opinion of the Brussels public prosecutor's office will be sought. If the public prosecutor's office does not issue an opinion within one month following the date on which the file was registered, a positive outcome will be assumed and the matter will be passed on to the Chamber of Representatives' Naturalization Committee, which may propose the launch of a fresh investigation, defer the application, approve, or reject the application. Ultimately, the Chamber of Representatives decides the application in a plenary session. The naturalization will be effective as of the date of publication in the

Belgian Official Gazette of the law voted in the parliament. The procedure can take several months, and sometimes even more than a year.

C. By Marriage

One can acquire Belgian nationality after marriage with a Belgian national. The married couple must have resided in Belgium for an uninterrupted period of at least three years. Prior to applying for naturalization, residence abroad can be equated with residence in Belgium if the applicant can prove that he/she has maintained genuine ties with Belgium.

CHAPTER 3
IMMIGRATION TO CANADA

IMMIGRATION TO CANADA

INTRODUCTION

Canada's immigration system is generally admininistered through the *Immigration and Refugee Protection Act* and *Regulations* enacted thereunder, and the *Citizenship Act* and *Regulations* enacted thereunder.

This chapter outlines the main categories in which foreign nationals may qualify for entry under Canada's immigration system. Generally, foreign nationals will seek temporary resident status (for temporary stay) or permanent resident status (for permanent stay).

TEMPORARY RESIDENT STATUS

A foreign national who intends to stay in Canada on a temporary basis will seek entry into Canada as a "temporary resident".

Depending on the foreign national's citizenship, a foreign national seeking entry as a temporary resident, may be required to obtain a "temporary resident visa" from a Canadian Consulate or Visa Post abroad before he/she can enter Canada. If a foreign national has resided or sojourned in a "medically designated" country for at least six months within the year immediately prior to seeking entry into Canada, and is seeking to enter Canada for more than six months, the foreign national may be required to undergo certain medical examinations.

A. Business Visitors

A foreign national who qualifies for entry into Canada as a business visitor will not require a work permit. However, there are many limitations on the types of activities that a business visitor can legally engage in. Generally, a business visitor must not be seeking to enter the Canadian labor market, and his/her primary source of remuneration must remain outside Canada.

B. Foreign Workers

1. Work Permit with Labor Market Opinion

Unless an exemption applies, a foreign national who wishes to work temporarily in Canada must obtain a work permit. Generally, applying for a work permit involves a two-step process. The Canadian employer must first obtain a Labor Market Opinion ("Opinion") from Human Resources and Social Development Canada ("HRSDC"). Before issuing an Opinion, an HRSDC officer must be satisfied that the foreign national's employment will create a "neutral or positive effect" on the Canadian labor market. HRSDC will consider factors such as whether the foreign national's employment will likely result in job creation or retention for Canadians, the creation or transfer of skills and knowledge for the benefit of Canadians, wages and working conditions, the employer's efforts to hire or train Canadians, and whether the foreign national's employment is likely to adversely affect the settlement of any labor dispute. If a positive Opinion is issued, the foreign national can then apply for a work permit from Citizenship and Immigration Canada ("CIC").

The HRSDC process may be streamlined if the foreign national qualifies under any existing sectoral agreement that HRSDC and interested stakeholders have negotiated. For example, certain information technology workers may qualify for work permits under the Software Development Workers Program if they meet the requirements for one of the following occupations: Senior Animation Effects Editor, Embedded Systems Software Designer, MIS Software Designer, Multimedia Software Developer, Software Developer – Services, Software Products Developer, and Telecommunications Software Designer. Occupations included under the Software Development Workers Program are validated on a national basis and therefore, the employer does not have to obtain a job-specific job validation for each foreign national who qualifies under the Program.

2. Work Permit with HRSDC Opinion Exemption

Canada's immigration legislation and several treaties that Canada is a signatory to, offer work permit categories that are "HRSDC exempt". If a foreign national qualifies under an HRSDC exempt work permit category, a positive Opinion from HRSDC is not required before a work permit is issued.

Under the intra-company transferee provisions of the *North American Free Trade Agreement* ("NAFTA"), the *General Agreement on Trade in Services* ("GATS"), and the *Canada Chile Free Trade Agreement* ("CCFTA"), executives, managers, and persons in positions of "specialized knowledge", may qualify for work permits with HRSDC exemptions. To qualify under the intra-company transferee provisions under GATS, NAFTA and CCFTA, foreign workers must also meet citizenship requirements, and requirements related to length of employment with the foreign employer. In addition, certain business sector requirements apply under GATS.

Canada's immigration legislation contains intra-company transferee provisions similar to those found under NAFTA. Unlike NAFTA however, Canada's intra-company transferee provisions do not have citizenship requirements. In addition, the intra-company transferee provisions under the various legislations may impose different maximum time limits for the intra-company transferee category.

Another HRSDC exempt work permit category is the "significant benefits" category found in Canada's immigration legislation. This category may be used where there is sufficient evidence to establish that the foreign national's work will create or maintain significant social, cultural or economic benefits or opportunities for Canadians.

3. Spousal Work Authorization Program

The Spousal Work Authorization Program allows spouses of certain skilled foreign workers to obtain job-specific or open work permits. Spouses who wish to engage in employment related to healthcare, childcare or primary/secondary education, must first pass immigration medical examinations.

C. Study Permits

Generally, a foreign national who wishes to study in Canada must obtain a study permit before he/she can attend an educational institution in Canada. However, under Canada's new immigration legislation, a minor child who is in Canada accompanying a parent who is working pursuant to a valid work permit or studying pursuant to a valid study permit, is no longer required to obtain a study permit. A study permit exemption also applies if a foreign national

enrolls in a program of study that is six months or less in duration and can be completed within the foreign national's period of authorized stay. Courses that are not academic, professional or vocational in nature do not require a study permit either.

PERMANENT RESIDENT STATUS

Canada's immigration system offers a number of permanent residence categories including: the federal Family Class Category, Skilled Worker Category, and Business Class Category. In addition to the selection criteria described below for each category, generally, applicants and accompanying family members must also pass medical and penal checks. Applicants may include spouses or common-law partners and dependent children in their applications for permanent residence.

In addition to the federal class immigration categories described below, certain provinces have entered into agreements with the federal government to implement their own immigration programs. Most provinces in Canada have an agreement with the Government of Canada that allows them to play a more direct role in selecting immigrants who wish to settle in that province. For example, under the Provincial Nominee Program, applicants must first apply to the province where they wish to settle. The province will consider the application based on the province's immigration needs and the applicant's genuine intention to settle there. After an applicant is nominated by a province, the applicant must make a separate application to CIC for permanent residence. A CIC officer will then assess the application based on Canada's immigration regulations.

A. Family Class Category

To qualify under the Family Class category, a "member of the family class" must be sponsored by an individual who is at least eighteen years old, resides in Canada, and is a citizen or a permanent resident of Canada.

A "member of the family class" includes the sponsor's:

- spouse or common-law partner[1] (including same-sex partner) or conjugal partner[2] ;
- dependent children of the sponsor;
- father or mother of the sponsor;
- grandfather or grandmother of the sponsor;
- brothers, sisters, nephews, nieces or grandchildren who are orphans; under the age of 18 and not married or in a common-law relationship;
- certain adopted children; and
- any other relative if the sponsor has none of the above family members either in Canada or abroad.

Detailed financial assessments of sponsors will also be conducted. A formula based on the Low Income Cut-Off figures published by Statistics Canada is used to determine whether the sponsor has sufficient resources to meet the needs of the sponsored family member and dependents. (This formula is not generally applied where a spouse, common-law partner, conjugal partner, or dependent children are sponsored).

B. Skilled Worker Category

Applicants under the federal Skilled Worker category will be assessed under a point system which takes into consideration factors such as the applicant's age, language skills, education, work experience, arranged employment, and adaptability. The point system of assessment is set out below.

1 "Common-law partner" is defined under the immigration legislation, as a person who is cohabitating with another in a conjugal relationship, and has cohabitated with that person for at least one year.

2 "Conjugal partner" is defined under the immigration legislation, as a foreign national residing outside Canada, who is in a conjugal relationship with the sponsor and has been in that relationship for at least one year.

1. Age: (Maximum 10 points)

Applicants between the ages of 21 and 49 (inclusive) will be awarded 10 points. 2 points will be subtracted for each year that an applicant is under 21 or over 49.

2. Language: (Maximum 24 points)

Applicants will be awarded points for their ability to speak, listen, read, or write English and French. A maximum of 16 points will be awarded with respect to the applicant's first official language (English or French), with a maximum of 8 points awarded with respect to the applicant's second official language (English or French).

3. Education: (Maximum 25 points)

Secondary school education credential	5 points
1-year post-secondary education credential other than university education credential and at least 12 years of full-time or full-time equivalent studies	12 points
Post-secondary education credential other than university education credential, and at least 13 years of full-time or full-time equivalent studies OR 1-year university education credential at bachelor's level and at least 13 years of full-time or full-time equivalent studies	15 points
2-year post-secondary education credential other than university education credential and at least 14 years of full-time or full-time equivalent studies OR 2-year university education credential at bachelor's level and at least 14 years of full-time or full-time equivalent studies	20 points
3-year post-secondary education credential other than university education credential and at least 15 years of full-time or full-time equivalent studies OR 2 or more university education credentials at bachelor's level and at least 15 years of full-time or full-time equivalent studies	22 points
University education credential at master's or doctor's level and at least 17 years of full-time or full-time equivalent studies	25 points

4. Work Experience: (Maximum 21 points)

Points may be awarded for work experience if the work experience is included in the National Occupational Classification matrix (the "NOC"). An applicant must have at least one year of full-time or full-time equivalent work experience in an occupation listed in "Skill Type O" (management occupations) or "Skill Levels A or B" in the NOC, within the past 10 years to score points. Skill Level A consists of professional occupations, while Skill Level B consists of technical, skilled trades and para-professional occupations.

If the applicant has experience that is considered to be Skill Type O or Skill Level A or B experience, the applicant will be awarded the following points:

Years of experience	1	2	3	4+
Points	15	17	19	21

5. Arranged Employment: (Maximum 10 points)

Points will be awarded for Arranged Employment if:

- the applicant is working in Canada pursuant to a valid work permit and the employer has offered permanent employment once the applicant becomes a permanent resident; or
- a Canadian employer makes an offer to employ the applicant on a permanent basis once the applicant becomes a permanent resident and an officer approves the offer of employment based on a HRSDC opinion that the offer of employment is genuine, the employment is not part-time or seasonal, and the wages and working conditions would be sufficient to attract and retain Canadian citizens.

6. Adaptability: (maximum 10 points)

Applicants may receive a maximum of 10 points based on any combination of the elements listed below:

i. education credentials of the applicant's accompanying spouse or common-law partner;

ii. completion of a two-year post-secondary program of full-time studies in Canada by applicant or accompanying spouse/common-law partner while on a study permit;

iii. at least one year of full-time employment in Canada by applicant or accompanying spouse/common-law partner while on a work permit;

iv. receiving points for Arranged Employment; or

v. applicant or applicant's accompanying spouse/common-law partner have family relationships in Canada.

Applicants must achieve a minimum of 67 points. Please note however, that immigration officers may exercise positive (or negative) discretion in granting (or refusing) permanent residence if an applicant's points do not adequately reflect his/her ability to establish themselves in Canada.

Under the Canada-Quebec Accord, the province of Quebec has its own immigrant skilled worker program.

C. Business Class Category

The Business Class category consists of three subcategories:

- Entrepreneurs;
- Investors; and
- Self-employed persons.

1. Entrepreneurs

The Entrepreneur category is designed for the business person who wishes to be an active participant in a business enterprise and who has the financial and managerial ability to start a business, to purchase a business or portion of a business, to participate in a joint venture, or to otherwise participate in a business.

Under the legislation, an applicant under the Entrepreneur Class category, an applicant must:

i. have business experience;

ii. have legally obtained a net worth of at least CAD 300,000; and

iii. meet the following conditions within the three-year period immediately after becoming a permanent resident:

(a) control a percentage of equity of a qualifying Canadian business equal to or greater than 33 1/3 per cent;

(b) provide active and ongoing management of the qualifying Canadian business; and

(c) create at least one incremental full-time job equivalent in that business for Canadian citizens or permanent residents, other than the entrepreneur and his/her family members.

Point System

Entrepreneurs will also be assessed on a point system based on age, education, language skills, business experience, and adaptability. Points for age, education and language skills are awarded according to the point system applicable to the Skilled Worker category. However, points for business experience and adaptability are assessed as follows:

BUSINESS EXPERIENCE (during period beginning five years before application and ending on date a determination is made)	**POINTS POSSIBLE (Maximum 35)**
Two years business experience	20
Three years business experience	25
Four years business experience	30
Five years business experience	35

Adaptability	**Maximum 6**
Business Exploration trip to Canada	6
Participation in designated Joint Federal-Provincial Business Immigration Initiatives	6

Applicants must obtain a minimum of 35 points based on age, education, language skills, business experience, and adaptability.

If the foreign national's application is approved, the applicant and his/her accompanying dependents will be admitted to Canada on the condition that the

applicant meets all of the above conditions. The applicant will be required to provide an officer with evidence of compliance with the above conditions within the three years after he/she becomes a permanent resident.

Under the Canada-Quebec Accord, the province of Quebec has its own immigrant entrepreneur program.

2. Investors

Under the legislation, an applicant under the Investor Class category, must:

i. have business experience which is specifically defined;

ii. have a legally obtained net worth of at least CAD 800,000; and

iii. make an investment of at least CAD 400,000 to the Canadian Government[3].

Points

An investor is assessed under the same point system applied to Entrepreneurs. The pass mark for investors is also 35 points.

Under the Canada-Quebec Accord, the province of Quebec has its own immigrant investor program.

3. Self-employed persons

An applicant under the Self-employed Person category must:

(a) have the relevant experience;

(b) the intention and ability to be self-employed in Canada; and

(c) make a significant contribution to specified economic activities in Canada (cultural activities, athletics, or the purchase and management of a farm).

Points

Self-employed persons must obtain a minimum of 35 points based on age, education, language skills, relevant work experience and adaptability. Points for age, education, and language skills are awarded according to the point system

3 The applicant's investment is returned to the applicant after a five-year period without interest.

applicable to the Skilled Worker, Investor and Entrepreneur categories. However, points for relevant work experience and adaptability are assessed as follows:

RELEVANT WORK EXPERIENCE (within five years preceding application)	**POINTS POSSIBLE (maximum 35)**
Two years business experience	20
Three years business experience	25
Four years business experience	30
Five years business experience	35

Adaptability: (maximum 6 points)

Applicants may receive a maximum of 6 points based on any combination of the elements listed below:

i. educational credentials of the applicant's accompanying spouse or common-law partner;

ii. completion of a two-year post-secondary program of full-time studies in Canada by applicant or accompanying spouse/common-law partner while on a study permit;

iii. at least one year of full-time employment in Canada by applicant or accompanying spouse/common-law partner while on a work permit; or

iv. applicant or applicant's accompanying spouse/common-law partner has a family relationship in Canada.

MAINTENANCE OF CANADIAN PERMANENT RESIDENCE

Canada's immigration legislation imposes a permanent residency requirement that requires a permanent resident to be physically in Canada for 730 days out of each five-year period to maintain status. However, permanent residents will be allowed to count as part of the required 730 days, time spent working abroad in certain circumstances such as working for a Canadian company or the Canadian government or accompanying their Canadian spouse or common-law spouse partner.

Permanent residents of Canada are required to carry a Permanent Resident Card ("PR card") with them in order to board a commercial carrier and re-enter Canada. The PR Card is a status card issued generally for five years at a time to permanent residents of Canada. The PR Card may be renewed provided the individual continues to meet residency requirements to maintain PR status.

All new permanent residents arriving in Canada will be processed for a PR Card upon their first entry into Canada. Existing permanent residents must apply for a PR Card through a mail in procedure and visit a local Citizenship and Immigration Canada office to pick up the card.

Permanent residents residing outside of Canada will not be able to apply for a PR Card although they may qualify for a "travel document" to return to Canada.

CITIZENSHIP

The *Citizenship Act* provides that the minister shall grant Canadian citizenship to any person who:

- makes an application;
- is 18 years of age or over;
- has been admitted to Canada as a permanent resident;
- has not ceased to be a permanent resident;
- has accumulated at least three years of permanent residence out of the four years immediately preceding the date of application (time spent in Canada before the applicant became a permanent resident will be counted as half time if it falls within the four years immediately preceding the date of application);
- has adequate knowledge of either French or English;
- has adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and
- is not under a deportation order.

A minor child of a Canadian citizen is also entitled to citizenship provided that the application for citizenship is made on behalf of the child by his/her parent or any other authorized person. Authorized persons include the legal or de facto guardian, or a person having custody of the child by virtue of a court order.

An individual may have a right to Canadian citizenship if he/she was born in Canada after 14 February, 1977; or if born outside Canada after 14 February, 1977, if one of his/her parents was a Canadian citizen at the time of his/her birth; or in other limited circumstances provided by statute.

CHAPTER 4
IMMIGRATION TO FRANCE

IMMIGRATION TO FRANCE

A new Law dated 24 July, 2006, has changed certain provisions, in particular the duration of certain residence permits (three years instead of one). However, the decrees to enact the Law are not yet published.

SHORT TERM VISAS (LESS THAN THREE MONTHS)

Except for nationals of the European Union ("EU") countries and certain countries with which France has reciprocity agreements, foreigners must, prior to coming to France, obtain a visa from the French Consulate or Embassy in the country where they reside.

The applicant will then obtain a Schengen visa, if his/her main destination is France. Such visa allows him to enter France and travel to other countries of the Schengen space.

Currently, the members of the Schengen space are the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Island, Italy, Luxemburg, Netherlands, Norway, Portugal, Spain and Sweden.

It is not possible for a holder of a Schengen visa to visit the other EU countries that are not members of the Schengen space.

The visa is granted for a maximum period of three months, with single or multiple entries. During the validity of the visa, the foreigner is authorized to stay in the Schengen space, for the period indicated in the visa.

The applicant must provide a return ticket, evidence of sufficient resources for the stay in France and insurance coverage.

The applicant can be required to provide a certificate obtained by the host person in France from the town hall.

The starting 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 foreigner has the burden of proving his/her actual date of entry in France by, for instance, showing his/her travel ticket.

WORKING VISAS

There are two categories of working visas:

- visas for corporate executives are processed through the Trade and Foreign Affairs Department.
- visas for employee's are processed through the Labor Department (Immigration Department).
- There are two types of visas for employees:
  a) regular employees
  b) temporary assignments
     (i) seconded employees
     (ii) trainees

A. Corporate Executives

1. Definition and conditions

For immigration purposes, the following persons are considered as corporate executives: the Managing Director of a French corporation (Société anonyme, S.A.) or the President and/or the Managing Director of a simplified incorporation (Société par Actions Simplifiée – SAS) or the Managing Director (*Gérant*) of a French limited company (SARL) or the Managing Director (*Responsible en France*) of a branch or a liaison office.

The above corporate executives who are not OECD[1] nationals are required to obtain a special permit called the commercial card (*Carte de commerçant*) in order to assume the above positions in France. This is the case even if they do not intend to reside in France.

OECD nationals who are not EU nationals must obtain a visa before assuming the above positions when they intend to reside in France. They do not need any visa or permit if they reside outside of France.

1 Organization for Economic Cooperation and Development

2. Administrative steps

The application for a commercial card must be filed in the foreign country where the applicant resides (normally his/her home country), at the French Consulate or Embassy nearest to his/her residence.

The file is then sent by the local consulate or embassy to the French Foreign Affairs Department, which in turn forwards it to the local Prefecture (local government office) in the district where the registered office of the French subsidiary, branch, or liaison office is or will be located.

The time required for this procedure varies from three to six months, depending upon the consulate involved. The Prefecture has three months to make a decision.

When the application is approved, the local Prefecture will inform the French Consulate or Embassy where the application was initially filed. The applicant and members of his/her family will obtain their visas from the French Consulate or Embassy. Such visa will be affixed on the passport.

Upon arrival in France, the applicant and his/her spouse must go to the Prefecture where they will obtain a provisional residence permit valid for three months. Within these three months, they will be requested to undergo a medical examination with the local Immigration Office. After such examination, a one year residence permit will be issued.

B. Employees

For the following categories of employees, French labor law in relation to working hours and paid vacation applies.

1. Regular employees

Non-EU nationals who are considered regular employees of a French business.

There are two categories:

- an employee who has worked for the foreign parent or affiliated company[2] for more than one year and receives in France a minimum gross salary

2 the ultimate parent company must have a capital of at least EUR 400,000 and which has been in existence for at least three years

exceeding EUR 5,000. This category is known as highly skilled employee (***cadres de haut niveau***). In this case, the application will be approved.

- for the employee who does not meet the above conditions, the employer could be requested to obtain a clearance from the National Employment Agency that there is no local candidate who is qualified to fulfill the position. This clearance is not a guarantee that the application will be approved.

2. Temporary assignments (seconded employees)

A seconded employee (***détaché***) is sent on a temporary basis to France (generally to an affiliate company) by his/her foreign employer for the performance of the following specific services: financial control, technical assistance or liaison service between said employer and the French host company. The transfer to France should not result in his/her effective involvement in the regular course of business of the French company.

A seconded employee remains on the payroll of the foreign employer while working in France and continues to be paid by such non-resident employer.

Generally, the duration of the secondment cannot exceed 12 months. In exceptional circumstances, it may be extended to 18 months.

The seconded employee status is normally granted to key personnel only. The seconded employee must receive, while working in France, a salary equal to the one paid to local employees holding a similar position in the same field of activity.

Even though the foreign employer has no presence in France and the employee's salary is paid outside France, French labor Law applies.

3. Temporary assignments (trainees)

The trainee, like the seconded employee, is sent to a French business operation (generally an affiliate company) for a specific purpose, which in this case, will be for temporary training.

The duration of the training period cannot normally exceed 12 months, but in exceptional situations may be extended to 18 months.

The trainee is required to become an employee of the French company and be paid by such company. The salary must be what is normal for the level of the employee's education.

4. Administrative steps for the above three categories of employees

4.1 Procedure for obtaining a visa

The French enterprise should file an application with the Labor Administration (***Direction Départementale du Travail et de l'Emploi***) in France.

The application, when approved by the Labor Administration, is then processed by the Immigration Office (***Agence Nationale de l'Accueil des Etrangers et des Migrations - ANAEM***), which in turn will forward it to the French Consulate or Embassy nearest to the residence abroad of the non-EU national.

The employee and his/her family members who accompany him/her will then be able to collect their long stay visas from the above consulate or embassy.

The above administrative proceedings take approximately four to six weeks, except for the highly skilled employee for whom the time requirement is about two weeks.

4.2 After obtaining the visa

When the employee and his/her family (if any) arrive in France with the visa(s), he/she (they) must undergo a medical examination with the Immigration Office[3].

Upon presentation to the Prefecture of the visa and evidence of the domicile in France, the employee and his/her spouse (if any) will receive either a provisional residence permit valid for three months (***récépissé***) or a one year residence permit (***titre de séjour***). They may also obtain directly a one year residence permit depending on the Prefecture involved.

3 The medical examination includes X-ray, urine test and interview with a doctor.

For the employee, the residence permit operates both as a residence and work permit.

In principle, the spouse of the employee is not allowed to work in France. However, the spouse of a highly skilled employee may obtain permission to work if he/she finds an employment with a monthly salary exceeding EUR 2,000.

For the seconded employee and the trainee, in addition to the residence permit, they must obtain from the Labor Administration, a work permit (***autorisation provisoire de travail***) which is valid for nine months.

The one year residence permit and the work permit (where applicable) are renewable as long as the initial conditions are met (except for the temporary assignment which is limited to a maximum of 18 months). Such renewal must be requested three months prior to the expiration date.

THE TEN YEAR RESIDENCE PERMIT

It is possible for non-EU nationals, after five years of residence in France, to obtain a ten year residence permit (***Carte de resident***), if they can prove that they have a regular business activity in France (as corporate executive, regular employees or otherwise) from which they derive sufficient income and declare that they intend to reside in France for a long period or on a permanent basis.[4]

The non-EU spouse of an EU employee working in France is entitled to obtain a ten year residence permit.[5]

4 The law of 26 November, 2003, which extend the time requirement of residence from three to five years provides that in addition to the conditions of regular business, sufficient income and intention for a long or permanent residence, the non-EU national must demonstrate that he/she is integrated into the French community (French speaking, participating in the local associations, etc.

5 Curiously enough, the non-EU national who is spouse of a French national can receive only a one year residence permit which is renewable once before obtaining the ten year residence permit. Such one year residence permit allows the spouse to work as employee.

The ten year residence permit enables the holder to assume any position (employee, corporate executive or self-employed) in France. This permit is automatically renewable. The holder who is absent from France for up to three years keeps the benefit of such permit.

SPECIAL PROVISIONS

There is an obligation for children to request a residence permit (*titre de séjour*) after their 18th birthday.

Children of non-EU nationals residing in France must secure a residence permit when they are 18 years old, for the same duration as that of their parents. Such residence permit does not allow the children to work.

In case of a change of address, non-EU national who moves from one residence to another must notify the local Police department (***Commissariat de Police***) of his/her new residence.

FRENCH CITIZENSHIP UNDER THE STANDARD REGIME

An application for citizenship must meet two basic types of criteria that will be evaluated by the Minister in charge of naturalization: (1) eligibility and (2) approval criteria.

A. Eligibility criteria

To be eligible for filing a request for naturalization under the standard regime, the applicant must be a resident of France when lodging the request and must have continuously resided in France during the five years preceding the filing of the application.

There are two separate aspects to this residency requirement, residency during five-year qualification and residency at the time of the application for French citizenship.

Residency during the five-year qualification period may be achieved by living in France under any of the valid residency categories, including as visitor, as student or as regular employee or corporate executive in France.

Having residency at the time of the application implies having established France as "the center of the applicant's interests". To determine whether France has become the center of the applicant's interests, a number of factors will be taken into account, i.e. the "permanence" of the applicant's immigration status, the applicant's family ties in France, the assets the applicant owns in France, and the origin of the applicant's financial resources.

Assuming that the applicant meets eligibility criteria, the applicant must still meet the approval criteria.

B. Approval criteria

Approval criteria includes assimilation into France (knowledge of French, insertion into the French community), health (absence of long life term illness or chronic condition), morality (no criminal record indicating a unlawful act in France or abroad), and an acceptable professional and financial profile.

C. Administrative steps

The application is filed with the Prefecture which will gather information and transmit such information to the Ministry. From the date the application is filed, a waiting time of at least two years is expected before receiving a final (appealable) decision. The government is presently working to reduce this time period.

CHAPTER 5
IMMIGRATION TO GERMANY

IMMIGRATION TO GERMANY

EMPLOYMENT RELATED IMMIGRATION

INTRODUCTION

The German laws governing the issuance of visas and residence permits in principle require any Non- European Economic Area ("EEA") alien to hold a residence permit for the purpose of his/her stay. There are two types of residence permits: fixed-term residence permit (*Aufenthaltserlaubnis*) and indefinite residence permit (*Niederlassungserlaubnis*), which may be issued if the alien has held a fixed-term residence permit for at least five years and fulfills further requirements (e. g., proving maintenance, sufficient knowledge of the German language, etc.). Additionally, for most employment categories, an internal approval from the labor authorities, a "work permit" (*Arbeitserlaubnis*), is required.

"Alien" is defined as "any individual who does not hold German citizenship". Depending on their nationality and the purpose and length of their stay, aliens may either require an entry clearance in the form of a visa or they may enter Germany without a visa and apply for a residence permit within Germany. However, the new Immigration Act introduced some changes were designed to facilitate immigration to Germany and in particular to attract highly qualified foreign personnel from Non-EEA countries. For example, highly qualified specialists and managers with special occupational experience and a minimum annual salary of EUR 85,500 will immediately obtain unlimited settlement permission. Family members who move at the same time or who arrive subsequently will be entitled to work. In addition, after the successful completion of their exams, it will be possible for students to stay in Germany for one year for the purpose of looking for work and if they find a qualified job, they will immediately receive the necessary residence permit.

GENERAL IMMIGRATION RULES

IMMIGRATION CATEGORIES

The following chapter will focus on the requirements for those individuals who intend to enter Germany for the purpose of employment/working/performing labor, either as temporary visitors or as employment-based immigrants.

Generally, four groups of countries can be distinguished, whose citizens are treated differently regarding visa, residence and work permit requirements. These are:

A. Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Germany without performing any prior formalities. Family members of an EEA-national (who are not themselves EEA-nationals) will be required to obtain an "EEA-Family Permit" to accompany or join an EEA-national who is exercising his/her 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. The only obligation is to register their local address.

The following countries other than Germany belong to the EEA: Austria, Belgium, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. In May, 2004, new member countries entered the EU including, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia. However, only Cyprus and Malta enjoy free access to the German labor market. All other Middle and East European countries (MOE countries) are excluded from the right of freedom of domicile for a minimum of a two-year period as of the date of accession and possibly for up to a maximum of seven years. They are however, privileged in the respect that they do not need entry clearances (visas) and can apply for employment related residence permits from within Germany.

According to treaties between Switzerland and the EU, Swiss nationals also enjoy immigration rights equal to those of nationals from EEA countries.

B. Citizens from Privileged Countries

Privileged countries are those who are parties to treaties of friendship and commerce with Germany as well as to non-visa movement treaties signed by Germany. This group of countries currently comprises of Andorra, Australia, Canada, Israel, Japan, Monaco, New Zealand, San Marino, South Korea and the United States.

Citizens from privileged countries are privileged in two ways:

- they may enter Germany without a visa and may submit their application for a residence permit within Germany.
- in principle, they have free access to the German labor market as long as no equally qualified German or EEA citizen can be found for the vacancy in question.

C. Citizens from Semi-Privileged Countries

Semi-privileged countries are those who are parties to non-visa movement treaties signed by Germany. The countries that currently belong to this group include:

> *Argentina, Bermuda, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Hong Kong, El Salvador, Guatemala, Macau, Malaysia, Mexico, Nicaragua, Paraquay, Singapore, Uruguay, Vatican City and Venezuela.*

Citizens from countries that are parties to non-visa movement treaties signed by Germany can enter Germany without a visa for purposes that are described below.

D. Citizens from All Other Non-privileged Countries

Citizens from non-privileged countries must apply for a visa from a German consulate or embassy in their country of residence regardless of the purpose of their visit to Germany.

EMPLOYMENT REQUIREMENTS AND CATEGORIES

For most work and employment activities that are carried out in Germany, a residence permit for employment purposes must be applied for. This will only be granted with the approval of the labor 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. An unlimited settlement permission can be granted from the beginning only to highly qualified specialists or after five years of residency in Germany.

In most cases the labor agency will only approve an employment application in Germany under the condition that:

- no adequately trained or qualified German or EEA personnel is available for the vacancy in question. The labor agency can insist on a four-week waiting period during which they will try to find personnel with German or other EEA-countries 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; and
- the intended assignment (vacancy) is allowed to be filled by aliens under the ordinance on employment of aliens (Ausländerbeschäftigungsverordnung), which is a detailed catalogue of possible qualifying professions.

A. Categories of Work that require no residence permit and no approval from the labor agency

1. Temporary business visitor

Except for citizens 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 12-month period.

Anyone who enters Germany as a business visitor is expressly barred from taking employment and to do so is a criminal offence. A business visitor is defined as an individual who, although he/she lives and works outside Germany,

comes to Germany to transact business, attend meetings and briefings, for fact-finding, negotiating or concluding contracts with German businesses to buy goods or sell services. The visitor must not intend to produce goods or provide services within Germany.

2. Specific assignments with temporary limitation of 90 days within a 12-month period

The following categories of visitors are exempt from the requirement of a residence permit for employment purposes, provided the visitors retain their residency abroad:

- **Sportsmen/women,** who take part in official sport festivals.
- **Artists** who take part in art festivals or guest performances.
- **Pupils and students** of foreign universities or vocational schools for a holiday job.
- **Journalists,** who are accepted by the German Press and Information Office ("Presse- und Informationsamt").
- **Trainers** that are employees of a company whose business is in a country outside of Germany to install or set up a "ready-to-use" machine or a (computer) system delivered by his/her foreign company; to provide training for the use of such machine or system and the maintenance or repair thereof. An individual is only eligible for this exemption if he/she can say that the company has sold a product or computer system which its employee is going to implement in its customer's office and some installation or training is necessary ("trainer"). The exemption from the work authorization must be approved by the labor authorities.

B. Categories of employment that require a residence permit but no approval from the labor agency

1. Service delivery

Approval from the labor agency is not required for non-EEA employees working for an EEA company that provides its services to customers within Germany if:

- the assignment does not exceed six months and the employee has been working legally for this company for at least six months prior to his/her transfer to Germany; or
- the assignment does not exceed 12 months and the employee has been working legally for this company for at least 12 months prior to his/her transfer to Germany.

2. Senior Executives

- **Chief-Executive Officers** with full power of attorney (Generalvollmacht) or Prokura as certified/verified by the German Commercial Register.
- **Members of the executive body** of a legal entity, e.g. Managing Directors of a GmbH.
- **Partners or shareholders** of trading or commercial company with the power to represent the company.

3. Highly qualified Specialists (without labor market check)

In exceptional cases, for highly qualified specialists, a settlement permit can be granted which gives unlimited residence rights to the applicant and their family members from the start. Highly qualified persons include:

- scientists with special technical knowledge;
- teaching or scientific personnel in prominent positions; and
- specialists and executive personnel with outstanding professional experience who earn a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme (in 2006: EUR 85,500 p.a.).

C. Categories of employment that require a residence permit and approval from the labor agency

1. Temporary Intra-Company-Transferees (without labor market check)

If a foreign company transfers one of its Non-EEA employees to a German subsidiary or a branch office, the employee may apply for a work permit as a so-called 'Intra-company-transferee' under the assumption that:

- he/she has been employed by the parent company for a minimum of one year; and
- he/she has academic qualifications; and
- he/she will work temporarily in Germany in a similar position as that in the parent company.

A work permit under this provision can be granted for up to three years.

2. International Personnel Exchange Members (without labor market check)

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany can obtain a work permit provided that the intended assignment can be seen as a 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 education or a minimum of five years employment with the company. Moreover, it is sufficient that the company sends, from time to time, skilled employees also from Germany to other countries. A work permit under this provision can be granted for up to three years.

This kind of work permit is can be obtained from a special labor authority (ZAV), without a labor market check, which usually speeds up the visa process considerably.

3. Conventional German work permit for highly qualified employees (with labor market check)

Based on Treaties of Friendship and Commerce, citizens of privileged countries, as described in section B above, may apply for any highly qualified job in Germany. However, if the employer wants to hire the foreigner, he must provide evidence that no German or EEA national is available in the German labor market to fill the vacancy.

FAMILY MEMBERS

Spouses and dependent children may accompany the holder of a work related residence permit. These family members may stay for the same period of time as the applicant. However, the applicant must provide evidence that he/she is capable of financially supporting the family members during their period of stay in Germany. Generally, spouses and dependents of the applicant are not entitled to work during the first two years in Germany (waiting period) unless they have obtained a work-related residence permit in their own right. Family members of a settlement permit holder are allowed to work without restriction.

CITIZENSHIP

In general, Germany does not follow the principle of "*ius soli*" (citizenship by place of birth) but the principle of "*ius sanguinis*" (citizenship according to citizenship of the parents). An exception to this rule now exists under the citizenship law that came into force on 1 January, 2000, for children born in Germany after 31 December, 1999, provided their foreign parents have been living in Germany for at least eight years. As a rule, German citizenship is either automatically acquired *by birth* (or adoption) through at least one German parent or through a foreign long-term resident or may be obtained through *naturalization*.

A. By Birth or By Adoption of a German Parent

Since 1975, German citizenship is acquired at birth of if least one parent is a German citizen at the time of the child's birth. It does not matter whether the child was born in Germany or in a foreign country.

B. By Birth of a Foreign Long-term Resident

As an exemption from the principle of "*ius sanguinis*", individuals who are born in Germany to foreign nationals become a German citizen, provided their foreign parents have been living in Germany for at least eight years. If such individuals acquire their second citizenship before their 23rd birthday, they must declare which of the two they wish to retain. In the event that they decide to retain their foreign citizenship, they lose their German citizenship. If the individuals decide to keep their German citizenship, they have to provide evidence that they have given up their other citizenship. Exceptions are possible, particularly if renunciation of the other citizenship is not possible or would be unreasonable.

C. By Naturalization

1. By a person settled in Germany

Foreigners who have been legally residing in Germany for at least eight years can be naturalized under certain circumstances. This generally requires that they have established themselves in Germany, i.e. they are able to sustain themselves and their family without the help of welfare benefits or unemployment assistance, that they have no criminal record and an 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.

2. By the spouse or legal partner of a German national

A foreign national who is the spouse or legal partner of a German citizen may also become naturalized under the same requirements as described under 1 above if they have been married to a German citizen for two years and have been residing in Germany for three years.

3. By (re-)naturalization

On application, individuals who lost their German citizenship between 30 January, 1933, and 8 May, 1945, because of political, racial, or religious reasons and their dependents, may be re-naturalized.

4. By descent

Naturalization of foreigners of lineal German descent (i.e. one of the parents or grandparents is German) who live outside of Germany is possible where the individual has:

- a specific relationship to Germany, for example: family in Germany, a current or former marriage to a German, a former long-term stay in Germany, attendance of German school or university, ownership of property or, regular business in Germany or something similar;
- sufficient German language skills that have to be confirmed by a special language test; and
- basic knowledge of the German state system.

In addition, as a general rule, the individual has to give up his/her current citizenship.

CHAPTER 6
IMMIGRATION TO THE HONG KONG SPECIAL ADMINISTRATIVE REGION

IMMIGRATION TO THE HONG KONG SPECIAL ADMINISTRATIVE REGION

INTRODUCTION

Apart from countries such as the People's Republic of China ("PRC"), North Korea, Vietnam and Iraq, foreigners from most other countries coming to Hong Kong Special Administrative Region ("Hong Kong") for a short duration as visitors are not required to apply for a visitor visa prior to arrival.

Foreigners (other than those having the right of abode or unconditional stay status in Hong Kong) who want to work in Hong Kong must apply for Hong Kong employment visas. A Hong Kong employment (investment) visa is issued to a foreigner who intends to invest in or set up a business in Hong Kong. Foreigners making the required capital investment can also secure visas. Training visas and student visas are issued to those coming to Hong Kong temporarily for training purposes and study respectively.

NON-IMMIGRANT VISAS

Hong Kong non-immigrant visas can be divided into seven categories:

- visitor visas;
- employment visas;
- dependent visas;
- employment (investment) visas;
- capital investment entrant visas;
- quality migrant visas;
- training visas; and
- student visas.

A. Visitor Visas

Foreigners who wish to travel to Hong Kong for business visits, but who will not be engaging in the regular duties of their employment in Hong Kong, may apply for visitor visas at an overseas People's Republic of China Consulate or Embassy. Citizens of certain countries do not need a visa to visit Hong Kong for limited periods. Permitted period of stay varies from country to country. Extensions are considered on a case-by-case basis.

The following is a list of permitted periods of stay granted to citizens of some of the more popular countries coming to Hong Kong:

Austria	- 90 days	Japan	- 90 days
Australia	- 90 days	Netherlands	- 90 days
Canada	- 90 days	Philippines	- 14 days
Finland	- 90 days	Singapore	- 90 days
France	- 90 days	Sweden	- 90 days
Germany	- 90 days	Switzerland	- 90 days
Greece	- 90 days	Thailand	- 30 days
India	- 14 days	United Kingdom (British citizens)	- 180 days
Ireland	- 90 days		
Italy	- 90 days	United States	- 90 days

Nationals of the following countries always require visas prior to entering Hong Kong, except in direct transit by air and when the person does not leave the airport transit area:

i. Nationals of Afghanistan, Albania, Armenia, Azerbaijan, Belarus, Cambodia, People's Republic of China*, Cuba, Georgia, Grenada, Iran, Khazakstan, Kyrgystan, Laos, Lebanon, Libya, Republic of Moldova, Myanmar, Nicaragua, Nigeria, North Korea, Panama, State of Palestine, Russian Federation, Senegal, Serbia and Montenegro, Solomon Islands, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

ii. Holders of Costa Rican Provisional passports, "Documento de Identidad Y Viaje" issued by the Costa Rican Government, Kiribati passports

with status stated as "INVESTOR" or "N-KIRIBATI", Special Peruvian passports, Tongan National passports, Tongan Protected Person passports, Tuvalu passports with national status stated as "I-TUVALU", Uruguay passports issued under Decree 289/90, and Vatican Service passports, and also holders of travel documents issued by the following administrations: Bophuthatswana, Ciskei, Imamate (or Emamate) of Oman State, Kwa-Zulu, Moari Kingdom of Teiti, The Northern Cyprus Turkish Republic, Taiwan, The Transkei, Venda, Yeman (Royalist authorities), Party of Democratic Kampuchea (Khmer Rouge) in Palin, North West Cambodia.

iii. All 'stateless' persons. Effective 1 November, 2001, holders of stateless travel documents issued by foreign countries/territories whose nationals enjoy visa-free access to Hong Kong may be issued a single or double-journey transit visa valid for three months and good for a stay of seven days, or a visit visa which is good for a stay of 14 days.

* *Under current arrangements, PRC nationals residing in Mainland China should apply for and secure appropriate entry permits through relevant Chinese authorities in Mainland China prior to traveling to Hong Kong. Mainland Chinese residents may apply through an authorized travel agent in China to visit Hong Kong on group tours. Mainland Chinese residents from certain provinces may also directly apply through relevant Chinese authorities in Mainland China to visit Hong Kong under the Individual Visit Scheme. Alternatively, Mainland Chinese residents traveling on PRC passports who are in 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/permit provided the usual immigration requirements are met, including possession of a valid entry visa for the destination country and a confirmed onward booking. In addition, effective 1 November, 2001, certain overseas PRC nationals holding PRC passports may be issued a multiple-journey visit entry permit valid for 24 months and good for a stay of 14 days upon each arrival. The overseas PRC nationals must be permanent residents or ordinarily residents for not less than one year in the country/territory (e.g. the United States of America) where the applications are lodged, have no previous adverse records in Hong Kong, and possess ample returnability to and have a steady job or study in the country/territory of domicile.*

Nationals of the following countries always require valid visas for Hong Kong for whatever purpose, including those who are in transit and remain in the airport transit area: Angola** Burundi**, Cameroon**, Democratic Republic of Congo, Republic of Cote D'Ivoire, Eritrea, Ethiopia**, Iraq, Liberia, Nepal, Pakistan**, Sierra Leone, Somalia, and Sri Lanka** (** except for holders of Diplomatic and Official passports).

Visitors are required to have adequate funds to cover the duration of their stay without working, and to hold onward or return tickets.

A visitor can request a limited extension of his/her stay in Hong Kong by applying in person at the Immigration Department of the Hong Kong SAR ("HKID"). A satisfactory explanation has to be given to the HKID before the extension of stay will be considered.

B. Employment Visas

1. Eligibility

Foreigners who wish to work in Hong Kong, whether paid or unpaid in Hong Kong and regardless of the length of proposed employment in Hong Kong, must firstly apply for and secure employment visas. Failure to do so is an offence under the Hong Kong Immigration Ordinance.

When the HKID processes applications for employment visas, it will normally address itself to three issues:

- whether the business under which the applicant proposes to be employed is beneficial to the economy, industry and trade of Hong Kong;
- whether the employment of the applicant is essential to such business; and
- whether that position may be easily filled by someone locally.

The applicant must prove that his/her services or expertise are unique such that the employer cannot find someone locally in Hong Kong to fill the position sought to be filled.

It could be because the applicant:

- is a very highly qualified professional;

- possesses technical knowledge or know-how indispensable to the company in Hong Kong;
- possesses acclaimed experience and knowledge in his/her field; or
- generally, his/her proposed stay in Hong Kong will benefit not only the company, but also Hong Kong.

In the case of an intra-company transfer, the above is usually satisfied by the fact that having worked in the overseas affiliate office, the applicant has gathered intrinsic knowledge of the internal administration and operation of the company and this type of knowledge is not readily available locally in Hong Kong.

2. Change of employment

The employment visa is employer specific. The foreign national cannot work for any other employer in Hong Kong other than his/her employer. If the foreign national leaves his/her employment, notwithstanding the fact the foreign national's visa validity has not expired, the visa lapses. The foreign national may not take up employment with any other employer in Hong Kong until prior approval is obtained from the HKID.

3. Take up side-business

If, for corporate or other reasons, a foreign national wishes to take up side-business in Hong Kong and work for someone in addition to his/her employer, he/she must firstly seek permission from the HKID. Without HKID's approval, a foreign national is not entitled to take up further employment in Hong Kong. This requirement is noteworthy in cases where the foreign national may be required to supervise or engage in activities for several related companies in Hong Kong.

4. Termination of employment

Upon termination of the foreign national's employment, or upon the expiration of his/her stay as granted by the Director of Immigration, the Hong Kong sponsor has a duty to inform the HKID of any changes or cessation in the foreign national's employment in Hong Kong. In addition, if called upon by the Hong Kong Immigration authority, the sponsor may be required to bear the cost of the foreign national's eventual repatriation to his/her country of origin.

C. Dependent Visas

Under current policy, persons not subject to a limit of stay in Hong Kong (e.g. Hong Kong permanent residents or residents with the right to land or on unconditional stay) may sponsor their spouses, unmarried dependent children under the age of 18, and dependent parents aged 60 or above to take up residence in Hong Kong as their dependents. However, persons admitted into Hong Kong to take up employment, study in full-time undergraduate or post-graduate programs in local degree-awarding institutions, as capital investment entrants, or as quality migrants, may sponsor only their spouses and unmarried dependent children under the age of 18 to take up residence in Hong Kong as their dependents.

Effective 15th May, 2006, all dependent visa holders are free to study and take up employment in Hong Kong without the need to apply for separate visas, so long as their principal sponsors maintain their employment status with their employers or sponsoring companies in Hong Kong, or if their sponsors are not subject to a limit of stay in Hong Kong. Those dependent visas issued before 15th May, 2006, bearing the condition "Employment is not permitted", may remove the condition by submitting applications to the HKID. The condition will also be automatically removed when the dependent visa holders' current visas expire and they are granted further extension of stay in Hong Kong.

Under current policy, common law spouses are not entitled to dependent visas and may only obtain prolonged visitor visas in certain situations.

D. Procedures for Applying for Employment and Dependent Visas

1. Direct application

Direct applications can be made to the HKID by the employee or by the Hong Kong employer on behalf of the employee. The employee should provide his/her personal documents including a copy of his/her passport, copies of his/ her academic certificates, his/her employment letter, his/her resume, reference letters in some cases and one passport-sized photograph. The Hong Kong employer should sponsor the application and will be required to supply

copies of certain corporate documents (see below) along with an explanation as to why the post cannot be filled locally. The HKID may require advertisement of the post to be filled to establish non-availability of suitable local labor. The processing time is approximately four to six weeks. If the application is successful, an entry visa, generally valid for three months, will be issued in Hong Kong which can be sent to the employee overseas. The entry visa must be presented to the immigration officer upon arrival in Hong Kong when a Hong Kong employment visa, valid for the shorter of the length of the applicant's proposed duration of stay in Hong Kong, a maximum period of one year, or the remaining validity of the applicant's passport, will be endorsed into the applicant's passport.

2. Change of status application

On occasions, due to time constraints, after the applicant has arrived in Hong Kong, a change of status application may be lodged. This practice is not encouraged by the HKID. Whether a change of status application will be entertained is a matter of discretion for the HKID, taking into account all surrounding circumstances and if genuine urgency can be demonstrated.

The processing time is approximately eight weeks. During the processing period, the applicant cannot engage in any employment in Hong Kong, whether paid or unpaid, but can attend to ancillary matters relating to "settling in" Hong Kong.

Employment and dependent visas are initially granted for the length of the applicant's proposed duration of stay in Hong Kong, a maximum period of one year, or the remaining validity of the passport, whichever is shorter. The visas can usually be renewed provided the applicant continues to work for the same employer in Hong Kong.

Please note that nationals of some countries may not lodge change of status applications.

The following documents are generally required:

- copy of the current Business Registration Certificate of the Hong Kong company (representative office, branch or subsidiary);

- copy of the Certificate of Incorporation of the Hong Kong company (subsidiary only) or Certificate of Registration of Overseas Company of the Hong Kong company (branch only);
- copy of the Memorandum and Articles of Association of the Hong Kong company (subsidiary only);
- current staff list of the Hong Kong company;
- copy of the Certificate of Incorporation of the overseas parent company (if applicable);
- copy of the Memorandum and Articles of Association/By-Laws of the overseas parent company (if applicable);
- copies of annual reports of the overseas parent company for the immediate preceding three years (if applicable);
- copies of financial statements of the Hong Kong company for the immediate preceding three years (if applicable);
- copy of the company brochure or brief description depicting the activities of the overseas parent company or the Hong Kong company;
- brief description of the applicant's proposed duties in Hong Kong;
- copy of the applicant's employment letter;
- copy of the applicant's academic certificate(s) and/or professional qualification(s);
- the applicant's updated resume;
- *copy of the applicant's marriage certificate (if married and will be accompanied by spouse);
- *copy of the birth certificate(s) of the applicant's child(ren) (if will be accompanied by child(ren));
- *copies of the applicant's and family's passports (if applicable);
- one passport-sized photograph of the applicant and accompanying family members (for direct applications only);

- appropriate Hong Kong visa application forms, which should be executed each by the applicant (and his/her accompanying family members if applicable); and
- appropriate sponsorship form for the applicant (and his/her accompanying family members if applicable), to be executed by an officer of the Hong Kong company.

* *Note: Original documents will be required for change of status applications. The HKID accepts documents in both Chinese or English. If any of the above listed documents are not in Chinese or English, then certified English translations (if appropriate) will be required.*

E. Employment of PRC Nationals

The HKID is quite strict with respect to the employment of PRC nationals. (Please note, certain PRC nationals on official or semi-official status in Hong Kong are exempted from HKID control). Under current Hong Kong immigration guidelines and as otherwise provided by the below schemes, unless the PRC national has resided continuously overseas (excluding Hong Kong, the PRC and Macau) for a period of at least one year immediately preceding the application or alternatively, unless the PRC national holds unconditional permanent resident status from certain "acceptable" countries (e.g., the United States of America) and has been continuously residing overseas (excluding Hong Kong, the PRC and Macau) immediately preceding the application, he/she will not be eligible to apply for a Hong Kong employment visa unless he/she qualifies under 1 or 2 below. If the PRC national's spouse and unmarried dependent children under the age of 18 will be accompanying the PRC national to Hong Kong as dependents and they are also PRC passport-holders, they must also individually meet the same requirements. The PRC national will also have to satisfy the regular requirements as to skills and experience previously mentioned.

In addition to the documents mentioned above, the following documents are required:

- copy of every page of the PRC national's passport;
- proof of his/her one-year overseas residence or unconditional permanent resident status in an acceptable country.

Generally, PRC nationals are not eligible to lodge change of status applications in Hong Kong. However, a PRC national who has lawful permanent resident status in the United States of America and a United States of America Re-entry Permit may lodge a change of status application in Hong Kong provided he/she first applies for a visitor visa to Hong Kong on the basis of his/her United States Re-entry Permit and entered Hong Kong as a visitor with the said travel document.

PRC passport holders resident in Hong Kong do not require re-entry visas to resume residence from a trip outside Hong Kong, provided they return to Hong Kong within 12 months of departure or the limit of stay imposed, whichever is earlier.

1. Admission of Mainland Talents and Professionals Scheme

The Admission of Mainland Talents and Professionals Scheme came into effect on 15 July, 2003, to replace the previous Admission of Talents Scheme and the Admission of Mainland Professionals Scheme. This scheme is quota-free and non-sector specific. In order to qualify under this scheme, generally, the applicant must possess a first degree in the relevant field and be offered a benefits package commensurate with the prevailing market rate. The applicant may apply for change of employment after admission if the new job is relevant to his/her qualifications and expertise. The applicant's spouse and unmarried dependent children under the age of 18 may apply to enter as dependents. The applicant and his/her dependents may apply for the right of abode after seven years of continuous residence in Hong Kong.

Procedure wise, the employer must submit the application directly to the HKID on behalf of the applicant. Upon approval of application, the HKID will issue an entry permit label to the employer for forwarding to the applicant. The applicant must present the entry permit label to the relevant office of the Public Security Bureau in China and apply for an Exit-entry Permit for Traveling to Hong Kong and Macau and a relevant exit endorsement before he/she can enter Hong Kong for employment under this scheme.

2. Employment of Degree or Above Level Mainland Students Graduating from University Grants Committee (UGC)-Funded Institutions in Hong Kong

Effective 1 August, 2001, PRC nationals who have completed their bachelor degree or higher level studies in Hong Kong may re-enter Hong Kong for employment after graduation. Under this arrangement, a PRC national graduating from a University Grants Committee - Funded Institution in Hong Kong in 1990 or afterwards may apply for a Hong Kong employment visa, provided he/she possesses skills or knowledge not readily available or in shortage locally and be offered a benefits package commensurate with the prevailing market rate. Change of employment will usually not be permitted in the first year. The applicant's spouse and unmarried dependent children under the age of 18 may apply to enter as dependents. The applicant and his/her dependents may apply for the right of abode after seven years of continuous residence in Hong Kong.

Similar to the Admission of Mainland Talents and Professionals Scheme, the successful applicant under this arrangement will be issued an entry permit label. The applicant must present the entry permit label to the relevant office of the Public Security Bureau in China and apply for an Exit-entry Permit for Traveling to Hong Kong and Macau and a relevant exit endorsement before he/she can enter Hong Kong for employment under this arrangement.

F. Employment (Investment) Visas

In cases where the applicant wishes to come to Hong Kong to invest in or start a business, the appropriate visa is an employment (investment) visa. The applicant should establish:

- that he/she is making "substantial" investment in Hong Kong; and
- that he/she proposes to invest in and carry on a business beneficial to Hong Kong's economy, commerce and industry, e.g. by the creation of jobs.

Note: As a guideline, "substantial" normally means a minimum of HKD 500,000. However, this amount may vary depending on the proposed business venture.

Application for an employment (investment) visa can be lodged either by direct application to HKID or locally in Hong Kong by way of change of status, subject again to the above comments. It takes approximately 10 to15 weeks to process this kind of application. The application for an employment (investment) visa is generally more complicated and requires substantially more documentation than the employment visa discussed previously. A detailed business plan is also required. Quite often, HKID will also seek comments from the Hong Kong Trade Development Council as to whether the proposed business will be beneficial to the interest of Hong Kong.

Successful applicants are generally granted a one-year visa or the remaining validity of the applicant's passport, whichever is shorter. The visa may be extended.

G. Capital Investment Entrant Scheme

Effective 27 October, 2003, people with net assets under their control and disposal for investment of no less than HKD 6.5 million in either or a combination of two permissible investment assets, namely, real estate and financial assets, may be eligible for admission to Hong Kong as capital investment entrants. This scheme currently applies to foreign nationals, residents of Macau, Chinese nationals who have obtained permanent resident status in an acceptable foreign country, stateless persons who have obtained permanent resident status in an acceptable foreign country with proven re-entry facilities, and residents of Taiwan.

Permissible investment assets made within six months before an entrant's submission of his/her application to the HKID, or made within six months after the granting of approval in principle by HKID will be counted towards the minimum investment threshold of HKD 6.5 million under the scheme. The entrant is not allowed to realize or cash in any capital appreciation of the qualifying portfolio during his/her stay in Hong Kong. However, if the value of the portfolio falls below the original level of HKD 6.5 million, no topping up is required. The entrant is allowed to bring in his/her spouse and unmarried dependent children under the age of 18. The applicant and his/her dependents may apply for the right of abode after seven years of continuous residence in Hong Kong in accordance with the laws.

H. Quality Migrant Admission Scheme

Introduced in June, 2006, the Quality Migrant Admission Scheme is aimed to attract highly skilled or talented persons between the age of 18 and 50 to Hong Kong. Applicants under the scheme do not need to secure an offer of employment in Hong Kong prior to the submission of his/her application to the HKID. The Quality Migrant Admission Scheme consists of two types of points-based assessments: (i) General Points Test and (ii) Achievement-based Points Test.

Applicants who choose to be assessed under the General Points Test are allocated marks according to the following five factors:

Factors	**Maximum Points**
Age	30
Academic/Professional Qualifications	45
Work Experience	50
Language Proficiency in Chinese and English	20
Family Background	20
	165

In order to be considered for a place in the scheme quota, applicants must achieve above a minimum mark set by the HKID. The minimum mark is subject to change.

The second assessment, the Achievement-based Points Test, is aimed at individuals with exceptional talent or skills. Applicants assessed under this test score marks by evidencing he/she has received awards of exceptional achievement (e.g. Olympic medals, Nobel prize, etc.), or by showing his/her work has been recognized by industry peers or has significantly contributed to the development of his/her field (e.g. lifetime achievement award from an industry). Under the Achievement-based Points Test, applicants will either obtain the maximum mark of 165 or face an immediate 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 Director of Immigration, and only a selected number of applicants will be allotted a place in the scheme quota.

Applicants who are allotted a place in the scheme quota will be issued with an Approval-In-Principle letter and will be required to attend an interview in person at the HKID in Hong Kong for verification of supporting documents. Upon a satisfactory verification, applicants will receive formal approval and the HKID will normally issue the applicant an entry visa or permit for an initial stay of 12 months in Hong Kong. Visas issued under the scheme may generally be renewed provided applicants can evidence he/she has taken steps to settle in Hong Kong. For any further applications of extensions of stay, applicants must prove he/she has settled in Hong Kong, and has made contribution to Hong Kong.

Successful applicants under the Quality Migrant Admission Scheme are allowed to bring their spouse and unmarried dependent children under the age of 18 as dependents into Hong Kong. Dependents are not required to attend the interview for formal approval. Persons admitted under the Quality Migrant Admission Scheme are eligible to apply for the right of abode in Hong Kong provided he/she has ordinarily resided in Hong Kong for a continuous period of not less than seven years in accordance with the laws.

Nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Democratic People's Republic of Korea, Nepal and Vietnam, are excluded from the Quality Migrant Admission Scheme.

I. Training Visas

Where the HKID is informed of company personnel coming to Hong Kong for training purposes, it may issue training visas for the period of training or a maximum of 12 months, whichever is shorter, after considering the nature and importance of the training program. Under certain circumstances, students are also eligible to apply for training visas in Hong Kong. In general, the Hong Kong training visas are granted to enable foreign/PRC nationals to acquire skills, knowledge or experience in Hong Kong, so that after training, they

may return to their respective home countries to make use of what they have learned at the conclusion of the training. PRC nationals seeking training visas do not need to meet the offshore residency or offshore permanent resident status requirement.

J. Student Visas

Briefly, this visa may be obtained upon proof by way of a letter from the school at which the applicant is registered or accepted as a student. The visa, when approved, will be for a period of six to twelve months or the period of the academic year, whichever is shorter. Thereafter, it is renewable for further periods of stay depending on prevailing circumstances.

HONG KONG IDENTITY CARDS

Once a resident of Hong Kong, an individual who is aged 11 and above must register for a Hong Kong Identity Card. Under the current Registration of Persons Ordinance, a Hong Kong resident who is 15 or above must carry at all times a Hong Kong Identity Card. Failure to do so is an offence under the Immigration Ordinance.

UNCONDITIONAL STAY STATUS OF FOREIGN RESIDENTS

Foreign residents (other than foreign domestic helpers, and contract workers under the import labor scheme) may apply for unconditional stay status on completion of seven years' continuous residence in Hong Kong. Proof of the continuous seven-year stay must be submitted to the HKID for consideration (e.g., tax returns, tenancy agreements, travel documents, etc.) Once obtained, the holder of unconditional stay status is free of any limitation on his/her ability to work in Hong Kong; and need only return to Hong Kong once every twelve months to retain that status.

RIGHT OF ABODE IN THE HONG KONG SAR

Chinese citizens and foreign residents (other than foreign domestic helpers, and contract workers under the import labor scheme) who have entered Hong Kong with valid travel documents/appropriate resident visas and have resided continuously in Hong Kong for seven years, have the option to apply for the Right of Abode in Hong Kong in accordance with the laws, provided they make a declaration that they have taken Hong Kong as their place of permanent residence. Once obtained, the Right of Abode entitles the holder to freely travel in and out of Hong Kong without any limitation on the ability to work and reside in Hong Kong. However, foreign residents who have obtained the Right of Abode must return to Hong Kong once every thirty six months to retain that status.

DECLARATION OF CHANGE OF NATIONALITY

The Standing Committee of the Chinese National People's Congress has passed a resolution on the Interpretation of the Chinese Nationality Law when applying in Hong Kong. Among other things, the HKID is authorized to process declarations of change of nationality in respect of Hong Kong residents who are Chinese citizens holding foreign passports. If such Hong Kong residents choose to be treated as foreign nationals in Hong Kong, they will have to make a declaration of change of nationality to the HKID. Once their declarations have been approved, these persons will be treated as foreign nationals in Hong Kong and will be eligible for consular protection.

NATURALIZATION AS A CHINESE NATIONAL

The Nationality Law of the People's Republic of China ("the Nationality Law") governs the issue of naturalization as a Chinese national in Hong Kong. According to Article 7 of the Nationality Law, any foreign national or stateless person who is willing to abide by China's constitution and laws and who meets one of the following conditions may be naturalized as a Chinese national in Hong Kong upon approval of their applications:–

- they are near relatives of Chinese nationals;

- they have settled in China; or
- they have other legitimate reasons.

A person will be treated as settled in Hong Kong if he/she is ordinary resident in Hong Kong, and is not subject to any limit of stay in Hong Kong. The HKID will consider each application for naturalization as a Chinese national on its own merits but consideration will be given to:-

- whether the applicant has a near relative who is a Chinese national having the right of abode in Hong Kong;
- whether the applicant has the right of abode in Hong Kong;
- whether the applicant's habitual residence is in Hong Kong;
- whether the principal members of the applicant's family are in Hong Kong;
- whether the applicant has a reasonable income to support himself/herself and his/her family;
- whether the applicant has paid taxes in accordance with the law;
- whether the applicant is of good character and sound mind;
- whether the applicant has sufficient knowledge of the Chinese language;
- whether the applicant intends to continue to live in Hong Kong in case his/her naturalization application is approved; and
- whether there are other legitimate reasons to support his/her application.

A person, whose application for naturalization as a Chinese national is approved in principal, must provide proof that he/she has relinquished all other nationalities before final approval is granted.

CHAPTER 7
IMMIGRATION TO JAPAN

IMMIGRATION TO JAPAN

INTRODUCTION

The Immigration Control and Refugee Recognition Act establishes specific minimum criteria that must be met by foreigners seeking entry to Japan in a particular status of residence. Whether or not a Certificate of Eligibility application for a particular status of residence will be granted ultimately depends on the facts and circumstances concerning the proposed business activities and the qualifications of the foreigner.

To enter and stay in Japan, a foreigner must possess status of residence regardless of the length of stay. Such status of residence is granted and sealed with a landing permission at the port of entry in Japan. At such time, visas and Certificates of Eligibility (explained in a later section) are the main sources of judgment issued by border officials when granting a landing permission.

A foreigner seeking residence in Japan is authorized to engage only in the activities specified in the regulations pertaining to his/her approved status of residence. To work and be remunerated, it is necessary to have status of residence authorizing engagement in such activities. There are 23 recognized categories of status of residence for foreigners seeking entry to Japan on a non-permanent basis. They are:

1. Diplomat
2. Official (of foreign governments)
3. Professor
4. Artist
5. Religious activities
6. Journalists
7. Investor/business manager
8. Legal/accounting services
9. Medical services

10. Researcher
11. Instructor
12. Engineer
13. Specialist in humanities or international service
14. Intra-company transferee
15. Entertainer
16. Skilled labor
17. Cultural activities
18. Temporary visitor
19. College student
20. Pre-college student
21. Trainee
22. Dependent
23. Such other activities as may be specifically designated for foreign individuals by the Ministry of Justice.

Short-Term Stay

Short-term stays refer to temporary visits to Japan for a limited amount of time for purposes such as sightseeing, sports, convalescence, visits to relatives or friends, amateur participation in athletic meetings or other contests, and business trips. Business trips can be for the purpose of conducting market surveys, business liaison, business meetings, signing contracts, and after-sale service for machinery imported into Japan. However, this category excludes profit-making operations and paid activities.

For nationals of countries which have not entered in to a reciprocal visa exemption agreement with Japan, it is necessary to obtain a visa for a short-term stay by applying in person at a Japanese consulate or embassy prior to entry into Japan. For nationals from countries which have reciprocal visa

exemption agreements with Japan, it is not necessary to obtain a visa for short-term stays provided the conditions described above are met. For those countries which have entered into reciprocal visa exemption agreements with Japan, the time granted for visits to Japan without the requirement for a visa, are set out below. The time permitted for a short-term stay in Japan ranges from 14 days to six months depending on the nationality of the person making the visit to Japan.

The visa exemption agreement is not applicable to persons who intend to engage in professions, occupations, or any other activity for remuneration in Japan. Any foreigner who intends to engage in any activity for remuneration in Japan must obtain, before entry into Japan, a visa.

The 62 countries (as of March, 2006) with which Japan has visa exemption agreements are set out below, together with the amount of time permitted in Japan:

List of Countries and Regions That Have Visa Exemption

Countries and Regions	**Term of residence**
Asia	
Singapore	3 months or less
Brunei	14 days or less
Hong Kong (BNO, SAR passport)	90 days or less
Korea	90 days or less
Taiwan	90 days or less
Macau (SAR passport)	90 days or less
North America	
Canada	3 months or less
U.S.A	90 days or less
Europe	
Austria	6 months or less
Germany	6 months or less
Ireland	6 months or less
Liechtenstein	6 months or less

Switzerland	6 months or less
United Kingdom	6 months or less
Belgium	3 months or less
Croatia	3 months or less
Cyprus	3 months or less
Denmark	3 months or less
Finland	3 months or less
France	3 months or less
Greece	3 months or less
Iceland	3 months or less
Italy	3 months or less
Luxembourg	3 months or less
Macedonia	3 months or less
Malta	3 months or less
Netherlands	3 months or less
Norway	3 months or less
Portugal	3 months or less
San Marino	3 months or less
Slovenia	3 months or less
Spain	3 months or less
Sweden	3 months or less
Andorra	90 days or less
Bulgaria	90 days or less
Czech Rep.	90 days or less
Estonia	90 days or less
Hungary	90 days or less
Latvia	90 days or less
Lithuania	90 days or less
Monaco	90 days or less
Poland	90 days or less
Slovakia	90 days or less

Latin America and Caribbean	
Mexico	6 months or less
Argentina	3 months or less
Bahamas	3 months or less
Chile	3 months or less
Costa Rica	3 months or less
Dominican Rep.	3 months or less
El Salvador	3 months or less
Guatemala	3 months or less
Honduras	3 months or less
Suriname	3 months or less
Uruguay	3 months or less
Barbados	90 days or less
Middle East	
Israel	3 months or less
Turkey	3 months or less
Oceania	
Australia	90 days or less
New Zealand	90 days or less
Africa	
Lesotho	3 months or less
Mauritius	3 months or less
Tunisia	3 months or less

Notes: In the case of the waiver of visa requirements of up to three months or 90 days, foreigners are granted upon landing a temporary visitor status for a period of 90 days (15 days for Brunei).

Nationals of countries and regions, who are able to stay in Japan for up to six months without the requirement for a visa, are in principal granted permission to stay in Japan for 90 days at the time of landing. Nationals of these countries and regions who wish to stay in Japan for more than 90 days must apply at their nearest immigration authority in Japan for an extension of their period of stay.

In the case of Australia, Japan adopts a unilateral measure, not a bilateral waiver of visa requirements.

In the case of Bangladesh, Pakistan and Iran, the waiver of visa requirements is temporarily suspended.

In the case of Malaysia, Peru and Colombia, it is recommended to obtain a visa.

Long-Term Stay

Under the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951), as amended in 1990, a four-step procedure should generally be followed by foreigners seeking to work in Japan. These steps may be summarized as follows:

1. apply for a Certificate of Eligibility from immigration authorities in Japan;
2. apply for a visa at a local Japanese consulate or embassy overseas;
3. obtain a landing permission from the Japanese border officials; and
4. submit to alien registration procedures after arrival in Japan.

If a foreigner wishes to enter Japan to engage in activities other than those described in the short-term stay section above, he/she will need a diplomatic visa, official visa, working visa, general visa, or a specified visa. Typical types of employment include long-term assignment to Japan of foreign company personnel and employment in Japanese companies to make use of the foreigner's knowledge of other activities.

It is also possible to obtain permission for long-term stays for some activities that meet certain criteria, such as Japanese university or college education or company training, although work is not permitted in these cases. Permission for long-term residence in Japan is also granted in the case of spouses of Japanese nationals and others who settle in Japan.

When applying for a visa for the above-mentioned activities, the government recommends applying in Japan beforehand for a Certificate of Eligibility. If a foreigner submits a visa application to a Japanese embassy or consulate overseas together with a Certificate of Eligibility, he/she will be able to obtain a visa in

a shorter time than applicants without such a certificate. Foreigners can also apply for a visa without such a certificate. However, if the purpose of the stay is employment, the application documents may be forwarded to a regional immigration authority in Japan for screening. For this reason, applicants are advised to schedule plenty of time for their applications to be processed.

CERTIFICATE OF ELIGIBILITY

Under the Certificate of Eligibility system, a Certificate of Eligibility may be issued before the visa application overseas by a regional immigration authority under the jurisdiction of the Ministry of Justice as evidence that the applicant fulfills various conditions of the Immigration Control Act, including certification that the activity in which the foreigner wishes to engage in Japan is valid and comes under a status of residence (excluding Temporary Visitor Status).

Personnel of the corporation at which the foreign national will be working in Japan may file an appropriate Certificate of Eligibility application on behalf of the foreign national.

It should be noted that the application forms and supporting documentation required for the Certificate of Eligibility application for a particular status of residence differs depending on the residence status sought. Review of the application for a Certificate of Eligibility takes approximately four to six weeks. Assuming the application is approved, a Certificate of Eligibility stating that the foreigner qualifies for the particular status of residence applied for will be forwarded to the company which filed the application on the foreigner's behalf. The company will in turn send the Certificate of Eligibility to the foreigner so that it can be used in the visa application.

STATUS OF RESIDENCE

The Immigration Control and Refugee Recognition Act provides for several types of visas that convey the right to earn remuneration in Japan (including a permanent residence visa). The scope of activities that a foreigner residing in Japan may engage in is limited by his/her status of residence.

STATUS OF RESIDENCE FOR EMPLOYMENT

This section will focus on the authorized activities and qualifying criteria for each of the four status of residence categories that are most often used to transfer employees to Japan: "Investor/Business Manager", "Engineer", "Specialist in Humanities/International Services", and "Intra-Company Transferee".

A. Investor/Business Manager

1. Authorized Activities

(i) to commence the operation of, or invest in, international trade or other business (e.g. investors);

(ii) to operate or manage international trade or other business on behalf of other foreign nationals who have commenced or invested in such an operation (e.g. representative directors); or

(iii) to operate or manage international trade or other new or invested business including new operations of foreign corporations or foreign-invested businesses (e.g. managers).

2. Authorized Period of Stay

One or three years, depending on the length of time reasonably necessary for the assignment.

3. Requirements

The following criteria must be fulfilled:

3.1 in cases where the foreigner is to commence or invest in international trade or other business (e.g. investors), or where the foreigner is to operate or manage international trade or other business on behalf of other foreign nationals who have commenced or invested in such an operation (e.g. representative directors), the following conditions must be met:

(a) the offices for the business concerned must be located in Japan; and

(b) the business concerned must be maintained on such a scale so as to employ at least two full-time employees in Japan (excluding foreign nationals residing under an approved status of residence for working in Japan), in addition to those who operate and/or manage the business.

3.2 in cases where a foreigner is to engage in the management of international trade or other business in Japan (e.g. managers), he or she should have at least three years of experience in the operation and/or management of business (including the period during which the foreigner studied business operation and management in graduate school) and receive a salary equivalent to or greater than the salary a Japanese national would receive for comparable work.

B. Engineer

1. Authorized Activities

The "Engineer" category authorizes service activities that require technology skills and/or knowledge of physical science, engineering or other natural science fields (excluding professors, instructors, researchers and those engaged in the provision of medical treatment).

2. Authorized Period of Stay

One or three years, depending on the length of time reasonably necessary for the assignment.

3. Requirements

The following criteria must be fulfilled:

3.1 the foreigner must have graduated from a college or obtained equivalent education majoring in the subject relevant to the skills and knowledge necessary for performing the job concerned, or the foreigner must have at least 10 years of experience (including the period of time spent studying the relevant skills and knowledge at college, "koto senmongakko", high school or during a specialized course of study at an advanced vocational school, "senshu gakko"); and

3.2 the foreigner should receive a salary no less than a Japanese national would receive for comparable work.

C. Specialist in Humanities/International Services

1. Authorized Activities

Authorized activities in the "Specialist in Humanities/International Services" category are service activities, which require:

1) knowledge of jurisprudence, economics, sociology, or other human science fields (excluding professors, instructors, artists, journalists and Investor/Business Managers); or

2) specific ways of thought or sensitivity based on experience with foreign cultures (excluding professors, instructors, artists, journalists and Investor/Business Managers).

2. Authorized Period of Stay

One or three years, depending on the length of time reasonably necessary for the assignment.

3. Requirements

The following criteria must be fulfilled in cases where the foreigner is to engage in a job requiring knowledge in human science:

3.1 the foreigner must have graduated from a college or obtained equivalent education majoring in a subject relevant to the knowledge necessary for performing the job concerned, or the foreigner must have at least ten years of experience (including the period of time spent studying the relevant knowledge at college, "koto senmongakko", high school or during a specialized course of study at an advanced vocational school "senshu gakko"); and

3.2 the foreigner should receive a salary no less than a Japanese national would receive for comparable work.

The following conditions are to be fulfilled in cases where the foreigner is to engage in a job requiring specific ways of thought or sensitivity based on the experience with foreign culture:

3.3 the foreigner shall be engaged in translation, interpretation, instruction of languages, public relations, publicity and advertisement, overseas transactions, fashion or interior design, product development, or other similar work; and

3.4 the foreigner must have at least three years of experience in the relevant job, except in cases where the foreigner who has graduated from college, is planning to engage in translation, interpretation, or instruction in languages.

D. Intra-Company Transferee

1. Authorized Activities

To be qualified as an "Intra-Company Transferee", the applicant must be transferred to business offices in Japan for a limited period of time from business offices which are established in foreign countries by public or private organizations that have head offices, branch offices in Japan and who will be engaging in activities described in the "Engineer" or "Specialist in Humanities/International Services" status of residence categories.

2. Authorized Period of Stay

One or three years, depending on the length of time reasonably necessary for the assignment.

3. Requirements

The following criteria must be fulfilled:

3.1 the foreigner must have been employed at the main office, or branch office or another office abroad for at least one year immediately prior to the transfer to Japan while engaging in a job which falls under the "Engineer" or "Specialist in Humanities/International Services" categories; and

3.2 the foreigner should receive a salary no less than a Japanese national would receive for comparable work.

VISA ISSUANCE

Once the Certificate of Eligibility has been granted, the foreigner will then file a visa application with the local Japanese consulate or embassy overseas together with a copy of the Certificate of Eligibility for the consulate's reference.

The foreigner should retain the original Certificate of Eligibility and should submit a copy to the Japanese consulate or embassy (the original must be presented for verification). It should then take from two to ten working days for the visa to be issued. The foreigner will be required to hand the original certificate to the immigration official at the port of entry into Japan.

It should be noted that since the purpose of the visa and Certificate of Eligibility systems are not identical, the issue of a Certificate of Eligibility does not ensure that a visa will be issued in all cases. However, a Certificate of Eligibility should make it substantially easier for foreigner to obtain a visa to enter Japan.

LANDING PERMISSION

At the time of landing, border officials in Japan will place a landing permission seal in the foreigner's passport. The seal specifies the foreigner's status of residence and authorized period of stay, which are determined by reference to the Certificate of Eligibility. It is therefore necessary for the foreigner to carry the Certificate with him/her when traveling to Japan. Indeed, presenting the Certificate of Eligibility, which states that the issuing authorities have approved the status of residence for the individual is essential to obtaining entry at the border.

Assuming that permission to land is granted by border officials, they will stamp the appropriate status of residence in the foreigner's passport, together with an indication of the authorized period of stay. The period of stay is determined by reference to the status of residence. A foreigner is not permitted to stay in Japan beyond the period granted at the time of landing in accordance with the regulations applicable to the status of residence, unless an extension is obtained.

The Certificate of Eligibility is valid for three months from the date of issue. If the foreigner does not present himself/herself at the border within that time,

or if circumstances have changed, the foreigner will have to re-establish to the satisfaction of border officials that he or she is entitled to enter the country under a particular status of residence.

ALIEN REGISTRATION

A foreigner is required to apply for alien registration within 90 days of the date of his/her arrival in Japan. Registration is made at the municipal office of the city, ward, town or village in which he or she is living. The application is made by filing the foreigner's passport together with an "Application for Alien Registration" provided by the municipal office where the registration is made.

Once a Certificate of Alien Registration is issued, the foreigner is required to carry this certificate with him/her at all times and to present it to an Immigration Inspector or a police officer upon demand.

PERMANENT RESIDENCE

Foreigners who are able to demonstrate good behavior and conduct, sufficient assets to make an independent living, five year previous residency, and a proven contribution to Japan, may apply for Japanese permanent residency. Application is considered on a discretionary basis.

There is no need for foreign nationals with status of residence, permanent resident for spouses or children of Japanese nationals, and spouses or children of permanent residents, to obtain work authorization for employment.

REVOCATION OF VISA STATUS

Clauses concerning revocation of visa status were added to the Immigration Control and Refugee Recognition Act in 2004. Foreigners deemed to have engaged in immigration fraud, to have overstayed, to have engaged in unauthorized activities, or to have engaged in work illegally will be subject to detention and deportation and the visa of such foreigner will be subject to revocation. The Japanese government has proclaimed a five-year plan for reducing the number of foreigners violating the immigration act by half and has increased its efforts in investigation and enforcement.

CHAPTER 8
IMMIGRATION TO MACAU SPECIAL ADMINISTRATIVE REGION

IMMIGRATION TO MACAU SPECIAL ADMINISTRATIVE REGION

Although the sovereignty of the Macau has been reverted back to the People's Republic of China, the city has retained its own immigration system. Non-residents of Macau who wish to take up employment or reside in Macau will generally be required to seek permission from the relevant government authorities prior to entering the region.

EMPLOYMENT IN MACAU

Non-residents of Macau who wish to work in Macau for a period of more than six months must first obtain a Macau Labor Card (commonly known as the Macau "Blue Card") from the Macau Immigration Bureau ("MIB"). The Macau Labor Card, like a work visa or permit, allows the holder to take up employment in Macau within the validity of the card. The Macau Labor Card also allows the holder to enjoy the privilege of multiple entries and exits to and from Macau.

Under current Macau labor law, there are two main categories of employment which are applicable to non-residents of Macau: (A) non-skilled employment and (B) skilled employment.

A. Non-skilled Employment

Macau enterprises which intend to employ non-resident workers for non-skilled employment must first secure approval from the Macau Labor Affairs Bureau (MLAB"). Such enterprises are required to provide proof that resident workers are not available to fill the vacancies and that the importation of workers will not jeopardize the interests of resident workers in Macau. Thereafter, Macau enterprises may conclude contracts for the rendering of services, which include the provision of work by non-residents with third party entities in Macau, provided a favorable authorization has been obtained from the MLAB.

B. Skilled Employment

The employment of overseas skilled workers, senior executives, and expatriates in Macau is governed by the Macau Legal Dispatch No. 49/GM/88 and 12/

GM/88. In general, an application for a work authorization in Macau will be considered by two separate Macau authorities, namely the MLAB and the MIB. Applicants will need to submit their application to the MLAB for initial assessment and then subsequently to the MIB for final approval and for the Macau Labor Card to be issued.

1. Applications to the MLAB

Applications submitted to the MLAB will be reviewed taking into account various considerations, and if necessary, the MLAB may seek the opinions of other Macau government authorities such as the Economic Services Bureau and Macau Government Tourist Office, prior to granting approval. All applications for employment in Macau must be sponsored by a local entity in Macau.

When assessing employment applications, the MLAB will take into consideration:-

- whether the offered positions can be filled by local residents;
- whether the applicant's professional and educational background correspond to the skilled employment in Macau;
- whether the professional will be able to provide vocational training to local resident workers; and
- whether the professional's employment is beneficial to Macau.

The following documents are required to be furnished to the MLAB in support of the application:--

1. application form, A49 (only the original application form issued by the MLAB in Macau will be accepted);
2. proof of recent advertisements, or registration receipts from the MLAB confirming local recruitment efforts (applicable to all positions including managing directors, managers, etc.);
3. copies of the sponsoring company's social insurance payments for the past two quarters (please note this requirement will be waived for newly set up company in Macau);

4. copies of the sponsoring company's business registration certificate, business license, industrial registration certificate etc.;

5. copy of the sponsoring company's recent Profit Tax Statement (Form commonly known as M/8);

6. copy of the applicant's passport (relevant pages only);

7. copy of the applicant's academic and professional certificates;

8. copy of the applicant's reference letters from previous/current employers;

9. copy of the applicant's resume; and

10. copy of employment letter[1] (duly signed by the applicant and the employer on each page of the letter).

Currently, the MLAB is taking at least four months to process an application. If all documents are in order and the MLAB approves the application, the bureau will issue a confirmation letter to the applicant's employer in Macau for subsequent formalities at the MIB.

2. Applications to the MIB

Upon approval from the MLAB, the applicant is required to enter Macau as a visitor and attend in person at the MIB to submit his/her application for a Macau Labor Card at the MIB.

The following documents are required to be furnished in support of a Macau Labor Card application:

1. original and a copy of MLAB's approval letter in respect of the applicant's employment in Macau;

2. original and four copies of the applicant's passport;

1 Under current Macau immigration regulations, an employment contract is required to be entered into between the Macau entity and the overseas employee in relation to the employee's work in Macau if the duration of the employment is for more than one month. The employment contract will serve as a legal document to protect the interests of the employer and the employee in Macau.

3. original and copy of the applicant's marriage certificate (if any); and

4. original and three copies of a completed list of Importation of Skilled Non-Resident Workers List ("Worker List").

Once the documents have been verified and accepted by MIB, the MIB will temporarily approve the applicant to work in Macau for an initial period of 20 days. A copy of the Worker List will be stamped (commonly known as the "Red Stamp") and returned to the applicant. The endorsed Worker List will serve as a proof of temporary authorization for the applicant to work in Macau. If the MIB has no objection to the application, the employee will be required to attend in person at the MIB towards the end of the initial 20 day period and to submit the following additional documentation for his/her Macau Labor Card registration:-

- original and a copy of the endorsed Worker List
- original and two copies of the applicant's passport
- six recent passport sized photos
- a completed "Declaration of Identity" form
- appropriate fee of 100 patacas (Macau currency)

Upon registration, the applicant will be fingerprinted and an acknowledgment for the Macau Labor Card will be issued. At this stage, the applicant will complete all his formalities for employment in Macau and is authorized to work in Macau. The Macau Labor Card will be issued approximately 30 days after completion of the registration process.

C. Macau Temporary Work Permit ("MTP")

Applicants who need to work for an entity in Macau for a short period of time on temporary assignments of no longer than six months, can apply for a MTP. The process for a MTP application is similar to a skilled employment application and will also be firstly assessed by the MLAB. A MTP application must also be sponsored by a legal entity in Macau. The current processing time for a MTP application is approximately two months. Once the application is approved by the MLAB, an approval letter will be issued to the local sponsor in Macau.

However, unlike the skilled employment procedure, the applicant will not be issued with a Macau Labor Card. Instead, he/she will be required to attend in person at the MIB and submit his/her application for employment authorization in Macau. The MIB will immediately review the application and, if approved, the applicant's passport will be stamped and he/she can start working with his/her local sponsor in Macau. The validity of the stamp endorsement will be in line with the approval from MLAB but not more than six months. No extensions of stay will be permitted for MTP holders.

D. Exception for Work Permit

According to Macau Administrative Regulation no. 17/2004, if there is a need to use the services of persons from outside Macau to provide guidance, technical, quality control or supervision services and those services will not be more than 45 continuous or non-continuous days in any six month period, then a work authorization is not required. Each day of work must be properly recorded for inspection by relevant Macau authorities, and there must be an agreement between a Macau entity and overseas company to provide such services. The agreement can be in any format which will serve as a proof that such services are required.

E. Penalty

In accordance with the Macau Administrative Regulation no. 17/2004, an entity that employs a non-Macau resident without the necessary authorization will be subject to an administrative fine of 20,000 to 50,000 patacas. In addition, the non-resident will also be subject to a fine of 5,000 to 20,000 patacas. The non-resident will also be barred from working in Macau for two years and will be subject to deportation.

INVESTMENT RESIDENCY

The Investors, Managerial Personnel, Technical and Professional Qualification Holders Residence Scheme (the "Scheme") is governed by Macau administrative rules 3/2005. Applicants can obtain temporary residence status in Macau through one of the following categories:

1. investments in manufacturing, services, hotels, or similar industries;
2. investment plans in industrial units, service industries, hotel industries, or similar investment projects;
3. investment on fixed assets or other tangible productive assets; and
4. management staff and professional technicians.

Applications for residency under the Scheme must be submitted to the Macau Trade and Investment Promotion Institute ("IPIM") in Macau, which will subsequently be forwarded to the Secretariat for Economy and Finance for further assessment. The IPIM will provide support and assistance at each level to the investors including verification of the applicant's documentation, assisting the investors on orientation issues related to investment in Macau, attending to all necessary governmental procedures to the investment set up in Macau, and following up with the MIB for the issue of the temporary residence card, if the applications are approved. It is currently taking the IPIM and the relevant authority in Macau at least 12 months to assess an application.

In assessing applications lodged under the scheme, the Secretariat for Economy and Finance will take into consideration:-

- whether the investment plan and projects are beneficial to the economic development in Macau;
- whether the applicant possesses the necessary business experience and knowledge;
- whether the applicant has acquired special skills and qualifications which are not available in Macau;

For fixed asset investment residency applications, the following requirements must be fulfilled before lodgment:--

1. the value of the fixed assets purchased must be free from any outstanding debt, loan, or mortgage and the value must be no less than one million patacas.
2. the applicant must have a fixed deposit account of no less than five hundred thousand patacas in a Macau financial institution.

3. the applicant must have reached at least higher national diploma level or the equivalent educational level. In case the applicant has only finished secondary school or equivalent, he/she must fulfill one of the following requirements:-

    - the applicant must have a direct relative who is a Macau permanent resident;
    - the applicant must have no less than two year experience of running a company or has been working for a company in a senior management position; or
    - the applicant must either wholly own or have no less than a fifty-one percent share in a company set up in Macau.

The applicant's spouse and dependent children (under the age of 18) are also qualified to apply for residence in Macau under the Scheme. Upon approval, the applicant and his/her family member will be issued with a temporary residency card and will be allowed to stay in Macau for an initial period of 18 months (for applications under investment projects category) or three years (for other types of applications). The Temporary Residence Card can be renewed before its expiry provided the applicant's investment in Macau has not changed.

RIGHT OF ABODE IN MACAU

Chinese citizens and foreign residents who have been approved for residency (except those who have been granted permission to stay in Macau for skilled or non-skilled employment) in Macau and residing there for a continuous period of not less than seven years, can have the option to apply for right of abode status in Macau in accordance with the laws, provided they make a declaration that they have taken Macau as their place of permanent residence. Once the right of abode status has been granted, it entitles the holder to freely travel in and out of Macau without any limitation on the ability to work and reside in Macau. In relation to the applicant's place of permanent residence, the following factors will be considered by the relevant authority in Macau:

- whether the applicant has been absent from Macau for a period of time
- whether the applicant has maintained his/her home base in Macau

- whether the applicant is employed by a Macau entity
- whether the applicant's close family member reside in Macau

CHAPTER 9
IMMIGRATION TO MALAYSIA

IMMIGRATION TO MALAYSIA

TYPES OF PASSES RELATING TO EMPLOYMENT

There are three different types of passes issued for the purpose of taking up employment in Malaysia, namely:

- the Employment Pass;
- the Visit Pass (Professional); and
- the Visit Pass (Temporary Employment).

A. Employment Pass

An Employment Pass is issued to a managerial or professional-level foreigner who is to be employed by a Malaysian employer i.e. a Malaysian incorporated subsidiary, Malaysian registered branch of a foreign corporation or a Malaysian representative office. Any employer applying for an Employment Pass must provide reasons as to why the foreigner must be employed as opposed to a Malaysian citizen or permanent resident. For example, one acceptable reason is that there is no Malaysian citizen or permanent resident available who is suitable in terms of academic qualifications and relevant practical experience or technical skills. An Employment Pass will allow the holder to engage in a full range of employment activities.

Application for an Employment Pass should be made three months prior to arrival. However, it is common, although not advisable, for a foreigner to enter on a Social Visit Pass obtained by oral application at the point of entry (or at a Malaysian Consulate or Embassy prior to traveling where applicable) and for the employer to thereafter apply for an Employment Pass prior to the foreigner taking up employment. The Visit Pass (Business) has been recently abolished, nd the Social Visit Pass now encompasses the permissible business activities previously under the Visit Pass (Business). If the foreigner intends to take up employment immediately, the employer could apply for a Visit Pass (Temporary Employment) simultaneously with the application for an Employment Pass.

A limited number of Employment Passes may be granted to foreigners employed by a Malaysian subsidiary. The general policy of the Immigration Department is to not 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, such as where the branch is involved in a government project. However, it appears that this policy has recently been relaxed slightly and it may be possible for the Immigration Department to grant up to two Employment Passes to foreign employees of a branch office for key positions.

1. Application procedure

The application procedure for an Employment Pass is a two-stage process:

1.1 The applicant company applies for an expatriate post (an application "for the services of an expatriate"), by submitting a completed Form DP 10. This form must be submitted in two sets accompanied by a letter of justification in the Malay Language from the employer justifying why the post must be held by a foreigner, whether there are any pre-requisites, qualifications and experience that are not available from Malaysia and whether steps (i.e. advertisements) have been taken to recruit a Malaysian to fill the post with evidence of such steps taken. The letter of justification should indicate the benefits the company will bring to the Malaysian economy and to the labor force.

The following information and documents are to be furnished in support of the application:

- particulars of the applicant company;
- employment structure according to category;
- copy of duly stamped short-form employment contract;
- copy of foreigner's passport;
- certified true copy of the job description;
- corporate documentation of the employer i.e. Memorandum and Articles of Association;

- where required, a copy of a letter of support from relevant Malaysian governmental agencies;
- information on the post and the foreign applicant;
- organization chart, indicating each post and the person designated for each post, including vacancies and the post being applied by the foreign applicant; and
- certified true copies of the resume and academic qualifications of the foreigner.

1.2 Following approval of the expatriate post, the application for the issue of the Employment Pass must be submitted together with:

- three recent passport sized photographs of the foreign applicant;
- copy of the foreigner's passport (with latest exit and entry stamps to Malaysia) ;
- completed Form DP 11;
- the original short-form employment contract between the company and the foreigner, duly stamped;
- cover letter from the employer making reference to the approval of the post and requesting issue of an Employment Pass to the relevant foreigner;
- certified true copies of the resume, job description and academic qualifications of the foreigner;
- if the employer is a Malaysian company, Forms 9, 13, 24 and 49 and the Memorandum and Articles of Association of the company;
- if the employer is a Malaysian branch, Forms 79 and 83 and the Memorandum and Articles of Association of the company;

An Employment Pass is generally issued for a period of two years. An application for renewal before its expiry may be submitted but there is no guarantee of approval.

Visit Pass (Temporary Employment)

If a Malaysian company requires the immediate services of the foreigner for whom an application for an expatriate post has been made, the company can apply for a Visit Pass (Temporary Employment) in the interim, usually valid for a period of three months, i.e. the approximate duration for the approval of the principal application. It may be possible to extend the Visit Pass (Temporary Employment) prior to its expiry but this is subject to the eventual decision on the principal application.

The procedure and the forms for application for a Visit Pass (Temporary Employment) are similar to that for the Employment Pass, except that a duly stamped Personal Bond and Form IM12 (in duplicate) must be submitted instead of Form IM8.

B. Visit Pass (Professional)

A Visit Pass (Professional) is applied for when engaging in a professional occupation or work in Malaysia. In the application, the applicant must, with a letter of support from the local sponsor disclose the activities which the applicant intends to conduct in Malaysia. The local sponsor must agree to take responsibilities for the maintenance and repatriation of the foreigner from Malaysia should it become necessary. A pass holder may conduct the activities for which the pass has been approved. It is a condition of the Visit Pass (Professional) that any change in the business or professional purposes for which the Visit Pass (Professional) has been issued must be made with the written consent of the Director-General of Immigration.

A Visit Pass (Professional) is normally only granted for a period of three to six months, but may be extended to a maximum period of one year. Pursuant to recent regulatory changes, a Visit Pass (Professional) may only be used for secondments and the intended holder must register with the Malaysian Inland Revenue Board before submitting the application. Employers seeking to directly

engage non-Malaysians must apply for an Employment Pass or a Visit Pass (Temporary Employment).

OTHER PASSES

For a short stay in Malaysia, other than for employment, such as for social purposes or for business, a Social Visit Pass may be obtained at the point of entry into Malaysia. However, depending on the nationality of the individual, a visa issued by a Malaysian Consulate or Embassy may be required.

A Social Visit Pass is solely for the purpose of a social, tourist or business visit. For business purposes, a person who has been issued with the Social Visit Pass is permitted to carry out the following activities while in Malaysia:

- attending meetings;
- attending business discussions;
- inspection of factory;
- auditing company's accounts;
- signing agreements;
- conducting surveys on investment opportunities/setting up factory; and attending seminars;
- Other activities not mentioned above but approved by the Director General of Immigration.

MALAYSIA MY SECOND HOME PROGRAM, MALAYSIAN PERMANENT RESIDENCE AND CITIZENSHIP

A. Malaysia My Second Home Program

The Malaysia My Second Home Program ("**MM2H**") is now managed by the Ministry of Tourism, Malaysia, instead of by the Immigration Department. The Ministry acts as a one-stop center to assist applicants who wish to apply to

stay in Malaysia pursuant to MM2H. The Ministry will process all applications and thereafter, the Immigration Department will issue the long-term Social Visit Pass. There is no age limit and the applicant's dependents, including their school-going children (below 18 years of age) as well as one of their domestic assistants may also stay in Malaysia with them. The Social Visit Pass is for a duration of ten years with multiple entry, followed by an extension for another ten years. This program does not guarantee permanent resident status. The conditions of approval are as follows:

i. (a) Applicants above 50 years of age

- single applicants must possess a savings account (fixed deposit) in any financial institution, including foreign financial institutions with local branches, of not less than RM 150,000. Applicants with spouses must be in possession of similar savings of not less than RM 150,000. After a period of one year, the successful applicant is allowed to withdraw up to RM 90,000 for approved expenses relating to house purchase, education for children in Malaysia and medical purposes. The successful applicant must maintain a minimum of RM 60,000 from the second year onwards and throughout his / her stay in Malaysia under the program; **OR**

- applicants with a spouse (either spouse must be above 50 years of age) must derive fixed monthly pension, royalties or other fixed income of not less than RM10,000 per month (from abroad). ;

(b) Applicants below 50 years of age

- single applicants must possess a savings account (fixed deposit) in a financial institution, including foreign financial institutions with local branches, of not less than RM 300,000. Applicants with a spouse must be in possession of similar savings of not less than RM 300,000. After a period of one year, the successful applicant is allowed to withdraw up to RM 240,000 for approved expenses relating to house purchase, education for children in Malaysia and medical purposes. The successful applicant must maintain a minimum of RM60,000 from the second year onwards and throughout his / her stay in Malaysia under the program.

ii. all applicants must have valid medical insurance cover issued by a Malaysian or foreign insurer; and

iii. sponsors for these applications must be Malaysian citizens or permanent residents. The requirement for a sponsor is necessary if the application is submitted by a third party. The requirement for a sponsor can be waived if the applicant submits the application himself / herself personally to the Ministry of Tourism, Malaysia.

The following documents are required for the application:

i. letter of application by the applicant;

ii. two Social Visit Pass application forms (Form IM12) (and of the spouse, where accompanied by a spouse);

iii. two passport-sized photographs of applicant (and of the spouse, where accompanied by a spouse);

iv. travel documents;

v. certified true copy of the marriage certificate (if accompanied by a spouse);

vi. certified true copy of birth certificate (if accompanied by children);

vi. certified true copy of the medical insurance policy;

vii. personal bond duly signed by the sponsor and stamped (where applicable);

viii. a copy of the sponsor's identity card;

ix. certified true copy of the latest bank statement/other related financial document to indicate the financial capability to support stay in Malaysia;

x. certified true copy of the applicant's fixed deposit receipt (upon approval); and

xi. any other relevant supporting documents.

B. Malaysian Permanent Residence

The Malaysian Government has full discretion in deciding whether to grant permanent resident and citizenship status, even to eligible persons. It is difficult to obtain Malaysian permanent residence or citizenship.

The following categories of persons are eligible for permanent residence in Malaysia:

i. wives of Malaysian citizens who have lived in Malaysia for at least five years preceding their applications; or

ii. children below six years of age whose parents or at least one of them is a citizen or permanent resident of Malaysia.

Applicants not within either of the above categories will have their applications rejected. However, an appeal can be filed with the Ministry of Home Affairs for further consideration and approval. Generally, at least five years residence in Malaysia is required before an appeal will be considered.

The application form for permanent residence may be obtained from any Immigration Department office. The form contains the rules, regulations and procedures relating to applications for permanent residence in Malaysia.

C. Malaysian Citizenship

Malaysian citizenship may be obtained in one of four ways:

- operation of law;
- registration;
- naturalization; or
- incorporation of territory.

However, in practice, citizenship is obtained by way of registration or naturalization.

1. Citizenship by registration

The following categories of persons are eligible to obtain Malaysian citizenship by registration:

- wives and children of Malaysian citizens;
- any person under the age of 21, one of whose parents is (or was at death) a citizen of Malaysia;
- persons born in the Federation of Malaya before Independence Day; and
- persons resident in Sabah and Sarawak on Malaysia Day by making an application to the Federal Government before September, 1971.

2. Citizenship by naturalization

As the eligibility criteria for citizenship by registration is restrictive, it will be more likely that an application for citizenship will be by way of naturalization. An applicant for citizenship by naturalization must show that:

- he/she has resided in Malaysia for at least ten out of the 12 years (including the immediately preceding 12 months) preceding the application for citizenship and intends to live permanently in Malaysia;
- is of good character; and
- has an adequate knowledge of the Malay Language.

In practice, an applicant for citizenship by naturalization must first obtain permanent residence and only after 12 years of residence in Malaysia thereafter, may the applicant apply for citizenship by naturalization.

The application forms for citizenship may be obtained from any Immigration Department office. The relevant form must be submitted with such documents as are applicable, such as the applicant's National Registration Identity Card ("NRIC"), spouse's citizenship certificate, marriage certificate, birth certificate, parents' citizenship certificates, academic certificates, sponsor's citizenship certificate or birth certificate and NRIC and the applicant's travel document or permit to enter Malaysia. If the application is not rejected at the first stage, the Immigration Department will require the applicant to attend an interview in

order to test amongst other things, in the case of an application for citizenship by naturalization, the applicant's knowledge of the Malay language and generally of Malaysia. This process may take years.

Successful applicants for citizenship must renounce citizenship of any other country and take an oath of allegiance and loyalty to Malaysia.

CHAPTER 10
IMMIGRATION TO MEXICO

IMMIGRATION TO MEXICO

INTRODUCTION

Mexican immigration is regulated by the General Law of Population and its Regulations and official communications which contain specific policies dictated by the immigration authorities.

In the past, procedures for obtaining Mexican visas allowing individuals to enter Mexico for purposes of performing profitable activities or business operations were very bureaucratic and the documentation required was excessive. In addition, immigration permits were limited to only three types of visas: Tourist visa, FM3 visa (non-immigrant visa) and FM2 visa (immigrant visa).

Today, as a result of the consolidation of the global economy and several international treaties which Mexico has executed, e.g. the North America Free Trade Agreement, the procedure to obtain visas has become more efficient. The documentation required has also become simpler. Furthermore, the Mexican Ministry of Interior has introduced an additional non-immigrant visa for business purposes; the so-called the Business Visa.

NON-IMMIGRANT VISAS

A. Tourist Visa

An individual may enter Mexico with a Tourist visa for recreation and tourism, health treatment and participation in non-remunerative artistic, cultural or sporting activities, with a maximum stay of six months. A Tourist visa may be obtained at Mexican consulates or embassies overseas, travel agencies, airlines, or for most foreigners, at the Mexican port of entry.

B. Business Visa

The Business Visa is a non renewable one-entry permit which allows for a maximum stay of 30 days in Mexico. However, an extension of the Business Visa may be obtained by requesting, in Mexico, a change of visa category to the FM3 visa, as described below. Additional Business Visas may be obtained by the visa holder to enter Mexico as necessary.

The procedure for obtaining a Business Visa is similar to that for obtaining a Tourist visa.

1. Categories of Business Visa holders

Business Visitors: Business visitors are those persons entering the country for:

- investigation and design;
- supervision of workers in training, manufacturing and production of goods;
- sales and production personnel at a managerial level;
- market analysts and investigators;
- commercial fairs personnel;
- sales agents and representatives that take purchase orders or negotiate contracts;
- transport operators that distribute goods;
- post-sale services (installation, repair, maintenance and supervision, among others).

1.1 Merchants and investors

1.1.1 Merchants are business persons that carry out large commercial exchanges of goods or services, where such goods shall be sold or such services rendered.

1.1.2 Investors are those who establish, develop, manage or render assistance or technical services in order to administer their own investment, in which a large amount of capital is involved.

1.2 Attendance at shareholder or board of directors' meetings

2. Information required for a Business Visa

The data required includes the description of the activity to be carried out in Mexico and the name of the entity or individual in Mexico with which or whom the visa holder intends to deal.

In addition, it is important to note that immigration officers, at the time of entry into Mexico, will require the Business Visa holder to show proof of nationality (e.g. passport, birth certificate) and a verbal declaration of the business purpose of the trip to Mexico.

3. Restrictions under the Business Visa

A Business Visa holder may not receive a salary or other financial gain whilst in Mexico or plan to reside permanently in Mexico. If he wishes to do so, the individual must change his Business Visa to an FM3 or FM2 visa.

4. Individuals allowed to apply for a Business Visa

Individuals from the following countries may apply for a Business Visa:

Argentina	France	Liechtenstein	Spain
Australia	Germany	Luxembourg	Sweden
Austria	Greece	Monaco	Switzerland
Belgium	Holland	Norway	United Kingdom
Bermuda	Hong Kong	New Zealand	United States
Brazil	Iceland	Portugal	Uruguay
Canada	Ireland	San Marino	Venezuela
Chile	Israel	Singapore	Denmark
Italy	South Africa	Finland	Japan
South Korea			

C. FM3 Visa

The FM3 Visa is a multiple entry permit granted for an initial term of one year, which may be renewed four times for additional one year terms. The FM3 Visa also allows the holder to import household goods and a car for personal use.

1. Categories of FM3 visa holders

FM3 visas may be granted to the following classes of applicants:

1.1 Business Visitor or Investor

i. seeking investment alternatives;

ii. making a direct investment;

iii. supervising a direct investment;

iv. representing a foreign company; or

v. carrying out commercial transactions.

1.2 Technical or Scientific Visitors

i. starting up or carrying out a specific investment project;

ii. counseling public or private institutions;

iii. carrying out, preparing or directing scientific research;

iv. giving conferences or courses or disseminating any kind of knowledge;

v. carrying out technical activities related to an investment project;

vi. designing, initiating, construction of or starting up a plant;

vii. training other technicians pursuant to previously executed agreements;

viii. providing services covered by an agreement for the transfer of technology, patents or trademarks; or

ix. providing services to a Mexican subsidiary or branch on behalf of a foreign company.

1.3 Rentier Visitors

Those that will live in Mexico from resources brought from abroad, the rents or interests derived from such, or from any income coming from a foreign investment or from their investments in Mexico.

1.4 Professionals

Those coming to exercise any profession in Mexico, in an independent matter or rendering services to public or private entities.

1.5 Directors or Managers

Those who will assume directorships or managerial positions in a Mexican company.

1.6 Attendance at shareholder or board of directors' meetings

Those members of the board of directors or shareholders of a Mexican entity for the purpose of attending shareholder or board of directors meetings.

1.7 Students

1.8 Dependents

Family members of individuals falling under any of the above categories may also obtain FM3 visas as dependents.

2. Procedures for obtaining an FM3 visa

There are two possible ways to obtain an FM3 visa:

2.1 Processing at the Mexican consulate or embassy closest to the applicant's current domicile

The FM3 visa application must be forwarded to the National Institute of Immigration ("NII") in Mexico City or the corresponding regional office. The NII, in approximately 15 working days after the filing of the application will issue an Official Communication authorizing the FM3 visa. Such Official Communication will be sent to the designated Mexican consulate or embassy where the applicant may appear to obtain the visa.

2.2 Changing of Tourist or Business Visa to an FM3 Visa

An applicant who has entered Mexico with a Tourist or Business Visa may apply to change such visa to an FM3 visa before the NII. The process takes approximately 15 working days. During this period, the applicant cannot leave Mexico unless he/she obtains a temporary permit for each departure. Once the FM3 visa authorization is ready, the applicant must appear before the NII in order to sign the FM3 visa and be fingerprinted.

3. Documents Required

The following documents must be submitted:

- copy of the entire passport of the applicant;
- original of Tourist or Business visa (if going through process 2.2 above);
- letter from a Mexican sponsoring entity, indicating activities to be performed in Mexico;
- documents evidencing the existence of the Mexican entity and its compliance with Mexican law, such as, by-laws and acts of incorporation, last tax returns, public deed containing the powers of attorney granted to the legal representative, etc.;
- documents evidencing the skills of the individual, in the event the activities to be performed in Mexico require any special skill; and
- certified copy of marriage certificate and birth certificates of accompanying children for family dependents.

IMMIGRANT VISA

FM2 Visa

An FM2 visa, as opposed to an FM3 visa, is intended for individuals wishing to permanently reside in Mexico. It is issued for a one year period renewable annually for a total of five years, after which the individual can apply for permanent resident (immigrant) status. The holder of an FM2 Visa is entitled to import his household goods into Mexico. However, his travel abroad is limited to 90 days during each of the first two years and to an aggregate of 18 months over the first five year period.

The categories of visa holders, procedures and required documents are similar to those required for the FM3 visa.

MEXICAN CITIZENSHIP

Article 30 of the Mexican Constitution establishes that any individual is considered a Mexican national if (i) the individual is born in Mexican territory; (ii) the individual's mother or father, or both, are Mexicans; and, (iii) the individual is a naturalized Mexican.

An individual becomes a naturalized Mexican under the following circumstances:

1. if the individual obtains from the Ministry of Foreign Affairs a Mexican Naturalization Certificate.

2. if the individual is married to a Mexican national and establishes his residence in the Mexican territory and complies with all the requirements provided by law.

A. Requirements to Obtain the Mexican Naturalization Certificate

1. Residence in Mexico

Article 20 of the Nationality Law provides that in order to qualify for the Mexican Naturalization Certificate, the foreign individual must prove the following years of residence in Mexico:

i. five years prior to the application date, as a general rule; or

ii. two years prior to the application date, if the individual: (i) is a direct descendant of a Mexican; (ii) has Mexican descendents; (iii) is from a Latin-American country or from Spain or Portugal; (iv) has rendered services or performed outstanding activities in cultural, scientific, technical, artistic, sport or industrial areas, in benefit of Mexico, under the discretion of the Ministry of Foreign Affairs; or, (v) is married to a Mexican national.

    In order to evidence his residence in Mexico, the Ministry of Foreign Affairs will request the foreign individual to submit his immigration document FM2 (the Immigration document FM3 does not prove residence in Mexico).

2. Tests

The Nationality Law provides that the Ministry of Foreign Affairs must apply several tests to the applicant in order to verify that:

i. the individual has a minimum knowledge of Mexican history;

ii. the individual is completely integrated into Mexican culture and uses; and

iii. the individual is fluent in Spanish language.

3. Resignation of nationality of origin.

Mexican Nationality Law requires the foreign individual to expressly renounce his nationality of origin and any other nationality, in order to obtain Mexican nationality. If it is discovered that the foreigner has not renounced his other nationality, the Mexican government will revoke the Mexican Naturalization Certificate and the individual will be deported and lose all benefits granted under such certificate.

B. Procedure for Obtaining a Mexican Naturalization Certificate.

The individual must personally appear before the Ministry of Foreign Affairs to file an application for the Mexican Naturalization Certificate.

The following documents will be required to file such application:

i. official application form which is provided by the Ministry of Foreign Affairs;

ii. original and two copies of the immigration document FM2;

iii. original and a copy of the applicant's passport;

iv. in case the individual is married to a Mexican national the following will be required:

- certified copy of the marriage certificate;
- certified copy of the birth certificate of the Mexican national;
- original and a copy of an official identification of the Mexican national.

v. In the event the individual has Mexican descendents, the corresponding Mexican birth certificates will be required.

Within ten working days after the filing of the application, the individual will have to appear before the Ministry of Foreign Affairs to take the tests described above.

After the tests have been successfully completed, the Ministry of Foreign Affairs will inform the individual that the Mexican Naturalization Certificate is authorized, within 40 working days.

Once the Certificate is duly authorized, the individual will have to appear before the Ministry of Foreign Affairs with two passport-sized photographs and the corresponding payment for the Mexican Naturalization Certificate fee.

Finally, after the individual confirms renunciation of the nationality of origin and any other nationality, the individual will receive his Mexican Naturalization Certificate.

The procedure for obtaining such certificate takes approximately three to four months.

CHAPTER 11
IMMIGRATION TO NEW ZEALAND

IMMIGRATION TO NEW ZEALAND

INTRODUCTION

New Zealand has two kinds of visas: non-immigrant and immigrant visas. In the following discussion on non-immigrant visas, the focus will be on visitor and employment visas. An immigrant visa is issued to one who qualifies for permanent residence in New Zealand under the Skilled Migrant Category, Investor Category, Family Category, or Family Quota Category.

NON-IMMIGRANT VISAS

A. Visitor Visas and Visitor Permits

British citizens and other British passport holders who have evidence of the right to reside permanently in the United Kingdom may be granted a Visitor's Permit valid for six months on arrival. Citizens of the following countries which have visa waiver agreements with New Zealand may also visit New Zealand for up to three months without a visa:

Andorra	France	Liechtenstein	San Marino
Argentina	Germany	Lithuania***	Saudi Arabia
Austria	Greece	Luxembourg	Singapore
Bahrain	Hong Kong (SAR/BNO) ****	Malaysia	Slovak Republic
Belgium	Hungary	Malta	Slovenia
Brazil	Iceland	Mexico	South Africa
Brunei	Ireland	Monaco	Spain
Canada	Israel	Netherlands	Sweden
Chile	Italy	Norway	Switzerland
Cyprus	Japan	Oman	United Arab Emirates (UAE)
Czech Republic	South Korea	Poland	United States**
Denmark	Kuwait	Portugal*	Uruguay
Estonia***	Latvia***	Qatar	Vatican City
Finland			

* *Portuguese passport holders must have the right to live permanently in Portugal*

** *Includes nationals of the USA*

*** *Visa waiver does not apply to people traveling on alien's (non-citizen's) passports issued by these countries*

**** *Hong Kong Document of Identity holders still need to apply for a visitor visa.*

In cases where a visitor visa is required, the following documents are required:

- the applicant's valid passport or travel documents (which must be valid for at least three months beyond the date on which the applicant intends to depart from New Zealand);
- one passport-sized photograph;
- evidence of funds from the applicant to support himself/herself while in New Zealand (NZD 1,000 for each person per month, or NZD $400 for each person per month if the applicant's accommodation has already been paid). The funds can be in the form of cash, traveler's cheques, bank drafts, letters of credit, or credit cards. If the applicant is unable to produce sufficient funds, the applicant will need a letter of guarantee of accommodation and maintenance from a friend or relative in New Zealand;
- letter of leave from employer and return or onward tickets; and
- the appropriate application fee.

Procedure:

- the applicant should lodge the documents listed above with the New Zealand Commission overseas;
- the New Zealand Commission will require about five to ten working days to process the application; and
- the visitor visa, once issued, will entitle the applicant to enter New Zealand and be eligible for a visitor permit upon arrival.

A visitor permit normally entitles the applicant to a single entry three-month stay in New Zealand. This is extendable for up to a maximum of nine months

over an 18 month period if the applicant is able to demonstrate sufficient funds to support himself/herself, or demonstrate guaranteed support from a friend or relative.

B. Work Visas and Work Permits

Except for Australian citizens or residents holding current Australian resident return visas, any foreigner who intends to work in New Zealand must first apply for a work visa.

To apply for a work visa, an applicant must produce an offer of employment from a New Zealand employer. The sponsoring employer has to prove to the New Zealand Immigration Service ("NZIS") that it meets the requirement as a sponsoring company and it cannot find suitable New Zealand citizens or residents to fill the post. NZIS will conduct a labor market test. If NZIS reviews the application favorably, an approval in-principle will be issued. The applicant should then lodge his/her work visa application at the New Zealand Commission in his/her country of residence.

Documents required include:

- the in-principle approval from NZIS;
- completed Application for Work Visa Form;
- travel document (which must be valid for at least three months beyond the date on which the applicant intends to depart from New Zealand);
- supporting documents evidencing that the applicant meets the necessary New Zealand certification or registration requirement and related work experience;
- one passport-sized photograph;
- original written job offer, signed and dated by the employer; and
- visa fee.

Procedure:

- the applicant should lodge all the documents listed above with the New Zealand Commission; and

- the processing time will vary, depending on the merits of each case.

A work visa, once approved, will be stamped in the applicant's travel document before departure for New Zealand. Once issued with a work visa, the applicant will be eligible for a work permit upon arrival in New Zealand.

A work permit, if issued, will be for a period of three months to three years each time, depending on the length of the employment contract or job guarantee. Requests for further extensions must be made while the work permit is still current.

C. Working Holiday Scheme

The government of New Zealand has established bilateral working holiday scheme with different countries to benefit young people from both places. Under the scheme, young people must be aged 18 to 30 years of age, hold valid passports from those participating countries, be in good health and good character, and must not having been issued New Zealand Working Holiday visas before. They can take up employment of not more than three months with any one single employer or engage in any studies or training for not more than three months. In addition, the applicants must possess return travel tickets or sufficient funds to purchase such tickets and have reasonable funds for their maintenance in New Zealand. The number of people accepted annually for working holidays and the length of stay in New Zealand will vary depending on the agreements agreed between the working holiday countries and the New Zealand Government.

IMMIGRANT VISAS

There are four main streams in which an individual can qualify for permanent residence in New Zealand. They are:

- Skilled Migrant Category (points system*);
- Investor Category;
- Family Category; and
- Family Quota Category.

* *Applicants under the Skilled Migrant Category are assessed under a points system. The Skilled Migrant Category points system will rank applicants, with a minimum of 100 points, in the Expression of Interest Pool. Those with the top points will be invited to lodge applications for residence.*

The requirements of each category are summarized below.

A. Skilled Migrant Category

Effective 17 December, 2003, a new Skilled Migrant Category, replacing the previous General Skills Category, has been introduced. Under the Skilled Migrant Category, applicants need to be of good health, good character, meet the minimum English requirement, and be no older than 55 years of age. Applicants will also need to meet the threshold of 100 points for employability and capacity building factors in order to have their Expression of Interest ("EOI") applications accepted. Bonus points are available for employment in identified areas of future growth or absolute skill shortage or within identified clusters. They will be ranked in the EOI Pool. If applicants are unsuccessful for selection, they will be withdrawn from the pool after six months. Applicants will receive notification from the NZIS that this has happened. They are required to submit another application if they wish to remain in the EOI Pool.

Effective 21 December, 2005, the NZIS will conduct selection periodically from the Pool in the following manner:-

- EOI that have total points of 140 or more will be selected automatically from the Pool;
- EOI that have a points total of 100 or more, but less than 140, and included points for offers of skilled employment or current skilled employment in New Zealand, will be selected (according to their points ranking) in sufficient numbers to meet New Zealand's Immigration Program requirements.

When there are places available in the EOI Pool after all applicants who score between 100 and 140 points and have a New Zealand job or job offer have been selected, remaining EOIs may be selected on the basis of specific criteria set by the Minister of Immigration every six months.

Those applicants selected from the Pool will be invited to lodge applications for residence. Principal applicants who do not meet the requirements, but who are assessed as having potential to settle successfully in New Zealand, can be granted a work visa or permit for up to six months. At the end of the six month period, if applicants have full time employment, residence status can be granted.

Under the new Skilled Migrant Category, applicants may score points for the following employability and capacity building factors:

1. Skilled employment

Skilled employment is work that requires significant specialist, technical, or management expertise. The expertise may have been gained through the completion of recognized qualifications or work experience in which this expertise is key. Points are scored as follows:

Current skilled employment in New Zealand for 12 months or more	60 points
Offer of skilled employment in New Zealand or current employment in New Zealand for less than 12 months	50 points

Bonus points will be awarded for employment or offer of employment in

An identified future growth area or cluster	5 points
An area of absolute skills shortage	10 points
Region outside Auckland	10 points
Spouse/partner employment or offer of employment	10 points

The employment offered or already provided by the current employer needs to be relevant to the applicants' recognized qualification or work experience. Employment in occupations listed in some of the Major Groups of the New Zealand Standard Classification of Occupations are generally considered as skilled employment. Special considerations for employment not considered as skilled employment will be based on whether it will contribute to New Zealand's economic growth and capacity or enhance New Zealand's accomplishment and participation in that occupational field because the applicant has an international reputation and record of excellence in that field.

Skilled employment only qualifies for points if the offer of employment is:

- for on-going employment by a single employer;
- for full-time employment;
- genuine;
- for a position that is paid by salary or wages or in terms of a contract for service; and
- accompanied by evidence of full or provisional professional registration if such registration is required by law to undertake the employment.

The employment must be permanent, or for a term of at least 12 months with an option of further terms after that. The employment must be relevant to the qualification for which points are allocated and must comply with all relevant New Zealand employment and immigration law.

2. Qualifications

Qualifications such as trade certificates, diplomas, bachelor degrees, and post-graduate qualifications can be awarded points under the Skilled Migrant Category. There is now a "List of Recognised Qualifications" such that points will only be awarded if the qualifications are received from certain recognized institutions. Otherwise, New Zealand Qualifications Authority assessment must be sought. In order to qualify for points under this category, full or provisional registration is required by an organization recognized for the purpose of registration and that this registration includes an assessment where the overseas qualification is comparable with a New Zealand recognized qualification.

Points scored will depend on the level of the qualifications occupied on the New Zealand Register of Quality Assured Qualifications. It will either score 50 or 55 points as follows:

Recognized basic qualification (e.g. trade qualification, diploma, bachelors degree with honors)	50 points
Recognized post-graduate qualification (masters degree or doctorate)	55 points

Bonus points for the following recognized qualification will be awarded:

Recognized New Zealand qualification (at least two years study in New Zealand)	10 points
Qualification in an identified future growth area or identified cluster	5 points
Qualification in an area of absolute skills shortage	10 points
Applicant's spouse or partner qualifications	10 points

Note:

- *an applicant can only obtain points for one qualification;*
- *partially completed qualifications will not be accepted;*
- *the applicant's qualification must be of a comparable standard to a New Zealand qualification; and*
- *an applicant claiming points for a qualification in an occupation where professional registration is required by law in New Zealand, must gain full or provisional registration before points will be awarded.*

3. Work experience

The work experience must be relevant to the recognized qualification or relate to current or offered skilled employment in New Zealand for which applicants are allocated points.

Points are scored as follows:

2 years	10 points
4 years	15 points
6 years	20 points
8 years	25 points
10 years	30 points

Bonus points will be awarded for previous work experience in New Zealand as follows:

2 years	5 points
4 years	10 points
6 years or more	15 points

Additional bonus points will also be awarded for previous work experience in an identified future growth area or cluster as follows:-

2 to 5 years	5 points
6 years or more	10 points

Additional bonus points will also be awarded for previous work experience in an area of absolute skills shortage as follows:-

2 to 5 years	10 points
6 years or more	15 points

If applicants are not working in skilled employment in New Zealand, or they do not have an offer of skilled employment in New Zealand, their work experience can only qualify for points if it was gained in a labor market that is comparable to the New Zealand labor market. From 24 July, 2006, work experience in an area of absolute skill shortage can obtain points for experience gained in any labor market.

4. Age

Points for age are allocated as follows:

Age	Points
20 - 29	30
30 - 39	25
40 - 44	20
45 - 49	10
50 - 55	5

Applicants who are 56 or above cannot be approved under the Skilled Migrant Category.

5. Close family in New Zealand

Applicants can qualify for 10 points in their EOI applications if they have close family members who are residents or citizens of New Zealand and their primary place of residence is in New Zealand. Family member must be the applicant's or their partner's adult sibling, adult child, or parent.

6. English language requirement

Principal applicants

6.1 Principal applicants in the Skilled Migrant Category must meet a minimum standard of English. Skilled Migrant Category applicants meet the minimum standard if an International English Language Testing System (IELTS) Test Report form, no more than two years old at the time the application is lodged, is provided showing that an "Overall Band" score of 6.5 or above has been achieved.

6.2 Principal applicants in the Skilled Migrant Category who do not meet the minimum standard of English will be refused under this category, except:

i. if they have current skilled employment in New Zealand for a period of at least 12 months that qualifies for points; and

ii. meet all other requirements for approval under the Skilled Migrant Category.

Spouses or partners and dependent children

Spouses or partners and dependent children aged 16 and older, who are included in Skilled Migrant Category applications, may either:

i. show that they meet a minimum standard of English achieving an IELTS overall band score of 5 or above; or

ii. pre-purchase ESOL tuition.

The amount of ESOL tuition to be pre-purchased for spouses or partners and dependent children with IELTS score across all four bands is according to the following table:-

Average IELTS Score	Charge to be paid	ESOL entitlement
4.5 or more but less than 5	NZD 1,700	NZD 1,500
4 or more but less than 4.5	NZD 3,350	NZD 3,000
3.5 or more but less than 4	NZD 5,000	NZD 4,500
Less than 3.5	NZD 6,650	NZD 6,000

The charge includes the applicant's ESOL tuition entitlement, as well as the NZIS and Tertiary Education Commission administration costs. Residence visas or permits will only be granted once the tuition charge has been paid. If an applicant has not submitted IELTS results when requested, the maximum charge of NZD 6,650 applies.

B. Investor Category

With effect from 4 July, 2005, the New Zealand Government has introduced a new Investor Category to replace the previous Business Investment Category. The new Investor Category involves a two-step process that, like the Skilled Migrant Category, needs an applicant filling out an Expression of Interest in becoming a resident through investment. The NZIS will assess the Expressions of Interest and invite people who meet the criteria of the policy to apply for residence. To be granted residence under the Investor Category, an applicant is required to:-

- have NZD 2 million to advance to the New Zealand Government for five years;
- have at least five years of business experience;
- be aged 54 or under when applying for residence;
- meet the minimum standard of English, health and character requirements; and
- be able to settle in and contribute to New Zealand.

Once the applicant is approved for permanent residence, his/her residence permit will have conditions on it that will apply for the first five years which is the length of the investment period. These conditions are:-

- to retain NZD 2 million in an acceptable investment for five years;
- to make New Zealand as the applicant's main home by the end of the investment period; and
- to participate in monitoring and evaluation as required by the NZIS.

If the applicant fails to meet the above criteria, his/her residence permit will be revoked and he/she will no longer be a resident of New Zealand.

1. Investment Fund

Investment funds are defined as funds and assets owned by the principal applicant or jointly by the principal applicant and spouse/dependent children and which have been lawfully earned. In order to qualify for New Zealand residence under the Investor Category, the applicant is required to undertake and transfer investment funds of NZD 2 million to the New Zealand Government who will then direct funds towards capacity building, sustainable growth, innovation, and infrastructure projects. The funds will be kept by the New Zealand Government for a period of five years. Upon approval in principle of an application, the applicant must transfer the funds to New Zealand through the trading bank system.

Immediately after two years of the New Zealand Government holding the funds, the applicant can submit a business plan to NZIS and request to withdraw up to half of the investment funds for other business investment. The proposed business investment must :-

- be in New Zealand;
- be capable of providing a commercial return;
- be of benefit to New Zealand; and
- be owned or controlled by the applicant.

Funds withdrawn for investment must be returned to the New Zealand Government once the applicant sells the business within the five-year conditional period. Any profits and returns generated from the investment can be retained by the applicant.

2. Business Experience

The applicant must have at least five years of business experience under the Investor Category. Business experience means owning at least 25 percent of a lawful business enterprise or having management experience in a lawful business enterprise, calculated on the basis of at least 30 hours per week.

3. Age

The applicant must be aged 54 or under when applying for residence under the Investor Category.

4. English language requirement

Principal applicants for residence under the Investor Category must meet a minimum standard of English. Principal applicants are required to achieve a "Band Score" of 5 or above in each of the following four components: listening, reading, writing and speaking. These components are of the International English Language Testing System (IELTS).

Applicants may also alternatively produce acceptable evidence (a list found in the Application guide) of having an English-speaking background.

Spouses or partners and dependent children

Spouses or partners and dependent children aged 16 years and over, who are included in Investor Category applications, may either:

i. show that they meet a minimum standard of English by achieving an IELTS overall band score of 5 or above; or

ii. pre-purchase ESOL tuition.

The amount of ESOL tuition to be pre-purchased is determined by the applicant's average IELTS score across all four bands, according to the following table:

Average IELTS Score	**Charge to be paid**	**ESOL entitlement**
4.5 or more but less than 5	NZD 1,700	NZD 1,500
4 or more but less than 4.5	NZD 3,350	NZD 3,000
3.5 or more but less than 4	NZD 5,000	NZD 4,500
Less than 3.5	NZD 6,650	NZD 6,000

The charge includes the applicant's ESOL tuition entitlement, as well as the NZIS and Tertiary Education Commission administration costs.

If an applicant has not submitted IELTS results when requested, the maximum charge of NZD 6,650 applies.

C. Family Category

1. Family reunion

If the applicant is applying under any of the family reunion policies, the applicant needs to have a sponsor who is living in New Zealand lawfully and permanently.

If the applicant is a parent, the applicant is eligible to be reunited with his/her adult children in New Zealand provided:

- all of his/her adult children are living permanently outside the applicant's home country;
- (if the applicant has no dependent children) the applicant has an equal or greater number of adult children lawfully and permanently resident in New Zealand than in any other single country including the applicant's home country (Centre of Gravity Principle); or
- (if the applicant does have dependent children) the applicant has an equal or greater number of adult children lawfully and permanently resident in New Zealand than in any other single country, including the applicant's home country (Centre of Gravity Principle); and the number of dependent children is the same as or less than the number of adult children resident in New Zealand.

Unmarried dependent children, under 24 years of age, are eligible for residence if they:

- are single;
- are joining their parents in New Zealand;
- have no children of their own;

- have parents lawfully and permanently living in New Zealand;
- were declared in their parents' application for residence in New Zealand or were born to their parents after the lodgment of their parents' application; and
- are totally or substantially reliant on their parents for financial support, whether living with them or not.

Siblings and adult children of New Zealand citizens or residents (single includes divorced or widowed) are eligible for residence provided that they are permanently alone in their home country together with an acceptable offer of employment in New Zealand.

2. Spouses/partners

A partnership with a New Zealand citizen or resident such as a legally married husband or wife, or a de facto or homosexual partner living together in a genuine and stable relationship may allow the applicant to qualify for residence.

Note:

- *approval for residence is not automatic for spouses or partners;*
- *an interview may be held for both partners; and*
- *de facto partners of New Zealand citizens or residents may be considered for residence provided that the relationship is considered to be genuine and stable and for at least one year before the application is assessed.*

D. Family Quota Category

The Family Quota Category allows New Zealand citizens and residents to sponsor family members who do not qualify for residency under any other category of residency policy. A quota of people each year will be chosen by ballot to take up residency in the country. The number of places available under the Family Quota Category is announced by the Minister of Immigration each year. A sponsor must:

- be 17 years of age or over;

- be a parent, adult grandchild, adult sibling, or adult child of the principal applicant;
- be in New Zealand;
- be a New Zealand or Australian citizen or resident;
- have been a New Zealand or Australian citizen and/or be holding a residence permit or a returning resident's visa for at least three years immediately before the date of lodging registration under the Family Quota Category;
- in each of the three 12-month portions within the three-year period, have spent a total of 184 days or more in New Zealand; and
- undertake to ensure financial support and accommodation is available to the applicant for the first 24 months as a resident in New Zealand.

The sponsor must lodge a registration in the Family Quota Category Pool within a specified period of each year. If the registration is successfully drawn from the Pool, the applicant must apply for residence within six months of the NZIS's advice to the sponsor. As there are no places available under the Family Quota in 2007, no registrations will be taken under this Category for the 2006/2007 year.

COMPULSORY REQUIREMENTS FOR ALL RESIDENCE CATEGORIES

A. Character Clearance

To qualify for residence in New Zealand, the applicant must meet certain character requirements.

Section 7 of the Immigration Act sets out specific categories of persons who are not eligible. These include persons who have been convicted and sentenced to prison for five years or more, convicted and sentenced for one-year or more during the last ten years, or reasonably believed to be associated with criminal or terrorist groups or constitute a danger to New Zealand.

Over and above these categories, persons who have been sentenced to imprisonment, or have an arrest warrant (or equivalent) outstanding in any country; who have misled NZIS on any application; or who are charged with, or under investigation for, offences of the type listed above will not normally be granted residence.

B. Police Certificates

Police certificates are required for every person of 17 years of age or over. The certificates must be issued from the country of the person's citizenship, and from any country he/she has lived in for 12 months or more in the last ten years before his/her residence application.

C. Health Certificates

The applicant and every person included in the application will need to be assessed by NZIS to be of acceptable standard of health. Fully completed medical certificates will be required from everyone included in the application. X-ray certificates will be required for everyone except pregnant women and children under 11 years of age.

D. Migrant Levy

This levy applies to all categories of migration, including Skilled Migrant, Investor, Family, and Family Quota Categories, except applicants granted residence because they are refugees or citizens of Samoa. The fees are payable after notification that the application has been approved in principle and must be paid before residence permits are granted or residence visas issued. NZD 300 is payable for each person included in an application, up to a maximum of NZD 1,200 per family.

RETAINING LAWFUL RESIDENT STATUS IN NEW ZEALAND

A. Resident Visa and Resident Permit

Upon approval, the applicant will be given a resident visa. The resident visa is normally valid for one year. The applicant is expected to travel to New Zealand

within that time and upon arrival in New Zealand, a resident permit will be granted. This permit lasts indefinitely, as long as the applicant remains in New Zealand.

B. Returning Resident's Visa ("RRV")

A migrant is allowed to travel outside New Zealand as soon as they arrive in New Zealand. If the migrant wishes to do so, he/she needs to obtain an RRV that enables him/her to return to New Zealand. This procedure must be followed even if the migrant has lived in New Zealand for many years or is married to a New Zealand citizen.

The first RRV is valid for two years from the date the first residence permit is granted on arrival and will allow the holder to travel outside New Zealand as frequently as the holder wishes during the two-year period. In case the migrant was granted a residence permit under the Investor Category, the first RRV will then be valid for five years. The RRV may be renewed for an indefinite RRV, one-year RRV, or 14-day RRV.

1. Indefinite RRV

There are five ways to qualify for an "indefinite" RRV:

i. Time spent in New Zealand

- If the applicant has held residence permits for a total of 184 days or more in each of the two 12-month portions of the 24 months immediately preceding the RRV application; or

ii. Tax Status

- If the applicant has held residence permits for a total of 41 days or more in each of the two 12-month portions of the 24 months immediately preceding the RRV application and the applicant was assessed by the Inland Revenue Department as holding tax residence status for the two years preceding the RRV application; or

iii. Investment in New Zealand

- If the applicant has been approved for residence under the Investor Category and has maintained the investment in New Zealand for

five years, or if the applicant has obtained residence under another category and has maintained an investment of NZD 1 million or more in New Zealand for at least two years; or

iv. Business in New Zealand

- If the applicant has obtained residence under any category and has successfully established a business in New Zealand not less than 12 months ago which is trading successfully and benefiting New Zealand in some way; or

v. Established base in New Zealand

- If the applicant has held residence permits for a total of at least 41 days in the 12-month period immediately before lodging the RRV application; and
- all members of the applicant's immediate family who were included in the applicant's residence application have resided in New Zealand for a total of at least 184 days in the two-year period immediately before lodging the RRV application; and
- the applicant owns and maintains a family home in New Zealand (the applicant must have purchased the home within 12 months of the date the applicant was initially granted a residence permit and the applicant and immediate family must still occupy the property); or
- the applicant has been genuinely employed full time in New Zealand for a total of at least 9 months in the two-year period immediately before lodging the RRV application.

2. One-Year RRV (12 months)

There are two ways to qualify for a one-year RRV:

i. Time spent in New Zealand

- If the applicant has held residence permits for a total of 184 days or more in at least one of the two 12-month portions of the 24 months immediately before lodging the RRV application; or

ii. Tax Status

- if the applicant has held residence permits for a total of 41 days or more in at least one of the two 12-month portions of the 24 months immediately before lodging the RRV application; and
- the applicant is assessed by the Inland Revenue Department as holding tax residence status for one year in the two years immediately before lodging the RRV application.

3. 14-day RRV

If the principal applicant holds a residence permit and has not met any of the requirements for an indefinite, or one-year RRV, a 14-day RRV may be issued. Applicants who are not in New Zealand will not qualify for a 14-day RRV.

The residence status of family members is linked to that of the principal applicant.

If a resident fails to obtain a renewal of the RRV, the resident will not lose permanent resident status as long as he/she remains in New Zealand. Except for very exceptional circumstances, a resident should not leave New Zealand without a valid RRV, or remain outside New Zealand when the RRV expires. If the RRV expires while the resident is outside New Zealand, the resident will generally need to re-apply to immigrate to New Zealand under the residence policy current at the time of application. A RRV may then be issued to facilitate the return depending on the circumstances.

CITIZENSHIP

To receive the grant of New Zealand citizenship, an applicant must be able to demonstrate that he/she:

- intends, if granted citizenship, to continue to reside in New Zealand;
- is able to understand and speak English;
- is of good character;
- understands the responsibilities and privileges of New Zealand citizenship; and

- is a permanent resident of New Zealand.

Effective 21 April, 2005, the New Zealand Citizenship Amendment Act 2005 came into effect. The period of residence in New Zealand to qualify for citizenship will increase from three years to five years. The requirements for grant of New Zealand Citizenship will be different before/after the commencement date of the new Act as discussed below.

A. Permanent Residence before 21 April, 2005

If an applicant received his/her permanent residence before 21 April, 2005, he/she is eligible to apply for grant of New Zealand citizenship if he/she has been ordinarily resident in New Zealand for the three years immediately before he/she applies.

An applicant is considered to have been ordinarily resident in New Zealand if he/she has:

- had a valid immigration permit to live in New Zealand over the three year period;
- established a permanent base in New Zealand; and
- usually lived here.

An applicant who has traveled overseas during the ordinary residence period can still meet the ordinary residence requirement as long as he/she:

- has established New Zealand as his/her home base;
- was away for less than twelve months in total;
- has no single trip which was longer than four months;
- did not enter into a settled lifestyle overseas;
- has been in New Zealand for 8 of 12 weeks immediately before they apply; and
- was in New Zealand for 8 of 12 weeks at the beginning of the ordinary residence period, or lived in New Zealand for four or more years.

B. Permanent Residence on or after 21 April, 2005

An applicant who received his/her permanent residence on or after 21 April, 2005, is required to fulfill the following requirements before he/she can apply for New Zealand citizenship:

- be present in New Zealand for a total of at least 1,350 days during the five years immediately before making an application;
- be present in New Zealand for a total of at least 240 days in each of those five years, with a permanent resident permit; and
- be able to meet any conditions imposed by the NZIS.

C. Changes to Citizenship by Birth in New Zealand from 1 January, 2006

Effective 1 January, 2006, children born in New Zealand will acquire New Zealand citizenship at birth only if at least one of their parents:

- is a New Zealand citizen; or
- has permanent residence in New Zealand.

CHAPTER 12
IMMIGRATION TO THE PEOPLE'S REPUBLIC OF CHINA ("PRC")

IMMIGRATION TO THE PEOPLE'S REPUBLIC OF CHINA ("PRC")[1]

INTRODUCTION

The Order of the President of the PRC (No. 31) adopted by the Standing Committee of the Sixth National People's Congress of the PRC governs foreigners' entry, exit, transit and resident status in the PRC. Pursuant to this Order, foreigners who wish to enter, pass through and reside in the PRC must obtain permission from PRC diplomatic missions, consular posts, or other agencies abroad, authorized by the Ministry of Foreign Affairs of the PRC to issue visas.

Under special circumstances, certain foreigners may apply for certain types of visas at the visa offices situated at the ports designated by the competent authorities of the PRC Government. To date, the number of cities having such designated ports has increased to thirty two and includes cities such as Beijing, Shanghai, Tianjin, Dalian, Fuzhou, Xiamen, Xi'an, Guilin, Hangzhou, Kunming, Guangzhou, Shenzhen, Zhuhai, Haikou, Sanya, Jinan, Qingdao, Yantai, Weihai, Chongqing, Chengdu, Nanjing, Shenyang, Heihe, Manzhouli, Suifenhe, Wuhan, Huichun, Changchun, Hekou, Mohan and Dongning.

The most commonly used categories of PRC visas include L, F, G, C, Z, X, D, J-1 and J-2, among which the Z, X, D and J-1 visas need to be converted to Residence Permits within 30 days after the holders of such visas enter the PRC.

To apply for a Chinese visa, the following documents are required as a minimum.

- the applicant's original passport, containing at least one blank visa page and a remaining validity of at least 6 months;
- two passport-size (two-inch) photographs of the applicant; and
- a completed visa application form, which can be obtained from the offices and the websites of the PRC visa posts abroad.

1 As the Special Administrative Regions of the People's Republic of PRC, Hong Kong and Macau operate their own immigration policies. This Chapter is focusing on the immigration policies operated in Mainland PRC.

In addition to the above, applicants for multi-entry visas and for certain categories of visas will be required to provide supporting documents ranging from invitation letters to specified certificates issued by the competent Chinese authorities. In the next part of this Chapter, we explain the application requirements for the most commonly used visas.

Nationals of Singapore, Brunei and Japan can enter and stay in Mainland China for a period of not more than 15 days without applying for a visa, provided the purpose of the visit is for carrying out business, sightseeing, meeting relatives or transit.

Residents of Hong Kong, Macau and Taiwan ("HMT") who wish to travel to the Mainland of the PRC need not apply for a visa. Instead, they may use their Re-Entry Permit for Hong Kong and Macau Compatriots (港澳居民來往內地通行証或港澳同胞回鄉証), which is valid for ten years, or their Permit to Travel to Mainland China for Taiwan Residents (台灣居民來往大陸通行証), which is valid for five years. HMT residents may obtain such travel documents by submitting an application to the appropriate authorized Chinese authority.

NON-RESIDENT VISAS

A. L Visa (Tourist)

Foreigners who travel to the PRC for sightseeing, visiting relatives or other private purposes should apply for the L visa.

Usually the validity of a single entry L visa is 90 days from the date of issue. This means the holder of the visa must enter the PRC no later than 90 days from the date of issue. The duration of stay of an L visa is usually for 30 days. It is possible to request a double-entry or multiple entry L visa if relevant supporting documents are provided.

When applying for an L visa, applicants may be required to provide supporting documentation to evidence their financial ability to cover travel expenses and provide the return portion of air, train or ship tickets. Applicants who come to the PRC to visit relatives should provide supporting documents (e.g. marriage certificate/birth certificate and the invitation letter from the applicant's relative) to evidence their kinship with the relatives residing in the PRC.

Foreigners who wish to stay in the PRC for longer periods may apply for visa renewals. Tourists may seek a one month renewal and generally, may renew their L visas twice. The renewal of an L visa for visiting relatives may require the applicant to have the supporting documents notarized by a public notary and legalized by the PRC visa post in the country where such documents were issued. When an L visa is renewed for staying with relatives in the PRC, the applicant may request a multi-entry L visa with a validity up to a year.

B. G Visa (Transit)

Foreigners who transit through the PRC should apply for a G visa. When applying for G visas, applicants are required to show valid on-going visas and tickets to the destination countries/regions.

Foreigners in transit are not required to produce visas if they are continuing on international flights within 24 hours without leaving the transit area of the airport.

C. F Visa (Business)

Foreigners who travel to the PRC for business visits, for speaking engagements, or to exchange knowledge on scientific and cultural topics, or for an internship for a period of no longer than six months should apply for an F visa.

There are three types of F visa which can be obtained through an overseas visa post or travel agency in Hong Kong. The charges for the F visa will vary depending on the type of visa and the travel agency used.

Type (or number) of Entry	Validity	Duration of Stay Per Visit
Single	90 days	30 days
Double	180 days	30 days
Multiple	180 days or 365 days	30 days

The usual processing time in Hong Kong is three working days. However, applications can be made on an urgent basis whereby only half a working day is needed. For such service, an extra charge will be added to the regular fees.

The applicant for an F visa should present an official invitation letter issued by an approved government agency in the PRC, as the supporting document in addition to the mandatory application documents.

As with the L visa, extensions of F visas may be attained. However, the application for renewal must be accompanied by a letter from the entity sponsoring the business traveler's visa. There is no restriction on the number of times that an F visa may be renewed, but the total cumulative duration of stay in the PRC on an F visa may not exceed one year from the first date of arrival in the PRC on that visa. Similarly, F visas may be issued in the PRC and be valid for a stay of one year with multiple travel privileges at the discretion of the issuing authority.

D. C Visa (Crew)

Train attendants, air crew members, seamen operating international services and their accompanying family members, should apply for C visas. To apply for a C visa, relevant documents are required to be provided in accordance with bilateral agreements or regulations of the PRC.

E. J-2 Visa (Correspondent on Short Term Visit)

Foreign correspondents who make short trips to the PRC for reporting should apply for J-2 visas. To apply for a J-2 visa, applicants are required to provide a certificate issued by the Information Department (新聞司) of the Ministry of Foreign Affairs of the PRC.

RESIDENT VISAS

Chinese resident visas include Z, X, J-1 and D visas. Foreigners holding resident visas should go through certain formalities to convert their visas to the corresponding residence documents (temporary Resident Permits or Permanent Residence Cards) within 30 days from the date of their entry into the PRC.

F. Z Visa (Work)

Foreigners who wish to work in the PRC should apply for a Z visa. To apply for a Z visa, the employer in the PRC should firstly sponsor the applicant to obtain an Employment License or, under certain circumstances a Foreign Expert License, which will be submitted to a relevant approval authority for the issuance of a visa notification letter for a single-entry Z visa.

a. The Employment License

According to the relevant regulations, foreigners seeking employment in China should meet the following conditions:

(1) 18 years of age or older and in good health;

(2) with professional skills and job experience required for the intended employment;

(3) with no criminal record;

(4) a clearly-defined employer; and

(5) with a valid passport or other international travel document in lieu of the passport.

In principle, foreigners who meet the above conditions are eligible to apply for an Employment License. However, the labor authorities at the municipal level may interpret the above conditions according to their own practice. For example, applications for an Employment License from foreigners over the age of 60 are in general not entertained. In addition, in many cities, college education plus two years relevant work experience are deemed to be the minimum requirement for foreigners who apply for an Employment License.

The first step in obtaining an Employment License is for the employer to seek authorization from the supervising authority of the industry.

The applicant is also required to undergo a medical examination. If the examination is done at an approved hospital overseas, it can be forwarded to the relevant health center in the PRC for verification. Please note however that, health centers in the PRC often refuse to verify overseas medical reports and the applicant must physically complete the medical examination in the PRC

(after entering on a non-resident visa). Accompany dependents 18 and over also must complete medical examinations. When applying for an Employment License, a copy of the medical examination report must be submitted along with the following documents:

- the appropriate application form;
- an application letter provided by the employer to the local labor bureau for hiring the foreigner;
- a letter of intent to hire, provided by the employer;
- a photocopy of the medical report;
- the applicant's resume;
- a photocopy of the applicant's passport;
- two passport-sized photographs of the applicant;
- evidence of the qualifications of the applicant to engage in the work;
- photocopies of the various documents of the employer including approval certificate, duplicate copy of business license, joint venture contract, articles of association, etc.; and
- other documents as required.

Once the approval is obtained, it must be verified by the local labor department. Upon verification, an Employment License will be issued and sent to the employer. The employer can then apply to the relevant approval authority (usually the local commerce bureau) for a single entry Z visa notification letter, notifying the Chinese consular office abroad where the applicant plans to apply for the single entry Z visa. If the applicant will bring dependents to stay in the PRC, the employer should arrange Z visa notification letters for the dependents as well.

Please note that foreign invested enterprises are not required to seek authorization from the supervising authority of the industry for employing foreigners. They may proceed directly to the local labor bureau and obtain the Employment License by producing the above-mentioned documents.

It is not necessary for Representative Offices to apply for an Employment License when appointing a foreigner as the Chief Representative or Representative. The Representative Office must however seek authorization from the appropriate "approval authority" and register such approval. Such approval is registered with the Local Administration for Industry and Commerce ("AIC"). Upon registration, a Working Card (aka Representative Certificate) will be issued to the Chief Representative and each of the other Representatives. Such Representatives may enter the PRC with an F or L visa and apply to change their visa to a Residence Permit on the strength of the Working Card and the Registration Certificate of the Representative Office issued by the local AIC.

Note: Verification should be sought for the exact documentation required. Such documentation is subject to change and will vary depending on the applicant's intended location in the PRC.

b. The Foreign Expert License

The Foreign Expert License is issued by the PRC National Foreign Expert Bureau or its local counterparts. Foreigners who apply for the license must be in good health, with no criminal record and meet the definition of one of the following categories:

1. foreign professional technical or administrative personnel who work in China to implement agreements between governments or international organizations;

2. foreign professional personnel who work in China in the areas of education, science research, news, publishing, culture, art, health or sport, etc;

3. foreigners who hold a position higher than Deputy General Manager, or foreign senior technicians, or administrative personnel who enjoy the same treatment in enterprises in China;

4. foreign representatives of overseas expert organizations or agencies for talented people; or

5. foreign professional technicians or administrative personnel in the areas of economics, technology, engineering, trade, finance, accounting, taxation or tourism etc. and who have special skills that are difficult to source in China.

Foreigners who fall into category 2 and category 3 should also have a degree higher than a bachelor degree and have more than five years of working experience.

The first step in obtaining the Foreign Expert License is to undergo a medical examination. If the examination is done at an approved hospital overseas, it can be forwarded to the relevant health center in the PRC for verification. Please note however that, health centers in the PRC often refuse to verify overseas medical reports and the applicant must physically complete the medical examination in the PRC (after entering on a non-resident visa). Accompanying dependents 18 and over also must complete medical examinations. When applying for a Foreign Expert License, a copy of the medical examination report must be submitted along with the following documents:

1. the appropriate application form (information on dependents needs to be provided if the applicant will bring dependents to stay in the PRC);
2. an application letter provided by the employer to the local foreign expert bureau for hiring the foreigner (the letter needs to state at which overseas PRC consular office the applicant will apply for the visa);
3. the applicant's resume;
4. two passport-sized photographs of the applicant;
5. the highest academic certificate of the applicant;
6. an employment agreement or contract; and
7. other documents as required.

Once the license has been obtained, the employer can then apply to the relevant approval authority (in Beijing, it is the International Exchange Center of the Foreign Affairs Office of Beijing Municipality) for a single entry Z visa notification letter. If the applicant will bring dependents to stay in the PRC, the employer should arrange Z visa notification letters for the dependents as well.

c. Issuance of a Single Entry Z Visa

Upon receipt of the Employment License/Foreign Expert License and the Z visa notification letter, the applicant should contact the PRC consulate or

embassy indicated on the visa notification letter for the issuance of a single entry Z visa. The applicant should submit the following documents:

- a visa application form;
- the Z visa notification letter (as appropriate);
- the Employment License, Working Card, or Foreign Expert License;
- a photocopy of the Registration Certificate (as appropriate);
- the original passport;
- two passport-sized photographs; and
- a letter of employment from the PRC employer.

This process usually takes approximately one to two weeks. If the applicant is intending to bring dependents to the PRC, the following additional documentation must be submitted by each dependent:

- a visa application form;
- the Z visa notification letter;
- two passport-sized photographs;
- if the dependent is a child, their birth certificate; and
- if the dependent is a spouse, the marriage certificate.

Once the Z visa is issued, it will be valid for 90 days. The applicant must enter the PRC within that period and within 15 days of arrival, the applicant holding an Employment License must obtain the Employment Permit by presenting an employment contract (or appointment agreement) provided by the employer. The applicant holding a Foreign Expert License will obtain the Foreign Expert Certificate instead of the Employment Permit. Within 30 days of the arrival, the applicant and dependents must obtain the appropriate residence permits on the strength of the Employment Permit or the Foreign Expert Certificate.

G. X Visa (Student)

Foreigners who come to China for study, advanced studies or job-training for a period of six months or more should apply for an X visa. To apply for an X visa, certificates from the receiving unit and the competent authority concerned are required (e.g., Application Form for Overseas Students to China [JW201 Form or JW202 Form], Admission Notice and the Physical Examination Record for Foreigners).

H. J-1 Visa (Journalist)

J-1 visas are issued to the foreign resident correspondents in China. Applicants for J-1 visas are required to provide a certificate issued by the Information Department (新聞司) of the Ministry of Foreign Affairs of the PRC.

I. D Visa (Permanent Residence)

D visas are issued to foreigners who reside permanently in China. A permanent residence confirmation form is required to apply for a D Visa. The applicant should apply to obtain this form directly or through his/her designated relatives in the PRC from the exit-and-entry department of the public security bureau in the city where the applicant applies to reside.

RESIDENCE PERMIT AND PERMANENT RESIDENCE CARD

J. Residence Permit

Foreigners who hold Z, X and J-1 visas must, within 30 days of arrival in the PRC, apply to the appropriate authority (usually the exit-and-entry department of the Public Security Bureau in that area) for a Foreigner Residence Permit. Similarly, their dependents must also apply for the Residence Permits after their arrival in the PRC. Holders of a valid Residence Permit can enter and exit the PRC without applying for another visa.

When applying for the Residence Permit, applicants must submit the following documents:

- a Residence Application Form;
- the valid resident visa (Z, X or J-1 visa);
- a temporary residence registration certificate;
- the original medical report issued by the designated health institution (only for applicants at or over the age of 18);
- the original passport;
- two passport-sized photographs taken with a pale blue background;
- for Z visa holders, the Employment Permit or Foreign Expert Certificate, and the required information of the employer;
- for X visa holders, the Admission Notice and the application letter provided by the receiving unit stating the study period;
- for J-1 visa holders, the Correspondent Certificate; and
- for dependents, the appropriate kinship certificates.

Note: Verification should be sought for the exact documentation required. Such documentation is subject to change and will vary depending on the employee's intended location in the PRC.

Regulations state that Residence Permits with a validity period of two to five years are available to: (1) investors who invest more than USD 3 million in the PRC (or more than USD 1 million in designated poverty relief development areas); (2) management and professional personnel of foreign entities that have made such investments; (3) senior management personnel who hold the position of assistant general manager or higher in enterprises or institutions; (4) key professional personnel; and (5) certain other restricted categories of applicant. But in practice, the validity of a Residence Permit granted to a Z visa holder will be concurrent with the validity of the applicant's Employment Permit or Foreigner Expert Certificate (normally one year) and cannot be longer than the validity of the applicant's passport.

Hong Kong and Macau residents are not required to apply for a Residence Permit. Taiwan residents must apply for a residence endorsement on their

Permit to Travel to the PRC for Taiwan Residents (台灣居民來往大陸通行証) for residing in the PRC.

Employment and Residence in China are location specific. A foreigner may not work or reside in a location other than that approved by the authorities without prior approval.

K. Permanent Residence Card

According to the *Administrative Measures on the Examination and Approval of Foreigners Permanently Residing in the PRC* approved by the State Council on 13 December, 2003 and issued by the Ministry of Public Security and the Ministry of Foreign Affairs on 15 August, 2004, certain foreigners may apply for permanent residence in the PRC and will no longer be required to apply for visas when entering the PRC. Qualified permanent residence applicants outside the PRC can apply for a D visa on the strength of the Permanent Residence Confirmation Form from an overseas Chinese consulate or embassy and then convert the D visa to the Permanent Residence Card within 30 days after arriving in the PRC.

Foreigners who qualify to apply for permanent residence in the PRC are:

- foreign individuals holding the position of deputy general manager, deputy factory manager or above or the position of associate professor, associate research fellow and other associate senior professional titles or above and who have been residing in the PRC for at least four successive years, with a minimum period of residence of three cumulative years within those four years, and who have a good tax payment record;
- foreign individuals who have made considerable investment in the PRC;
- foreign individuals who have made outstanding contributions to or are specially needed by the PRC;
- the spouses and unmarried children under the age of 18 of the foreign individuals noted above.

Foreigners approved for permanent residence in the PRC are required to stay in the PRC for no less than three months each year and no less than one year

cumulatively in any five year period. Following application to the relevant Public Security Bureau authorities in the PRC, such foreigners will be issued a Permanent Resident Permit with a validity of either five or ten years and subject to renewal upon expiry. Foreign individuals who meet the above qualifications but are abroad at the time of application should submit the application to a Chinese embassy or visa post abroad and will be granted a D visa on the strength of which the Permanent Resident Permit can be issued after entry into the PRC.

TEMPORARY RESIDENCE REGISTRATION

Foreigners and HMT residents 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. If the foreigner or the HMT resident moves to a new place during their stay in China, he/she should re-register with the local police station in the district of his/her new place of stay. If the foreigner does not change his/her place of stay but their visa has changed, he/she should register such change with the local police station as well.

EXIT

Foreigners who wish to exit from the PRC should present their valid passports or any other valid certificates.

Border check posts have the authority to withhold the exit of a foreigner who falls within one of the following categories:

- a holder of an invalid passport and/or certificate;
- a holder of a passport and/or certificate other than his/her own;
- a holder of a forged or altered passport and/or certificate;
- a foreigner who declines to present his/her passport and/or certificate for verification; and
- a foreigner who has been denied exit by the Ministry of Public Security or the Ministry of State Security.

A foreigner who falls within one of the following categories is forbidden from leaving the PRC:

- a defendant in a criminal procedure or a criminal suspect;
- a person under notice by a Peoples' Court for an unsettled civil procedure; or
- a person awaiting decision for any other violation of PRC law who may be called upon by the competent authorities for an investigation.

PENALTIES

A foreigner who enters, leaves, resides or stops over in the PRC illegally, or travels to places which are not open to foreigners without a valid travel permit (in contravention of the present law), may be subject to penalties such as warnings, fines or detention from three to ten days.

CHAPTER 13
IMMIGRATION TO THE PHILIPPINES

IMMIGRATION TO THE PHILIPPINES

INTRODUCTION

Since June, 1989, the Philippine Government has relaxed its immigration controls for the benefit of investors and retirees who wish to obtain permanent residence in the Philippines by way of investment.

NON-IMMIGRANT VISAS

Generally, there are three categories of non-immigrant visas: i) temporary visitor/tourist visas; ii) working/employment visas, which include special multiple-entry visas, special non-immigrants with 47(a)(2) visas, pre-arranged employment visas and treaty traders'/investors' visas; and iii) special resident visas.

A. Temporary Visitor/Tourist Visas

I. Nationals from countries listed below are allowed to enter the Philippines without visas for a stay not exceeding 21 days, provided they hold valid tickets for their return journey to the port of origin or next port of destination. Department regulations require that passports are valid for a period of not less than six months beyond the contemplated period of stay. However, Immigration Officers at ports of entry may exercise their discretion to admit holders of passports valid for at least 60 days beyond the intended period of stay.

II. Nationals from the following countries are allowed to enter the Philippines without a visa:

1. Andorra
2. Angola
3. Antigua and Barbuda
4. Argentina
5. Australia
6. Austria
7. Bahamas
8. Bahrain
9. Barbados
10. Belgium

11. Benin
12. Bhutan
13. Bolivia
14. Botswana
15. Brazil
16. Brunei Darussalam
17. Bulgaria
18. Burkina Faso
19. Cambodia
20. Cameroon
21. Canada
22. Cape Verde
23. Central African Republic
24. Chad
25. Chile
26. Colombia
27. Comoros
28. Congo
29. Costa Rica
30. Cote d'Ivoire
31. Cyprus
32. Czech Republic
33. Democratic Republic of the Congo
34. Denmark
35. Djibouti
36. Dominica
37. Dominican Republic
38. Ecuador
39. El Salvador
40. Equatorial Guinea
41. Eritrea
42. Ethiopia
43. Fiji
44. Finland
45. France
46. Gabon
47. Germany
48. Ghana
49. Gibraltar
50. Greece
51. Grenada
52. Guatemala
53. Guinea
54. Guinea Bissau
55. Guyana
56. Haiti

57. Honduras
58. Hungary
59. Iceland
60. Indonesia
61. Ireland
62. Israel
63. Italy
64. Jamaica
65. Japan
66. Kenya
67. Kuwait
68. Lao People's Democratic Republic
69. Lesotho
70. Liberia
71. Liechtenstein
72. Luxembourg
73. Madagascar
74. Malawi
75. Malaysia
76. Maldives
77. Mali
78. Malta
79. Marshall Islands
80. Mauritania
81. Mauritius
82. Mexico
83. Micronesia
84. Monaco
85. Mongolia
86. Morocco
87. Mozambique
88. Myanmar
89. Namibia
90. Nepal
91. Netherlands
92. New Zealand
93. Nicaragua
94. Niger
95. Norway
96. Oman
97. Palau
98. Panama
99. Papua New Guinea
100. Paraguay
101. Peru
102. Poland

103. Portugal
104. Qatar
105. Republic of Korea
106. Romania
107. Rwanda
108. Saint Kitts and Nevis
109. Saint Lucia
110. Saint Vincent and the Grenadines
111. San Marino
112. Sao Tome and Principe
113. Saudi Arabia
114. Senegal
115. Seychelles
116. Singapore
117. Slovakia
118. Solomon Islands
119. Somalia
120. South Africa
121. Spain
122. Suriname
123. Swaziland
124. Sweden
125. Switzerland
126. Thailand
127. Togo
128. Trinidad and Tobago
129. Tunisia
130. Turkey
131. Tuvalu
132. Uganda
133. United Arab Emirates
134. United Kingdom of Great Britain and Northern Ireland
135. United Republic of Tanzania
136. United States of America
137. Uruguay
138. Venezuela
139. Vietnam
140. Zambia
141. Zimbabwe

III. The following nationals are allowed to enter the Philippines without a visa for a stay not exceeding seven days:

1. holders of Hong Kong Special Administrative Region ("SAR") passports;
2. holders of British National Overseas ("BNO") passports;
3. holders of Macau-Portuguese passports; and
4. holders of Macau Special Administrative Region ("SAR") passports.

Nationals who are subjects of deportation/blacklist orders of the Department and the Bureau of Immigration shall not be admitted to the Philippines.

An alien who wishes to extend his/her stay must obtain the approval of the Bureau of Immigration ("BI").

B. Work / Employment Visas

There are several types of work or employment visas.

1. Multiple Entry Special Visas

These 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; and
- foreign personnel of regional or area headquarters of multinational companies which are officially recognized by the Philippine Government.

These executives, their spouses and unmarried minor children under 21 years of age, if accompanying or joining them after their admission into the country as non-immigrants, may be issued multiple entry special visas valid for three-years, which may be renewed upon legal and meritorious grounds.

2. Special Non-immigrant with 47(a)(2) Visas

This visa is granted under Section 47(a)(2) of the Philippine Immigration Act, which allows the President to issue such visas when public interest warrants, subject to conditions the President may prescribe.

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 (e.g. MRT, Skyway).

The procedure for such visas is as follows:

- the employing entity must apply with the relevant government agency e.g., Philippine Economic Zone Authority ("PEZA") or Board of Investments ("BOI") for authority to employ foreign nationals;
- the relevant government agency endorses the application to the Department of Justice ("DOJ"); and
- once the DOJ approves the application, the approved application is forwarded to the BI for implementation. The dependents of the 47(a)(2) visa holder are entitled to the same visa.

This visa is generally valid for an initial period of one-year and is renewable from year to year.

3. Pre-arranged Employment Visas

These visas are available to foreigners who will be occupying an executive, technical, managerial or highly confidential position in a Philippine company under Section 9(g) of the Philippine Immigration Act and who are proceeding 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 procedure for application is as follows:

- the petitioning company must sufficiently establish, by obtaining an alien employment permit ("AEP") from the Department of Labor and Employment ("DOLE"), that no person can be found in the Philippines willing and competent to perform the labor and service for which the alien is hired and that the admission of the alien will be beneficial to the public interest. The BI will not approve an application for a pre-arranged employment visa until such permit has been secured. The alien may

commence work upon the filing of his application for an AEP with the DOLE.

- the entire process of obtaining a pre-arranged employment visa takes about two to three months. The process is generally initiated in the Philippines.
- dependents of pre-arranged employment visa holders will be entitled to the same visa.
- the pre-arranged employment or 9(g) visa is granted for a period co-terminous with the AEP, which in turn, is granted for a period discretionary to the DOLE, but is usually based on the duration of the election or appointment of the foreigner. There are, however, instances where the BI limits the validity period of the 9(g) visa to one year.

4. Treaty Traders' or Investors' Visas

An alien investor is entitled to enter the Philippines as a treaty trader or investor only if he/she 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 alien and the majority of the shareholders of the employer 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 alien or his/her employer intends to carry on "substantial trade" between the Philippines and the country in which the alien is a national; or
- the alien intends to develop and direct the operations of an enterprise in which the alien or his/her employer has invested, or is in the process of investing, a substantial amount of capital.

Under the regulations, "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 below 21 years of age. It is generally valid for a one-year period subject to extension upon application of the investor.

5. Subic Bay Freeport Work Visas

Foreign nationals who possess executive or highly technical skills, which no Filipino citizen within Subic Bay Freeport ("SBF") possesses, as certified by the DOLE, may apply for work visas with the Subic Bay Metropolitan Authority. The work visas are valid for one year and renewable from year to year.

The process of obtaining the visa takes about 1 to 2 weeks.

6. Special Clark Work Visas

Foreign nationals who possess executive or highly technical skills, which no Filipino citizen within the Clark Economic Zone possesses, may apply for work visas with the Clark Development Authority.

The work visas are valid for a period co-terminous with the AEP of the foreign national.

The process of obtaining the visa takes about 1 to 2 weeks.

7. Additional Prerequisite Work Permits

In addition to acquiring any of the above work or employment visas, a foreigner who wishes to work in the Philippines must, through the petitioning Philippine company, obtain an AEP. Under present immigration rules, a pending AEP application will authorize the foreigner to commence work during the pendency of the work or employment visa application.

However, for short-term employment (i.e., for a period of not more than six months) in positions that are temporary in nature (i.e., consultancy), obtainment of a special work permit (as opposed to any of the above work or employment visas) will be sufficient. The foreigner will not be required to obtain in addition an AEP as a condition for commencing work.

7.1. Alien Employment Permit ("AEP")

All foreigners seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage a foreigner for employment in the Philippines shall obtain an AEP from the DOLE.

An AEP shall be issued subject to the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the foreigner is desired.

Processing time is three to four weeks upon filing, provided all the required documents are submitted.

7.2 Special Work Permit ("SWP")

A foreigner who enters the Philippines with a tourist visa and intends to engage in a professional or commercial undertaking, which is not considered purely local employment may apply for a special work permit. The following foreigners are entitled to apply:

- professional athletes competing only for the limited period of authorized stay;
- foreigners of distinguished merit and ability entering to perform exceptional temporary services, but having no contract of pre-arranged employment;
- artists and other performers who wish to perform in the country when the audience pays for the performance;
- certain foreigners, coming primarily to perform a non-competitive temporary service or to take non-competitive training, who would be classifiable as temporary workers or industrial trainees;
- foreigners authorized to search for hidden treasure;
- movie and television crews filming in the country; and
- foreign journalists pursuing their profession in the country.

C. Special Resident Visas

1. Special Resident Retiree's Visas ("SRRV")

The SRRV program is available to foreigners and former Filipinos at least 35 years of age, and who deposit the minimum amount required by law with a bank accredited by the Philippine Leisure and Retirement Authority.

The holder of an SRRV may stay in the Philippines indefinitely or visit the country at any time. The holder may also invest in or establish a business in the Philippines.

The retiree must deposit certain amounts with an authorized bank in the Philippines depending on the applicant's age. In exceptional cases, the age requirement may be waived. Under present immigration rules, the requirements are:

- 35 – 49 years old = USD 50,000
- 50 years old and above = USD 20,000
- former Filipinos = USD 1,500 (at least 35 years old but regardless of the number of dependents)
- retired ADB employees:
  - USD 25,000 (50 years and above)
  - USD 50,000 (below 50 years old)
- retired foreign ambassadors = USD 1,500
- retired military personnel (and members of the diplomatic corps below ambassador level) = USD 50,000
- additional dependent (in excess of two) = USD 15,000 (except former Filipinos)

For ADB retirees under No. 4, the balance of USD 25,000 may be filled in with a pre-existing investment in real property in the Philippines

1.1 Benefits of obtaining an SRRV:

- right to reside permanently in the Philippines;
- multiple entry privileges and exemption from the exit clearance and re-entry requirements of the BI;
- exemption from travel tax, provided the SRRV holder has not stayed in the Philippines for more than a year from date of last entry;
- tax-free importation of household goods/personal effects worth USD 7,000;
- foreign currency time deposit can be converted into Philippine peso deposit, but interest is subject to withholding taxes;
- privilege to work in the Philippines upon issuance of the AEP;
- deposit may be converted into active investment, including purchase of condominium unit;
- pension annuities remitted to the Philippines are tax free;
- guaranteed return of the dollar time deposit and/or investment

2.2 Areas of investments allowed for SRRV holders:

- purchase, acquisition and ownership of a condominium unit;
- long term lease of house and lot, condominium or townhouse which should not be for a period shorter than 20 years;
- purchase, acquisition and ownership of golf or country club share/s; or
- investments in shares of stocks of corporations duly registered in the Philippine Stock Exchange.

1.3 Other Features (in process):

- availment of the Philippine Leisure Retirement Authority ("PLRA") 24/7 Call Center;
- availment of services of PLRA Travel Agency;

- use of PLRA membership in golf clubs;
- membership in the exclusive PLRA Executive Club; and
- discounts in PLRA-authorized establishments and shops.

1.4 Application Requirements

Applicants may apply through any Philippine Consulate or Embassy overseas. Documentary requirements include:

1.4.1 Principal Applicant

- duly accomplished PLRA application form;
- original passport with valid entry status;
- medical examination clearance (if secured abroad, to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy);
- National Bureau of Investigation ("NBI") clearance from the Philippines or police clearance from abroad (to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy);
- six pieces 1x1 and six pieces 2x2 pictures; and
- bank certification of dollar time deposit – inward remittance to PLRA

  Fees:

  - USD 1,500 processing and service fee
  - USD 10 annual PLRA ID card fee (waived for the first year)

1.4.2 Spouse

- duly accomplished PLRA application form;
- original passport with valid entry status;

- medical examination clearance (if from abroad, to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy);
- NBI clearance from the Philippines or Police Clearance from abroad (to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy);
- six pieces 1x1 and six pieces 2x2 pictures; and
- marriage certificate[1] (to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy).

Fees:

- USD 300 processing and service fee
- USD 10 annual PLRA ID card fee (waived for the first year)

1.4.3 Dependents

- duly accomplished PLRA application form;
- original passport with valid entry status;
- medical examination clearance (if from abroad, to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy);
- NBI clearance from the Philippines or police clearance from abroad (to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy) – for dependents 18 years and above;

1 In lieu of the marriage certificate, the spouse may submit:

- Family Register/Domicile (for Koreans)
- Household Register (for Taiwanese)
- Certificate of Relationship (for P.R.O.C. Chinese)

(to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy).

- six pieces 1x1 and six pieces 2x2 pictures; and
- birth certificate[2] (to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy)

  Fees:

  - USD 300 processing and service fee
  - USD 10 annual PLRA ID card fee (waived for the first year)

The SRRV takes about two to three weeks to process provided all requirements are complete.

It should be noted that if a successful SRRV applicant loses the deposit in investment or business in the Philippines, the special resident status would not be terminated. The applicant can continue to stay in the Philippines provided he/she is capable of financially supporting himself or herself.

1.5. Maintaining permanent resident status under an SRRV

An SRRV holder is given an indefinite period of stay in the Philippines. However, the holder is expected to keep records of travels abroad and must complete a departure form for each trip.

2. Special Investor's Resident Visas ("SIRV")

This is a program offered by the Philippine Government to alien investors wanting to obtain a special resident status with multiple entries for as long as the USD 75,000 investment subsists.

2 In lieu of the birth certificate, the dependent may submit:

- Family Register/Domicile (for Koreans)
- Household Register (for Taiwanese)
- Certificate of Relationship (for P.R.O.C. Chinese)

(to be translated in English, if applicable, and authenticated by the Philippine Consulate or Embassy).

2.1 Who May Apply

- a person at least twenty-one (21) years of age, who meets normal character and health requirements[3]
- spouse and unmarried children, less than 21 years of age, accompanying the applicant. Unlike the SRRV, there is no limit to the number of unmarried children that can be included in the application.

2.2 Allowable Forms of Investment

- for purposes of securing an SIRV, only ownership of shares of stocks in the following shall be accepted as eligible forms of investment, to wit:

  (a) In Existing Corporations

  - publicly-listed companies;
  - companies engaged in investment priorities plan ("IPP") projects; or
  - companies engaged in the manufacturing and services sectors.

  (b) In New Corporations

  - Companies to be engaged in the manufacturing and services sectors; or
  - Companies to be engaged in IPP projects.

3 The qualifications are as follows:

1. He has not been convicted of a crime involving moral turpitude;
2. He is not afflicted with any loathsome, dangerous or contagious disease;
3. He has not been institutionalized for any mental disorder or disability;

2.3 Procedure for Application

The applicant should submit a notarized application form together with the following documentary requirements to the Philippine Consulate or Embassy overseas, or the Board of Investments in the Philippines:

- recent photographs;
- clearance from the National Intelligence Coordinating Agency ("NICA"), together with either a clearance from the central government agency of the applicant's country or place of residence, duly authenticated by the Philippine Embassy, or the Interpol Division of the National Bureau of Investigation ("NBI") indicating that the applicant has not been convicted by final judgment of a crime involving moral turpitude. A derogatory record may serve as a basis for revocation of the SIRV holder's visa;
- medical certificates of the applicant, his/her spouse and children issued by the Department Of Health ("DOH"), any government hospital or health facility, or any licensed and accredited hospital, medical center, or laboratory or the equivalent thereof in the applicant's home country, certifying that the applicant is physically and mentally fit;
- original bank certification under oath by a BOI accredited bank as to the amount of foreign exchange inwardly remitted by the applicant, which remittance should not be lower than USD 75,000, and should not be made earlier than one year prior to the filing of the application;
- certified true copy of the certificate of peso time deposit with a maturity period of at least 30 days;
- authenticated copies of the birth certificate/family registry/ household registry of the applicant, spouse, children;
- authenticated copy of the marriage contract of applicant and spouse;

2.4 Maintaining permanent residence status for SIRV holders

An SIRV holder is granted virtual permanent residence status as long as the SIRV holder maintains the investment in the Philippines.

Should it be ascertained at any time that the holder of this visa has withdrawn the investment from the Philippines or has reduced the same below the value of USD 75,000, except in the event of loss through ordinary business or investment decisions, the BI shall issue an order terminating the holder's special permanent residence status.

3. Special Investor's Resident Visas for investors in tourist-related projects and tourist establishments

A variation of the SIRV discussed above is the visa issued to investors in tourist-related projects and tourist establishments. A foreigner who invests the amount of at least USD 50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.

4. Subic Bay Freeport Residency Visas

Any investor who has made and continues to maintain, an investment of not less than USD 250,000 within the SBF may apply for a permanent residency visa within the SBF. Such visa shall be valid for as long as the visa holder maintains the investment.

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 applicant's country. There are two types of immigrant visas: (i) quota; and (ii) non-quota:

1. Quota Immigrant Visa

The issuance of quota or preference visas is governed by an order of preference and granted to aliens with or without nationalities (includes stateless persons). They are issued on a calendar basis and cannot exceed the numerical limitation of 50 in a given year.

To qualify for this visa, the applicant must satisfactorily establish that: (a) he has lawfully entered the Philippines and remains under a lawful admission status; (b) there is no record of any derogatory information against him in any local or foreign law enforcement agency; (c) he is not afflicted with any dangerous, contagious or loathsome disease; (d) he has not violated any law or ordinance; (e) he is possessed of qualification, skills, scientific, educational or technical knowledge which will advance and be beneficial to the national interest; (f) there is a reciprocity agreement for a similar resident visa between his country and the Philippines; (g) he has not been confined in any mental institution; and (h) he has sufficient capital for a viable and sustainable investment which is approved by the Commissioner of Immigration.

2. Non-Quota Immigrant Visa

The non-preference or non-quota visas are classified into six categories. The most common type of non-quota visa is the Section 13(a) visa which is issued to a foreign national on the basis of marriage to a Philippine citizen. To qualify for this visa, the applicant must prove that : (a) he/she contracted a valid marriage with a Philippine citizen; (b) the marriage is recognized under existing Philippine laws; (c) there is no record of any derogatory information against him/her in any local or foreign law enforcement agency; (d) he/she is not afflicted with any dangerous, contagious or loathsome disease; (e) he/she has sufficient financial capacity to support a family and will not become a public charge; (f) he/she was allowed lawful entry into the Philippines by immigration authorities; and (g) he/she has not been institutionalized for any mental disability.

There are instances, however, when the country of the applicant does not have an existing reciprocity agreement with the Philippines. An inflexible interpretation of the law would negate the grant of a non-quota immigrant visa to the applicant. However, Philippine laws on family relations may be invoked by the applicant for the purpose of obtaining a non-quota immigrant visa. In such case and provided that the applicant is qualified, the Commissioner of Immigration may allow the issuance of a *temporary residence visa ("TRV")* to be issued to an applicant who, despite the absence of a reciprocity agreement between his country and the Philippines, contracts a valid marriage with a Philippine citizen.

CITIZENSHIP

The Government of the Philippines may grant citizenship to the following applicants:

- A foreigner who:
  - is at least 21 years old;
  - has maintained continuous residence in the Philippines for at least ten years;
  - has maintained proper and irreproachable conduct during the entire period of residence in the Philippines;
  - is engaged in a lucrative trade, profession or lawful occupation;
  - speaks and writes English or Spanish or any one of the principal Philippine languages; and
  - where applicable, has enrolled minor children in local schools where Philippine history, government and civics are taught as part of the curriculum.
- Certain holders of a SRRV or SIRV.
  - a holder of a SRRV or SIRV for ten years is entitled to apply for Philippine citizenship provided that he stays in the Philippines for a substantial period (about four months) each year during the requisite ten years.

A. The Citizenship Retention and Reacquisition Act of 2003

On 29 August, 2003, President Gloria Macapagal-Arroyo signed into law Republic Act No. 9225 entitled "The Citizenship Retention and Reacquisition Act of 2003", otherwise known as the Dual Citizenship Law of 2003 (R.A. No. 9225)[4]. Department of Justice/Bureau of Immigration Memorandum Circular No. AFF-04-01 dated 10 March, 2004, provides for the rules and regulations to implement the Act. The following are its salient features:

4 R.A. No. 9225 was signed by the President into law on 29 August, 2003.

1. Declaration of Policy

All Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act (Sec. 2).

2. Reacquisition of Philippine Citizenship

Granted to natural born Philippine citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country (Sec. 3).

3. Retention of Philippine Citizenship

Granted to *natural-born* Philippine citizens who, *after the effectiveness of the Act*, become citizens of a foreign country (Sec. 3).

4. Derivative Philippine Citizenship

Granted to:

- unmarried minor child
- whether legitimate, illegitimate or adopted
- of those who reacquire Philippine citizenship under the Act.

5. Procedures for Reacquiring Philippine Citizenship

5.1 Filing of Petition

a. For former natural-born Philippine citizens already in the Philippines and BI-registered aliens

   - file a petition (BI form available) under oath to the Commissioner of Immigration for the cancellation of Alien Certificate of Registration ("ACR") and issuance of an Identification Certificate ("IC") under the Act.

b. For former natural-born Philippine citizens abroad but BI-registered aliens

   - file a petition under oath to the nearest Philippine Consulate or Embassy for evaluation.

- the foreign post shall forward the entire records to the Commissioner of Immigration for the cancellation of ACR and issuance of the IC under the Act.

c. For former natural-born Philippine citizens already in the Philippines but not BI-registered aliens

- file a petition under oath to the Commissioner of Immigration for issuance of an IC under the Act.

d. For former natural-born Philippine citizens abroad and not BI-registered aliens

- file a petition under oath to the nearest Philippine Consulate or Embassy for the issuance of an IC under R.A. 9225.

5.2 Documentary Requirements

The applicant should submit the duly accomplished/notarized petition together with the following documentary requirements:

- applicant must state his/her latest forwarding address;
- three 2x2 photographs (front, left and right side views over white background);
- original Official Receipt of one time application fee of P 2,500 for those already in the Philippines, and USD 50 or its equivalent in foreign currency acceptable to the Philippine Foreign Post concerned;
- NSO-authenticated copy of birth certificate for those born in the Philippines;
- for those born abroad, original copy of the Report of Birth issued by the Philippine Consulate or Embassy and in applicable cases, the birth certificate issued by competent foreign authorities
- duly accomplished/notarized Oath of Allegiance to the Republic of the Philippines (form available).

These documents shall be sufficient to establish that the applicant is a natural-born citizen of the Philippines for purposes of the rules and regulations implementing the Act.

5.3 Procedure for Evaluation/Approval of the Petition

- at the time of filing of the petition, the same shall be assigned to an evaluating officer who shall evaluate the petition without further proceedings;
- in case the petition does not comply with the requirements, the applicant shall be notified of the defect/deficiency and required to comply within 30 days from notice. Otherwise, the petition shall not be favorably acted upon by the BI or the Philippine Consulate or Embassy;
- if after evaluation, the documents submitted fail to establish that the applicant is a natural-born citizen of the Philippines, the applicant shall be notified of such fact by the BI or the Philippine Consulate or Embassy;
- if the petition is sufficient in form and substance, the evaluating officer shall submit his findings and recommendation to the Commissioner of Immigration or Consul-General, as the case may be, within five days from date of assignment;
- for applications filed by former Filipinos already in the Philippines, the Commissioner shall issue, within five days from receipt of the findings/recommendation of the evaluating officer, the Order of Approval;
- the Order of Approval shall indicate that the petition complies with the provisions of the Act and the Rules, and shall direct the Chief of the Alien Registration Division ("ARD") to cancel the subject ACR and/or to issue the corresponding IC to the applicant;
- each cancelled ACR shall be attached to the Order of Approval to form part of the records;
- for applications filed by former Philippine nationals located abroad, the Consul-General shall issue, within five days from receipt of the findings/recommendation of the evaluating officer, the Order of Approval. He shall transmit copies of the Order of Approval, Oath

of Allegiance, including the authenticated Record of Birth or Birth certificate to the BI;

- immediately upon receipt of these documents, the BI shall issue the corresponding IC to the applicant and forward the same to the Philippine Consulate or Embassy concerned; and
- if the applicant is a BI-registered alien, the BI shall also cancel his ACR.

5.4 Conferment of Philippine Citizenship/ Conditions

Oath of Allegiance

- subject to full compliance with the Rules, the Oath of Allegiance (in addition to the written oath attached to the application) shall be the final act that would confer Philippine citizenship upon the petitioner.
- if the applicant is in the Philippines, he may take his Oath of Allegiance before the Commissioner of Immigration or any other officer authorized to administer oath. In the latter case, the applicant must submit the Oath of Allegiance to the BI to form part of his records.
- in case the applicant is abroad, only the Consul General or a duly commissioned foreign service officer of the Philippine Consulate or Embassy concerned shall administer the Oath of Allegiance.
- the Oath of Allegiance shall thereafter be registered in accordance with the provisions of the Civil Registry laws.

6. Civil and political rights and liabilities of those who Reacquire/Retain Philippine Citizenship under the Act

1. enjoyment of full civil and political rights; and
2. subject to all attendant liabilities and responsibilities under the law.

7. Qualifications/Restrictions

7.1 Requirements

- must meet requirements under Sec. 1 Art. V of Constitution[5] ; and
- Republic Act 9189 or "The Overseas Absentee Voting Act of 2003[6].

5 a) All Filipino citizens, not disqualified by law; b) at least 18 years of age; c) must have resided in the Philippines for at least one year, and d) in the place wherein they propose to vote for at least six months immediately preceding the election, are entitled to vote.

6 Those qualified to participate under the Overseas Absentee Voting Act include:

All Filipino citizens, not otherwise disqualified by law, at least 18 years of age on the day of the election, and who are registered overseas absentee voters with approved application to vote in absentia, may vote for President, Vice-President, Senators and Party-List Representatives.

Those disqualified from registering as overseas absentee voters include:

a. *Those who have lost their Philippine citizenship in accordance with Philippine laws;

b. *Those who have expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;

c. Those who have been convicted by final judgment of a court or tribunal of an offense punishable by imprisonment of not less than one year, unless such disability has been removed by plenary pardon or amnesty;

d. Those who have been found guilty by final judgment of Disloyalty as defined under Article 137 of the Revised Penal Code, unless such disability has been removed by plenary pardon or amnesty;

*May have been amended by the Citizenship Retention and Reacquisition Act of 2003.

e. *An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes upon filing of an application for registration as overseas absentee voter an affidavit declaring that: (i) he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval of his/her registration, and (ii) he/she has not applied for citizenship in another country;

f. Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine Consulate or Embassy, or foreign service establishment concerned, unless such competent authority subsequently certifies that such person is no longer insane or incompetent.

However, those disqualified under paragraphs (c) and (d) hereof who have not been granted plenary pardon or amnesty shall automatically acquire or reacquire the right to vote as an overseas absentee voter upon the expiration of five years after service of sentence.

7.2 Election to Public Office

- must meet the qualifications for holding such public office as required by the Constitution and existing laws; and
- at the time of the filing of the certificate of candidacy, he must make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

7.3 Appointment to Public Office

- prior to assumption of office, he must subscribe and swear to an oath of allegiance to the Republic; and
- he must renounce their oath of allegiance to the foreign country where they took that oath.

7.4 Practice of Profession

- he must obtain a license/permit to engage in such practice.

7.5 Denial of the right to vote/to be elected/appointed to any public office to those who:

- are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or
- are in active service as commissioned or non-commissioned officers in the armed forces of the country of which they are naturalized citizens.

CHAPTER 14
IMMIGRATION TO POLAND

IMMIGRATION TO POLAND

INTRODUCTION

The Polish Act on Foreigners enacted on 13 June, 2003, ("the Act"), defines a foreigner as any person who does not hold Polish citizenship. A foreigner can cross the Polish border and stay in Poland if he holds a valid passport and a visa, unless provided otherwise by the Act. Additional documents are required for employment. The Act does not apply to citizens of the European Union ("EU") countries and citizens of countries from the European Economic Area ("EEA"). The following table summarizes the various entry stay and residency provisions.

Table 1 Entry and stay in Poland

Purpose and period of stay	Permit	Employment	Remarks
Tourist up to 90 days	No permits	Not allowed	Applies only to citizens of countries which are parties to non-visa movement treaties signed by Poland
Any purpose other than employment or business, up to three months (five years in some cases)	Visitor's visa (the type of visa depends on the purpose of the stay in Poland)	Not allowed	The applicant may apply for a residence visa to any Polish consulate outside of Poland
Employment or business, up to one year	Work visa or business visa	Allowed, on the basis of work permit issued by a local authority at the request of the prospective employer (for details see point F)	A work visa may only be issued by the Polish consulate competent with regard to the applicant's place of residence

Purpose and period of stay	Permit	Employment	Remarks
Any purpose for a period up to two years	Temporary Residency Card	Allowed, on the basis of work permit (for details see point F)	The applicant may apply for a temporary residence permit to the local authority (Voivodship Office) during his/her stay in Poland
Permanent residency	Permanent Residency Card	Allowed	A permanent Residency Card is also issued by the Voivoidship Office
Naturalization	Identification card	Allowed	Citizenship is solely granted by the President of the Republic of Poland.

ENTRY AND STAY IN POLAND ON THE BASIS OF A VISA

If a foreigner is a citizen of a state which is party to a non-visa movement treaty with Poland, a visa is not required for entry and stay as a tourist for a period not exceeding the agreed period (usually 90 days). At present, Poland has concluded treaties with approximately 60 countries.

All remaining foreigners must obtain the relevant visitor's visa by applying to the Polish consulate before entering Poland. In addition, when crossing the border the foreigner may be required to prove at request of a Polish customs officer, that he/she has financial means sufficient to cover the cost of entry, stay, and exit from Poland. This requirement is met if:

i. a foreigner has Polish currency or foreign instruments of payment which are legally exchanged in Poland; or

ii. a foreigner has the documents which enable the holder to obtain instruments of payment; or

iii. a foreigner has documents confirming the reservation of and payment for food and lodging in Poland.

A foreigner does not have to possess financial means if the foreigner:

i. holds a permit to settle in Poland (permanent residency),

ii. has been living legally in Poland for at least five years,

iii. holds an invitation (in a specified form) either from a Polish citizen residing in Poland or from a legal person or other organization with its seat in Poland. In order to be valid the invitation must be properly registered at the Voivodship Office, Section for Foreigners at the request of the sponsor. The invitation remains valid for one year from the date of its registration. The sponsor is obliged to cover the costs of the invited person's stay in Poland.

A. Visa

There are two basic types of visitor's visas in Poland, namely:

- a short-term visa — which allows for either an interrupted stay in Poland not exceeding 90 days during a period of 180 days or a few shorter visits, the length of which cannot exceed 90 days in the aggregate within the period of 180 days starting from the day of the first entry; the short-term visa can be either a single, double, or multi-entry visa;
- a long-term visa – can be issued for a maximum stay in Poland not exceeding 365 days and is granted only in certain situations; according to the applicant's declaration request. Such a visa remains valid for five years from the date of issuance.

A work visa is a specific type of visitor's visa enabling a foreigner to be employed in the territory of Poland or to perform the duties of the Management Board member of a Polish company, if the time spent performing duties for the company exceeds 30 days per calendar year. It is issued on the basis of a promissory decision on a work permit granted by the Voivoidship

Office upon the prospective employer's request for a period of up to one year. In order to obtain this decision, the foreigner's prospective employer must follow the procedure discussed below.

A work visa is granted to a foreigner for a defined period of time, corresponding to the period of time indicated in the promissory decision on a work permit, but not exceeding 365 days.

The first work visa is issued by the consul responsible for the applicant's place of residence. If that work permit is extended, an applicant who is in Poland at the time may apply for another work visa or temporary residence permit for the purpose of employment through the Voivodship Office responsible for his/her place of temporary residence in Poland.

B. Visa Refusal

There are a number of circumstances when a visa will be refused. Among these are:

1. where the conditions necessary for the issuance of a specific type of visa are not fulfilled;
2. where the foreigner is on the list of "undesirable aliens";
3. where the foreigner does not have adequate funds to cover the cost of his/her stay in Poland;
4. where there is suspicion that the issue of a visa could pose a threat to national defense or public safety and order or, may be harmful to the interests of Poland in some other way;
5. where the foreigner's travel document will expire in less than three months from the date that he/she would have to leave Poland as a result of the expiry of their visa;
6. where less than one year has elapsed since the date of issue of a previous decision rejecting a visa application, and the foreigner failed to present details of any new circumstances;
7. where in the course of the visa application process:

a. the foreigner submitted an application or attached documents that contained inaccurate and/or false data, or

b. the foreigner made false representations, concealed the truth or falsified or altered a document, with the aim of passing it off as an original, or actually submitted such documents as originals.

STAY IN POLAND ON THE BASIS OF A TEMPORARY RESIDENCY CARD

Generally a visitor's visa entitles a foreigner to stay in Poland for no longer than 90 days within a period of 180 days. If he/she intends to stay for more than 90 days, instead of extending the visa, the foreigner should apply for a temporary residence permit. When staying abroad, the application for the temporary residence permit should be filed via the consular office. If the foreigner is in Poland he/she should apply for that permit to the Department of Citizen's Affairs in the Voivodship Office in the capital city of the respective voivodship.

A foreigner may obtain a permit to reside in Poland for a specified period of time longer than 90 days, if the circumstances justify his/her stay for such a period. Such circumstances may include:

- having obtained either a promissory decision on a work permit or an extension of a promissory decision or employer's statement in writing about the intention to entrust the foreigner with the work to be performed, providing the work permit is not required;
- carrying out business activity which is beneficial for the Polish economy; and in particular, contribution to the increase of investments, transfer of technologies, launching of a beneficial innovation or the creation of new jobs;
- receiving education; conducting training, or receiving professional training in programs held by the EU;
- being married to a Polish citizen or a foreign person who has a permit to settle;

- where the foreigner, as a renowned artist, intends to continue his/her work in Poland;
- where the foreigner intends to live together with a migrating employee as a family member, as defined in the European Social Charter adopted in Turin on 18 October, 1961.

Furthermore, a residential permit for a specified period may be granted to a foreigner who:

- proves that there are circumstances, other than those described above, that would justify his/her stay in Poland for a period of more than 90 successive days and that he/she has the financial means necessary to cover the costs of his/her stay in Poland;
- intends to undertake or continue studies in Poland, if he/she has proof of this fact in the form of a certificate from the educational establishment confirming that the foreigner has been accepted to such an establishment and that he/she has the necessary financial means required to cover the cost of such studies and the cost of living expenses during the period of study, without the need for state financial support.

The law provides for a list of circumstances where the foreigners' marriage may be deemed as concluded solely for a purpose of obtaining a residency permit, in which case, the permit may be refused or revoked. The major circumstances are: the spouses live apart, the spouses have never met before the marriage, the spouses do not know each other's basic data, the spouses do not know one common language, among others.

Furthermore, a temporary residency card will be refused if:

- the foreigner does not meet the requirements as described in Article 53 of the Act which sets out the general guidelines permitting foreigners to reside in Poland;
- the foreigner is listed as an "undesirable alien";
- the circumstances of the case show that the purpose of the foreigner's visit or stay in Poland is or will be different than that declared;

- the application is submitted in connection with entering into a marriage relationship with a Polish or foreign citizen residing in Poland where such marriage was entered into with the aim of circumventing the regulations on issuance of temporary residence permits;
- this is required due to national security or national defense factors or due to the existence of a threat to public safety and order or a threat to any other interests of Poland;
- in the course of proceedings for the granting of a temporary residence permit:
    a. the foreigner submitted a motion or attached documents containing inaccurate personal data or false information,
    b. the foreigner made false declarations or concealed the truth, or falsified or altered a document or submitted such false or altered documents as originals.
- the foreigner is in arrears with any State taxes;
- the foreigner stays in Poland without the required permission for his stay.

A Temporary Residency Card may be issued for a period of up to two years and may be extended for subsequent periods of up to two years. The total period of stay on the basis of a Temporary Residency Card is not limited.

Issuance of a Temporary Residency Card may be refused for the same reasons as a visa.

EXTENSION OF A PERMIT TO STAY (NON-VISA MOVEMENT, VISAS AND TEMPORARY RESIDENCY CARDS)

Residents of countries with which Poland has a non-visa movement treaty may remain for 90 days only on the basis of the valid passport.

There are strict deadlines for submitting applications to issue or extend the relevant permits:

- extension of a visa – seven days before expiration of the current short-term visa or 14 days before expiration of the current long-term visa.

  As a rule, a visa may be extended only once and only if all of the following requirements are met:

  1. the foreigner has a valid professional or personal interest in obtaining such a visa or is applying for a visa on humanitarian grounds;
  2. the events that led to the application for the visa extension were beyond the control of the foreigner and could not have been foreseen at the time of the issuance of the visa;
  3. the circumstances of the case do not indicate that the purpose of the foreigner's stay in Poland will be different than that actually declared;
  4. the foreigner is not listed as an "undesirable alien", has the adequate financial resources required to cover the costs of his/her stay or other circumstances as described in the regulations are not applicable;

- issuance or extension of a Temporary Residency Card - 45 days before expiration of the current visa or Temporary Residency Card; and
- issuance of a Permanent Residency Card – 60 days before expiration of the Temporary Residency Card or the Visa.

If the foreigner submits his/her request within the deadlines and the authorities are not able to issue the requested permit before expiry of the current Visa or Temporary Residency Card, the authorities must grant the applicant a special visa for the period of the completion of the first-instance proceedings to grant a temporary residence permit. If the foreigner does not submit its request within the deadlines and the current permit expires before the new one is granted, the foreigner is obliged to leave Poland.

PERMIT TO SETTLE – PERMANENT RESIDENCY CARD

A foreigner who has resided in Poland for at least five years (in certain cases – three years) on the basis of a Visa and Temporary Residency Card can apply for a permit to settle and a Permanent Residency Card. A permit to settle is granted for an indefinite period and the holder does not need any special permits to be employed or to carry out business activities in Poland.

To obtain a permit to settle, a foreigner has to fulfill all of the following conditions:

- permanent economic or family links with Poland;
- secured accommodation and maintenance of support in Poland for himself/herself and members of the family; and
- immediately before submitting the application, the person has resided in Poland for at least five years on the basis of a permit to reside for a specified period of time and visas, or at least three years if the permit to reside for a specified period was granted as a result of joining family.

There are additional situations in which permanent residency will be granted.

Permanent residency will be refused in the same situations in which a Temporary Residency Card is refused.

ENTRY AND STAY IN POLAND OF THE EU CITIZENS

EU citizens staying in Poland beyond three months will be required to obtain a residence permit or temporary residence permit. As a result of the procedure of granting a residence permit or temporary residence permit, the EU citizen will obtain the EU citizen's residence card.

A residence permit is granted to an EU citizen on the condition that he/she:

- intends to perform or performs work, business activity or a free profession in Poland for a period exceeding 12 months, and

- has health insurance and sufficient resources to cover his/her expenses without needing social security support.

Residence permits are valid for five years with the possibility of extension for further five-year periods. If an EU citizen staying in Poland in connection with work is, on the day of applying for the first extension of his/her stay, without such work, not due to his/her fault, but not for a period exceeding 12 months, the permit will be extended for 12 months.

Temporary residence permits are granted to EU citizens who have health insurance and sufficient resources to cover their expenses without needing social security support, and who intend to:

- take up studies – in such cases a permit for residence is for one year, to be extended by further one-year periods until completion of studies,
- perform work, conduct business activity or a free profession in Poland for a period of between 3 months to 12 months – in such cases the permit will be granted while that occupation is practiced.

Residence and temporary residence permits issued to an EU citizen cover family members (excluding relatives in the case of students).

An EU citizen and members of his/her family may be denied a residence permit in order to protect public order and security, public health, or due to a threat to state security or defense.

Decisions concerning residence permits and residence cards for EU citizens (including decision as to their extension and revocation) are issued by the voivode of the voivodship where the EU citizen intends to reside.

The above requirements do not apply to persons who perform work or a free profession or conduct business activity in Poland, providing they retain permanent residence on the territory of another EU state, to which they return at least once a week.

POLISH CITIZENSHIP

In general, Polish citizenship is obtained by birth if the child has Polish parents. A child acquires citizenship regardless of the country where he/she is born, if both parents are citizens of Poland or at least one of the parents is a Polish citizen and the other's citizenship is either unknown or whose citizenship cannot be established, or who is stateless.

A child, one of whose parents is a citizen of a foreign country, will acquire Polish citizenship by birth. However, by way of affidavit, executed before the proper Polish authorities within three months of the birth of the child, the parents can choose foreign citizenship for the child, if the laws of the foreign country grant the child citizenship based on descent from the foreign parent. Polish citizenship can be granted to that child if he/she executes an affidavit before the proper Polish authorities after turning 16, but before 6 months to the legal age expressing his/her intention to become a Polish citizen.

Citizenship can be granted by the President of the Republic of Poland. A foreigner is eligible to apply for citizenship if he/she has resided in Poland for at least 5 years on the basis of a permit to settle. This period may be reduced to three years if a foreigner is married to a Polish citizen. However marriage to a Polish national does not affect the citizenship of either party.

The granting of citizenship can be subject to submission of evidence of the loss or renunciation of foreign citizenship.

If Polish citizenship is granted to a foreigner, it may apply to the foreigner's children:

- if the other parent is Polish;
- if the child is solely under parental control of the parent being granted citizenship; or
- if the second parent consents to granting the child citizenship.

The foreigner may be recognized as a Polish citizen if the foreigner is not a citizen of any foreign state and has lived in Poland on the basis of a permit to settle for at least five years.

EMPLOYMENT OF FOREIGNERS

In general, according to the Act on Employment enacted on April 20, 2004, a foreigner can be employed in Poland if:

i. the prospective Polish employer obtains the promissory decision on a work permit from the Voivoidship Office,

ii. the foreigner obtains a Work Visa or a Temporary Residency Card, and

iii. after the foreigner's entrance to Poland, the prospective employer obtains a work permit for him/her from the Voivoidship Office.

It is also possible for a foreign entity, which provides its services in Poland on the basis of a contract of result concluded with a Polish entity, to send its employees to Poland to perform under such contract. To be considered a contract of result, the contract must specify the task to be performed. In both situations, a work permit has to be issued.

There are some situations when a work permit is not necessary. According to the statutory provisions, the following foreigners are not required to obtain a work permit in order to work in Poland:

i. individuals conducting training, receiving professional training or participating in advisory programs organized by the EU or in other international support programs, including those based on loans contracted by the Government of Poland;

ii. foreign language teachers or teachers conducting classes in foreign languages on the basis of international agreements and understandings realized by the minister dealing with education issues;

iii. foreigners who are permitted to work without work permits pursuant to international agreements and understandings to which Poland is a party;

iv. members of armed forces and civil staff who work connected with the North Atlantic Corps;

v. regular foreign correspondents working for mass media that pursue press, radio, television, film or photographic activities who were accredited by the minister dealing with foreign affairs at the request of a foreign editor-

in-chief or a head of a foreign agency where the correspondent renders work;

vi. foreigners who, individually or in groups, render artistic services such as those of actor, recitation performers, conductors, musicians, singers, dancers or mime artists;

vii. foreigners delegated to work in foreign culture institutes in Poland based on international agreements, provided that this is reciprocal;

viii. students of regular day university courses followed in Poland for a period not exceeding three months during holidays;

ix. students working as part of their professional training organized by bodies, which are members of international students' associations;

x. foreigners who remain residents of foreign countries but are delegated to Poland by a foreign employer for a maximum period of three months in a calendar year in order to:

- perform assembly and maintenance works or repair devices, constructions, machines or other equipment which are technically complete, if they were manufactured by a foreign producer;
- collect devices, machines or other equipment manufactured by a Polish producer on order;
- train the employees of a Polish employer who is a purchaser of devices, machines or other equipment referred to in point (i) with respect to the operation and use thereof; or
- assemble and disassemble stands and look after them if the exhibitor is a foreign employer who delegates foreigners for this purpose;

xi. foreigners who remain residents of foreign countries and who occasionally deliver lectures or speeches or hold presentations of considerable scientific or artistic value;

xii. foreigners who are members of management boards of legal persons conducting business activities who remain residents of foreign countries and render work in Poland for up to 30 days in a calendar year;

xiii. foreigners who are clerical persons who work in churches, church organizations or religious associations if such entities have been duly registered by the minister dealing with internal affairs and administration.

xiv. foreigners acting as members of the management boards of legal persons conducting business activity, if they stay in the territory of Poland on the basis of a visitor's visa in order to perform work, and the period of residence in connection with performing the function on the territory of Poland, regardless of the number of legal persons running the business in which the function is performed, does not exceed 30 days in the calendar year.

xv. foreigners being a spouse of a Polish citizen when residing in the territory of Poland on the basis of a temporary residence permit issued as a result of the marriage, regardless of the foreigner's citizenship.

EMPLOYMENT OF EU CITIZENS

On 1 May, 2004, Poland joined the EU. One of the basic principles of the EU is free movement of people and freedom of employment. However not all of the current member countries have opened their labor markets to citizens of the new members. In response to this, Poland itself according to the reciprocity principle, has introduced some restrictions on free movement of workers.

For the time being, the only exceptions will be for United Kingdom, Irish, Swedish, Spanish, Portuguese, Greek and Finnish nationals. Nationals from these countries do not need a work permit in Poland, as those countries have waived restraints in relation to access to their employment markets. The Polish labor market will also be open to new EU member countries (the Czech Republic, Hungary, Latvia, Lithuania, Estonia, Slovakia, Slovenia, Malta and Cyprus) and nationals of those members/countries will be able to seek employment in Poland without the need to obtain a work permit.

With the exception of German and Austrian nationals, EU employees delegated to Poland to provide services on the basis of the 96/71/EC Directive do not need a work permit.

Citizens of Germany and Austria posted to work in Poland need to apply for a work permit if they are to provide services in the following sectors:

In the case of Germany: construction (including related branches), industrial, and interior decoration.

In the case of Austria: Horticultural service activities, cutting, shaping and finishing of stone, manufacture of metal structures and parts of structures, construction (including related branches), security activities, industrial cleaning, home nursing, social work and activities without accommodation.

Table 2 Procedure for issuance of work permits for foreigners

Stage 1	Promissory decision on a work permit
Stage 2	Work Visa / Temporary Residency Card
Stage 3	Work permit

A. Stage 1

The prospective employer must first offer the position to Polish citizens unless the employer is a foreign company which sends its employees to Poland. The offer should be sent to the relevant authority (the Regional Employment Office, REO) and should describe the individual requirements (qualifications, relevant practical experience or technical skills).

As a rule, a promissory decision for a work permit is issued if there are no Polish candidates to be found on the domestic market. If there are no Polish citizens available that would be fit for the post described, the REO issues the appropriate confirmation to the employer in writing.

Once the employer obtains confirmation from the REO, he submits an application for issuance of a promissory decision on a work permit for the foreigner, together with a copy of the confirmation.

The employer is obliged to provide in the applications the personal data of the foreigner, the details of the foreigner's passport document, and if any, information on the foreigner's permanent place of residence and his/her place of residence in Poland. Furthermore, information should be given on the professional qualifications of the foreigner, his/her job post, the type of work performed, and the proposed employment post in Poland (including the level of remuneration proposed). The employer is further obliged to indicate the

period of employment and describe the legal basis of the employment (e.g. employment agreement, service agreement etc.).

The promissory decision is issued by the appropriate Voivoidship Office.

The promissory decision on a work permit will be granted for a period not exceeding one year and it may be extended.

B. Stage 2

After obtaining the promissory decision on a work permit, a foreigner has to submit an application for a work visa or a temporary residency card (if already in Poland) on his/her own initiative. The foreigner will be required to present the original promissory decision on a work permit granted to the prospective employer for this foreigner.

C. Stage 3

The final stage is issuance of a work permit following submission of a separate application by the prospective employer. The work permit is issued by the appropriate Voivoidship Office, if the procedures to obtain the promissory decision for a work permit and the work visa are completed successfully.

The work permit is issued for a period of no longer than the period of stay determined by the work visa, or no longer than the validity period of the temporary residency permit.

Once the foreigner receives a work permit, an employment contract can be concluded with him/her for the period for which the work permit was issued. Furthermore the foreigner must be granted a work permit for each position of work he will perform in Poland.

PENALTIES

Pursuant to the Act, a foreigner may be deported from Poland:

i. if the foreigner stays without the required permit to enter or stay;

ii. if the foreigner does not have the financial means necessary to cover the cost of stay;

iii. if the foreigner was employed or performed other gainful activity without the required permit;

iv. if the foreigner is entered on the list of undesirable aliens - in the case of the foreigner entering Poland while still being listed as an undesirable alien;

v. if the continued presence of the foreigner in Poland represents a threat to national defense or national security or a threat to public security and order or any other interests of Poland;

vi. if the foreigner entered Poland illegally or attempted to enter Poland illegally;

vii. if the foreigner failed to leave the territory of Poland by the date as provided for in a decision:

   a. ordering him/her to leave Poland,

   b. refusing to grant a temporary residence permit,

   c. revoking a temporary residence permit;

viii. if the foreigner has outstanding tax liabilities towards the State Treasury; or

ix. if the foreigner has just completed a jail term in Poland for a crime committed with intent or a fiscal crime.

A person who does not leave Polish territory before or on the date of expiry of the permit is subject to a fine of up to PLN 5,000.

According to the Act on Employment, an employer who employs a foreigner without the required work permit is subject to a fine of a minimum of PLN 3,000 and of up to PLN 5,000. A foreigner who works without a work permit is also subject to a minimum fine of PLN 1,000 or subject to deportation.

CONCLUSION

The procedures for obtaining legal residence and work permits are difficult and time consuming for foreign citizens. Citizens of EU countries, which

have opened their labor market to Polish citizens, do not need to obtain work permits. For citizens of other EU countries, Poland has introduced transitional periods (these vary depending on the country and range from two to seven years) based on the reciprocity rule.

CHAPTER 15
IMMIGRATION TO THE RUSSIAN FEDERATION

IMMIGRATION TO THE RUSSIAN FEDERATION

INTRODUCTION

The basic issues relating to the entry of foreigners to Russia are covered in the Federal Law on Entry to and Exit from the Russian Federation (the "**Visa Law**") and the Federal Law on the Legal Status of Foreign Citizens in Russia (the "**Foreigners Law**"). In July, 2006, the Russian Parliament introduced numerous amendments to the Foreigners Law and adopted a new Federal Law on the Migration Record of Foreign Citizens and Stateless Persons in the Russian Federation (the "**Migration Record Law**"). The new Migration Record Law and the new version of the Foreigners Law will come into effect on 15 January, 2007. More specific issues (e.g., lists of documents to be filed to the respective authorities) are covered in several other subordinate acts.

Russian immigration law continues to evolve very quickly and new acts explaining, supplementing or altering the Visa Law and the Foreigners Law are issued regularly. Hence, the information contained in this chapter should not be fully relied upon without first reviewing the latest changes to the legislation.

VISAS

A. Overview of Visa Types

As a general rule, foreigners seeking to enter the Russian Federation are required to obtain a visa. The Visa Law provides for five basic types of Russian visas, depending on the purpose of entry and stay in the Russian Federation. One of these types (Ordinary Visa, point 3 below) is further divided into seven subtypes.

1. Diplomatic Visa;
2. Official Visa;
3. Ordinary Visa:
    3.1. Private;

3.2. Business (commercial);

3.3. Tourist;

3.4. Student;

3.5. Work;

3.6. Humanitarian; and

3.7. For requesting asylum;

4. Transit Visa; and

5. Temporary Residence Visa.

Visas can be single-entry, double-entry or multiple-entry. The maximum term for which a visa can be issued depends on the type of visa (the terms range from ten days to one year).

Family members of foreigners coming to Russia on the basis of diplomatic, official, ordinary business, ordinary student, ordinary work or ordinary humanitarian visas may be issued the same visas as the applicant.

International treaties between the Russian Federation and foreign states may provide for visa-free entry. Most commonly, such international treaties grant the right to visa-free entry into Russia (subject to the fulfillment of certain conditions) to the following groups of foreign citizens:

- citizens of states that have international treaties on visa-free travel with Russia. These are mostly former Soviet Republics (e.g., Byelorussia, Kazakhstan, Kyrgyzstan, Tajikistan, Moldova, etc.). The majority of the new provisions introduced in the Foreigners Law and coming into effect on 15 January, 2007 concern this group of foreigners (see subsection B of the next section for more detail);
- citizens who are holders of diplomatic or service passports;
- crew members of civil aircraft and sea craft, etc.

B. Registration of Foreigners in Russia

Before the new Migration Record Law enters into effect (i.e., before 15 January, 2007), each foreigner arriving in Russia is required to register at the address of stay in Russia within three working days of arrival. The registration mark should be affixed by the relevant authority of the Ministry of the Interior on the migration card, which is issued at the point of entry into Russia and must be returned at the point of exit. Thus, each time a foreigner leaves Russia, he/she must surrender his/her registered migration card.

After the new Migration Record Law enters into effect (i.e., as of 15 January, 2007), the procedure for registration of foreigners in Russia will change. In particular, the obligation to register a foreigner at the address of stay in Russia will shift from the foreigner to the "inviting party", i.e., the foreigner's employer (if the foreigner enters Russia for the purpose of work), business partner (in case of visits for business purposes), the respective inviting Russian citizen (in case of visits for personal purposes), etc.

Within three working days following the arrival of a foreigner in Russia, the inviting party will be required to file a standard notification form with the relevant state authority. The latter should place a special mark on the tear-off part of the notification form and return it to the inviting party. In its turn, the inviting party should provide the marked tear-off part of the notification form to the foreigner. The marked tear-off part of the notification form will serve as evidence that all formalities connected with the foreigner's registration in Russia have been complied with.

Similarly, when leaving Russia the foreigner should surrender the tear-off part of the notification form to the inviting party and the latter should file it with the relevant state authority within two days following the exit of the foreigner from Russia.

C. Liability

Violation of requirements and rules of stay in Russia by a foreigner may result in the imposition of an administrative fine in the amount of up to 1,500 RUR (approx. USD 55), and even deportation from Russia. Violations include:

- violation of the rules concerning entry into Russia;
- absence of documents confirming the right to stay in Russia;
- failure to notify the relevant state authorities about the loss of documents confirming the right to stay in Russia;
- non-compliance with the established registration procedure (see section B above);
- refusal to leave Russia after the expiry of the established term of stay in Russia;
- non-compliance with the rules of transit through Russia.

WORK IN RUSSIA

As a precondition to obtaining an ordinary work visa (point 3.5 of subsection A of the previous section), foreigners coming to work in Russia are required to obtain work permits. A work permit is a document confirming the right of a foreigner to work in the Russian Federation on a temporary basis. Work permits must be obtained for foreigners working under employment agreements and also for those providing services under civil law (services, consulting) contracts. Employees of representative offices or branches of foreign companies also require work permits under current Russian laws, irrespective of the fact that they also must obtain personal accreditation cards through the relevant accrediting authority.

A. Work Permit Issuance Procedure

Set forth below are the key steps to be performed for bringing a foreign employee to Russia.

Step 1: The employer obtains all required personal data and documents from the future employee.

Step 2: The employer obtains "Permission to Hire Foreigners". In practice this step requires obtaining two types of permission: (1) "Consent for Hiring Foreigners" from the Federal State Employment Center,

and (2) "Permission to Hire Foreigners" from the Federal Migration Service of the Russian Ministry of the Interior. In practice, it takes approximately two months to obtain Consent for Hiring Foreigners (1) and an additional month to obtain Permission to Hire Foreigners (2) in Moscow; the timing can be different in other regions of Russia.

Step 3: The employer obtains a work permit and a visa invitation for the particular employee. The official term for work permit issuance is 30 working days (i.e., six weeks) from the date of submission of all required documents, plus an additional ten days granted to the Federal Migration Service for notification of the employer about the decision made. Thus, only this step may take eight weeks or even longer.

Step 4: The employer sends a copy of the work permit and the original visa invitation to the foreign employee.

Step 5: The foreign employee obtains his/her Russian work visa at a Russian consulate or embassy abroad. Upon arrival in Russia, within three working days the employee should be registered at the address of his/her stay in Russia (see subsection B of the previous section).

Step 6: The employer files a notification with the relevant local branch of the Tax Ministry.

B. Simplified Work Permit Issuance Procedure

The new version of the Foreigners Law coming into effect on 15 January, 2007 introduces a simplified procedure for issuance of work permits for citizens of states that have international treaties on visa-free travel with Russia. As noted in subsection A of the previous section, these are mostly former Soviet republics and some countries of the former Eastern Block. In fact, the new amendments to the Foreigners Law are aimed at legalizing the existing large-scale illegal work immigration from some CIS countries. Set forth below are the key steps in this simplified procedure.

Step 1: The foreigner arrives in Russia without a visa. Within three working days of arrival the foreigner should register the address of his/her stay in Russia (see subsection B of the previous section).

Step 2: The foreigner obtains a work permit. To do so, the foreigner files an application with the relevant state authority and presents (1) his/her passport, (2) the migration card received at the point of entry into Russia, and (3) the pay slip confirming payment of the respective state fee. The application may be filed by an entity engaged in employment of foreigners in Russia or the foreigner's legal representative; however, the work permit should be received by the foreigner in person. Within ten working days, the relevant state authority issues a work permit or a notification on refusal to grant a work permit.

Step 3: If a work permit is issued for a period exceeding 90 days, the foreigner should, within 30 days of its issuance, file with the relevant state authorities documents confirming the absence of drug addiction, infectious diseases and HIV infection.

Step 4: The employer files notifications with (1) the state authority for migration, (2) the state authority for employment, and (3) the local branch of the Tax Ministry.

C. Exceptions

The following categories of foreigners are allowed to work in Russia without a work permit:

1. foreigners permanently residing in Russia (see next section);
2. foreigners temporarily residing in Russia (see next section);
3. employees of foreign states' diplomatic representations, consular offices and international organizations and their personal domestic staff;
4. employees of foreign legal entities (producers or suppliers) coming to Russia to perform installation works, servicing or guarantee repairs or post-guarantee repairs of technical equipment supplied to Russia by their employer;

5. journalists accredited in Russia;
6. students of educational institutions of professional education who work during holidays;
7. students of educational institutions of professional education who work during their spare time in the same educational institutions in the capacity of support personnel.
8. foreigners invited to Russia as teachers, except for persons entering Russia for the performance of education activity in institutions of professional religious education.

D. Liability

Failure to comply with the requirements for obtaining Permission to Hire Foreigners and/or work permits may trigger adverse consequences for both the foreigner and the Russian employer. As of August 1, 2006, illegal labor activities of a foreigner in Russia (e.g., work in Russia without relevant work permit) may subject the foreigner to an administrative fine in the amount of up to 2,500 RUR (approx. USD 95), and, even deportation from Russia. Expenses incurred by the state on deportation are to be recovered from the employer upon the claim of the relevant state authority. The employer and/or its officers may also be subject to administrative fines, of up to 20,000 RUR (approx. USD 740) on the employer's officers, and up to 300,000 RUR (approx. USD 11,100) on the employer itself.

In light of the described adverse consequences, employers and foreigners are strongly encouraged to avoid a situation where a foreign employee enters Russia on a tourist or business visa and starts his/her work prior to the date on which the employer obtains Permission to Hire Foreigners, a work permit and, where applicable, a work visa for the employee.

RESIDENCE STATUS

Under the Foreigners Law, foreigners may request temporary residence status and, subsequently, permanent residence status.

Both the temporary and the permanent residence status allow foreigners to work in Russia without work permits.

A. Temporary Residence Status

Temporary residence status is confirmed by a temporary residence permit which is valid for three years. The number of temporary residence permits that may be issued each year is limited by a special quota established by the Russian Federation Government on a yearly basis (e.g., in 2003 the quota equaled to 439,080 temporary residence permits, including 90,000 for Moscow; in 2004 the quota was 205,633, including 1,500 for Moscow; in 2005 the quota was 108,001, including 1,000 for Moscow; for 2006 it is 107,425, including 1,000 for Moscow).

Besides, limited categories of foreigners may request temporary residence status irrespective of the established quotas. These include:

- foreigners who were born in the Russian Soviet Federative Socialist Republic and who in the past had USSR citizenship, or foreigners born on the Russian Federation;
- foreigners married to a Russian citizen who resides in Russia;
- foreigners investing in Russia in an amount established by the Government of the Russian Federation (as of 1 August, 2006, such amount had not been established);
- citizens of states that have international treaties on visa-free travel with Russia; and
- several other categories.

The temporary residence permit is issued within six months of submission of the relevant application and all required documents, or even longer in some cases.

Temporary residence status is a precondition for obtaining permanent residence status.

B. Permanent Residence Status

Within the term of validity of a temporary residence permit, foreigners may apply for a permanent residence permit (or, simply, a "residence permit"). As a precondition for applying for a residence permit, a foreigner is required to have lived in the Russian Federation on the basis of a temporary residence permit for at least one year. The residence permit is issued for five years and may be renewed an unlimited number of times.

Permanent residence status is one of the preconditions for acquiring Russian citizenship (see subsection B of the following section for more detail).

C. Refusal to Grant/Annulment of a Residence Permit

The relevant Russian authorities may refuse to issue a temporary or permanent residence permit or may annul an already issued permit if the foreigner concerned:

1. advocates a forced alteration of the fundamentals of the constitutional system of the Russian Federation, or threatens the security of the Russian Federation or its citizens by other actions;
2. finances or plans terrorist attacks;
3. was subject to administrative expulsion or deportation from the Russian Federation;
4. provided false or sham documents or presented false facts;
5. was sentenced by a court for a grave offence, felony or crime deemed dangerous if repeated;
6. has a criminal record involving a grave offence or felony;
7. was repeatedly (twice or more) subject to administrative liability for violation of the rules of stay (residence) of foreigners in the Russian Federation within a single year;
8. is unable to support himself or herself and the members of his/her family within the minimum cost of living without support from the state, except for cases when the foreigner is a disabled person;

9. upon expiry of three years after entry into Russia does not possess living quarters in the Russian Federation on one of the legal grounds provided by the Russian legislation;

10. leaves the Russian Federation to live permanently in a foreign state;

11. stays outside Russia for more than six months;

12. the marriage granting the right to a residence permit or temporary residence permit is nullified;

13. is addicted to drugs, does not possess a certificate evidencing the absence of HIV or suffers from an infectious disease which may be harmful to others.

RUSSIAN CITIZENSHIP

The basic issues relating to Russian Federation citizenship are covered by the Federal Law on Citizenship of the Russian Federation (the "**Citizenship Law**").

Under the Citizenship Law, Russian Federation citizenship may be acquired based on: (1) birth, (2) conferment of citizenship, (3) restoration of Russian citizenship, or 4) other grounds provided by the Citizenship Law or international treaties of the Russian Federation.

A. Acquisition of Citizenship by Birth

A child acquires Russian citizenship in the following instances:

1. If, as of his/her date of date of birth, both parents or his/her sole parent are Russian citizens (irrespective of the child's place of birth);

2. If, as of his/her date of birth, one of the child's parents is a Russian citizen and the other is a stateless person, a missing person or a person whose location is unknown (irrespective of the child's place of birth);

3. If, as of his/her date of birth, one of the child's parents is a Russian citizen and the other is a foreign citizen, provided the child was born on Russian territory or if the child would otherwise become a stateless person;

4. If, as of his/her date of birth, both parents (or sole parent) are foreign citizens or stateless persons residing in Russia, provided the child was born on Russian territory and the foreign state of his/her parents' (or sole parent's) citizenship does not grant its citizenship to the child; or

5. If the child is found on the territory of the Russian Federation and his/her parents are unknown, provided the parents do not show up for six months after his/her discovery.

B. Acquisition of Citizenship by Conferment of Citizenship

As a general rule, foreigners wishing to acquire Russian citizenship by conferment have to satisfy the following criteria:

1. be at least 18 years old;

2. be legally capable;

3. have had five years of uninterrupted residence in Russia starting from the date of issuance of the residence permit (see previous section) to the date of filing of the application for citizenship (this criteria may be subject to exceptions);

4. compliance with the Russian Constitution and other legislation;

5. have a legitimate source of means of subsistence;

6. file with the relevant body of a foreign state an application for denial of citizenship (denial is not required in cases provided by the Citizenship Law and international treaties of the Russian Federation or in cases where denial is impossible due to reasons beyond the person's control);

7. proficiency in the Russian language.

C. Acquisition of Citizenship by Restoration of Russian Citizenship

Foreigners and stateless persons who previously used to be Russian citizens may acquire Russian citizenship once again pursuant to the procedure described in subsection B above, except that the uninterrupted residence requirement (point 3 of the subsection B above) is reduced to three years.

CHAPTER 16
IMMIGRATION TO SINGAPORE

IMMIGRATION TO SINGAPORE

INTRODUCTION

Immigration into Singapore is controlled by the provisions of the Immigration Act, 1985 ("the Act") and the Immigration Regulations, 1972 ("the Regulations").

There are two types of status available to foreigners: non-immigrant and immigrant.

NON-IMMIGRANT VISAS

Singapore non-immigrant visas can be divided into the following types:

- Visitor Visas;
- Professional Visit Passes;
- Student Passes;
- Training Passes; and
- Work Passes (and accompanying Dependent Passes).

A. Visitor Visas

Foreigners visiting Singapore for social and holiday purposes and 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 7, 14, 30 or 90 days. Extensions are considered on a case-by-case basis.

Foreigners holding travel documents issued by the following countries, however, will require entry visas prior to arrival in Singapore:

Afghanistan

Algeria

Bangladesh*

Cambodia

Commonwealth of Independent States (except Diplomatic and Official passport holders for a stay of up to 30 days and nationals of the Commonwealth of Independent States who are in transit to a third country, subject to certain conditions):

- Armenia
- Azerbaijan
- Belarus
- Georgia
- Kazakhstan
- Kyrgyzstan
- Moldova
- Russia
- Tajikstan
- Turkmenistan
- Ukraine
- Uzbekistan

Egypt

India*

Iran

Iraq

Jordan*

Lebanon

Libya

Morocco

Myanmar*

Pakistan

People's Republic of China*

Saudi Arabia

Somalia

Sudan

Syria

Tunisia*

Yemen

* *Except for visitors with Diplomatic and Official passports*

In addition, those holding Hong Kong Special Administrative Region Documents of Identity, Refugee Travel Documents issued by Middle-East countries, Palestinian Authority Passports, Temporary Passports issued by the United Arab Emirates, and Macau Special Administrative Region Travel Permits will also require an entry visa.

B. Professional Visit Passes

The following groups of foreigners who wish to take up short-term professional assignments (not more than three months) in Singapore will require a professional visit pass from the Immigration & Checkpoints Authority ("ICA"):

- foreigners who enter Singapore to conduct or to participate in conferences, seminars, workshops or gatherings of a racial/communal, religious, cause-related or political nature;
- foreign religious workers coming to Singapore to give religious and other related talks;
- foreign journalists and reporters, including accompanying crew members, who are in Singapore to write a story or to cover an event; and
- foreign artists performing at nightclubs, lounges, pubs or other similar entertainment outlets.

An application for a professional visit pass takes approximately two weeks to process. The application must be submitted through a local sponsor, i.e. a Singapore registered organization. For performing artists, the local sponsor is required to post a security bond and deposit of SGD 3,000 in the form of a cashier's order. The security deposit will be refunded after the artist's departure from Singapore is confirmed and provided there has been no breach of the conditions stipulated in the security bond.

1. Waiver

The professional visit pass requirement is waived for the following groups of foreigners traveling to Singapore on short-term professional assignments:

- foreign artists such as those in cultural troupes and performances;
- camera crew, film directors, actors, actresses, foreign models and photographers on location shooting;
- foreign professionals, speakers and lecturers who are here to attend, conduct or participate in seminars, workshops or conferences (this exemption does not apply to such events which are racial/communal, religious, cause-related or political in nature);

- foreign professional artists who wish to exhibit their works;
- foreign cultural missions;
- foreign sportsmen who are engaged by local sports clubhouses or who are here for sports competition/events;
- foreign exhibitors in exhibitions or trade fairs; and
- foreign journalists, reporters or accompanying crew members who are supported/sponsored by the Singapore Government agencies to cover or write a story in Singapore.

These above foreigners are allowed to carry out their assignments within the validity of the visit pass granted to them at the point of entry upon their arrival in Singapore. However, the waiver of the professional visit pass requirement does not exempt the listed foreigners from seeking the approval of the appropriate authorities concerned. For example, a foreign artist will still have to apply to the police for a Public Entertainment License to exhibit his works in Singapore. If these foreigners require a longer stay in Singapore and the total period (including the visit pass granted to them upon arrival in Singapore) does not exceed three months, they may apply for an extension of stay. Those who require more than three months stay will have to apply for a work pass from the Ministry of Manpower.

C. Student Passes

A foreigner is required to apply for a student's pass if he/she wishes to pursue full-time studies in Singapore in an institution that is registered with the Ministry of Education or has obtained approval from ICA to accept foreign students. Briefly, the application must be submitted at least two months and not more than six months from the course commencement date. The application for a student's pass must be sponsored by either a Singapore citizen, permanent resident or the school. Depending on the nationality of the student, the local sponsor may be required to place a security deposit ranging from SGD 1,000 to SGD 5,000 with ICA in the form of either a cashier's order or a banker's guarantee. The security deposit is refundable upon the cancellation of the student's pass and upon the departure of the student from Singapore and provided the student has not breached the conditions of the security bond.

A student's pass can take up to four weeks to process.

Dependent pass holders studying in government, government aided, independent, foreign system schools and kindergartens are exempted from applying for a student's pass.

D. Training Visit Passes

Training visit passes are available to foreigners coming to Singapore to undergo training. An application for a training pass takes approximately three weeks to process. The application must be submitted through a local sponsor, i.e., a Singapore registered organization.

E. Work Passes

All matters pertaining to the employment of foreigners in Singapore come under the review of the Ministry of Manpower (the "Ministry").

The Ministry adopts a graduated approach towards foreign talent, offering the most attractive terms to those who can contribute 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, parents and parents-in-law. This privilege, however, is not extended to all workers.

There are two types of work passes.

1. Employment Pass/"S" Pass

1.1 The "P" Pass

"P" passes are issued to foreigners who hold acceptable tertiary/professional qualifications and who are seeking professional, administrative, executive or managerial jobs in Singapore or who are entrepreneurs or investors.

There are two types of "P" passes:

- "P1" pass for those who earn SGD 7,001 and above per month; and

- "P2" pass for those who earn SGD 3,501 up to SGD 7,000 per month.

The spouse and children of "P" pass holders (both "P1" and "P2") are eligible for dependent passes to stay in Singapore and their parents and parents-in-law are eligible for Long-term Social Visit Passes.

1.2 The "Q1" Pass

"Q1" passes are meant for foreigners who earn SGD 2,501 up to SGD 3,500 per month and possess acceptable degrees, professional qualifications or specialist skills.

The spouse and children of "Q1" pass holders are eligible for dependent passes to stay in Singapore. However, the parents and parents-in-law of "Q1" pass holders are not eligible for long-term social visit passes.

1.3 The "S" Pass

The "S" pass is a new category of work pass which replaces the "Q2" Pass with effect from 1 July, 2004. It is meant for foreigners whose basic monthly salary is at least SGD 1,800. Applicants for "S" passes are assessed on a points system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. A monthly levy of SGD 50 per month also applies and there is a 5% cap on the number of "S" pass holders in each company based on the company's number of local workers and work permit holders.

The spouse and children of "S" pass holders are eligible for dependent passes to stay in Singapore if the basic monthly salary is equal or more than SGD 2,500.

1.4 Additional Information

The "P", "Q1" and "S" passes are generally valid for up to two years and may be renewed upon expiry for a period of usually up to three years. The Ministry may, at its discretion, issue exceptional candidates with renewable passes valid for up to five years.

Application for an employment pass is submitted to the Employment Pass Department of the Ministry. Processing time is approximately three

weeks. Upon approval of the application, the Ministry will then advise of the category under which the pass has been granted (i.e., "P1", "P2", "Q1" or "S").

If an applicant is required to commence employment in Singapore before the employment pass is approved, it is possible to request a temporary employment pass, valid usually for one month. A temporary employment pass is not automatically given but is subject to the Ministry's consideration and approval. A temporary employment pass is not available for "S" pass applicants.

A Short-Term Employment Pass may be applied for by foreigners who wish to work in Singapore on a specific project or assignment up to a maximum of **one month**. The Pass will be issued on a **one-time** and **strictly non-renewal** basis. You may apply for a Short-Term Employment Pass if you earn a monthly basic salary above SGD 2,500 and hold acceptable tertiary / professional qualifications.

1.5 EntrePass

The EntrePass, is an Employment Pass for foreign entrepreneurs who would like to start businesses in Singapore. It is jointly determined by the Ministry and SPRING Singapore, a governmental board overseeing Singapore's productivity standards and quality ("SPRING"). Applicants are to submit their applications to the Ministry. All applications are assessed by SPRING. The Ministry will issue Employment Passes for successful applicants. All public queries and appeals can be directed to both the Ministry and to SPRING.

A foreign entrepreneur who is ready to start a new company / business and will be actively involved in the operation of the company / business in Singapore can apply for an Employment Pass under the EntrePass scheme. At the point of submission for the EntrePass application, the applicant must not have registered his / her business with the Accounting and Corporate Regulatory Authority (ACRA) for longer than six months.

The proposed business venture must not be engaged in illegal activities. In addition, businesses which are not entrepreneurial by nature for example, coffeeshops / hawker centers / food courts, foot reflexology, massage

parlors, karaoke lounges, money changing / remitting, newspaper vending, geomancy and tuition services etc will not be considered for an EntrePass.

1.6 The Personalized Employment Pass

The Ministry will introduce a Personalized Employment Pass (**"PEP"**) from 1 January, 2007. The PEP will be granted to suitable Employment Pass holders or foreigners who have graduated from local institutions of higher learning, and have worked in Singapore for a period of time.

The current Employment Pass is linked to a specific employer and any change in employers requires a fresh application for an EP. As such, unless an EP 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 social visit pass. In contrast, the PEP is linked to the individual employee and will be granted on the strength of an individual's merits. The PEP will allow holders to remain in Singapore for up to six continuous months in-between jobs. PEP holders can generally take on employment in any sector, except that some jobs may require prior permission. Further details will be released by the Ministry at a later date.

The following groups of EP holders will be eligible for a PEP, provided they have earned a basic salary of at least SGD 30,000.00 in the preceding year:

1. **P1 and P2 pass holders** that have at least two years' working experience on a P Pass.
2. **Q1 pass holders** with at least five years' working experience on a Q1 Pass.
3. **Foreign students** from institutions of higher learning in Singapore with at least two years' working experience on a P or Q1 Pass.

The Ministry will be flexible in considering individual cases that do not meet the minimum criteria but, based on the individual circumstances, merit the issuance of the PEP.

The PEP will be valid for five years and will be non-renewable. The minimum salary requirement of SGD 30,000 will continue to apply throughout the five year validity of the PEP. A PEP holder will retain the dependents' privileges of his original EP pass or current eligibility at the point of PEP application, whichever is higher. P1, P2 and Q1 Pass holders are eligible to bring their spouse and children under the age of 21 into Singapore on Dependent's Passes. A PEP Pass holder can also bring his/her parents and parents-in-law into Singapore on Long-Term Social Visit Passes. Those employees who switch to higher-paying jobs may apply for the corresponding dependents' privileges.

PEP holders and their employers will need to keep Ministry 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 Ministry. The processing time for a PEP application is estimated to be about two weeks from submission.

2. Work permit

A work permit or "R" pass may be issued to lesser skilled or unskilled foreign workers (e.g., foreign factory workers, construction workers, domestic maids, etc.) who earn SGD 1,800 or less per month. 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.

Generally, "R" passes are issued for a period of two years depending upon the nationality and qualifications of the applicant, as well as the type of industry in which the applicant will be employed.

"R" passes will be issued to semi-skilled foreign workers with a Level 3 National Technical Certificate or other suitable qualifications as well as to unskilled foreign workers.

Foreign workers holding "R" passes will not be allowed to bring their immediate family members to live with them in Singapore.

Companies employing foreign workers are usually required to pay a foreign worker levy, the amount of which varies from industry to industry and depending on whether the worker is skilled or unskilled.

An application for a work permit or "R" pass is submitted to the Work Permit Department of the Ministry of Manpower and takes approximately one to seven days to process.

IMMIGRANT VISAS

A. Application for Permanent Residence (Entry Permit)

Non-Singaporeans who are below the age of 50 can become Singapore permanent residents ("PRs") by obtaining an Entry Permit (an application for an Entry Permit is an application for PR). Applications by foreigners who are 50 years of age and above will be considered on a case by case basis.

The grant of PR 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.

The following categories of persons are eligible to submit applications for PR:

- spouses and unmarried children (below 21 years old) of a Singapore citizen or PR;
- aged parents of a Singapore citizen;
- "P" and "Q" Work Pass Holders (under the Scheme for Professionals/ Technical Personnel & Skilled Workers - PTS Scheme);
- investors (under the EDB Global Investors' Scheme or MAS Financial Investor Scheme); and
- Hong Kong residents (under the In-Principle Approval Scheme).

Applicants are assessed utilizing a points system allocated on the basis of the following factors:

- type of work pass;
- duration of stay in Singapore;
- academic qualifications;

- basic monthly salary;
- age; and
- kinship ties in Singapore.

The points system, introduced in January, 1999, provides a more comprehensive picture of the application, allowing particular strengths such as good employment track record to make up for, say, absence of kinship ties in Singapore.

1. PTS Scheme for Work Pass Holders

"P" and "Q" work pass holders are eligible to apply for PR. The type of pass held will be used as a primary basis for assessing the applicant's potential to contribute to Singapore's economy, which aligns PR to the work pass framework. Thus, foreigners who may not be highly qualified academically, but who are holding professional, managerial or well-paying jobs, have a better chance of qualifying for PR. Other factors being equal, the higher the work pass held by the applicant, the earlier and more likely he is eligible for PR.

A male work pass holder may include his wife and unmarried children (below 21 years of age) in his application for PR. On the other hand, a female work pass holder may only include her unmarried children (below 21 years of age) in her application for PR. Her husband will have to apply for PR on his own merits.

2. Global Investors Scheme

Foreign investors with substantial capital and good entrepreneurial track records may apply for permanent residence under the Global Investors Scheme. There are now 3 options:

- at least SGD 1 million has to be invested in a business activity approved by the Economic Development Board ("EDB") ; and
- at least SGD 1.5 million has to be invested in any Singapore-incorporated venture capital fund, foundation or trust approved by the EDB;
- invest at least SGD 2 million in a new business start-up, expansion of an existing operation, approved Singapore-incorporated venture capital

fund or Singapore-incorporated foundation or trust that focuses on economic development, and / or residential properties. Up to 50% of the investment amount under this new option can be private residential properties, subject to foreign ownership restrictions

PR status will be conferred when the investment is made.

2.1 Application procedures:

Applications are to be made on prescribed forms. If an application meets the objectives of the scheme, an in-principle approval valid for three months will be issued within which the applicant is required to deposit SGD 1 million with the Accountant-General of Singapore, upon which final approval for PR status will be issued. The final approval is valid for 12 months within which time the applicant and his family members are required to relocate to Singapore.

The investment must be maintained for a period of five years from the date of final approval of the PR.

The investor may include the following immediate family for permanent residence:

- spouse;
- children under 21 years of age; and
- unmarried children over 21 years of age who have completed approved courses of tertiary education at accredited institutions of higher learning.

Investors can also include parents and parents-in-law on additional deposit of SGD 300,000 for each.

Upon arrival in Singapore, the successful candidate and family members should present themselves at ICA where their Entry Permits will be issued.

2.2 Areas of investment

The applicant must indicate how he/she intends to invest the deposit

when the application for permanent residence is lodged. Up to 30% of the immigration deposit may be allowed for investment in an approved regional project through a Singapore-registered company owned by the permanent resident; or up to 50% of the immigration deposit for such investments, if the company has at least 20% Singaporean ownership. The regional project must have the prior acceptance of EDB as an approved investment under this scheme. The remaining amount of the funds may be invested in a project in Singapore as approved by the EDB. The applicant is given two years from the date of the deposit to make the investment. Once the investment proposal has been approved, the deposit will be released for investment in the proposed company. The applicant cannot assign the benefit of the deposit to any person, corporation or company.

The application should be submitted together with all supporting documents to:

Resource Development Division
Singapore Economic Development Board
250 North Bridge Road
#24-00 Raffles City Tower
Singapore 179101

2.3 Monetary Authority of Singapore ("MAS") Financial Investor Scheme ("FIS") for Singapore Permanent Residence

The FIS for Singapore Permanent Residence offers high net worth individuals an opportunity to apply for permanent residence in Singapore. Its aim is to attract high net worth individuals to place their financial assets in Singapore's financial institutions.

There are two types of financial commitments under the FIS for Singapore Permanent Residence.

- Option A requires the applicant to place in Singapore at least SGD 5 million of financial assets (the "Minimum Sum") with a financial institution regulated by the MAS.
- Option B requires the applicant to hold at least SGD 3 million of assets and a Sentosa Cove bungalow on Sentosa Island. Sentosa

Island is an island resort managed by the Sentosa Development Corporation (a statutory board incorporated 110 under the purview of the Ministry of Trade and Industry).

Financial assets include bank deposits, capital markets products, collective investment schemes, premiums paid in respect of life insurance policies and other investment products. Once invested with a MAS-regulated financial institution ("FI"), the financial assets shall be held for a period of five years, and held in designated accounts with the FIs. No withdrawal of assets is allowed except for interest income and dividend income in the current calendar year. Transfers of financial assets from one FI to another FI at any time during the five year period may be made provided that only a maximum of three FIs are used (although this point is currently being clarified, so that the restriction may eventually apply to less than three FIs) and the total value of the financial assets withdrawn are transferred to the new FI.

The applicant must have a minimum net personal asset of SGD 20 million, and those with less than SGD 20 million would be considered on a case-by-case basis. Applicants may include their immediate family members (spouse and children below 21 years of age) in the same application for Singapore permanent residence. There are other additional terms relating to parents, parents-in-law and unmarried children above 21 years of age.

Application is made to the MAS. The approval takes about four months, and thereafter, the applicant has six months to commit the assets. Upon approval the applicant has six to twelve months to complete formalities – medical examination, application for re-entry permit and identity card. Applicants may include their immediate family members in their PR applications.

3. In-Principle Approval Scheme for Hong Kong Residents

This scheme is applicable to those born in Hong Kong or who can show proof of right of abode in Hong Kong.

To be eligible, the applicant should be below 45 years of age with tertiary qualifications and not presently employed in Singapore. If the application is

approved by ICA, the applicant will be required to fulfill certain conditions, usually to seek and to take up employment in Singapore, before being conferred PR status.

In Hong Kong, the application may be processed through SMC (HK) Ltd and in Singapore through SMC Management Consultants Pte Ltd.

B. Maintenance of Permanent Resident Status (Re-Entry Permit)

To maintain permanent resident status, all permanent residents who intend to travel out of Singapore must first obtain re-entry permits and must return to Singapore within the validity period of the permit. A Singapore PR will lose his or her PR status if he/she remains outside of Singapore without a valid Re-Entry Permit.

A re-entry permit is usually valid for multiple journeys for a period of either five or ten years. A re-entry permit may not be issued or renewed if the permanent resident does not continue to be gainfully employed in Singapore or does not maintain sufficient connections with Singapore.

CITIZENSHIP

Citizenship is dealt with under Part X of the Constitution of Singapore. Singapore citizenship may be acquired by birth, descent, registration or naturalization.

The waiting period for permanent residents to qualify for Singapore citizenship is currently two to six years.

The average processing time for citizenship applications is three to six months.

The following categories of persons are eligible to apply for citizenship:

- persons who are at least 21 years of age and have been Singapore Permanent Residents (PRs) for at least two to six years immediately prior to the date of application;
- PRs who have satisfactorily completed full-time National Service ("NS");

- spouses of Singapore citizens who have been Singapore PRs for at least two years immediately preceding the date of application;
- minors (below 21 years of age) born in Singapore but who are not Singapore citizens;
- minors born outside Singapore but who are residing permanently in Singapore and whose parents are Singapore citizens;
- children born outside Singapore whose father or mother (if the birth is on or after 15 May, 2004) is a Singapore citizen and has a lawful marriage at the time of the birth. The application has to be made within one year from the date of birth of the child, otherwise a letter of explanation is required for late submission. (In the case where the father or mother is a Singapore citizen by registration, documentary evidence indicating that the child has no claim to the citizenship of the country where the birth occurred must be produced at time of application).

All applicants for citizenship must be of good character, be financially able to support themselves and their dependents and must intend to reside permanently in Singapore. The criteria for evaluating citizenship applications have been broadened since September, 2004. The revised evaluation criteria for assessing citizenship applications takes into consideration how the rest of the applicant's family, for example the applicant's spouse and children, can integrate into Singapore society, evaluating beyond the immigrant's demonstrated educational qualifications and immediate economic contributions.

The decision to confer citizenship is discretionary and will be decided on the merits of each case. As Singapore does not permit the holding of dual nationality, the applicant will have to renounce his foreign citizenship in order to acquire Singapore citizenship.

RECENT CHANGES

In August, 2006, the Singapore Government announced that the ICA will set up an online self-assessment system that will allow foreigners to determine whether they qualify for permanent residency or citizenship. This will, hopefully, make the immigration process more transparent and will assist

foreigners to identify proactive steps they can take in order to qualify for permanent residency or citizenship in Singapore.

NATIONAL SERVICE

The issue of National Service is dealt with under the Enlistment Act, 1985. Basically, all male permanent residents 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. Under section 10(1) of the Enlistment Act, a person will be required to report for enlistment at the age of 18 years. National service involves being drafted into the national military service for two years and thereafter being selected to serve Operationally Ready National Service for a 13-year training cycle. With effect from 1 April 2006, this will be reduced from 13 years to ten years. Under this revised scheme, most NS men will be phased into the Ministry of Defence Reserve after completion of the ten-year training cycle. Key appointment holders and critical vocationalists may be required to serve longer. All NS men however remain liable for duty until the age of 50 years (for officers) or 40 years (for other ranks).

A first generation permanent resident is automatically exempt from national service. However, he will be required to register himself with the Central Manpower Base, if he is below 40 years of age, upon which he will receive an exemption notice. The male children of a first generation permanent resident are, however, liable for national service.

Male ex-Singapore citizens and ex-Singapore permanent residents who are granted Singapore permanent resident status are liable to be called upon for national service.

CHAPTER 17
IMMIGRATION TO TAIWAN

IMMIGRATION TO TAIWAN

INTRODUCTION

Different immigration procedures apply for Hong Kong SAR citizens, Macau citizens, PRC nationals, and foreign nationals. For Hong Kong SAR and Macau citizens, obtaining immigrant visas or non-immigrant visas to Taiwan involves the same initial procedure. Applicants for non-immigrant visas are generally required to apply for Entry and Exit Permits, while applicants for immigrant visas have two further steps, obtaining Residency Approval and a Republic of China ("ROC") identification card.

PRC Nationals may now be admitted to Taiwan for the purpose of tourism, visiting relatives, family reunion, engaging in business, or conducting professional activities. In some limited cases, PRC nationals are even allowed to "work" in Taiwan under the classification of engaging in business activities.

Foreign national visitors to Taiwan should generally apply for visitor visas.

PROCEDURES FOR HONG KONG SAR AND MACAU CITIZENS

The ROC Government does not regard Hong Kong SAR and Macau citizens as PRC nationals nor foreign nationals. This categorization includes people holding Certificates of Identity or passports issued by the Hong Kong SAR or Macau governments, BNO, or Portuguese passports. Hong Kong SAR or Macau citizens who are visiting Taiwan or are seeking to become residents of the ROC must apply for Entry and Exit Permits. In Hong Kong SAR, applications can be made at the Chung Hwa Travel Service.

On 6 March, 2002, and 10 June, 2002, according to the Orders of Ref. Tai-Nei-Chin-Tze-0910078595 and of Ref. Tai-Nei-Chin-Tze-0910078060, the Ministry of Interior of ROC revised and promulgated the "Regulations of Entry, Residency and Settlement Approval for Hong Kong SAR and Macau Residents". Hong Kong SAR or Macau citizens who were born locally, hold valid Entry and Exit Permits, or have previously been admitted to Taiwan, may apply for a 14-day Temporary Entry and Stay Certificate upon landing and may apply for extension under certain circumstances.

Furthermore on 1 January, 2005, fast application of 14-day Temporary Entry and Stay Certificate from the Bureau of Immigration, aimed at enhancing the country's competitiveness in tourism, is also available online for the above mentioned applicant. The system will approve the online application automatically by issuing a reference number, allowing the applicant to pick up the Temporary Entry and Stay Certificate from the Chung Hwa Travel Service in person. It is good for two entries within three months from the date of issue.

A. To obtain an Entry and Exit Permit

To obtain an Entry and Exit Permit:

- the applicant must have resided in Hong Kong SAR or Macau for at least four years;
- a Hong Kong SAR or Macau permanent resident who holds a passport valid over six months;
- the applicant must submit one passport- sized photo, a self-addressed return envelope, original and photocopy of the Hong Kong SAR or Macau identity Card;

The processing time at Chung Hwa Travel Service in Hong Kong SAR is approximately two weeks. A Taiwan Entry and Exit Permit is usually granted, valid for six months, for an initial period of stay of three months. Thereafter, renewals are granted for varying periods.

B. To Obtain Employment Approval

Hong Kong SAR and Macau citizens must secure employment approval before they are allowed to work in Taiwan.

Different procedures apply to Hong Kong SAR or Macau citizens with and without overseas Chinese identity certificates. Easier procedures apply to the former. For the latter, the procedure used for seeking employment approval for foreign nationals is applied. Please refer to the section on Procedures for Foreign Nationals.

For Hong Kong SAR or Macau citizens with overseas Chinese identity certificates who wish to work in Taiwan, employment approval must be applied for by their employers beforehand. However, if the applicants have already received Taiwanese residency approvals, they can apply for an employment approval on their own.

1. Documents required for employment approval applications:

By employer:

- application form;
- copy of employer's ID, or company license and business registration;
- medical examination report (with three months validity), performed by designated hospitals in Taiwan, Hong Kong SAR, or Macau;
- overseas Chinese identity certificate;
- copy of employment contract; and
- other documents required by the relevant authorities.

By the applicant:

- application form;
- copy of Residency Certificate;
- overseas Chinese identity certificate; and
- other documents required by the relevant authorities.

C. To Obtain Residency Approval

To obtain residency approval, the applicant must meet one of the following requirements:

i. the applicant's blood relative(s), spouse, sibling(s), or parent(s)-in-law have legal domicile in Taiwan. If a relative relation exists because of adoption, the period of time should be more than two continuous years;

ii. the applicant has participated in and contributed to overseas Chinese affairs and has certification from the relevant authorities;

iii. the applicant has achievements in the specialized areas of applied engineering and technology;

iv. the applicant has professional skills and has obtained professional licenses from the Hong Kong SAR or Macau government, or the applicant has achievements in the fields of academic studies, science, culture, journalism, finance, insurance, securities, futures, transportation, postal services, telecommunications, meteorology, or tourism;

v. the applicant has invested more than TWD five million in Taiwan and has obtained certification from the relevant authorities;

vi. the applicant has deposited the equivalent of more than TWD five million in Taiwan for one year and has obtained certification from the bank;

vii. the applicant has taught overseas or conducted research on newly developed academic subjects, or has special skills and experience and has obtained certification from the relevant authorities;

viii. the applicant has been a student from Hong Kong SAR or Macau, who has been permitted to study in Taiwan and has worked in Hong Kong SAR or Macau for two years upon graduation;

ix. the applicant has been employed as a supervisor or a specialized and technical person in (i) an approved foreign company or (ii) a representative office of a foreign company that has obtained certification from the relevant authorities or (iii) a company established under the Corporate law (Incorporation Act);

x. the applicant has been employed by other government authorities or private/public universities, colleges, or institutes;

xi. the applicant has contributed to the development and achievement of policies and goals in relation to Hong Kong SAR or Macau affairs and has passed assessment by the relevant authorities;

xii. the applicant is residing in Hong Kong SAR or Macau, and has a certified sponsor who is either a blood relative of the applicant within the second degree, spouse, or a person with a proper occupation in Taiwan. The sponsor must hold a valid household registration in Taiwan;

xiii. the applicant has legally stayed in Taiwan for over five years during which he/she has resided for 270 days per year physically, and has made unique contributions to the country, society, and charity services and has obtained certification from the relevant authorities;

xiv. the applicant has worked in Taiwan and has obtained certification from the labor or relevant authorities;

xv. the applicant's spouse is a foreign national who has been employed as a finance professional in either a company established under the corporate law, approved foreign company, or Taiwan representative office of a foreign company; or

xvi. the applicant's spouse is a foreign national who has been employed as a technology professional in either a company established under the corporate law, approved foreign company, or Taiwan representative office of a foreign company.

With Residency Approval, the applicant will be issued with a Taiwan Residence Certificate which will be valid for between one and a half to three years. This Certificate can be renewed if the prescribed requirements exist at the time of certificate renewal.

1. Documents required for residency approval application:

- application form;
- one passport-sized photograph;
- evidence of permanent residency in Hong Kong SAR or Macau;
- a guarantee letter from a Taiwan citizen (except for those pursuing studies in Taiwan);
- police certificate (with three month validity);
- medical examination result (with three month validity); and
- other documents required by relevant authorities.

In addition, if the applicant meets any of the above requirements, except for requirements of the first part of viii, ix, xiv, xv and xvi), he/she, along with

accompanying spouse and dependent children, may apply for "Settlement Approval" after residing in Taiwan for at least one year continuously (cannot exit Taiwan for over 30 days within that year) or over two years with 270 days per year physically in Taiwan, the applicant will be issued with a Taiwan Settlement Certificate. An applicant who is less than 12 years of age, and whose father or mother has household registration in Taiwan may apply for "Settlement Approval" without meeting the residency requirements. With the Taiwan Settlement Certificate, Hong Kong SAR or Macau residents will be eligible for household registration and a Taiwan Identification Card.

2. Documents required for settlement approval application:

- application form;
- one passport-sized photograph;
- evidence of permanent residency in Hong Kong SAR or Macau;
- evidence of having ROC nationality, e.g., Overseas Chinese Certificate;
- Taiwan residence certificate or Taiwan Residency Entry and Exit Permit;
- registration certificate of traveling individual (which must be done with the local police within 15 days of entry to Taiwan); and
- other relevant documents.

D. To Obtain ROC Citizenship (Identification Card)

The applicant must:

- have obtained Settlement Approval;
- have filed for household registration with the census register; and
- be personally present in Taiwan to apply for the ROC Identification Card with the following documents:
    - one passport-sized photograph;
    - household registration book;

- Taiwan Settlement Certificate; and
- personal chop.

The applicant will be issued with the ROC Identification Card on the spot if the required documents are provided.

PROCEDURES FOR PRC NATIONALS

A. PRC Nationals Entering Taiwan for Tourism Activities

On 11 December, 2001, according to the order of Ref. Tai-Nei-Ching-Tzu-9088027, the Ministry of Interior of ROC promulgated the "Regulations Governing Approval of PRC Nationals Entering to Taiwan for Tourism Activities". Since 20 December, 2001, certain classifications of PRC nationals have been allowed to come to Taiwan for sightseeing. With revisions of the said regulation on 7 May, 2002, which came into force on 10 May, 2002, more classifications of PRC nationals have been approved to come to Taiwan for such purpose.

The application must be made through a travel agent as a group visitor, each group containing at least 15 but no more than 40 people. If the group is in transit to Taiwan from other countries, the group may contain seven people only. Currently, there is quota of 1,437 visitors coming to Taiwan per day.

To be eligible to apply, the PRC applicant should meet one of the following:

- have a decent occupation; or
- be a student; or
- have a savings deposit with a minimum of TWD 200,000 provided with a bank statement issued by a financial institute in China; or
- be pursuing studies abroad, have resided in another country with the permanent residence status of the country, or have resided abroad for more than four years with a valid work permit. The said applicant's accompanying spouse or immediate blood relative(s) who also reside abroad are also eligible; or

- be pursuing studies in Hong Kong or Macau; have resided in Hong Kong or Macau with the permanent residence status; have resided in Hong Kong or Macau for over four years with a work permit. The accompanying spouse or immediate blood relative(s) who also resided in Hong Kong or Macau are also eligible.

The maximum period of stay is ten days on each visit.

B. PRC Professionals Entering Taiwan for Engagement in Professional Activities

On 29 June, 1998, according to the order of Ref. Tai-(87)-Ching-Tzu-8782622, the Ministry of Interior of ROC promulgated the "Regulations of Approval for PRC Professionals Entering To Taiwan, For Engagement In Professional Activities".

The PRC professional applicant needs to be invited by a sponsor in Taiwan, who also has to meet certain requirements depending on the nature of the entity.

Professionals are classified in the following areas:

- religion;
- land/construction/architecture;
- banking/finance/accounting;
- cultural/educational;
- athletic;
- legal;
- business (economic/trade);
- telecommunications/transportation;
- mass communications;
- hygienic/medical;
- environmental protection;

- agricultural;
- folk art;
- fire fighting
- scientific/technical; and
- labor association.
- consumer protection
- social welfare
- industrial technology

In most cases, the application should be submitted two months before the applicant's proposed date of entry into Taiwan. The sponsor should submit the application to the Immigration Bureau in Taiwan if the applicant is in PRC territory. If the applicant is in a third country, the applicant should submit the application through the Taiwan embassy or its equivalent authority in that country.

Once the application is approved, the applicant will be issued a Travel Permit, which is valid for three months, is good for single entry, and allows a stay in Taiwan for a maximum period of up to two months. The period of each stay can be extended for up to a maximum of four months each year (for technology professional only).

1. Documents required from the sponsor:

- form of guarantee;
- form of itinerary/schedule;
- form of reason and proposal for visiting Taiwan;
- invitation letter;
- copy of corporate documents; and
- copy of corporate income tax returns (may be required).

2. Documents required from the applicant:

- application form;
- one passport-sized photo;
- copy of academic and qualification certificates;
- copy of employment reference letters; and
- copy of PRC passport/identity certificates.

In January, March, and July of 2002, the Taiwanese authorities began to adopt the following measures to ease entry restrictions for both PRC technology professionals and certain business professionals (e.g., those employed by multinational companies):

- visa application procedure shortened from two months to ten days;
- introduction of the Renewable Travel Permit, which holders may change to a six year multiple-entry visa upon approval;
- total length of stay extended from three years to six years for technology professionals;
- new classes of applicants exempted from the mutual guarantee procedure administered by local police authorities;
- broader scope to issue original Travel Permits via sponsoring parties; and
- simplified visa application procedures.

C. PRC Professionals Entering Taiwan for Engagement in Business Activities

On 25 December, 2003, according to the order of Ref. Tai-Nei-Ching-Tzu-0920080847, the Ministry of Interior of ROC promulgated the "Regulations of Approval for PRC Professional Entering To Taiwan, For Engagement in Business Activities, Sponsored by Multinational Companies, Free Port Enterprises or Sizable Companies in Taiwan".

The PRC professional applicant needs to be invited by the following three types of sponsors:

1. By Multinational Company:

The multinational company must correspond to one of the following requirements:

- the assets of the company are valued at more than USD two billion for the last year;
- there are more than 100 employees in Taiwan and at least half of them must have a bachelor degree;
- the net annual income in Taiwan is more than TWD one billion;
- the net annual income of a geographic area is more than TWD one and half billion.

2. By Free Trade Zones Enterprises:

For the purposes of these regulations, the term "Free Trade Zones Enterprises" refers to the entities of free trade zones, according to the "Act for the Establishment and Management of Free Trade Zones ", which engage in any of the following businesses in an international airport or an international seaport under the approval of the Executive Yuan, or of an adjacent area demarcated as a controlled area, and an industrial park, Export Processing Zone, Science-Based Industrial Park, and other areas approved by the Executive Yuan:

- trading;
- warehousing;
- logistics;
- collecting and distributing (cargo of) containers;
- transiting;
- transhipment;
- forwarding;

- customs clearance;
- assembling;
- sorting;
- packaging;
- repairing and fabricating;
- processing;
- manufacturing;
- displaying; and
- technological service.

3. By Sizable Company in Taiwan:

Not only multinational companies but sizable companies in Taiwan can invite PRC professionals to enter Taiwan if they meet the following requirements:

- the net annual income in Taiwan is more than TWD one billion.
- the net annual income of a geographic area is more than TWD one and a half billion.

Professionals are classified in the following areas:

- intra-company transferee (the applicant must be invited by a multinational company)
- expert discharge
- joining a commercial meeting or commercial negotiation
- undertaking training (the applicant must be invited by a multinational company)

In most cases, the application should be submitted one month before the applicant's proposed date of entry into Taiwan. The sponsor should submit the application to the Immigration Bureau in Taiwan if the applicant is in PRC territory. If the applicant is in a third country, the applicant should submit

the application through the Taiwan embassy or its equivalent authority in that country.

Once the application is approved, the applicant, if an intra-company transferee, will be issued a Travel Permit for up to three years which can be extended. Each extension is for one year and there is no limit on the number of extensions. In addition, the spouse and any dependent children under the age of 18 may accompany the applicant to Taiwan.

If the applicant is in Taiwan for expert discharge, or for joining commercial meetings and commercial negotiations, he/she will be issued with a Travel Permit for up to one year and can stay in Taiwan for up to a maximum of 90 days each time.

If the applicant is undertaking training, he/she will be issued with a Travel Permit for up to one year which may be extended. Each extension is for one year and there is no limitation on the number of extensions.

D. PRC Nationals Entering Taiwan for Engagement in Business Activities

On February 1, 2005, according to the order of Ref. Tai-Ching-Tzu-0940115055, the Ministry of Interior of ROC promulgated the "Regulations of Approval for PRC Nationals Entering To Taiwan, For Engagement In Business Activities".

Due to the increased business activities between Taiwan and mainland China, the Taiwanese authorities have simplified the existing regulations and have eased restrictions to foster trade development. This is a simplified (2 in 1) visa application (which combines the regulations of approval for PRC professionals entering Taiwan for engagement in professional activities and the invitation of PRC nationals to engage in short term business activities under the regulations of approval for Multinational Companies, Free Port Enterprises or Sizable Companies in Taiwan for engagement in business activities). PRC nationals need to be invited by the following sponsors: 1) companies whose annual income in Taiwan is more than TWD ten million or the capital of the company is more than TWD five million; 2) Taiwan branch of a foreign company whose net amount of annual income is more than TWD ten million or a new Taiwan

branch of a foreign company with its operational capital being more than TWD five million. 3) Representative office of foreign companies with its purchase performance reaching USD one million.

For the sponsor, whose net annual income in Taiwan is less than TWD thirty million, the numbers of invited PRC nationals are limited to 15 employees per year. For those sponsors whose net annual income in Taiwan is more than TWD thirty million, the numbers of invited PRC nationals are limited to 30 employees per year.

Types of Applicants are classified in the following areas:

- Owner of a business/Managerial positions
- Specialized or Technical work

For business activities such as commercial negotiation, conduct business, attend commercial conferences, speech delivery, and attend exhibition, the maximum duration of stay is 14 days with no extension allowed. For business training/ business research and study, fulfilling contracts, the maximum duration of stay is 90 days with no extension allowed.

PROCEDURES FOR FOREIGN NATIONALS

A. Visitor Visas

Foreigners who wish to travel to Taiwan for business visits should submit their application for a Visitor Visa at an overseas Taiwanese visa post unless they qualify for exemptions.

They should bring the following documents:

- original passport (valid for over six months);
- air tickets; and
- two passport-sized photographs.

The validity of the visitor visa is dependent on the nationality of the applicant. Visas are not required for visits, not exceeding 30 days, for passport holders

from Australia, Austria, Belgium, Canada, Costa Rica, Denmark, Finland, France, Germany, Greece, Ireland, Iceland, Italy, Japan, Republic of Korea, Liechtenstein Luxembourg, Malaysia, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, UK, and the USA, who hold onward air tickets. For those nationals of the Czech Republic, Hungary and Poland who wish to stay up to 30 days, a landing visa may be applied for upon arrival.

B. Business Internship

The Investment Commission under the Ministry of Economic Affairs (MOEA) revised rules to ease restrictions on corporations and organizations wishing to hire interns from abroad. In responding to a recent cross-ministerial meeting of assisting enterprises in recruiting personnel, and according to the Orders of Ref. Jing-Shen-Tze 09502609300 the Ministry of Economic Affairs promulgated the Guidelines for Application by Enterprises and Juridical Persons for Students to Come to Taiwan as Interns on 25 May, 2006, permitting enterprises and juridical persons that meet certain conditions, corporate bodies under the MOEA, and the Foreign chambers of commerce to invite foreign students to serve as interns in Taiwan.

Organizations that meet the following conditions are eligible to apply for foreign students to come to Taiwan for internships—with exceptions, however, for special cases that are approved by the competent authority of the target industries:

- domestic and foreign-invested enterprises that have annual revenues of at least TWD ten million in the most recent year, or new domestic and foreign-invested enterprises that have a capitalization of at least TWD five million.
- Taiwan branches of foreign enterprises that have annual revenues of at least TWD ten million, or Taiwan branches of new foreign enterprises that have operational funds of at least TWD five million.
- Taiwan office procurement of at least USD one million, but no minimum procurement requirement for financial service businesses.

- free trade zone enterprises that are regulated by Article 3, Subparagraph 2 of the Act for Establishment and Management of Free Trade Zones.
- corporate bodies under the MOEA that have business funds of at least TWD five million in the most recent year.
- foreign chambers of commerce.

Foreign/overseas student in colleges, universities, and advanced education programs and his/her school should be referred to in the overseas school booklet issued by the Ministry of Education of ROC. The Guidelines limit the applicants to stay a maximum of six months. Those who need to stay longer will be allowed to apply for a single extension of the same length.

An approved letter issued by the MOEA will be forwarded to the student applicants so that they can apply for the visitor visa from the Taiwan Embassy or its equivalent overseas representative office before they come to work in Taiwan.

C. Employment Approvals

On 15 January, 2004, a One-Stop Center for applications of Work Permits for Foreign Professionals was established within the Bureau of Employment and Vocational Training (BEVT). The main consideration was to integrate the rules and regulations of different competent governmental organizations, to achieve universal standards and rules. The one-stop service center aims to cut down on excuses and conflicts resulting from different governmental organizations when employers apply for foreign work permits.

Foreign professionals are classified 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/or Health Care;
- environmental protection;
- cultural, sports and recreation services;
- academic research;
- veterinarians;
- manufacturing;
- wholesaling; and
- other job designated by the Central Competent Authority and competent authorities for other purposes at the central government level after consultation.

The employers of foreign employees performing specialized or technical work or serving as executive managerial officers shall have one of the following qualifications:

1. local companies that have less than one year operation and have a capital amount of TWD five million; or companies that have been established for more than one year, and the latest yearly revenue or the average revenue of the last three years amounts to TWD ten million, with average import/export performances reaching USD one million or average agent commission reaching USD 400,000.
2. foreign branch offices that have less than one year operation history, and have more than TWD five million operational capital in the ROC; or companies that have been established for more than one year, and the latest yearly revenue or the average revenue of the last three years amounts to TWD ten million, with average import/export performances reaching USD one million or average (agent) commission reaching USD 400,000.
3. representative offices of foreign companies with work performances that have been approved by the competent authorities for other purposes at the central government level.

4. research and development center or operational head office of an Enterprise that have been approved by the competent authorities for other purposes at the central government level.

The foreign national employed to perform professional or technical work must meet one of the following qualifications:

- he/she has obtained a master degree or above;
- he/she has obtained a bachelor degree in a relevant field with a minimum of two years of actual relevant work experience;
- he/she has been employed by a multinational company for over one year and is assigned to work in Taiwan; or
- he/she has received specialized training or has studied independently with a minimum of five years of actual relevant work experience and has demonstrated creative and special performances.

The required qualifications mentioned above do not apply to foreign nationals employed as an executive or managerial officer (e.g., General Manager) of foreign companies in Taiwan.

1. Documents required for employment approval application:

- application form (on a prescribed form);
- copy of corporate documents;
- copy of business income tax returns for the past year;
- copy of passport;
- copy of academic and qualification certificates (which may be required to be notarized and legalized by the Taiwanese Embassy or its equivalent overseas if requested);
- copy of certificate of previous work experience;
- copy of employment contract; and
- one passport-sized photograph.

D. 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 purpose of joining family, pursuing studies, accepting employment, making investment, doing missionary work, or engaging in other activities. A resident visa is valid for three months, good for a single entry or multiple entries, and allows a stay in Taiwan for a period of more than six months.

Applicants for employment or investment, specified in the preceding sections, are required to submit the relevant documents for approval by the relevant authorities of the central or provincial (municipal) government. Resident holder for working purpose shall apply for an ARC in accordance with the current regulations within 15 days of arrival. The length of residence shall depend on the validity date of the ARC. ARC holder who needs to leave the country and then re-enter should apply for the Re-entry permit simultaneously with the application of the ARC.

1. Documents required for the Resident Visa application:

- original passport (valid over six months);
- two passport-sized photographs;
- supporting documents or official letters of approval from a competent authority of the ROC; and
- other relevant documents.

2. Documents required for ARC application:

- original passport (valid for more than six months);
- two passport-sized photographs;
- resident visa or re-entry permit; and
- supporting documents or official letters of approval from a competent authority of the ROC.

E. Permanent Resident and Alien Permanent Resident Certificate ("APRC")

On 15 July, 2002, and 6 February, 2003, according to the Orders of Ref. Chung-Tung-Hua-Chung-I-Yi-Tze-0910004233 and of Ref. Tai-Nei-Yi-Tze-09200017690, the Ministry of Interior of ROC revised and promulgated the "Immigration Law of ROC" and, the "Regulations Governing Visiting, Residence and Permanent Residence of Aliens."

Aliens who have legally and continuously resided in the ROC for seven years or if the alien spouses and/or children of ROC nationals with registered permanent residence (household registration) in Taiwan, have legally and continuously resided in the ROC for five years; or have legally resided in the ROC for more than ten years during which they have resided for more than 183 days each year for five years, may apply for permanent residence if they:

i. are 20 years old or more (children must be 14 and over);

ii. have a decent character;

iii. have considerable properties, skills, or talents that are enough to enable them to make a living by themselves;

iv. have resided in the ROC for over 183 days each year during their legal and continuous residence in the ROC; and

v. are favorable to the national interests of the ROC.

Exception: Aliens who have made special contributions to ROC or have acquired high technology knowledge can also apply for permanent residence even though they do not meet the above qualifications.

1. Documents required for APRC application:

- original passport;
- two passport-sized photographs;
- original and two photocopies of Alien Registration certificate or other legal proof of residence;

- original and photocopy of satisfactory health examination reports;
- tax returns or tax exempt certificates within the last three years;
- certificates of assets or special skills;
- police criminal record certificate issued in the ROC and the applicant's country within the last five years; and (with three months validity)
- other relevant documents or proof.

F. Citizenship

A foreign national may obtain ROC citizenship through naturalization if he/she can prove the loss of his/her original nationality and meets all of the following requirements:

i. has legally stayed in the territory of the ROC for more than 183 days each year for more than five years without interruption (three years for the spouse of the ROC citizen, children of the ROC citizen and for whom was born in the territory of the ROC);

ii. has attained the age of 20 years and has legal capacity under both the law of the ROC and the law of his/her original country;

iii. has good character and no record of criminal conviction;

iv. possesses sufficient property or professional skills which enables him/her to make a self-reliant living or a living without any economic hardship; and

v. has basic Chinese language ability and basic knowledge of the right and duty of a ROC national.

CHAPTER 18
IMMIGRATION TO THAILAND

IMMIGRATION TO THAILAND

INTRODUCTION

Three main Acts govern Thailand's immigration processes. These are the Immigration Act, Alien Working Act, and the Nationality Act. The Immigration Act is concerned with the control of entry, departure, and residency of foreigners in Thailand. The Alien Working Act enforces rules and laws relating to the employment of foreigners in Thailand and foreigners engaging in business in Thailand. The Nationality Act deals with the acquisition and loss of Thai nationality.

The government departments that administer such laws are respectively, the Immigration Bureau, the Department of Employment, and the Police Department. These departments issue "permits" and "documents" that are separate but at the same time, remain synonymous with the overall Thai immigration process. For example, the Immigration Bureau under the Ministry of Interior, issues the "Permit-to-Stay in Thailand" on entering Thailand and an "Extension of Permit-to-Stay in Thailand", if required. The Department of Employment under the Ministry of Labour and Welfare, issues documents such as the "Alien Work Permit". The Police Department, also under the Ministry of Interior, administers the process of applying for Thai Nationality, although the approval of an application for Thai Nationality rests finally with the Interior Minister.

The One Stop Service Center was established on 1 July, 1997, to facilitate the needs of foreign investors. The One Stop Service Center houses government officials from the Immigration Bureau and the Department of Employment. This Center handles all aspects of employment and immigration procedures at one location.

IMMIGRATION

Generally, a person entering Thailand will be granted a Permit-to-Stay in the Kingdom on passing through immigration control. The Permit-to-Stay granted will depend on whether that person enters the Kingdom with a visa (Permit-to-Enter), or whether a person enters the Kingdom without a visa.

A. Temporary or Non-Immigrant Visas

Generally, a person entering Thailand will be granted a "Permit-to-Stay" in the Kingdom. The type of visa (Permit-to-Enter) issued for entry to Thailand is dependent on the purpose of the journey and is available on application to any Thai embassy or consulate prior to entering the Kingdom. The types of temporary visas available are:

- Diplomatic or Consular Mission;
- Official Mission;
- tourism;
- sports;
- business;
- investment that has received prior approval from the Ministry, sub-Ministry or department concerned;
- investment or other affairs in connection with an investment under the control of the laws covering investment promotion;
- air-crew or crew of a vessel;
- study or observation;
- mass media work;
- missionary work with approval from the Ministry, sub-Ministry or department concerned;
- scientific research, or to teach in a research or an educational institute;
- to work as a skilled worker or specialist; and
- other purposes as prescribed by ministerial regulations.

B. Permit-to-Stay

In Thailand, the visa (Permit-to-Enter) and the Permit-to-Stay are different from each other. A Permit-to-Enter must be obtained from a Thai embassy or

consulate, whereas a Permit-to-Stay is granted on entry to Thailand. The length of the Permit-to-Stay depends on the type of visa held by the foreigner. Permit-to-Stay may be extended depending on the reasons for extension and the type of visa initially obtained for entry. For example, a Non-immigrant "B" (Business) Visa initially generates a 90-day Permit-to-Stay. This type of visa is supportive of a "One Year Extension of Permit-to-Stay in Thailand", that is, if a foreigner already holds a Work Permit. Work Permits are granted to those persons who intend to be employed or engage in business in Thailand (see section C).

C. Special Schemes for a One-Year Permit-to-Stay

1. Three Million Baht Investment

Foreign investors who wish to obtain a One-Year Permit-to-Stay in Thailand are now able to do so through the investment of at least THB three million with evidence of funds transferred from abroad and deposited in a Thai bank. The investment must fall into any one or more of the following categories:

- deposit of funds in a Thai government bank;
- purchase of government bonds or state enterprise bonds;
- purchase of condominium; or
- other investments that would be profitable to the Thai economy as specified by the Immigration Bureau.

A foreigner who intends to apply for the One-Year Permit-to-Stay must have entered Thailand on a Non-immigrant Visa. Upon submission of the application (together with complete documents) to the Immigration Bureau, the authorities will take approximately 15 to 30 days to consider the application before the result is issued.

In case the foreigner intends to change the investment after approval of the One-Year Permit-to-Stay status, such change must be notified and approved by the Immigration Bureau; otherwise the One-Year Permit-to-Stay will be considered revoked upon change of the investment.

2. Retirement

A foreigner who intends to stay in Thailand for retirement may also be eligible to apply for the One-Year Permit-to-Stay. According to the current internal practice of the Immigration Bureau, there are two categories for application of the One-Year Permit-to-Stay under the retirement status, either of which must be met:

- evidence of deposit of at least THB 800,000 in a Thai bank; or
- evidence of pension amounting to not less than THB 65,000 per month.

In order to apply for the One-Year Permit-to-Stay under the retirement status, the foreigner must have entered Thailand on a Non-immigrant Visa. Once the complete application is submitted to the Immigration Bureau, it will take approximately two months for the authorities to consider the application.

D. Re-entry Permit

Permit-to-Stay will be automatically cancelled if a foreigner departs the country without obtaining a Re-entry permit. A foreigner who wants to return to and stay in Thailand up to the expiry date of the Permit-to-Stay previously granted on entering Thailand is required to apply for a Re-entry permit before departing Thailand. An application for a Re-entry permit must be lodged with the Immigration Bureau in Bangkok. Applicants may apply for a single or multiple Re-entry permits. Re-entry permits will only be valid up to the date of the Permit-to-Stay.

E. Permanent Residence

In order to apply for permanent residency, a foreigner must have entered Thailand on a non-immigrant visa and have been granted "Permit-To-Stay" in the country temporarily for a consecutive period of not less than three years. Note that this three-year residence requirement does not apply to certain "special" investor categories of applicants under the Immigration Bureau Scheme as detailed below.

After residing in Thailand for a consecutive period of three years, a foreigner can apply for permanent residence for himself /herself and his /her spouse,

parents and children (as long as all the family members have fulfilled the three-year residence requirement). If the foreigner's visa expires while the permanent residence application is pending, he /she must apply to the Immigration Office for a further extension of the permission to stay. In addition, if the foreigner wishes to travel outside of Thailand while the application is pending, he /she must apply in advance for a Re-entry Permit from the Immigration Office.

The application for permanent residence must be submitted to the Immigration Bureau, Police Department, and Ministry of Interior.

The Immigration Bureau will adjudicate the application, taking into consideration factors such as the foreigner's income, property, knowledge, professional skill and other conditions (i.e., national security) as deemed appropriate. If the Immigration Bureau approves the application, they will forward it to the Ministry of Interior for final approval. The Ministry of Interior will forward notification of the final approval to the foreigner.

Within 30 days of receiving notification of approval, the foreigner must apply to the designated Immigration Office for the issuance of a residence permit. If the applicant is a child under 12 years of age, the application must be made by his/her parent or guardian.

Once granted, residence permit is valid indefinitely unless it is revoked. However, holders of residence permits must comply with reporting requirements each time they leave Thailand.

Categories

There are seven categories of foreigners who may apply for permanent residence under the standard application procedure:

- business operators / workers;
- investors;
- experts / advisors;
- religious workers;
- persons supporting / supported by Thai residents;

- persons supporting / supported by Thai national spouses; or
- retired government officials / employees.

Quota

The number of foreigners who can obtain permanent residence in Thailand is limited to 100 persons per country (including colonies, which have their own independent administration) and no more than 50 stateless persons per year. In addition, the Ministry of the Interior can grant permanent residence to persons who invest at least THB 10 million, with a limit of five persons per country per year. These limitations do not apply to the following persons:

- returning Permanent Residents with valid Re-Entry Permits or permission to enter Thailand;
- women of Thai nationality by birth who lost their Thai nationality by marriage to a non-Thai;
- children who are not sui juris of a woman who possessed Thai nationality at birth, regardless of whether she has lost her Thai nationality by marriage to a non-Thai;
- children whose parents are Returning Permanent Residents with valid Re-Entry Permits, who were born while their mother was outside Thailand, if the child travels to Thailand with the parents prior to the expiration of the Re-Entry Permit and prior to the child's first birthday; and
- certain "Special Investors" as prescribed under the schemes of the Immigration Bureau and the Board of Investment

Ineligible Persons

The Immigration Act prohibits certain foreigners from entering Thailand for any purpose. Such excludable foreigners include, for instance, criminal foreigners, foreigners with certain diseases or health conditions, foreigners who have intentionally violated the immigration laws of Thailand or who previously have been deported, foreigners who may lack sufficient financial resources, or foreigners whose presence might pose a threat to national interest, peace and order, culture, good morals, or public well-being.

In addition, the Immigration Act specifically prohibits the following individuals from becoming permanent residents:

- foreigners who have been sentenced to imprisonment by the judgment of a Thai court or by a lawful order of a foreign court, unless the offence was a petty offence, was committed through negligence, or is specifically exempted by the Ministerial Regulations; and
- foreigners who cannot earn a living due to physical disability, unsoundness of mind, or any of the following diseases: leprosy, tuberculosis, elephantiasis, narcotic addiction, alcoholism, or tertiary syphilis, unless such foreigners is the father, mother, husband, wife, or child of a person residing in Thailand and the foreigner's relative is in a position to support him/her.

Maintaining Permanent Resident Status

A person who has a Certificate of Residence or a Residence Permit is allowed to stay in Thailand indefinitely. If the holder of the Certificate of Residence or Residence Permit departs Thailand without prior approval, his/her certificate or permit will become invalid.

Prior to departure, persons holding a Certificate of Residence or a Residence Permit must file a "Notification of Departure for Re-entry/Entry" with the Immigration Bureau and obtain an "Endorsement of Department for Return" which will be valid for a period of one year from the date of obtaining the endorsement. The holder must re-enter Thailand within the validity period or the Certificate of Residence or a Residence Permit will become invalid. Departure for Re-entry forms need only be completed once a year and can be used for any number of trips in and out of Thailand during a one-year period.

Dependents of those who hold a Certificate of Residence must independently establish their own immigrant status and apply for a separate Certificate of Residence. However, dependents under 12 years of age may have their residence status endorsed in the Certificate of Residence of either parent.

ALIEN WORK PERMITS

A foreigner cannot perform any act of work or service unless a Work Permit has been issued by the Alien Occupational Control Division ("AOD"), or unless the individual or the work performed falls within an exception to the Act.

An applicant for a Work Permit who has not been granted a Residence Permit must enter Thailand on a Non-immigrant "B" Visa. The Non-immigrant "B" Visa must be obtained from a Thai Embassy or Consulate before entering Thailand. An employer may send an application for advance consideration before the employee enters Thailand but the Work Permit will not be issued until the employee enters the country.

If a foreigner wishes to work for a business promoted by the Board of Investment ("BOI"), the Work Permit application can be made directly to the BOI.

An application for a Work Permit may be made either by the employer before entry of the employee to Thailand or after arrival in Thailand.

The Work Permit Criteria

The issuance of work permits to foreigners shall be subject to necessity and appropriateness by relying on:

- internal security of the Kingdom in terms of politics, religion, economy, and society;
- preventing foreigners from taking away from Thai people occupations that Thai people have knowledge of and are capable of doing, and are in sufficient number to serve the needs of the labor market in the Kingdom;
- benefits from permitting foreigners to work in positions, that causes foreign currencies to be invested or spent in the country in large amounts, causes Thai laborers to be hired in greater numbers, or requires such modern knowledge and skills that are of benefit to the development of the domestic economy and are transferred to Thai laborers;
- improvement of skills that Thai laborers will receive via the transfer of modern knowledge, understanding, method, and details relevant to machinery, tools and know-how by a foreigner permitted to work; and

- humanitarian principles.

Please note that there is discretion whether or not to grant the work permit based on the above criteria.

NATIONALITY

A. By Birth

Persons who are born of either a father or mother of Thai nationality, whether within or outside of Thailand, acquire Thai nationality. Persons who are born in Thailand of foreign parents may acquire Thai nationality, if at the time of their birth, their legitimate father is legally married to their mother and their mother is not:

- a person who has a "permission of grace" from the Thai government to stay in the Kingdom under "special" circumstances;
- a person with a Temporary Visa; or
- a person who entered Thailand illegally.

B. Naturalization

After being domiciled in Thailand as a permanent resident for a consecutive period of not less than five years, a permanent resident is eligible to apply for naturalization as a Thai. Applicants for Thai nationality have to show that they:

- are of full legal capacity under Thai law and the law under which they hold nationality;
- display good behavior;
- have a regular occupation and income; and
- are able to speak and understand Thai.

The naturalization application has to be made with the Special Branch Police Division of the Police Department. The application will be considered by a Naturalization Bureau. Final approval will be issued by the Interior Ministry.

"ONE-STOP SERVICE CENTER" – AN IMMIGRATION AND WORK PERMIT DEVELOPMENT

On l July, 1997, the Thai government officially opened its One-Stop Service Centers for Work Permit and immigration services. The One-Stop Service Centers house government officials from Thailand's Board of Investment, the Immigration Bureau, and the Department of Employment. The One Stop Service Centers were established partly as a response to feedback obtained from foreign investors about the procedural complexities in obtaining relevant stay authorizations and work permits. Basically, the service aims to process all aspects of extensions of Permit-to-Stay, issuance of Work Permits, including Work Permit extensions and issuance of Re-entry Permits, within three hours at the same location. The documentation required in an application for Work Permit and extension of Permit-to-Stay is the same as submitted in application procedures via already existing application channels.

The One Stop Service will not be eligible to everyone as specific criteria relating to various investment schemes must be met. Those eligible to use the One Stop Service Centers can be categorized as follows:

- individual investors:
    - to be eligible for the one-year Permit-to-Stay and Work Permit, the individual investor must remit into Thailand not less than THB two million as paid up capital for a registered company in Thailand. Whereas to be eligible for the two year Permit-to-Stay and one year Work Permit (Work Permit will be renewed on an annual basis), the individual investor must remit not less than THB 10 million as paid up capital for a registered company in Thailand.
- foreign experts and executives working for company in Thailand:
    - the company must have a fully paid-up registered capital or working capital of not less than THB 30 million; and
    - the company must maintain a four Thai national to one foreign employee ratio within the business organization. The ratio is subject to change from time to time.

- foreign experts and executives working for representative or regional offices:
    - foreign experts and executives working for representative or regional offices must first apply for the work permit at the Ministry of Commerce in accordance with the normal application procedure. Once the work permit is granted, the foreign employee can apply for an extension of Permit-to-Stay at the One Stop Service Center. Work Permit renewals will still be handled by the Ministry of Commerce. It is anticipated that the Ministry of Commerce will eventually transfer authority to grant Work Permits for representative and regional offices to the One Stop Service Center.
- foreign experts and executives working for companies under various investment promotion schemes:
    - companies that are promoted by the BOI in Thailand are eligible to use the One Stop Service Center; and
    - the companies that are promoted by the Industrial Estates Authority of Thailand (IEAT) are eligible to use the One Stop Service Center.

Foreign investors, experts and executives, regardless of their nationalities, have access to the services provided by the One Stop Service Center.

CHAPTER 19
IMMIGRATION TO THE UNITED KINGDOM

IMMIGRATION TO THE UNITED KINGDOM

INTRODUCTION

The Statement of Changes in Immigration Rules ("HC395") came into force on 1st October, 1994. HC395 consolidated all the changes which had been made to the United Kingdom Immigration Rules since 1st May, 1990, but subsequent changes have since been incorporated.

British citizens, Commonwealth citizens with the right of abode in the United Kingdom and Irish citizens from Ireland are not subject to immigration control. This means that they do not require an immigration officer's permission to enter or remain in the United Kingdom; their passports will not be stamped on entry; and they are free to return to the United Kingdom however long they stay outside the United Kingdom. However, a person seeking admission to the United Kingdom on the basis that he/she has a right of abode must establish the right by means of a United Kingdom passport or Certificate of Entitlement. If a person claiming a right of abode arrives in the United Kingdom without such a document, that person may be treated as a person who requires leave to enter and will be refused entry, against which there will be no right of appeal until the individual has left the United Kingdom.

Nationals of European Economic Area ("EEA") countries i.e., nationals of the European Union ("EU") countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the ten new accession countries who joined on the 1 May 2004) plus nationals of Iceland, Liechtenstein and Norway are, in general, free to come to the United Kingdom with their dependents to reside and work in the United Kingdom without any prior formalities. Swiss nationals also benefit from the same rights although Switzerland is not a member of the EEA. Nationals of Cyprus and Malta were granted the right to take up employment straightaway across the EU. Nationals from the remainder of the ten new accession countries (i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia & Slovenia) have also been granted an immediate right to work in the United Kingdom, unlike in many of the other EU member states where this right is being introduced over a number of years. However,

although nationals from the new accession countries are free to live and work in the United Kingdom, they are required to register the details of their employment within one month of taking up a new job. This requirement does not apply to nationals from Cyprus and Malta. The requirement to register continues until they have been employed in the United Kingdom for one year. Under HC395, family members (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/her rights to reside in the United Kingdom. These are issued free of charge by the relevant British Embassy, Consulate or High Commission and are valid for multiple entries to the United Kingdom for a one-year period. However, under the Immigration (EEA) Regulations 2006, EEA nationals and their family members are now allowed to reside in the UK for up to three months without any conditions or formalities as long as they possess a valid passport or ID card. This should make obtaining entry to the UK as a family member of an EEA national much easier. Family members, who will be remaining in the United Kingdom on a longer-term basis with their EEA national sponsor, should apply for a residence document in the form of a residence card from the United Kingdom Home Office which will be valid for five years.

Aliens, Commonwealth citizens without the right of abode and United Kingdom passport holders who are not British citizens, i.e., British Overseas Citizens, are subject to full immigration control. This means that they must obtain permission from an immigration officer at the port of entry to enter or remain in the United Kingdom. Their passports will normally be stamped to indicate how long they can remain in the United Kingdom 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 United Kingdom for any purpose, even as visitors. Other nationals only require an entry clearance if they wish to travel to the United Kingdom for a particular purpose. Entry clearance is the process by which a person applies, at a British diplomatic post in their country of residence, for prior permission to enter the United Kingdom. In general, United Kingdom entry clearance consists of a visa for "visa nationals" or an entry certificate for non-visa nationals.

A standard format for evidencing the grant of leave to enter and remain has been introduced across the EU and, in the United Kingdom, is known as a United Kingdom Residence Permit ("UKRP"). This is now required by any person, including a non-visa national, who is not a national of a European Economic Area country and is traveling to the United Kingdom for longer than six months. It is hoped that the common format across the EU will make it easier to check documents from other EU countries, and hopefully reduce document and identity fraud.

There are two kinds of leave to remain in the United Kingdom. Limited leave means that there are conditions on the person's stay in the United Kingdom. Someone given such leave will have an endorsement in their passport stating what these conditions are, e.g., an indication of how long he/she is allowed to stay, whether there is a restriction or prohibition on employment, or a requirement to register with the police on arrival. Indefinite leave means that someone can remain in the United Kingdom for an indefinite period, i.e., the person has settled status. Persons with settled status have no restrictions on the employment they may take in the United Kingdom.

After five years of continuous residence, certain categories of entrants with limited leave to remain in the United Kingdom may make an application to the United Kingdom Home Office to obtain indefinite leave and so become "settled" for the purposes of United Kingdom immigration law. The endorsement in their passports would then be changed accordingly. The categories leading to settlement are defined as for long-stay purposes and include, for example, work permit employment. Other short-stay categories of entrants, such as students and working holiday makers, are not entitled to apply for indefinite leave to remain under HC 395.

IMMIGRATION CATEGORIES

The various immigration categories can be divided into those for short stay or temporary purposes and those for long stay purposes leading to settled status. The main categories of interest are reviewed below.

For Short Stay Purposes:

A. Visitors (and "Business Visitors")

Except for a "visa national", a visitor need not apply for prior entry clearance to enter the United Kingdom. Anyone who enters the United Kingdom as a visitor is expressly barred from taking employment and to do so is a criminal offence. In respect of persons coming to the United Kingdom for business purposes, HC395 states that for a non European Economic Area national to qualify for entry in this capacity he/she must be "a person living and working outside the United Kingdom who comes to the United Kingdom to transact business (such as attending meetings and briefings, fact finding, negotiating or making contracts with United Kingdom businesses to buy or sell goods or services)". It also states that the applicant must not "intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public". The United Kingdom Home Office has produced a leaflet expanding on the persons who qualify for this category under the Immigration Rules. For example, a guest speaker at a conference may fall under the business visitor category, whereas a Project Manager would not. The maximum period of stay in the United Kingdom as a business visitor remains six months in any 12-month period. If any productive work is to be undertaken during a stay in the United Kingdom, a work permit will usually be necessary notwithstanding the length of the proposed stay in the United Kingdom.

B. Students

Entry as a student is permitted to follow a recognized full-time degree course at a publicly funded institution of further or higher education, or to undertake a weekday full-time course involving at least 15 hours of organized daytime study in a single subject or related subjects at a bona fide private educational establishment that maintains satisfactory records of enrolment and attendance. The student must be able to show that he/she can meet the cost of the course, as well as costs for maintaining himself/herself and accompanying dependents.

Most students are admitted with a condition "restricting" employment. However, all non-EEA students studying in the United Kingdom for 12 months

or longer are now deemed to have permission to work for 20 hours per week during term time and full time during the vacation period.

Prospective students who have not yet been accepted for a particular course are admitted initially for six months with a "prohibition" on employment. If they obtain a place on a course of study within the six-month period, they must submit an application to the United Kingdom Home Office so that their leave to remain may be extended and they are able to take on full student status.

The spouse or civil partner and children under 18 of a student are granted leave to enter for the same period as the student if they can be maintained and accommodated without recourse to public funds. The spouse or civil partner of a student will be permitted to work without any restriction provided the student has been granted leave to enter and remain in that capacity for 12 months or more, and that the student and spouse or civil partner will be cohabiting in the United Kingdom and both intend to leave the United Kingdom at the end of any period of leave granted to the student.

HC395 now allows both male and female spouses to qualify for entry as dependents of students.

C. Working Holiday Makers

This category allows young Commonwealth citizens to travel to the United Kingdom for an extended holiday. The rules regarding working holidaymakers were relaxed in June, 2003, to allow those entering under this category to work full-time throughout the full two year period. However, without any warning, the rules were tightened up again in May, 2004. Working holidaymakers are now limited to working part-time throughout the two year period or full-time for only one year.

Individuals in this category will have to meet the following requirements: -

- they must be Commonwealth citizens;
- they must be aged between 17 and 30 years old (inclusive);
- they must intend to leave at the end of the holiday and have the means to pay for an onward journey;

- they must be single, or married to a person who is accompanying them and who also meets the requirements for entry under this category with a view to spending a working holiday in the United Kingdom;
- they must intend to take employment incidental to their holiday and not engage in business or provide services as a professional sportsperson (the prohibition on pursuing a career in the United Kingdom has been revoked);
- they must not have dependent children aged five or over, or who will reach the age of five before the applicant completes the working holiday, or have any other commitments which would require them to earn a regular income.

The applicant and his/her dependents must obtain entry clearance from a British diplomatic post abroad prior to arrival in the United Kingdom. The Immigration Rules also state that people who have previously spent time in the United Kingdom under this category, will not be able to seek leave to enter as a Working Holidaymaker again after the initial two years period has elapsed (even if most or all of this period was spent outside of the United Kingdom).

D. Training or Work Experience

The Training and Work Experience Scheme ("TWES") is administered by Work Permits (United Kingdom), a division of the Home Office. Applications for TWES permits must be made by an established United Kingdom employer. Applications should be submitted while the proposed employee is abroad but, although there is a general prohibition upon switching category whilst in the United Kingdom, it is possible to switch from student status to that of a TWES permit holder. The TWES scheme was revised in April, 2001, and is currently divided into two limbs each with separate criteria.

1. Training for a Professional or Specialist Qualification

The rules for training are that it: must lead to a recognized professional or specialist qualification that requires an entry level of at least National Vocational Qualification ("NVQ") level 3 and the employer should be registered or approved by an appropriate professional body. The trainee should have an

academic or vocational qualification at least at NVQ level 3. The trainee should have appropriate qualifications where this is necessary to do the training. Also, the trainee must be additional to normal staffing requirements. The training should be for a minimum of 30 hours per week, excluding any time for associated study and the trainee should be engaged on the same salary and conditions of employment as resident trainees. The period of training should be agreed in advance. Where a qualification takes a number of years to obtain, approval may normally be given for an initial period, which will then be extended provided the trainee is making satisfactory progress. The maximum training period is five years. A maximum of three possible sittings at any examination are normally allowed.

2. Work Experience

The rules for work experience are that it must be for a fixed period of time with normally a maximum of one-year being allowed (although this may be extended for a further one-year in exceptional circumstances). The work should be at managerial level or at least equivalent to NVQ level 3. It should be a minimum of 30 hours per week, excluding any time for associated study.

The employees' pay and conditions should be in line with those given to resident workers doing the same work experience. The overseas nationals are required to show that they have previous relevant experience or the appropriate academic or vocational qualifications to benefit from the work experience. They should be employed in a supernumerary capacity and should not be filling a job, unless it is a head for head exchange.

The TWES categories do not lead to settlement. Employers must sign a declaration accepting that the workers will return abroad upon completion of the agreed period. Currently, if the workers were on a TWES permit for up to 12 months they will not normally be eligible to return for further work permit employment until 12 months working overseas. If they were on a TWES permit for over 12 months they will not normally be eligible to return for further work permit employment until after 24 months working overseas. In exceptional circumstances, primarily where individuals are on TWES permits under the training category and their roles are deemed to be in shortage occupations, those individuals may be permitted to switch to main scheme work permits.

For Long Stay Purposes:

E. Retired Persons of Independent Means

This category replaced the previous "Person of Independent Means" category. A person who seeks entry to the United Kingdom under this category must show the following:

- must have an income of at least GBP 25,000 per annum without needing to work in the United Kingdom or elsewhere in the world;
- must be able to demonstrate a close connection with the United Kingdom; and
- must intend to make the United Kingdom his/her main home.

Entry clearance must be obtained from a British Mission abroad prior to arrival in the United Kingdom.

Ordinarily, five years leave to remain in the United Kingdom will be granted with a prohibition on employment. Thereafter, an application for indefinite leave to remain in the United Kingdom may be made.

F. Investors

The rules regarding this category were revised in January, 2004, to allow in some cases loaned funds to be used. Potential investors must apply for entry clearance and be able to show the following:

- evidence of money of his/her own, under his/her control and disposable in the United Kingdom, of no less than GBP 1 million; or
- if the applicant can provide evidence of a personal net worth of no less than GBP 2million, the GBP 1 million sum for investment will be acceptable by way of a loan from a financial institution that is regulated by the Financial Services Authority (FSA).

The investor may also have to show the source of that capital which he/she intends to bring into the United Kingdom and must demonstrate that he/she intends to make the United Kingdom his/her main home.

The applicant must intend to invest not less than GBP 750,000 of the capital in active and trading United Kingdom registered companies (other than those principally engaged in property investment) and may not make the investment by way of deposit with a bank, building society or other enterprises whose normal course of business includes the acceptance of deposits. The applicant must be able to maintain and accommodate himself/herself and any dependents without recourse to public funds or taking employment. The United Kingdom Home Office envisages that the individual would either be engaged in monitoring his/her own investments and/or be appointed as non-Executive Director of any of the companies in which the individual has invested capital. The directorships which the individual would hold should not, however, be remunerated nor should they involve the investor in performing any duties for the companies concerned other than those requiring him to attend the meetings of the Board of Directors and/or of the shareholders.

A person seeking admission for the purpose of investing in the United Kingdom must hold a current entry clearance certificate issued for that purpose. Applications for entry clearance must be made at a British Mission and are currently taking up to two weeks to process. A person who has obtained such an entry clearance certificate should be admitted for a period not exceeding 24 months and then subsequently a three-year block extension could be obtained to enable him or her to accumulate five years under this category with a view to applying for indefinite leave status.

G. Person Intending to Establish Themselves in Business

The self-employed businessmen category has been renamed "Persons intending to establish themselves in business". HC395 sets out the three types of business activities which will be allowed under this category, namely:

- sole trader;
- participation in a partnership; or
- ownership of a company registered in the United Kingdom.

Entrants under this category must meet a number of detailed requirements. The two most important requirements are that the applicant must invest a

minimum of GBP 200,000 of their own money and have additional funds to support themselves and their dependents in the United Kingdom until the new business provides an adequate income. In addition, it must be shown that the business will create at least two new full-time jobs for persons already settled in the United Kingdom. Entry clearance must be obtained from a British Mission abroad prior to arrival in the United Kingdom, a process which may take several months.

H. Innovators

The Innovator category was introduced by the United Kingdom government on the 4 September, 2000, under a two-year pilot scheme. This category has now been extended indefinitely. The category is aimed at attracting entrepreneurs with "innovative" ideas, particularly from the e-commerce sector. It has been specifically designed to bridge the gap under the current provisions which make it difficult for entrepreneurs who have limited capital of their own to establish a business in the United Kingdom.

Following on from an extensive consultation exercise, the new category is a more business-oriented and flexible version of the existing Business category. The distinguishing feature of the new category is that no minimum investment will be required and, in addition, third party funding will be permitted and indeed, encouraged. In addition, unlike the Business category, the credentials of the applicant will form a major element of the application criteria. The new category will also specifically focus upon the economic benefit that the proposed business will bring to the United Kingdom. A government statement advises that the category has been "tailored" to make it attractive to entrepreneurs in "science and technology sectors, including businesses specializing in e-commerce". According to the Home Office, applications from entrepreneurs in any sector will be permitted currently and it does not appear that the new scheme discriminates against proposals from less hi-tech sectors.

Applications will be subject to three minimum requirements:

- creating two full-time jobs to be filled by resident workers in the United Kingdom (or their equivalent through part-time work);
- maintaining a minimum 5% equity shareholding in the business; and

- evidencing the applicant's ability to support themselves/dependents without recourse to public benefits.

The need to create two jobs has been taken from the existing Business category. However, the level of shareholding has been reduced to 5% from a requirement under the Business category to hold a controlling or equal interest in the business. Outside of these minimum criteria, applications will be decided using a points based system. An assessment will be made in relation to three key areas: the personal characteristics of the applicant; the viability of the business plan; and the potential economic benefit that the United Kingdom will derive. Points will be awarded in relation to each of these subject areas and applicants must achieve a minimum number of points in each area in order to qualify. The applicant must also obtain a higher overall score in order to be successful. If the application is successful the applicant (and their family) will be granted permission to enter for a 24-month period initially, but this can be extended up to a total of three years after which they will qualify for permanent residency.

Entry clearance must usually be obtained prior to traveling to the United Kingdom. At present all applications are referred back to the Home Office in the United Kingdom for a decision. Until quite recently business applications were taking several months to process. However, a special Business Case Unit has been reintroduced and staffing increased in anticipation of a high number of applications being received under this new category.

I. Highly Skilled Migrant Program

The Highly Skilled Migrant Program ("HSMP") was introduced in January, 2002, as a concession, or policy that operates outside of the Immigration Rules. This category has now been incorporated into the Immigration Rules. The overall points required in order to qualify were reduced in October, 2003, from 75 to 65 and a separate category for applicants under 28 years old was introduced. These changes were made in the hope of making this category more attractive.

The HSMP is designed to allow individuals with exceptional personal skills and experience to seek entry into the United Kingdom to work without having a prior offer of employment. It aims to provide an individual migration route for

highly skilled persons who have the skills and experience required by the United Kingdom to compete in the global economy. Like the Innovator category, the HSMP is also a points based scheme. In order to qualify, applicants who are over 28 years old must show that they score a minimum of 65 points in four specific areas, including educational background, work experience, past earnings from work and achievement in chosen field. Applicants who are qualified doctors can also obtain additional points.

The HSMP application requires more documentary evidence than most of the other categories. The applicant must back up each point claimed with relevant documentary evidence. For instance, in order to obtain the 15 points awarded for five years of graduate level employment, letters of reference must be provided from each former employer. The main benefit of this category is that it allows the applicant to apply on their own behalf, without the need for a sponsoring United Kingdom employer, for the purpose of seeking employment or self-employment opportunities in the United Kingdom. HSMP applications currently take several months to process. Entry clearance must be obtained following approval of the application and prior to arrival in the United Kingdom. A three year extension can be obtained if the applicant can show that he/she has been able to support himself without seeking public assistance. After completing five years under this category the person would be entitled to apply for permanent residency.

J. For Employment

The general rule is that no foreign national may undertake employment in the United Kingdom without a work permit. The main exceptions to this general rule concern:

- EEA nationals;
- Swiss nationals; and
- Gibraltarians.

In addition to the nationality of the applicant, it is necessary to consider whether any of the permit free employment categories apply.

1. Permit Free Employment:

As the name suggests, for certain categories of employment a work permit is not required. Applications are made by applying for entry clearance from a British Mission abroad prior to arrival in the United Kingdom.

1.1 Commonwealth citizens with United Kingdom ancestry

Upon proof that one grandparent (paternal or maternal) was born in the United Kingdom or Channel Islands, a Commonwealth citizen who wishes to take or seek employment in the United Kingdom will be granted an entry clearance for that purpose and does not require a work permit. On entry, such a person will be admitted for an initial period of four years.

1.2. Representatives of overseas firms which have no branch, subsidiary or other representative in the United Kingdom

The sole representative category has been renamed "Representatives of overseas firms which have no branch, subsidiary or other representative in the United Kingdom". Intending entrants in this category must meet the following requirements that did not previously apply:

- they must seek entry as a senior employee with full authority to take operational decisions; and
- they must intend to establish and operate a registered branch or wholly owned subsidiary of their overseas employer (thereby excluding any other legal entity or type of activity).

United Kingdom entry clearance must be obtained prior to entry to the United Kingdom and this process may take a number of months at some diplomatic posts, but in general can be processed within two weeks. Entrants under this category are admitted to the United Kingdom for an initial period of 24 months. A three-year extension of the initial year will be granted if the sole representative is able to provide the following additional information to the United Kingdom Home Office:

- evidence of the existence of the registered branch or wholly-owned subsidiary of their overseas employer; and
- evidence that their overseas employer still has its headquarters and principal place of business outside the United Kingdom.

There are also categories for representatives of overseas newspapers, news agencies and broadcasting organizations; private servants in diplomatic households and overseas government employees; ministers of religion; and airport operational ground staff.

2. Work Permit Employment:

United Kingdom work permits (except for employers based in the Isle of Man, Jersey or the Channel Islands) are issued by Work Permits (United Kingdom) (formerly known as the Overseas Labour Service) which is now part of the Home Office's Immigration & Nationality Directorate ("IND"). The rules of the United Kingdom Work Permit Scheme are not contained in the Immigration Rules, but are found in administrative guidelines issued by the IND. The Scheme is divided into several categories, but the most important are:

- Business & Commercial ("Main Scheme")
- Training & Work Experience Scheme ("TWES")

The position regarding permits under the Training & Work Experience Scheme have been previously examined.

Applications for work permits must be made by a United Kingdom-based employer, established in accordance with United Kingdom legislation, with an existing presence in the United Kingdom. An overseas national cannot submit a work permit application without a sponsoring United Kingdom employer. The overseas national should normally be outside of the United Kingdom when the application is submitted to Work Permits (United Kingdom). The prospective employee may not take up employment until the work permit has been issued, and their passport has been endorsed on arrival in the United Kingdom to indicate that they have entered the United Kingdom as a work permit holder. However, in a limited number of situations, individuals who are already in the United Kingdom in another capacity may be allowed to switch to work permit employment. It is essential that legal advice is obtained before applying to switch an individual's status. An application fee is now payable to Work Permits (United Kingdom) for each application filed on behalf of an overseas national with the exception of applications filed for nationals of Bulgaria, Moldova, Romania and Turkey.

The work permit allows a named foreign national to carry out a specific job for a particular United Kingdom employer. The United Kingdom employer must notify Work Permits (United Kingdom) of any change in the work permit holder's terms and conditions of employment. Work permits are not transferable; if the foreign employee wishes to change from one United Kingdom employer to another, the new United Kingdom employer must apply for a fresh work permit on behalf of the prospective employee.

2.1 Business & Commercial ("the Main Scheme")

Work permits under this category can only be obtained for jobs that require high-level or specialist skills. This covers the following general categories of employment:

- highly qualified management and executive staff with relevant experience;
- highly qualified technicians with specialist experience; and
- others if, in the opinion of the Secretary of State for Education and Employment, their employment is in the national interest.

Work Permits (United Kingdom) must be satisfied that all the following conditions have been met:

- a genuine vacancy exists;
- the individual will be an employee of the United Kingdom employer;
- where the individual will be working at a client's address, the employer is responsible for the post and is providing a service and not just personnel;
- the pay and conditions of employment are equal to those normally given to a resident worker doing the same work;
- the employment complies with all United Kingdom legislation and any requirements for registration or licensing;

- the potential employee does not have a significant shareholding or beneficial interest in the United Kingdom-based company or connected business;
- the skills, qualifications and experience needed to do the job meet specific requirements (see below);
- the person is suitably qualified or experienced to do the job on offer (see below) and whether there is a need for them to do the job on offer; and
- there is no suitable labor in the United Kingdom and EEA available to fill the vacancy and the employer has made adequate efforts to fill the vacancy from suitable resident labor, in the United Kingdom and other EEA countries (see below).

To satisfy Work Permits (United Kingdom) that there are no "suitable" candidates within the resident EEA labor force, it is necessary for the employer to consider whether the vacancy can be filled by the promotion or transfer of an existing worker. In addition, the employer must normally demonstrate that the company has advertised the vacancy appropriately, to trawl for suitable alternative candidates within the United Kingdom and EEA labor market. The employer must wait for four weeks after publication of the advertisement before submitting a work permit application to Work Permits (United Kingdom), and the application must be supported by documentation to show why any other applicants were considered unsuitable for the advertised position.

The advertising requirement will be waived where the overseas national has worked for a foreign parent or associated company of the United Kingdom employer for at least six months. In such cases the employee can be sent to the United Kingdom as an "intra-company transferee". In such circumstances, it must be shown that the post needs an established employee who has company knowledge and experience that is essential for the employment in question. The advertising procedure will also be waived if the position is a board level post, or where the proposed relocation will lead to new inward investment from abroad or where the occupation is recognized by Work Permits (United Kingdom) as being in acute short supply.

To qualify for a permit, the job specification should require the individual to have a United Kingdom degree or equivalent; or a Higher National Diploma ("HND") level qualification in a relevant subject; or an HND which is not relevant to the post on offer provided the applicant has one year of relevant full-time experience. Alternatively, the post should require a person who has at least three years of experience using specialist skills acquired through doing the type of job for which the permit is sought. This previous work should be at NVQ level 3 or above.

The Asylum and Immigration Act 1996 imposes fines of up to GBP 5,000 on an employer who takes on a worker who does not have leave to enter or remain in the United Kingdom, or whose leave has expired or is subject to a prohibition on taking up employment. Before the Act came into force in January, 1997, sanctions were only imposed upon workers who took up employment in breach of their United Kingdom immigration status (i.e., not on their employers). Under this Act all employers are now required to request documentary evidence from any prospective employee that they have authorization to work in the United Kingdom. The employer must make a copy of such documentation to be kept on the employee's personnel file.

K. Dependents of Certain Categories of Entrants

The categories concerned are:

- students;
- training and work experience permit holders;
- self-employed businessmen;
- retired persons of independent means;
- investors;
- innovators;
- highly skilled migrants;
- persons in permit free employment; and
- work permit holders.

The spouses, civil partners or unmarried partners of entrants under the above categories must satisfy the following conditions in order to enter as dependents:

- they must be married to the entrant or have entered into a civil partnership with the entrant or be the unmarried partner of the entrant and have been living together in a relationship akin to marriage for at least two years;
- they must intend to live with each other during their stay;
- they must obtain entry clearance to enter as a dependent spouse or civil partner or unmarried partner and, if they are already in the United Kingdom under the visitor category and wish to fall under the dependent spouse, civil partner or unmarried partner categories, they must leave the United Kingdom and obtain clearance to enter under the latter category.

The children of entrants under the above categories are subject to the following rules if they wish to enter as dependents:

- they must be the child of the applicant and his/her spouse or civil partner and under the age of 18;
- they must be under the age of 18;
- they must not be married or have formed an independent family unit;
- they must enter with both parents or be entering the United Kingdom in order to be re-united with parents already there (entry with one parent is permitted if they are to join the other parent who is already in the United Kingdom; and in exceptional circumstances [for example, following the death of a parent, the divorce/separation of the parents, or for other "serious and compelling reasons"] entry with only one parent will be allowed;
- they must obtain entry clearance to enter as a dependent child and, if they are already in the United Kingdom under the visitor category and wish to fall under the dependent child category, they must leave the United Kingdom and obtain clearance to enter under the latter category.

In addition to the above requirements, in respect of the entry of both dependent spouses or civil partners and children, the following requirements must be met:

- there must be adequate accommodation for the parties; and
- they must be able to maintain themselves without recourse to public funds.

"SETTLEMENT" IN THE UNITED KINGDOM

The Immigration Act 1971 states that a person is "settled" in the United Kingdom if that person is ordinarily resident in the United Kingdom without being subject under the Immigration Rules to any restriction on the period for which he/she may remain. A person who resides in the United Kingdom and who has indefinite leave to remain stamped in his/her passport will be viewed as "settled".

A settled person can take or change employment without governmental permission. However, such a person is subject to deportation if he/she commits a serious crime or if the person's presence is considered as not conducive to the public good.

A. Applying to Become "Settled" in the United Kingdom

These persons will have originally been admitted to the United Kingdom with limited leave to remain under HC395 in categories including:

- persons intending to establish themselves in business;
- retired persons of independent means;
- investors;
- innovators;
- highly skilled migrants
- persons in permit free employment; and
- work permit holders.

Such persons, together with their spouses, civil partners or unmarried partners and dependent children, may apply to have the time limits on their stay removed if they have continuously resided in the United Kingdom in one of the above categories for four years or more. Applications for removal of the time limit are considered in light of all relevant circumstances including, in the case of a person in employment, whether the employer wishes to continue to employ the person. In practice, the United Kingdom Home Office may disregard absences from the United Kingdom of not more than three months during each of the five qualifying years where a satisfactory explanation is provided for the absences. If there are longer absences, discretion may be exercised in the applicant's favor or a further period of limited leave may be granted.

Where an application is successful, the foreign national's passport will be stamped with an endorsement indicating that the holder has indefinite leave to remain in the United Kingdom.

B. Maintaining "Settled Status" in the United Kingdom

Unlike those with limited leave, persons who are settled in the United Kingdom are treated as returning residents when they travel abroad and re-enter the United Kingdom. They will be re-admitted to the United Kingdom upon presentation to an Immigration Officer at the port of entry of a current passport containing the indefinite leave endorsement made by the Home Office. However, persons who leave the United Kingdom for a period in excess of two years will forfeit their settled status for immigration purposes, as their indefinite leave to remain in the United Kingdom will lapse. Where a person's United Kingdom settled immigration has lapsed due to excessive absence from the United Kingdom, any attempt to re-enter the United Kingdom must then be made under another category of HC395 for which prior entry clearance may be necessary.

CITIZENSHIP

A. By Birth

A person born in the United Kingdom after 1 January, 1983, becomes a British citizen at birth, if at the time of birth his/her father or mother was a British

citizen or was settled in the United Kingdom (i.e., had indefinite right to remain in the United Kingdom). This person has an automatic right to apply for a British passport.

B. By Descent

A person born outside of the United Kingdom may, after 1 January, 1983, be British where at least one parent is a British citizen other than by descent. Where the parent is British by descent then citizenship will only be passed if the parent was serving abroad in Crown Service or a designated service or in an Institution of the European Union having been recruited in the United Kingdom or European Union respectively.

C. By Registration

A British National Overseas citizen or a British Protected Person who has ordinarily resided in the United Kingdom for five years has the right to be registered as a British citizen.

The applicant must be present in the United Kingdom for five years prior to the application and without absences of more than 450 days during the five years. There must be no breach of the immigration laws throughout the five-year period; and in the twelve months immediately before the application, the applicant must have been free from any restrictions on the length of stay in the United Kingdom and must not have been absent for more than 90 days in total.

A Certificate of Registration will eventually be issued by the United Kingdom Home Office, which the holder may present to the Passport Office to obtain a British passport.

D. By Naturalization

1. By a person settled in the United Kingdom

A foreign national may become naturalized as a British citizen in accordance with the provisions of the British Nationality Act 1981. An applicant for naturalization must be of good character and satisfy the five-year residence requirement (i.e., should have spent no more than 450 days outside the United

Kingdom during the five years immediately prior to the date of the application). The applicant should have been "settled" (see above) for the purposes of United Kingdom immigration law for at least 12 months and must not have been absent for more than 90 days in total during the 12 months prior to the application. The applicant should intend to live principally in the United Kingdom upon becoming naturalized. In addition, the applicant should have sufficient knowledge of the English, Welsh or Scottish Gaelic languages, as the case may be. From 1 November, 2005, applicants will also need to prove knowledge of life in the United Kingdom (unless they fall into one of the exemptions).

The dependent spouse, civil partner and children of an applicant for naturalization as a British citizen also have the right to be included in the application, provided that they have been in the United Kingdom with the main applicant during the five-year qualifying period.

2. By the spouse of a British national

A foreign national who is the husband or wife of a British citizen may also make an application to be naturalized as a British citizen. The spouse must be aged at least 18, of good character and married to a British citizen on the date of the application. The spouse must satisfy the three-year residence requirement for spouses (i.e., he/she should have spent no more than 270 days outside the United Kingdom during the previous three-year period and no more than 90 days outside the United Kingdom during the 12 months immediately prior to the date of the application). The spouse also needs to satisfy the language ability requirement and, from 1 November, 2005, provide evidence of knowledge of life in the United Kingdom.

Once the naturalization application has been approved, the applicant will need to attend a citizenship ceremony at the local authority. At the ceremony the applicant will be asked to complete an oath of allegiance or affirmation of allegiance to the Queen before being awarded the Certificate of Naturalization.

A British citizen is entitled to hold a British passport and is free to live in, enter and exit, the United Kingdom without being subject to immigration control.

CHAPTER 20
IMMIGRATION TO THE UNITED STATES

IMMIGRATION TO THE UNITED STATES

INTRODUCTION

After the attacks on the United States ("U.S.") on 11 September, 2001, the government instituted a number of important changes to U.S. immigration law. These changes are discussed below.

Non-citizens are admitted to the U.S. only if they hold the proper visa or qualify for a waiver. Lawful permanent residents of the U.S. present their alien registration card (commonly known as "green card") as their visa. Immigrants entering the U.S. for the first time are issued immigrant visas at American consular posts abroad. Temporary visitors generally apply to American consular posts outside the U.S. for non-immigrant visas. The non-immigrant visas discussed below often authorize visits for many years and, as noted, may authorize employment in the U.S.

The government agency responsible for immigration, "Immigration and Naturalization Service," was disbanded. The new "Department of Homeland Security" was created and under it was placed three new agencies:

- Citizenship and Immigration Services ("CIS"). The CIS is generally responsible for processing non-immigrant and immigrant visa petitions, as well as citizenship applications.
- Immigration and Customs Enforcement ("ICE"). The ICE performs investigatory enforcement actions on both immigration and customs matters.
- Customs and Border Patrol ("CBP"). The CBP controls admission and exit of the U.S. for both people and goods.

REGISTRATION OF FOREIGNERS

Post 11 September, 2001, the government began to place greater importance on compliance with alien registration requirements. U.S. law requires all foreign nationals (tourists, other non-immigrants, lawful permanent residents, and even unlawful residents) to file CIS Form AR-11 within ten days of changing their

address in the U.S. Special registration requirements apply to non-immigrants that are nationals or citizens of certain countries, primarily in the Middle East.

NON-IMMIGRANT VISAS

Non-immigrant visa applications are filed at American consular posts outside the U.S. Some visa applications require that the CIS first approve a petition filed in the U.S. Processing of these petitions by the CIS can range from days to months, but often can be expedited (15 days or less) with payment of an additional USD 1,000 government fee.

A. B Visas: Business and Pleasure Visitors

The B visa category, which is the largest category of visas issued, is intended for individuals who are coming temporarily to the U.S. on short trips and who have no intention of abandoning their foreign residence. This category encompasses two types of visas:

- B-1 for business visitors; and
- B-2 for tourists.

The B-1 business visitor visa is the standard visa issued to persons entering the United States temporarily to engage in business, but who will not be employed by a United States entity. B-1 visa holders may not be paid by a United States entity, nor may their work "enure to the benefit" of a United States company. The regulations authorize only limited business activities, including:

- conventions;
- conferences;
- consultations;
- contract negotiations;
- litigation;
- taking of purchase orders; and
- other legitimate activities of a commercial or professional nature.

However, specifically excluded from the definition of business is any local employment or labor for hire. Therefore, except in very limited cases, B-1 visa holders may not engage in any employment during their stay in the United States.

The B-2 visitor visa is solely for pleasure visitors and tourists. As with B-1 visa holders, B-2 visa holders may not engage in any employment during their stay in the United States.

Under the B Visa Waiver Pilot Program, individuals from a large number of designated countries may enter the United States for a period of up to 90 days without first obtaining a B visa in their home country. This program generally requires that an individual from one of the qualifying countries present to the Immigration Inspector on arrival: (i) a machine-readable passport from his home country valid for the period of proposed stay in the United States; and (ii) a departure ticket. It does not matter whether the individual arrives in the United States by land, sea or air. The following countries are presently qualified under this program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Under a separate agreement, there is a waiver of the normal machine-readable passport and visa requirements for Canadian nationals, as well as for permanent residents of Canada or Bermuda who are citizens of certain countries.

The B-1 and B-2 visas are normally issued for a period of six months or longer. However, the CBP officer at the port of entry will decide the actual period of time the visitor is permitted to remain in the U.S. CBP officers frequently limit visitors to visits of 30 days or less.

* *There is some variation in local application procedures at different American consular posts around the world. Contact the consular post directly or review the information posted on the Internet by many posts via the U.S. State Department's web site, http://travel.state.gov.*

B. E Visas: Treaty Traders and Treaty Investors

The E visa is exclusively for individuals who will be working in the United States pursuant to treaties of commerce and navigation or bilateral investment treaties between the United States and their home country. Generally, these treaties provide reciprocal benefits to United States citizens in the treaty countries.

In order to qualify for an E visa, the following requirements must be satisfied:

First, a treaty of commerce and navigation or bilateral investment treaty must exist between the United States and the country of citizenship for the visa applicant and, in the case of an application by an employee of a qualifying company, at least fifty percent of the owners of that company. 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:

Country	Both	E-1	E-2
Albania			✓
Argentina	✓		
Armenia			✓
Australia	✓		
Austria	✓		
Bahrain			✓
Bangladesh			✓
Belgium	✓		
Bolivia	✓		
Bosnia & Herzegovina	✓		
Brunei			✓
Bulgaria			✓
Camaroon			✓

Canada	✓		
Chile	✓		
China, Republic of (Taiwan)	✓		
Columbia	✓		
Costa Rica	✓		
Croatia	✓		
Czech Republic			✓
Denmark		✓	
Ecuador			✓
Egypt			✓
Estonia	✓		
Ethiopia	✓		
Finland	✓		
France	✓		
Georgia			✓
Germany	✓		
Greece		✓	
Grenada			✓
Honduras	✓		
Iran	✓		
Ireland	✓		
Israel		✓	
Italy	✓		
Jamaica			✓
Japan	✓		
Jordan	✓		

Kazakhstan			✓
Korea	✓		
Kyrgyzstan			✓
Latvia	✓		
Liberia	✓		
Luxembourg	✓		
Mexico	✓		
Macedonia	✓		
Moldova			✓
Mongolia			✓
Morocco			✓
The Netherlands	✓		
Norway	✓		
Oman	✓		
Pakistan	✓		
Panama			✓
Paraguay	✓		
The Philippines	✓		
Poland			✓
Romania			✓
Senegal			✓
Singapore	✓		
Slovakia			✓
Slovenia	✓		
South Korea	✓		
Spain	✓		

Sri Lanka			✓
The Sultanate of Muscat and Oman	✓		
Suriname	✓		
Sweden	✓		
Switzerland	✓		
Thailand	✓		
Togo	✓		
Trinidad and Tobago			✓
Tunisia			✓
Turkey	✓		
The United Kingdom	✓		
Ukraine			✓

Second, the visa applicant or prospective employer must qualify as either a "treaty trader" or "treaty investor." A treaty trader must demonstrate that it engages primarily in trade between the United States and its citizenship country. Trade is defined broadly to encompass the exchange, purchase or sale of goods and/or services. "Services" include banking, insurance, transportation, communication and data processing, advertising, accounting, design and engineering, management consulting, tourism and technology transfer. A treaty investor must have made or be in the process of making investment in active, commercial ventures subject to risk of loss. Passive investments in stocks or bonds or undeveloped real estate, or private homes and personal property, will not be considered.

Third, the volume of trade or the amount of investment must be substantial. "Substantial" is not specifically defined as a set dollar amount and can vary, depending on the nature of the business. In most cases, the amount will be in excess of USD 250,000.

Fourth, the applicant must either be coming to manage and direct his/her own investment or, in the case of an employee, coming to serve in an executive or supervisory capacity, or have essential skills.

The validity of the E visa is for up to five years. At the time of arrival, the treaty trader or treaty investor and accompanying family members will be issued permission to remain in the United States in increments of up to two years. Extensions can be secured either by post or at the time of the next entry to the United States after international travel. E visas may potentially be extended without limit if the applicant continues to meet the requirements.

C. F Visas: Academic Students

The F-1 student visa is obtainable by individuals who will be in the United States temporarily to pursue a full-time course of academic study at an approved educational institution.

Application for enrollment is first made to the school. Upon acceptance, the school issues the student CIS Form I-20, which is then presented to the American consular post as part of the visa application. Like most nonimmigrant visa applicants, students must prove to the consular officer that they have the required nonimmigrant intention, including sufficient ties to demonstrate they will return to the home country at the end of studies. Most F-1 visa applications are denied for insufficient proof.

An F-1 visa holder is permitted to accept employment only under limited circumstances. The visa holder can work on-campus full time during vacations and holidays but no more than 20 hours a week during the academic year if his/her educational institution approves such employment. Employment off-campus or beyond 20 hours requires authorization.

Employment may be permitted during the student's curricular program and immediately afterwards if approved by the educational institution and, in some cases, by the CIS. The student may be eligible for "practical training" if: the student has been enrolled full-time for at least nine months at an approved post-secondary institution; and the training position is directly related to the student's major field of study. Post graduation practical training is limited to a maximum of 12 months and must be completed within 14 months of completing the academic program.

D. H Visas: Temporary Workers

Visas under the H category are issued to aliens who will work temporarily in the United States. There are a number of different types of H visas. Three of the more popular categories are discussed below:

- H-1B for "specialty occupation" workers and fashion models of distinguished merit or ability;
- H-2B for seasonal non-agricultural workers; and
- H-3 for trainees.

1. H-1B Professionals

The primary purpose of the H-1B visa is to admit aliens employed in "specialty occupations" to perform services in the United States on a temporary basis. In order to obtain an H-1B visa, the United States employer or the employer's agent must first file a petition on behalf of the alien. If the alien will perform services in the United States for a number of employers, each employer must file a petition on behalf of the alien. The employer, which must have an employer identification number issued by the Internal Revenue Service, must be a person, firm, corporation, contractor or other association or organization with a place of business in the United States.

The employer must show that the position which the alien will fill is a "specialty occupation," *i.e.*, that:

- a baccalaureate or higher degree is normally the minimum entry requirement and that the degree is commonly required in the industry in parallel positions;
- the duties to be performed are so complex or unique that only a degree-holder can perform them and that the employer normally requires a degree or equivalent for the position; or
- the specific duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a degree.

Additionally, the worker must be qualified to engage in that specialty occupation. That means the worker must be licensed or certified in the state of employment, if required for such work, and that the individual holds at least the equivalent of the required degree. Where the alien lacks the required degree, it may be shown that the alien holds the equivalent through education, special training and/or experience in progressively responsible positions directly related to the specialty.

First, the employer must file a "labor condition application" with the U.S. Department of Labor. The employer must provide, among other things, the title of the position and the wage or wage range offered for the position. Notice of the application must be made publicly at the job site. These applications can now be processed online very quickly.

Second, the employer must file a petition regarding the job requirements and the worker's professional qualifications with the CIS. Notice of the petition approval can be sent to the United States Consulate or Embassy.

Third, the worker applies for the H-1B visa at the U.S. consular post, where the visa is issued in the passport.

Note that the H-1B employer must certify that if the alien is dismissed before the expiration of the visa, the employer will be liable for the alien's cost to return abroad. However, if the worker terminates employment voluntarily, the employer is not obliged to pay the return transportation cost.

In general, the H-1B visa is subject to maximum six-year duration, with some exceptions. Once a worker has been in the United Stated for the maximum duration, the worker must spend at least one-year outside the United States before being eligible for a new H-1B visa. Under the current quota scheme, no more than 58,200 new H-1B visas may be issued between 1 October, 2005 and 30 September, 2006. The limited supply is insufficient to meet demands, so that the government already stopped accepting new H-1B petitions in August 2005, well before the fiscal year even started. A separate annual quota of 20,000 new H-1B visa petitions was created in 2004, but is only available to individuals who have earned graduate level degrees from American universities. This quota remains available, but is likely to be used up early in the fiscal year. These limits only for new H-1B visa petitions and not to H-1B petition extensions, even

where the worker is changing employers, unless the prior H-1B was not subject to the quota.

Individuals who wish to work for academic institutions, affiliated research organizations, non-profit research organizations and government research organizations are not subject to the quota. For those workers already in a non-immigrant status who were previously granted H-1B status, employment is now authorized after the filing of the H-1B petition by the new employer. H-1B status can be extended beyond the normal six year limit in certain situations where there is a pending or approved employment-based immigration request under the first, second, or third preference classification.

Note: Although this is the most popular visa for professionals, there are a number of alternatives to the H-1B visa, including the O-1 visa category for aliens with extraordinary abilities, discussed below.

2. H-1B1 Free Trade Agreement Professional

The H-1B1 Free Trade Agreement Professional visa is issued to citizens of Chile and Singapore who are coming for employment in a job that normally requires a post-secondary degree involving at least four years of study.

Unlike the H-1B, these applicants are required to establish that they are non-immigrants who intend to return abroad at the end of their U.S. assignment. The visa is granted in 18 month increments. There is no limit to the number of times the H-1B1 can be extended, however, the non-immigrant intent requirement has the potential to limit applicants from lengthy assignments.

To obtain an H-1B1 visa, the application is submitted to the American consular post abroad with: (i) a letter from the prospective U.S. employer describing the job offered; (ii) evidence of the applicant's qualifying studies; and (iii) a U.S. Department of Labor certification.

Only a limited number of new H-1B1 visas can be granted each year. The demand has historically been less than the supply, so that this visa tends to be available all year.

3. H-2B Seasonal Worker

The H-2B visa is issued to temporary non-agricultural workers. However, these visa holders do not have to meet the special educational requirements applicable to H-1B visa holders.

To obtain an H-2B visa, two documents must be submitted to the CIS: (i) an employer petition; and (ii) a U.S. Department of Labor certification. The worker's prospective United States employer or the authorized representative of a foreign employer with a United States location must prepare the petition.

The petition must state that the worker, who will perform temporary services in the United States, will not displace any United States workers capable of performing the same services and that the employment of the worker will not adversely affect the wages or working conditions of United States employees. The DOL certification can be difficult and time consuming to obtain.

H-2B visas are granted only to permit aliens to work temporarily in the United States. Therefore, the employer must explain in the petition that the need for the alien's services is "temporary," which the regulations generally define as a need for one-year or less. Reasons for a temporary need of an alien worker include a one-time occurrence, a seasonal change or a peak load need. Extensions of H-2B status are difficult to obtain.

Although there are no special educational requirements to obtain an H-2B visa, the petition must explain what qualifications the worker has to have in order to perform the services needed by the employer.

The employer must also certify that it is liable for the worker's transportation costs home if dismissed before the period of authorized stay ends. However, the employer does not have this liability if the worker terminates employment.

A maximum of 66,000 H-2B visas may be issued annually. The limited supply is insufficient to meet demands, so that the government stops accepting new H-2B petitions well before the fiscal year ends. This limit is only for new H-2B visa petitions and does not apply to H-2B petition extensions, even where the worker is changing employers.

The H-2B visa is issued for periods of up to one-year and extensions are

available only under very limited circumstances. No H-2B visa holder may remain in the United States for more than three years under H-2B status.

3. H-3 Trainee

A third category of H visa is the H-3 visa issued to trainees. These trainees can participate in training programs of up to two years in any field including agriculture, commerce, communications, finance, government, transportation or the professions, as well as training in an industrial establishment. The petition, which is submitted by the organization sponsoring the training program, must demonstrate:

- that the training is unavailable in the home country;
- that the trainee will not be placed in a position in which United States citizens and resident workers are regularly employed;
- that the training will include no productive employment unless it is incidental and necessary to the training; and
- that the training will benefit the trainee in pursuing a career outside the United States.

The H-3 visa is not available for on-the-job training programs.

Note: A generally more favorable alternative to the H-3 is the J-1 visa, discussed below, which is available for on-the-job training programs.

E. E-2 Visa: Australian Free Trade Agreement Professionals

In 2005, the U.S. and Australia entered into a free trade agreement to provide benefits to Australian professionals similar to the H-1B1 discussed above. The new E-3 visa is only available to citizens of Australia and their spouse and children. The spouse is eligible to apply for an employment authorization document to work in the U.S. upon arrival. The E-3 requires an offer of employment in the U.S. in a specialty occupation, just like the H-1B discussed above.

The E-3 visa is subject to quota limitations of 10,500 visas annually. Like the H-1B, sponsoring employers must file the labor condition application with the

DOL. Like the H-1B1, visa applications are made directly at American consular posts without the need to first file a visa petition in the U.S., although that route is also available for qualified individuals already in the U.S.

F. J Visas: Exchange Visitors

In general, students, scholars, teachers, professors, research scholars, and trainees apply for the J-1 visa in order to participate in United States approved education or training exchange programs under the United States Information and Education Exchange Act. J visa holders can engage in employment related to their programs with the approval of the program sponsor.

The duration of the J visa is normally the length of time needed to complete the program plus thirty days. However, there are general limitations on the duration of visas held by certain categories of individuals such as graduate students (18 months), graduate medical professionals (7 years), teachers, professors and research scholars (3 years) and business and industrial trainees (18 months). These are maximum limitations only and do not extend the period for which the alien's visa would otherwise be valid.

Sometimes J-1 visa holders are subject to a home residence requirement. The requirement is stated on the visa issued in the passport at the American consular post. The home residence requirement generally precludes the individual from obtaining H, L or O non-immigrant visa status or any immigrant visa status until the requirement is either satisfied or waived. The requirement is satisfied if the individual resides in the home country for at least 2 years after the J-1 visit. There are a number of different grounds for a waiver, but the process is lengthy and often difficult.

G. L Visas: Intracompany Transferees

One of the most often used non-immigrant visa is the L-1 visa for intracompany transferees. The L-1 visa permits companies to temporarily transfer certain types of experienced employees from a non-United States location to perform services in the United States for the same organization or its parent, branch, subsidiary or affiliate. The non-United States sending company and the United States receiving company must have a qualifying intracompany relationship

based on the common ownership and control of the two companies. A number of relationships will qualify, but perhaps the most common is where one company owns at least 50% of the other. These companies must do business both in the United States and at least one other country during the L visa holder's entire United States assignment. The qualifying organization need not be a United States-owned company.

The petition submitted on behalf of the employee must indicate that the employee has been employed by the organization abroad for at least one of the past three years as a manager, executive or in a position involving specialized knowledge. It is not necessary that the employee performs the same function while in the United States so long as the employee performs one of the three permitted functions.

Generally, a manager is defined as someone who:

- manages the organization, or a department, subdivision, function, or component of the organization;
- supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

An executive is an individual who:

- directs the management of the organization or a major component or function of the organization;

- establishes the goals and policies of the organization, component, or function;
- exercises wide latitude in discretionary decision-making; and
- receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

An individual with specialized knowledge is someone who holds:

- special knowledge possessed by an individual of the proposed L-1B employer's product, service, research, equipment, techniques, management, or other interests and its application in international markets; or
- an advanced level of knowledge or expertise in the organization's processes and procedures.

The L visa is generally granted, at the outset, for a maximum of three years and can be renewable in two-year increments. The maximum duration for individuals with specialized knowledge is five years. The maximum duration permitted for executives and managers is seven years.

It is possible for a foreign company to establish a newly affiliated operation in the United States and immediately transfer qualified managerial or executive staff to the United States. In these cases, the L visa is initially granted for one-year but may ultimately be extended to the same maximum periods. It is difficult for small companies to secure L visas for managers or executives unless there are sufficient subordinate employees to show the job qualifies. In such cases, it may be easier to secure approval for an employee whose job utilizes specialized knowledge, even if the job title suggests the job is for a manager or executive.

Like many of the other non-immigrant visas, the L visa has a two-stage process. The petition must first be lodged and approved by the CIS in the United States. Thereafter, the employee can apply for the actual visa overseas at an American consular post.

H. M Visas: Vocational Students

The M visa is issued to vocational or non-academic students pursuing a full-time course of study in the United States that is unavailable at home. Generally, M visa holders cannot accept employment unless it qualifies as "practical training". However, any period of practical training must occur after completing the course of study and may not last more than six months. The length of permitted stay under the M visa is the lesser of: (i) the length of the course of study plus 30 days; or (ii) one-year.

I. O Visas: Aliens of Extraordinary Ability

The O-1 visa category is for individuals who have extraordinary ability in the fields of science, art, education, business or athletics, which has been demonstrated by sustained national or international acclaim. The O visa is sometimes available as an alternative to the H-1B, discussed above.

The prospective employer in the United States must file the petition for the O-1 visa. If the individual will work for more than one employer, each employer must lodge a separate petition. In order to obtain an O-1 visa, the petition must show: (i) that the position requires someone of extraordinary ability; and (ii) that the individual has that extraordinary ability.

To demonstrate that the position requires extraordinary ability, the position must satisfy one of the following criteria:

- the services will be performed for an event with a distinguished reputation or for a new, but comparable event;
- the service performed will be in a lead or critical role for an organization with a reputation for employing extraordinary persons;
- the services primarily involve a scientific or educational event sponsored by a bona fide scientific or educational organization; or
- the services consist of a business project that, because of its complexity, requires the skills of an extraordinary executive, manager or highly technical person.

The petition must also demonstrate that the individual has extraordinary ability in his/her field. "Extraordinary ability" is defined as a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavour. To establish this, the petition must provide evidence of: (i) the receipt of a major, internationally recognized award, such as the Nobel Prize; or (ii) at least three of the following forms of documentation:

- receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavour;
- membership in associations in the field that require outstanding achievement of their members, as judged by recognized national or international experts in their disciplines or fields;
- published material in professional or major trade publications or major media about the individual and relating to the work in the field;
- participation on a panel or individually, as a judge of the work of others in the same or in an allied field of specialization;
- authorship of scholarly articles in the field, in professional journals, or other major media;
- a history of employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation; and
- present or past history of high salary or other remuneration for services.

In addition to the petition, the petitioner must submit an advisory opinion from a "peer group" regarding exceptional ability in the claimed field. The peer group can be a professional organization or association of individuals in the same field. The advisory opinion should describe the individual's ability and achievements in the field, describe the duties to be performed and state whether the position requires extraordinary ability.

The O visa is normally issued for the duration of the event or activity to be pursued in the United States, with a maximum length of three years. For purposes of the O visa, "event" is defined to include a science project, conference, convention, lecture series, tour, exhibit, business project, academic year or engagement. However, extensions in one-year increments are available

if necessary to continue or complete the same event for which the visa was originally obtained.

J. TN Visas: Canadian and Mexican Business Travelers

Pursuant to the North American Free Trade Agreement ("NAFTA") of 1994, Trade NAFTA ("TN") visas may be issued to Canadian and Mexican citizens who seek temporary entry into the United States to engage in professional business activities. To qualify for a TN visa, the applicant must demonstrate that the intended activity in the United States falls within one of the professional activities listed in Schedule 2 of NAFTA and that the applicant possesses the necessary academic and/or professional credentials to qualify as a professional in that field of activity. Professionals listed in Schedule 2 include accountants, engineers, registered nurses, architects, lawyers, university-level teachers and research assistants, systems analysts and management consultants, among others. Processing procedures for Canadian and Mexican citizens are quite different.

To obtain a TN visa for admission to the United States, a Canadian citizen must provide the following evidence at a United States port of entry:

- Canadian citizenship;
- that the intended professional activity in the United States is one listed on Schedule 2 of NAFTA;
- possession of the necessary academic, experience and/or professional credentials to be considered a professional in that field of activity;
- satisfaction of any licensing requirements to engage in that professional activity in the State of intended employment;
- offer of qualifying employment in the U.S. in the profession; and
- a statement confirming that the purpose of the entry is temporary (*e.g.*, up to one year).

Mexican citizens who wish to apply for TN visas must provide similar documentation, however, unlike Canadian applicants, Mexican citizens must apply at an American consular post. Further, the TN visa petition for a Mexican

citizen must be supported by an approved labor condition application from the U.S. Department of Labor.

TN visa status may be issued for up to one-year and may be extended in one-year increments without any limitation.

K. Employment Authorization

As indicated above, non-immigrants are permitted to work in the United States only with proper employment authorization, whether granted generally by the terms of their visa or specifically by the government. Non-immigrants who disregard those restrictions are subject to removal for violating the terms of their visa. Additionally, employers who hire workers without proper employment authorization are subject to substantial sanctions. The sanctions include civil fines, injunctive relief and criminal penalties.

In general, each employee must complete the designated portion of Form I-9, the Employment Eligibility Verification form, on which the employee must attest under penalty of perjury that he/she is authorized to work in the United States as a United States citizen or permanent resident alien or under the terms of the non-immigrant visa. The prospective employee must submit Form I-9 for the employer's review. Additionally, within three business days of the hiring, the prospective employee must submit certain original documents that establish identity and employment eligibility. In certain circumstances, where the prospective employee does not have documents establishing employment eligibility but has applied to the government for employment authorization, the prospective employee may instead submit the receipt from such application and then submit the authorizing documents themselves within 21 business days of the hiring date.

Note: Several types of documents establishing an employee's identity, employment eligibility or both will satisfy this documentation requirement. The documents are listed on the Form I-9. However, the employer cannot specify which of these acceptable documents a prospective employee must furnish. To do so is a violation of discrimination laws and will subject the employer to civil fines.

Once the employer has reviewed the prospective employee's documents, it must complete the second portion of the Form I-9 by entering the type of documentation provided, any identification number and the expiration date (if any) of the employment authorization. The employer must retain the

completed Form I-9 for at least three years or one year after employment terminates, whichever is later.

Upon at least three days' notice, the government may request to inspect the employer's Form I-9s, which the employer must make available. If the employer does not satisfy the requirement of the employment verification process, both civil and criminal penalties may be imposed. If there is a "pattern or practice" of illegal hiring, employers may face:

- the imposition of a permanent or temporary injunction;
- a restraining order or other order;
- criminal penalties including fines; and/or
- imprisonment.

IMMIGRANT (PERMANENT RESIDENT) VISAS

Permanent resident status, symbolized to many people by what is popularly termed the "Green Card," confers on foreign nationals the right to live and work in the United States without time limitation. It is also the first necessary step to becoming a United States citizen.

The two most common bases for obtaining immigrant status are through close family ties to a United States citizen or permanent resident, or through an offer of permanent employment by an employer in the United States. The procedures for obtaining permanent residence on either of these bases follow similar courses: the prospective immigrant must be sponsored, either by the relative or the employer, who files a petition with the CIS.

Once the individual is found to be qualified within one of the groups to which the United States Congress has given "preference" for immigration, that individual can then apply for permanent resident status. This application is usually made at a United States Embassy or Consulate outside the United States. However, in some cases when the individual is in the United States, an application can be made in the United States to "adjust status" to that of a permanent resident.

The United States has designated certain groups to whom it has given "preference" in immigrating to the United States. For immediate relatives of United States citizens (see below), no limitation is placed on the number of individuals who can immigrate per year.

Family-based immigrant visa categories:	
Immediate relative	Spouse, parent or child (unmarried and under 21) of United States citizens
First preference	Unmarried sons or daughters, 21 years of age or older, of United States citizens
Second preference	Spouses, unmarried sons or daughters of United States permanent residents
Third preference	Married sons or daughters of United States citizens
Fourth preference	Brothers or sisters of United States citizens

Employment-based immigrant visas:	
First preference	Priority workers, including individuals with extraordinary ability, outstanding professors and researchers and certain multinational executives and managers
Second preference	Professionals holding advanced degrees and individuals of exceptional ability
Third preference	Skilled workers, professionals, other workers with skills in short supply
Fourth preference	Certain religious workers
Fifth preference	Employment creation visa for investors who create jobs for U.S. workers

The fact that an individual fulfills the requirements in the above categories does not mean immediate entry to the United States. Due to over-subscription in many of the categories, there may be a waiting period before an immigrant visa will be issued. Information about the availability of family- and employment-based visas can be found at the U.S. State Department's web site, http://travel.state.gov/visa/frvi_bulletin.html.

Starting in 2000, with increasing unemployment in the wake of the wide spread layoffs, especially in the technology sector, the U.S. Department of Labor's handling of certification applications slowed. In the aftermath of the September 11th attacks, the U.S. Government made many changes in the security and background clearance procedures for foreign nationals. These two factors greatly increased the processing time for immigrating to the U.S. As predicted in last year's edition of this Manual, the Department of Labor instituted long awaited reforms that resulted in vastly reduced processing times. At about the same time, government background clearance procedures were regularized. The result was a large number of permanent residence requests granted in fiscal year 2005.

Unfortunately, the demand from so many long pending cases from years of government delay was greater than the limited annual supply. As a result, quota waiting periods developed that can further delay issuance of resident status. The problem is most acute for individuals born in India and China (excluding Hong Kong and Taiwan, R.O.C.), where the especially large number of prospective immigrants results in even longer waiting periods. The problem is likely to continue for some years. The State Department web site listed above provides visa availability information updated monthly and can be used to estimate waiting periods.

The employment-based immigrant visas are generally based on offers of permanent employment in the United States. These were established in recognition of the fact that American employers are not always able to find qualified United States workers to fill available job vacancies. These categories also give the opportunity to foreign nationals with no pre-existing family relationships to immigrate to the United States.

Basic requirements for most employment-based immigrant visas:

- the United States employer who offers the individual employment must be offering current full-time, permanent employment;
- unless an exemption applies, an employer who offers permanent employment to an individual must apply to the U.S. Department of Labor for a certification that United States workers are unavailable to fill the position that is the subject of the job offer; and

- the individual must meet the minimum requirements for the job, the employer must be able to pay the individual's salary and the individual and employer must both intend for the individual to undertake the position.

In 2005, the Department of Labor instituted an e-filing system called "PERM" that streamlined processing, while at the same time issuing regulations that more precisely guide employers on program requirements. This has helped the immigration process significantly.

Some occupations are "pre-certified," that is the employer does not have to file an alien employment certification application, but rather can apply directly to the CIS to have the individual classified as eligible for immigration based on the offer of employment. None of the priority worker preference immigrant visa categories require certification, nor is it required for the employment creation (investor) category. There are also special, pre-certified categories for certain types of health care workers and other individuals with exceptional ability. These have their own quota allocations that generally make them faster routes for immigration.

The fifth preference classification immigrant visa makes available 10,000 visas annually for immigrants seeking to invest in a business and create jobs in the United States. The amount of investment required varies from USD 500,000 to USD 1,000,000 or more, depending on the population and unemployment rate of the area in which the investment is made. The new business must benefit the United States economy and create at least ten full-time employment positions for workers who are qualified to be employed in the United States, other than the spouse and children of the investor. In some cases, investment into existing businesses may also be allowed. The investor must be engaged to some degree in the management of the enterprise, either through daily management or through policy formulation. In order to increase interest in this category, Congress has created an investor pilot program. This relaxes the job creation requirement by allowing aliens investing in new commercial enterprises located within certain approved regional centers to establish "reasonable methodologies" for determining the number of jobs created indirectly through revenues generated from increased exports resulting from the pilot program.

Once the investor enters the United States, he/she obtains permanent residence on a conditional basis. In order to prevent abuses of this category, the law requires the investor to establish and manage the business for two years following entry into the United States. After expiration of the two-year period, the investor may petition for removal of the condition by proving to the CIS that he/she has complied with the requirements of the Employment Creation category.

EXPEDITED REMOVAL OF UNLAWFUL ALIENS

Since 1996, the U.S. has made it more difficult for aliens unlawfully in the United States to obtain an immigrant visa overseas or adjust status to permanent resident in the United States. Further, foreign nationals are subject to "Removal Proceedings" instead of Deportation and Exclusion Proceedings. Removal proceedings may take place at the border at the time of entry or after the foreign national has already arrived in the United States. If an individual is removed at the border, he/she will be precluded from entering the U.S. for 5 years. Those individuals who have entered the United States illegally, overstayed their current status, or otherwise violated their status, may be barred from entering the United States for ten years. Beginning 1 April, 1997, those individuals present in the United States unlawfully for more than 180 days but less than one year (counting only those days accrued after 1 April, 1997) are inadmissible to the United States for three years from the date of departure. Those individuals who remained in the United States in an unauthorized status for one-year or more are inadmissible for ten years. An individual who overstays the authorized period of stay in the United States automatically loses the remaining validity of the visa currently in his/her passport. In addition, such a person would be precluded from applying for a replacement visa at any consular post other than the post in the person's home country.

RETENTION AND MAINTENANCE OF LAWFUL PERMANENT RESIDENCE

After an individual is admitted to the United States as a permanent resident, he/she should be aware of the requirements for maintaining lawful permanent residence if he/she plans a lengthy absence from the United States.

An individual will be re-admitted to the United States as a permanent resident only if that individual is returning to an unrelinquished, lawful permanent residence in the United States and is returning from a temporary absence abroad. Permanent resident status can be lost by a lengthy absence abroad, and an extended absence is often a major factor taken into account in judging the individual's intentions. The key factor is the individual's intention, but a mere statement of intent to remain a United States resident is not controlling. Rather, the government will look at objective factors that indicate the individual's continuing desire and intent to return to the United States after a trip abroad. The major factors that are analyzed in determining the individual's intent include:

- the purpose for the individual's departure from the United States;
- the length of the individual's absence from the United States, *i.e.*, the existence of a fixed termination date for the visit abroad;
- the location and nature of the individual's employment, *e.g.*, United States vs. foreign employer, permanent vs. temporary employment abroad;
- the possession of a valid United States re-entry permit;
- the continued filing of United States tax returns as a resident of the United States;
- the maintenance of a United States address;
- the continued maintenance and usage of United States bank accounts, credit cards, driver's licenses;
- the maintenance of memberships in social and professional organizations; and
- the location of close family members.

Note: Lawful permanent residents seeking to claim benefits under income tax treaties sometimes file U.S. non-resident income tax returns. Under U.S. law, this raises the presumption that the resident did not intend to maintain immigration resident status. The factors listed above become especially important in such cases for the resident to prove immigration resident intent.

CITIZENSHIP

In order to be eligible for United States citizenship, an individual must generally meet the following requirements:

- lawful admission as a permanent resident;
- continuous permanent resident status (not to be confused with actual physical presence) in the U.S. for at least five years immediately preceding the filing for naturalization (three years for the spouses of citizens). *Caveat*: An absence from the United States that is too lengthy may break the continuity of the individual's residence in the United States for naturalization. An absence from the United States for more than six months without interruption is presumed to break the continuity of residence for naturalization. To qualify for extended absence benefits, the applicant must have been in the United States for at least one-year subsequent to admission for permanent residence and must be working for a qualified organization outside the United States;
- residence for at least one month immediately preceding the filing for naturalization in the state where the petition is filed;
- actual physical presence within the United States for an aggregate total of at least one-half of the period of required continuous residence (two and one-half years for most individuals, one and one-half years for spouses of citizens);
- ability to read, write and speak ordinary English. All individuals must meet this requirement with three exceptions:
    i. those who are physically unable to comply, because of a disability such as blindness, deafness or other illness;
    ii. those who are over 50 years old on the date of filing for naturalization and have lived in the United States for a total of at least 20 years after a lawful admission to permanent residence; and
    iii. those who are over 55 years old on the date of filing for naturalization and have been living in the United States for a total of at least 15 years after a lawful admission to permanent residence.

- knowledge and understanding of the fundamentals of the history and government of the United States;
- good moral character and attachment to the principles of the United States Constitution; and
- are 18 years of age or above at the time of filing for naturalization (with certain exceptions for the children of individuals, who can be naturalized with their parents).

Section 319(b) is a special provision for spouses of United States citizens employed abroad that allows the spouse to become a naturalized citizen and bypass the normal residence and physical presence requirements.

Permanent resident spouses of United States citizens who are assigned abroad by their United States employers can be exempted completely from all residence and physical presence requirements under section 319(b) of the Act. The citizen spouse must be working for one of the following employers:

- the United States government;
- an American research institution;
- an American firm which is majority owned by United States citizens or its subsidiary (if the American firm owns a majority of the stock) engaged in the development of United States foreign trade and commerce; or
- public international organizations in which the United States participates.

The only requirements are that the applicant spouse be a lawful permanent resident, be physically present in the United States at the time of filing for naturalization and affirm the intention to reside in the United States upon completion of the citizen spouse's overseas assignment.

There are additional special provisions for current and past members of the U.S. Armed Forces that significantly speed up the naturalization process.

CHAPTER 21
IMMIGRATION TO VIETNAM

IMMIGRATION TO VIETNAM

INTRODUCTION

The procedures regarding the entry, exit and residence of foreigners in Vietnam are outlined in Ordinance No. 24/1999/PL/UBTVQH10 on Entry, Exit and Residency of Foreigners in Vietnam adopted by the Standing Committee of the National Assembly on 28 April, 2000, ("Ordinance"); Decree No. 21/2001/ND/CP Setting Forth Detailed Regulations for Implementing the Ordinance on Entry, Exit and Residence of Foreign Nationals in Vietnam dated 28 May, 2001 ("Decree 21"); and Inter-ministerial Circular No. 04/2002/TTLT/BCA-BNG on Providing Specific Guidelines for the Entry, Exit and Residence of Foreigners in Vietnam dated 29 January, 2002 ("Circular 04").

Decree 21 provides that the Ministry of Public Security ("MPS") is responsible for the approval of entry visas to most foreigners and overseas Vietnamese residents who wish to enter Vietnam. Applications by other individuals, such as state officials and foreign representatives or diplomats, are addressed by the Prime Minister's office or by the Ministry of Foreign Affairs.

Recent legislation[1] provides that most foreigners who wish to work in Vietnam must obtain a work permit. Work permits are issued by the Ministry of Labor, War Invalids and Social Affairs ("MOLISA").

As regulations change frequently, verification of the following information is highly recommended.

ENTRY VISAS

Visitors may apply for single or multiple entry visas. The validity of a single and multiple entry visa is no more than 12 months and may not be extended for tourist visa holders. Employment is prohibited for persons with tourist visas.

1 Decree No. 105/2003/ND/CP Setting Forth Detailed Regulations and Guidance for Implementing a Number of Articles of the Labor Code on Recruitment and Management of Foreign Employees Working in Vietnam ("Decree 105") and Decree No, 93/2005/ND/CP dated 13 July, 2005, amending a number of Articles of Decree No. 105/2003/ND/CP ("Decree 93")

For foreigners and overseas Vietnamese working in Vietnam, extension of the entry visa may be granted only if the company and/or sponsor office submits documents to show the validity of business operations and the necessity of granting an extension. Decisions are made on a case-by-case basis.

Foreigners or overseas Vietnamese must submit an application to an overseas Vietnamese representative office, such as a consulate or embassy, for an entry visa. The Vietnamese representative office will then forward the request to one of several business or service organizations in Vietnam which will submit a request to the MPS for an entry visa. The business or service organization will charge a fee for acting as the host or sponsor of the entry visa request. First time entrants to Vietnam should note that upon entry, an additional form is required to be completed and submitted, together with a passport sized photograph. Attention should also be paid to the points of entry or exit specified in a visa, as one may only enter and exit at specified places. This detail is particularly relevant to anyone desiring to travel by land to neighbouring countries.

Individuals or organizations 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.

Vietnam has introduced a visa waiver program for foreign nationals of many countries, both through unilateral and bilateral commitments. As of 30 June, 2006, Vietnam has entered into 46 bilateral visa-waiver treaties and agreements with other countries on visa waiver. Vietnam is considering extending visa waiver to all European Union and Association of Southeast Asian Nations ("ASEAN") countries, in line with its close relationship with these groups. Vietnam has also granted unilateral visa waiver for officials of ASEAN Secretary Committee and countries such as Japan, Korea, Sweden, Denmark, Poland, and Norway. It should be noted, however, that these commitments vary regarding the length of stay permitted, the type of visa, and various other conditions, so it is advisable to check with your nearest Vietnamese consular office for more detailed and current information.

A. Foreigners Invited to Visit by Non-State Agencies or Individuals Living in Vietnam

Foreigners who must first obtain an entry visa issued by the MPS include: foreigners who are invited to visit Vietnam by non-state agencies or organizations, foreign organizations (i.e., foreign-invested joint ventures, 100 per cent foreign owned enterprises and foreign branch or representative offices), Vietnamese citizens residing in Vietnam, foreigners who are granted permanent residence permits, or foreigners who have been living in Vietnam for more than six months. The head of the host organization or the host citizen must file a request and all the necessary supporting documentation with the entry/exit management authority under the MPS for the issuance of the entry visa. The entry/exit management authority undertakes to make a decision within five days of receiving the request. Upon approving the request, the entry/exit management authority will direct the relevant overseas Vietnamese representative office to issue the entry visa to the foreigner.

Organizations may request the entry/exit management 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.

B. Foreigners Intending to Carry Out Investment Projects

Foreigners who are entering Vietnam to carry out investment projects which have been licensed by the Ministry for Planning and Investment ("MPI") may submit applications for entry visas directly to an overseas Vietnamese representative office. The representative offices undertake to make a decision within five days of receiving a request and all the necessary supporting documentation. Upon the approval of the request, the representative office will issue the entry visa and notify the MPS for monitoring and management purposes. In practice, however, procedures will generally proceed more expediently if one's visa application is sponsored from a party within Vietnam, such as an affiliated office.

C. Foreigners without Invitation Letters

Foreigners without an invitation letter from a local individual or organization in Vietnam will only be granted visas for 15 days. The relevant overseas Vietnamese representative offices undertake to make a decision within three days of receiving a request and all the necessary supporting documentation.

D. APEC Travel Card Program

By Decision No. 45/2006/QD-TTg of the Prime Minister dated 28 February, 2006, Vietnam officially participated in the program called APEC Business Travel Card ("ABTC") of Asia-Pacific Economic Cooperation ("APEC") countries. 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 visa waiver for ABTC-holders. The ABTC is valid for three years and cannot be extended.

E. Types of Visa

The visa type is determined by the foreigner's purpose of entry into Vietnam. The many visas include: A1, A2 and A3; B1, B2, B3, and B4; C1 and C2; and D. A-type visas are for diplomatic and official purposes; B, for business; C, by invitation from a local individual or organization; and D, without an invitation from a local individual or organization.

WORK PERMITS

Acquiring an entry visa and a Blue Book (see below) only addresses the entry, exit, and residence rights of foreigners in Vietnam. If foreigners, including overseas Vietnamese, ("foreigners") would like to work in Vietnam, they must obtain work permits unless they qualify for an exemption as mentioned above.

The procedures for the issuance of work permits to foreigners working in enterprises and organizations in Vietnam, including conditions for exemptions are outlined in Decree 105, Decree 93 and Circular No. 04/2004/TT-BLDTBXH Providing Guidelines for Implementing Decree No. 105("Circular 04").

According to Decree 105, MOLISA is responsible for the issuance of work permits to foreigners who wish to work for enterprises and organizations in Vietnam. The local Service of Labor, War Invalids and Social Affairs ("SOLISA") is responsible for the issuance of work permits for short-term assignments of less than three months.

A. Foreigners exempt from work permit requirements

In general, all foreigners who wish to work in Vietnam must obtain work permits, except for:

- foreigners who are members of the Board of Management, General Directors, Deputy General Directors, Directors, and Deputy Directors of foreign invested enterprises;
- foreigners engaged by employers in order to deal with difficulties in emergencies (emergencies are complex technological breakdowns which have arisen and which affect or threaten to affect production or business and cannot be dealt with by Vietnamese or foreign experts in Vietnam); and
- foreigners who are chief representatives and heads of branches.

B. Procedures for issuing work permits to foreign employees

1. The approval of competent authorities

Enterprises in Vietnam may only hire foreigners if they obtain the consent of competent authorities. The competent authority is typically the MPI with respect to foreign invested enterprises.

2. Submission of documentation

The application process should take 15 days, but may take longer in practice. Therefore, companies planning the secondment of an employee to Vietnam should apply for the work permit well in advance of the intended date of arrival of the employee in Vietnam. No fee is charged for issuance of work permits. In order to obtain work permits, the following documents must be submitted:

3. Employer

- an application for the issuance of a work permit for foreigners; and
- the foreign laborer's job application dossier as submitted to the employer by the foreign laborer (the applicant).

The following documents are not listed in the regulations, but are nonetheless very likely to be requested by MOLISA:

- a document issued by the competent authorities approving the recruitment of foreigners; and
- a notarized copy of the establishment decision and operation license of the employer.

4. Foreign employee

- an application to work in Vietnam;
- a copy of the foreigner's criminal record from the local Department of Justice (if the foreigner currently resides in Vietnam) or from the Department of Justice in the country where the foreigner lives (if the foreigner currently resides outside of Vietnam);
- a copy of the certificate of professional qualifications of the foreigner. Such certificates must be the original, which must be notarized, legalized and consularized;
- health certificates obtained from a hospital at the provincial level or higher in Vietnam or overseas (which must be submitted within six months of the date of hospital issuance);
- a curriculum vitae; and
- three 3x4 cm color photographs.

If the criminal record, health certificate, curriculum vitae, or certificates regarding the skills of the foreigner are written in a foreign language, they must be translated into Vietnamese and the translation must be notarized in Vietnam for submittal with the application.

Under the new regulations, the employer and the foreign laborer may only enter into an employment contract after a work permit has been issued by MOLISA.

C. Term of work permits

The term of the work permit will be set as the term of the labor contract. The maximum term for the labor contract is three years. Work permits can be renewed once for another term of up to three years. In the renewal application, the employer must clearly state the reasons why it has not replaced the foreigner with a Vietnamese person, the name of the Vietnamese person being trained to replace the foreigner, the training expenses, the time period of the training, and the place of training.

D. Violations

Foreigners who work in Vietnam without first obtaining a work permit can face expulsion from Vietnam. Furthermore, both employer and employee may be subject to a fine, with the employee being barred from working in Vietnam. The level of the fine has not yet been stipulated by authorities. Persons wishing to apply for a work permit should seek professional assistance with regard to possible exemptions and required documents, according to their particular circumstances, because regulations are often changed or authorities may change their interpretation of existing regulations.

TEMPORARY RESIDENCE AND PERMANENT RESIDENCE

A. Temporary Residence

If the foreigner intends to stay in Vietnam for more than one year and is legally registered for employment or for study in Vietnam, he/she may apply to the police department at the provincial security immigration office in order to be granted a "Temporary Residence Certificate" (also known as a Temporary Residence Permit) upon presentation of his/her valid travel document and entry visa. This form of Temporary Residence Certificate is commonly known

as the Blue Book. The duration of the certificate should be consistent with the purpose of the temporary residence.

The Blue Book permits are valid for one to three years and may be considered for renewal or extension. Blue Book holders are exempt from entry/exit visa requirements throughout the Blue Book's term of validity.

The procedures for obtaining a Blue Book are as follows:

One copy of one of the following documents is required:

- investment license issued by the MPI;
- permit issued by the Ministry of Trade for establishing a representative office and its Registration of Activities; or
- list of members of the Board of Management if the relevant organization is a joint venture enterprise or 100% foreign owned company.

The following must also be submitted:

- one application form filled out and signed by the Vietnamese employer;
- one declaration form together with three passport-sized photographs. The declaration form shall be provided after the submission of the above-mentioned documents;
- copy of the current residential lease. The lease must be in accordance with regulations. Note that if the applicant plans to stay in a hotel long-term, he or she must submit a copy of the contract (letter of approval) issued by the hotel; and
- copy of passport and entry visa.

The process should take five days, but in practice, it usually takes longer.

B. Permanent Residence

Under the Ordinance and its implementing regulations, permanently resident foreigners are defined as foreigners who have resided, worked, and lived in Vietnam for a long time. Only the following temporarily resident foreigners may be considered for permanent resident status:

- persons who have fought for freedom and independence of the people, for socialism, for democracy and peace or for scientific work and for which they were harmed;
- persons who contribute to the development and protection of the Fatherland; and
- persons who are the spouse, children, or parents of Vietnamese citizens residing permanently in Vietnam.

Foreigners who would like to apply for permanent residency may do so with the entry/exit management authority under the MPS. Once given permanent residency status, a permanent residency card will be issued to the person concerned and with this card, such person is exempt from entry/exit visa.

C. Fees

The Ministry of Finance issued *Circular No. 37/2003/TT/BTC* dated 24 April, 2003, ("Circular 37") and Circular No. 60/2005/TT/BTC dated 1 August, 2005, amending a number of Articles of Circular 37 ("Circular 60") to stipulate the regime for collecting, paying, and managing the use of fees for issuing passports, visas, and documents regarding entry, exit, transit, and residence in Vietnam.

According to the fee schedule under Circular 37, foreigners and overseas Vietnamese will have to pay USD60 for a temporary residence card that is valid for less than one year. The fees for the same card with validity periods of one to two years and two to three years are USD80 and USD100 respectively, and the fee for a permanent residence card is USD100. Meanwhile, visa fees remain unchanged at USD25 for a single-entry visa, USD50 for a multiple-entry visa of less than six months, and USD100 for the same visa of six months or longer. These fees can be paid in either USD or VND at the exchange rate as stipulated by the State Bank of Vietnam at the time of fee collection.

Circular 60 provides for visa-free cases such as (i) guests including their spouse and children of the Communist Party, the State, the Government, and the National Assembly; or of leaders of the Communist Party, the State, the Government, and the National Assembly ; (ii) diplomats and personnel

(including their spouse and children under 18 years old) of foreign diplomatic missions and international organizations in Vietnam who are not Vietnamese citizens and do not reside permanently in Vietnam on the basis of reciprocal treatment; (iii) holders of foreign diplomatic or public service passports on the basis of reciprocal treatment; (iv) foreigners who are eligible for visa-free treatment according to an Agreement or Convention to which Vietnam is a party; (v) foreigners entering into Vietnam for the purpose of performing supporting works or providing charity assistance to Vietnamese organizations or individuals; (vi) persons granted exemption by decisions of the Ministers of Foreign Affairs, Public Security, and National Defence.

RESETTLEMENT OF OVERSEAS VIETNAMESE

Inter-ministerial Circular No. 06/TT/LT Guidelines on Decision No. 875/TT ("Circular 6") was issued by the Ministries of Interior and Foreign Affairs on 29 January, 1997, and provides guidelines on implementing the Prime Minister's new policy on the voluntary repatriation of overseas Vietnamese. Under Circular 6, overseas Vietnamese may receive consideration to resettle in Vietnam if they are investing or employed in Vietnam, or are sponsored by relatives. They must also meet certain qualifications related to self-sustenance and submit a formal application to the government. Of note is the fact that overseas Vietnamese are entitled to tax and investment incentives under the laws on Domestic Investment.

GRANTING OF GENERAL PASSPORTS FOR VIETNAMESE CITIZENS IN FOREIGN COUNTRIES

On 29 January, 2002, the Ministry of Public Security and the Ministry of Foreign Affairs jointly issued Inter-ministerial Circular No. 03/2002/TTLT/BCA-BNG providing guidelines for the granting, extension, supplementation, and amendment of general passports for Vietnamese citizens in foreign countries under the Government's Decree No. 05/2000/ND-CP of 3 March, 2000, on exit and entry of Vietnamese citizens.

This Circular does not apply to Vietnamese citizens in countries that have signed agreements with Vietnam on the re-acceptance of Vietnamese citizens who are

not allowed to reside in foreign countries and overseas Vietnamese who are repatriated to the homeland under the Prime Minister's Decision No. 875/TTg dated 21 November, 1996.

Vietnamese citizens must appear at the Vietnamese representative agencies overseas to submit applications and to receive passports. Applications include a form with a photo attached, a document of the applicant's Vietnamese nationality, and certifications of the applicant's personal status. Within five days from the date of receipt of the documents mentioned above, the representative agencies must issue passports to the applicants. Relatives of the applicants may come to immigration offices in Vietnam to request certification of personal status for the applicants. Vietnamese citizens abroad may also ask the representative agencies to re-issue passports in cases of lost, torn, or expired passports.

A. Law on Vietnamese Nationality

Law No. 07/1998/QH10 on Vietnamese Nationality was adopted by the National Assembly, Legislative X, 3rd Session on 20 May, 1998; effective from 1 January, 1999 ("Law No. 07"). According to Law No. 07, in order to be eligible for Vietnamese citizenship, an individual must meet certain conditions relating to: self-sustenance, ability to read, write and speak Vietnamese, and have resided in Vietnam for at least five years. These conditions may be waived if an individual has a wife or husband who is a Vietnamese citizen or if the individual is a father or mother of a Vietnamese citizen.

An individual has a right to Vietnamese citizenship if he/she was born in Vietnam or overseas to a mother or father who is a Vietnamese citizen.

Law No. 07 does not permit dual citizenship.

The procedures for naturalization as a Vietnamese citizen are outlined in Decree No. 104/1998/ND/CP Stipulating in Detail and Providing Guidelines for Implementing the Law on Vietnamese Nationality, dated 31 December, 1998, ("Decree No. 104") and Decree No. 55/2000/ND/CP Amending a Number of Articles of Decree No. 104/1998/ND/CP, dated 11 October, 2000.

1. Documents Required

The following documents are required for naturalization as a Vietnamese citizen:

- an application for naturalization as a Vietnamese citizen which must be prepared according to the standard form issued by the Ministry of Justice ("MOJ"). The applicant must have a proper Vietnamese name and such Vietnamese name must be clearly written in his/her application;
- a copy of the applicant's birth certificate;
- a curriculum vitae which must be prepared according to the standard form issued by the MOJ;
- a certification regarding any criminal record issued by the competent Vietnamese authority in the locality where the applicant resides. Where the applicant does not reside in Vietnam, a certification regarding any criminal record issued by the competent authority of the country of which the applicant is a citizen or where the applicant resides;
- a Vietnamese language qualification certificate;
- a paper certifying a continuous period of residence in Vietnam (at least five years) issued by the People's Committee of the ward where the applicant resides;
- a paper certifying the applicant's domicile, occupation, lawful income, or property status in Vietnam issued by the People's Committee of the ward where the applicant resides; and
- a written commitment to relinquish foreign nationality (if any) when he/she is naturalized as a Vietnamese citizen.

2. Exemption from or Reduction of Requirements for Naturalization as a Vietnamese citizen.

Exemption from or reduction of requirements for naturalization as a Vietnamese citizen will be given as outlined below:

- persons whose spouses, parents, or children are Vietnamese citizens and those who have been awarded orders, medals, and/or other honorable titles by the State of the Democratic Republic of Vietnam, the Provisional

Revolutionary Government of the Republic of South Vietnam, or the State of the Socialist Republic of Vietnam, or who have made outstanding contributions to the cause of building and defending the Vietnamese fatherland, shall be entitled to a reduction of two years in the required length of continuous residence in Vietnam and shall be exempt from conditions regarding the Vietnamese language knowledge requirement and the requirement of having sufficient means to live in Vietnam; and

- in particular cases where the naturalization of foreigners is especially beneficial to the economic, social and/or scientific development and/or national defense and security of the Socialist Republic of Vietnam, such foreigners shall be exempt from the requirements regarding the length of their residence in Vietnam, Vietnamese language knowledge, and proof of sufficient means to live in Vietnam.

3. Submission of Documentation and the Approval of Competent Authorities

The dossier for naturalization as a Vietnamese citizen must be prepared in four sets and submitted to the Service of Justice ("SOJ") where the applicant resides. If the applicant resides abroad, he/she must submit his/her dossiers to the Vietnamese diplomatic mission or consular office in the territory where he/she resides. The application process should not take more than 12 months.

A decision to grant Vietnamese nationality will be issued and signed by the State President. The Vietnamese name of the applicant will be stated in the decision.

CHAPTER 22
ECONOMIC CITIZENSHIP PROGRAM

ECONOMIC CITIZENSHIP PROGRAM

Some countries offer citizenship to persons who make investment, contribution, or donation to those particular countries. The following is a brief summary of the Economic Citizenship Program offered to potential emigrants by St. Christopher and Nevis.

ST. CHRISTOPHER AND NEVIS (ST. KITTS & NEVIS)

INTRODUCTION

St. Kitts & Nevis is located in the northern section of the Eastern Caribbean. The island is approximately 1,250 miles southeast of Miami and 1,500 miles southeast of New York. It has an area of approximately 9,000 square miles.

In 1983, St. Kitts gained its independence from Britain and formed a twin island Federation with its sister island Nevis within the British Commonwealth. The population is estimated at 39,000.

Investment Program

The citizenship by Investment Program was established in 1984 and is authorized by Chapter VIII (Section 90-95) of the Constitution of St. Christopher and Nevis. The Program requires a substantial investment in a government approved investment project. All applications for citizenship are processed by the Ministry of Finance in Basseterre, St. Kitts. Upon approval, the applicant and his/her family may apply for St. Kitts & Nevis passports.

Currently, there are two options under the Program which will lead to St. Kitts & Nevis citizenship. The two options are:

- approved real estate investment
- contribution to the Sugar Industry Diversification Foundation Fund

A. Approved Real Estate Investment

Under this option, an applicant is required to make an investment in a designated real estate project with a value of not less than USD 350,000. Once the real estate investment is accepted and citizenship granted, the real estate cannot be resold for 5 years, and it will not qualify the next buyer for another citizenship application. In addition to the investment, there are government registration fees of:

Head of Household	USD 35,000
Spouse and dependent under 18	USD 15,000
Dependent of 18 and over	USD 35,000

Security checks and declarations in respect of the source of fund are also required.

B. Contribution to Sugar Industry Diversification Foundation ("SIDF")

In October, 2006, the government of St. Kitts & Nevis designated the newly launched SIDF as a special approved project for the purposes of Citizenship by Investment. In order to qualify for citizenship, an applicant is required to make a substantial contribution to the SIDF which will generate additional resources to assist and improve the welfare of the displaced sugar workers in the country. Under this option, the prescribed minimum levels of contributions to SIDF are as follow:

1. single applicant: USD 200,000;
2. applicant with up to three dependents (i.e. one spouse and two children below the age of 18): USD 250,000;
3. applicant with up to five dependents (i.e. one spouse and four children): USD 300,000;
4. applicant with six or more dependents: USD 400,000.

The applicant is required to make appropriate declarations in respect of the source of funds. However, unlike the real estate option, government registration fees are already included in the contributions to SIDF. No further government payment will be required.

Current list of countries to which passport holders of St. Kitts & Nevis may travel without visas:

1. Antigua and Barbuda
2. Bahamas
3. Bangladesh
4. Barbados
5. Belize
6. Botswana
7. Brunei
8. Canada
9. Chile
10. Colombia
11. Costa Rica
12. Dominica
13. Fiji
14. Gambia
15. Ghana
16. Grenada
17. Guyana
18. Hong Kong
19. Jamaica
20. Kenya
21. Kiribati
22. Korea
23. Lesotho
24. Malawi
25. Malaysia
26. Maldives
27. Malta
28. Mauritius
29. Nauru
30. Nigeria
31. Panama*
32. Papua New Guinea
33. St. Lucia
34. St. Vincent
35. Seychelles
36. Sierra Leone
37. Singapore
38. Solomon Islands

39. South Korea
40. Sri Lanka
41. Swaziland
42. Tanzania
43. Tonga
44. Trinidad & Tobago
45. Tuvalu
46. Uganda
47. United Kingdom**
48. Vanuatu
49. Zambia
50. Zimbabwe

* *Nationals traveling to Dominican Republic can get a tourist card on arrival*

** *Entry Clearance may be required depending upon length of proposed stay.*

Note: Visa requirements change from time to time. It is well advised to check with the appropriate consulate or embassy beforehand.

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