Global Mobility Handbook

2013

Baker & McKenzie

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Editors' Note

This handbook is a product of the efforts of numerous lawyers throughout Baker & McKenzie and selected local professionals at other firms, including the contributors listed on the following pages. The editors are grateful to these lawyers for their work to provide readers with a clearer appreciation of the business and legal considerations associated with global mobility assignments.

We continue to acknowledge the legacy of retired partner William Kuo. Bill laid the foundation for our global practice and this publication over the many years that he led efforts to develop and publish the firm's *Immigration Manual*.

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Section 1 Introduction

Introduction

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

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

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

The Global Mobility Handbook

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

Global Labor, Employment and Employee Benefits

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

Baker & McKenzie offers comprehensive legal advice related to global immigration – delivered locally around the world. We help employers plan and implement global transfers and provide on-site legal support to companies and employees in most major business communities around the globe.

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

defensible. Our knowledgeable professionals are qualified and experienced in the countries where you do business. Baker & McKenzie has the unique ability to develop and implement comprehensive global immigration strategies and solutions to address the many needs of moving your employees globally.

Global Immigration Services

Our global client care model, includes timely alerts on major changes in global mobility, immigration law and practice, a quarterly newsletter outlining global developments, and regular seminars and workshops on a broad range of issues:

- **Workplace compliance**, including counseling, trainings, audits and litigation defense related to worksite enforcement and related employer initiatives

- **Advocacy** on legislative reforms and regulatory changes, and agency practices around the world

- **Design and implementation** of programs to accept immigrant investors, and schools and training programs to accept foreign students

- **Coordination** among members of our global team to obtain visas, residence and work permits from consular offices or to execute transfers to the countries where you do business

- **Transfer of staff** to existing and new multinational operations, including employees with specialist and technical skills, executives and managers and new employees hired from overseas

- **Large-scale transfers**, including managing the immigration consequences of reorganizations, mergers, acquisitions, RIFs, redundancies, and related restructuring

- **Transfer-related immigration matters**, including permanent residence, citizenship and relocation of spouses and other dependents

- **Case management**, maintaining employee records for visa renewals, provision of status reports and planning and coordination of global immigration requirements

- **Employment, employee benefits and tax advice** in relation to the transfer of staff, including structuring and auditing the employment relationship to ensure compliance with legal and tax obligations and to prevent obligations to prevent unauthorized employment

- **Ancillary transfer issues**, working with a range of professionals in relation to shipping of personal belongings and customs and excise duties

- **Establishment of new business operations abroad**, including the transfer of senior personnel to establish operations and related corporate and securities and taxation advice

Further Information

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

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

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

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

The Global Employer is a monthly publication covering labor, employment, employee benefits, and immigration topics of interest to multinational employers in all of the major jurisdictions of the world.

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

Worldwide Guide to Termination, Employment Discrimination & Workplace Harassment Laws and Worldwide Guide to Trade Unions & Works Councils is our guide to help employers manage global business change.

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

Section 2 Major Issues

Immigration

Executive Summary

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

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

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

Current Trends

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

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

In the interest of national security and with concerns of protecting local workers, many countries more actively enforce prohibitions against unlawful employment. Penalties against employers are as common as penalties against foreign national employees. And these penalties are increasingly including criminal, rather than just civil,

punishments. The potential damage to an employer's reputation with the government agencies, impact on future visa requests, and potential bad publicity makes it especially important to obey the spirit, as well as the letter, of the law in this area.

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

Business Travel

Visitor Visas

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

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

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

Visa Waiver

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

Training

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

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

Employment Assignments

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

Work Permits

Most countries are keen to protect their local labor market. A recurring solution is to impose some kind of labor market check as a prerequisite to issuance of a visa for an employment assignment (*e.g.*, Malaysia). These are often handled by a Ministry of Labor or

equivalent government labor agency, as distinct from the Foreign Affairs governmental agency that issues visas at consular posts. In many countries, the Labor agency's authority is framed in the context of a work permit.

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

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

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

Residence Permits

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

Other Concerns

An increasing number of countries are requiring medical or physical examinations with the goal of limiting the spread of contagious

diseases (*e.g.*, Saudi Arabia, People's Republic of China, Russian Federation).

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

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

Further Information

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

Employment

Introduction

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

Employment Structures for International Transfers

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

- Secondment - the employee remains employed by the home country employer and is loaned or seconded to work for an entity in the host country for a period of time;

- Transfer - the employee is terminated by the home country employer and is rehired by a new employer in the host country;

- Global Employment Company – the employee is terminated by the home country employer and transferred to the employment of a global employment company or "GEC." The GEC in turn seconds the employee to work for an entity in a host country.

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

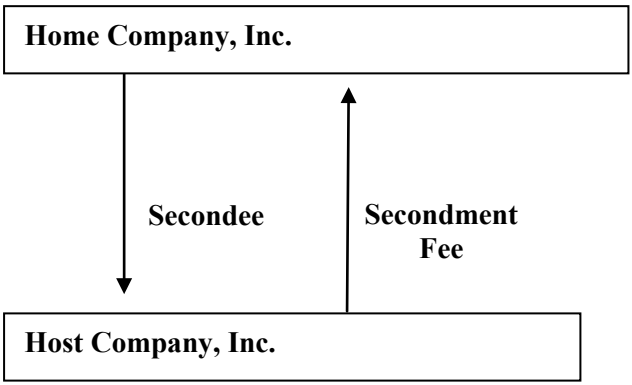
In addition to these four main structures, multinational companies sometimes use other structures, although they are not as popular. For example, in Germany and several other European countries it is

possible to use a "dormant contract" approach, whereby the employee's existing employment relationship is suspended for the duration of the foreign assignment, the employee is formally transferred to and becomes an employee of another company during the duration of the assignment, and then the employee's dormant contract is "revived" upon the termination of the assignment and the employee's return to the original employer. Other possible structures include putting the employee on a "leave of absence" for the duration of the assignment, or terminating the employee and then re-hiring the employee as an independent contractor.

Secondment

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

Typical Secondment Structure



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

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

Secondment letters typically include the following provisions:

- confirmation of employment status (*e.g.*, at-will status for US outbound secondees);
- details of the role, reporting relationship, and anticipated duration of the secondment;
- details on salary and benefits, including specific expat benefits such as housing allowances, relocation expense reimbursement, or cost of living differential;
- tax equalization language where applicable, or language requiring employee to be responsible for any additional tax triggered by the secondment;

- compliance language (such as for compliance with the US Foreign Corrupt Practices Act);

- provisions addressing what happens upon a termination of the secondment, and also upon a termination of employment;

- anti- "double dip" language, preventing the expat from enjoying benefits under the laws of both the home and host jurisdictions; and

- choice of law and choice of forum provisions (which could be very important in the event of a dispute with the expatriate over the terms or benefits under the secondment).

Another pitfall of the secondment approach is the potential permanent establishment ("PE") issue created if an employee of one country is sent to work in another country. If that employee has the right to enter into contracts in the name of the Home Company, then the local tax authorities in the host jurisdiction may seek to impose a corporate tax on the activities of that individual on the ground that the employee is a taxable presence of the Home Company. To mitigate the risks associated with a PE, the secondment letter should expressly provide that the individual does not have the authority to conclude contracts on behalf of the Home Company while on secondment. Consultation with tax counsel about this issue is prudent under most circumstances, since in the case of secondments to certain jurisdictions (*e.g.*, Canada, China and India) the covenant not to conclude contracts will not be sufficient to mitigate the PE risk.

Another issue presented by secondment is that it sometimes will be challenging to implement where the employee, as a matter of local immigration law, may be required to be employed by a local entity in order to receive the proper immigration papers and work permit to enter the country, which is very common for Latin American and Middle Eastern jurisdictions (*e.g.*, Argentina, Brazil, Colombia, Dubai, Saudi Arabia). Also, in some countries, an individual with a

certain title (*e.g.*, CEO) must as a matter of local employment law be employed by a local entity in that jurisdiction.

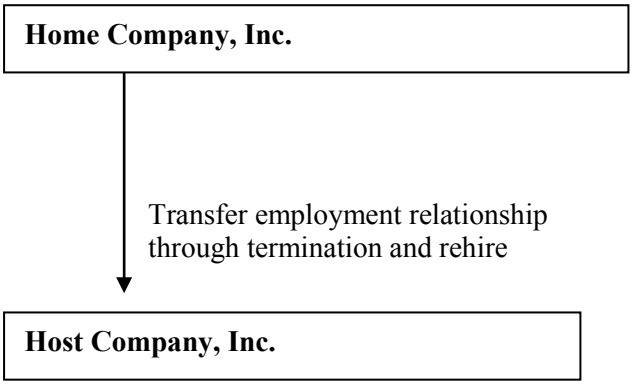
Secondments, nevertheless, remain the most common employment structure for expatriates. Secondment is particularly desirable where the employee desires to continue in home country employee benefit plans while working in the host country, such as a retirement or pension plan. Many US expatriates, for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

Transfer of Employment

In the transfer of employment structure, the employee's employment with the Home Company is terminated and the employee is rehired by the Host Company. This structure is the preferred approach from a pure employment law perspective because it creates a "clean break" between employing entities, and thus provides clarity as to what laws govern the employment relationship on a going forward basis.

Since this alternative involves a technical termination of employment, however, all termination-related obligations and payments are triggered (*e.g.*, severance pay, termination indemnities, distribution of accrued pension benefits, the final paycheck and vacation payout, and so forth). In some jurisdictions, payment of severance is mandatory, even if the employee is to rehired by a related company, and cannot be waived as a matter of local law and public policy. Further, it requires the employee to start as a "new hire" with the new employer. Finally, at the end of the assignment whom the employee returns to the Home Company, the employee will have to be terminated and rehired again triggering payments and obligations the same as before. Thus, while it is a preferred approach from an employment law perspective, the transfer of employment structure is also the most expensive, typically, for the employer to implement.

Typical Transfer of Employment Structure



Documenting a transfer usually involves a two-step process. The first step is a letter agreement between the current employer and the employee to terminate the employment relationship, and to waive any notice and/or severance entitlements (vacation rollovers also can be addressed) if allowable in the particular jurisdiction and in accordance with local laws. The letter agreement would also present an opportunity to obtain a release of claims (if allowable under local law) from the employee if there are any potential concerns regarding latent claims against the Home Company. The second step is an offer letter from or employment agreement with the new employer. Since the employee in this situation has a "history" with the Home Company, it is common practice not to include any probationary periods in the new offer of employment, and, where permitted, to recognize prior seniority with the Home Company for purposes of participating in employee benefit plans with the Host Company.

In light of the inherent cost and transfer mechanics, multinational companies tend to use this structure vary sparingly. A long-term or permanent assignment to a new jurisdiction may suggest use of this structure, but for most foreign assignments a direct transfer will not be the first choice.

Global Employment Company ("GEC")

This alternative is something of a hybrid, combing elements from both the secondment and transfer of employment structures. First, the employee is terminated by the Home Company and transferred to a special services company (usually an affiliate) organized for the express purpose of employing expatriates. The GEC, as the employee's employer, becomes the employee's new Home Company, and it then seconds the employee to work for an affiliate.

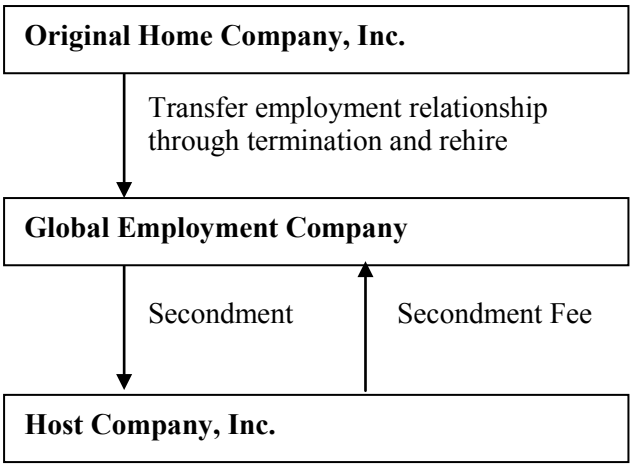
The use of a GEC can offer employers the opportunity to create a uniform structure for their global mobility program. All expatriates would be under the same "umbrella" because they would all have the same employer - the GEC. The GEC allows a multinational company the ability to adopt a uniform approach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

Multinationals can look to a variety of jurisdictions as the location for their GEC. There is no one right choice in this regard. The choice of GEC jurisdiction is primarily a tax decision. Is it desirable to have a GEC in a jurisdiction with a robust income tax treaty network (*e.g.*, the Netherlands or Ireland), or in a jurisdiction with minimal or no corporate income taxes (*e.g.*, the Cayman Islands, Bermuda, and Guernsey)? Another consideration when selecting a GEC jurisdiction is whether the laws are employer-friendly. Singapore is an example of this type of jurisdiction. And, depending on the size and variety of the expatriate population, a multinational may decide to set up more than one GEC for different regions, for different lines of business, or for different nationalities of expatriates.

Often, a GEC can be established as a "paper" company, that is, it exists for real but it contracts out for all of its services (*e.g.*, accounting, payroll, employee benefits, H.R., and so forth) with

related companies. In exchange for these services, the GEC pays a service fee, often with an arm's length profit markup.

Global Employment Company ("GEC")



GECs are popular with multinationals with large expatriate populations. Given the amount of work necessary to set up a GEC, companies with smaller expatriate populations tend not to use this alternative.

Dual Employment

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

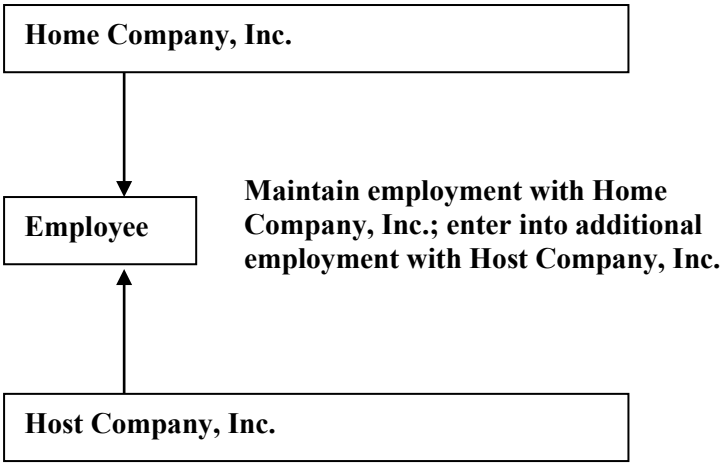
A dual employment structure is often used in a situation where the employee is in fact providing services that benefit more than one entity, such as a sales manager who is selling products covering more than one line of business, or an executive who has multiple titles and reporting relationships. Dual employment can, in some cases, achieve some favorable tax results, such as where an employee works in a jurisdiction that taxes compensation on a remittance basis (*e.g.*, the

UK, Hong Kong, and Singapore). In this case, compensation for work performed outside that jurisdiction for a foreign employer, which is not remitted into that jurisdiction, is not subject to local taxation. Because of the complexity of a dual employment structure, careful planning is required to avoid fines and penalties for failing to withhold or report income where required.

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

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

Typical Dual Employment Structure



Further Information

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

Compensation and Employee Benefits

Introduction

At the commencement of every expatriate assignment, one common question is what compensation and employee benefits will apply to the expatriate while he or she is on assignment. While many multinational companies have dedicated compensation packages and employee benefit plans in place to cover only the expatriate population, not all companies do. Other companies attempt to cover the expatriates by their existing programs and insurance policies. And in some cases, the compensation and employee benefits have to be customized just for one or several individuals, that is, they have to be specially-designed and implemented to address a particular fact pattern. In short, there is no universal practice among multinational companies. The factors that will impact the expatriate's compensation and employee benefits include: the employment structure, the jurisdictions involved, the length of the expatriate's assignment, the types of employee benefit plans currently provided by the employer, whether benefits coverage can be easily extended to the expatriate under the terms of the employee benefit plan, whether the expatriate desires to remain covered by home country benefit plans, whether it is anticipated that the expatriate will return to his home country after the assignment, and so forth.

Compensation and Payroll

The primary elements of an expatriate's compensation package are base salary and bonus opportunity. Here, there is no single approach or best practice. Each expatriate situation is different, and how much the company is willing to pay the expatriate in terms of base salary and bonus opportunity will depend in large part on the employer's compensation policy, the value of the expatriate to the company's operations, the expatriate's seniority and experience in the field, and other similar factors.

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

In the case of a secondment, for example, it is common for the parties to want a structure whereby the expatriate will remain on his home country employer payroll, but perhaps be placed nominally on the payroll of the host country employer so that local income taxes or social taxes can be remitted on behalf of the expatriate to the local tax authority. It is also common to split the pay of the expatriate on secondment so that a portion of the compensation is paid locally, to cover certain local expenses, while the bulk of the compensation is paid to the expatriate via direct deposit into the expatriate's bank account in the home country.

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

Note that payroll typically is not determinative of the employer-employee relationship. That is, a company does not become the expatriate's "employer" merely because the expatriate is on its payroll. Often, an expatriate sent to a jurisdiction will be put on the local company payroll just as an accommodation (for example, to facilitate the payment of local income tax and social insurance taxes). Or, companies are sometimes designated to serve as payroll agents for other companies. Accordingly, the host company might pay compensation to the expatriate as payroll agent on behalf of the

expatriate's real employer in the home jurisdiction. Or, the home country employer might continue to cover the expatriate in the home country benefit plans, and might even continue to contribute to home country benefit plans on behalf of the expatriate, even though the expatriate is now employed by another company. So, the payroll location will not, by itself, be determinative of who is the expatriate's employer.

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

Extending US Tax-Qualified Plans to Employees Working Abroad

A common request of a US expatriate is to determine whether he or she can continue to participate in a US tax-qualified retirement plan while working outside of the United States on a foreign assignment.

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

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

A US Tax-Qualified Retirement Plan Must Cover "Employees"

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

The most critical aspect for plan participation purposes is the employer-employee relationship. In general, a US tax-qualified retirement plan must be limited to employees of the plan sponsor or any member of the plan sponsor's controlled group. The plan may not cover individuals who are not technically "employees." For these purposes, an individual is an "employee" if the individual's employer has the right to direct and control the activities of the individual. Failure to limit plan participation to employees only may result in disqualification of the plan.

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

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

However, where the employee transfers employment to a non-US parent or subsidiary organization that is outside of the plan sponsor's controlled group, he would no longer be eligible for participation in the plan. In that case, the employee's participation in the plan will cease upon his transfer of employment.

Controlled Group Coverage

Where an employee will become an employee of a non-US entity, his participation in a US tax-qualified retirement plan can be preserved where he is transferred to employment with a member of the same controlled group as the plan sponsor or adopting employer of the plan. For these purposes, a "controlled group" is defined as a "controlled group of corporations," or "trades or businesses under common control" under the Code.

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

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

The IRS has ruled that because of the application of the controlled group rules, employment is tested on an entity-wide basis. That is to say, employment with any member of the controlled group will be considered to be employment with the plan sponsor (other than for deduction purposes, discussed below). Accordingly, the plan sponsor may preserve an employee's participation in the plan as long as he transfers employment to a member of the same controlled group. The plan document should be reviewed to confirm that participation can in fact be extended in this manner.

Potential Loss of US Tax Deduction

Even if the employee's participation can be continued because he or she is transferring employment to a controlled group member, the plan sponsor is not automatically entitled to a US federal income tax deduction for its contributions made on behalf of such employee, since the plan sponsor may only deduct contributions made on behalf of its *own* employees. In other words, the controlled group rules and the income tax deduction rules are not completely synchronized. Notwithstanding, the IRS has ruled that if the controlled group member in fact adopts the plan for the benefit of the employee, the contribution is deductible the same as if the employee remained with the plan sponsor.

Nondeductible contributions in general give rise to a special 10 percent excise tax payable by the employer. Notwithstanding, as long as the nondeductible amount contributed on behalf of the employee does not exceed the amount allowable as a deduction under Code Section 404 (*e.g.*, 25 percent of compensation), then the 10 percent excise tax does not apply.

Treat Assignment as a "Leave of Absence"

If the employee will be abroad on a temporary assignment, he or she may be able to remain a participant in the US tax-qualified retirement plan if the assignment is characterized as a "leave of absence." The relevant Regulations provide that a US tax-qualified retirement plan may cover employees who are temporarily on leave.

Working for a "Foreign Affiliate"

Another way to continue the employee's participation in the US tax-qualified retirement plan is if the employee is employed by an entity in which an "American employer" (which includes a US corporation) has a 10 percent or more interest (*i.e.*, a "foreign affiliate"). In that case, he or she will be treated as employed by the American employer for purposes of the American employer's tax-qualified retirement plan, if certain requirements are met, including that the American

employer agrees to extend US Social Security coverage to all of the foreign affiliate's employees who are US citizens or residents by means of a Section 3121(l) agreement filed with the IRS.

A similar provision applies to certain employees of US subsidiaries having non-US operations.

Adoption by Foreign Employer

Plan coverage could also be continued by arranging for the foreign employer to adopt and make contributions to the plan.

Foreign Law Implications

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

Tax Laws

The employee might be taxed under local rules before receiving distributions from the plan. The local tax rules may provide, for example, that plan benefits are taxable when accrued, when a contribution is made to the plan or allocated to a plan account on the employee's behalf, or when the employee vests in the contribution.

Labor Laws

In certain countries, plan benefits or contributions may be subject to a works council consultation procedure before they can be offered to employees of the local operation. While it is unlikely that works council approval or consultation would be required with respect to just one or two expatriates, if a larger group of employees are involved then it will be important to check with local labor counsel, especially in an EU jurisdiction, regarding the implications. Note as well that plan benefits may have to be taken into account when determining the employee's dismissal pay or termination or severance indemnities that may be payable when he or she leaves employment. Further, the plan benefits may run afoul of compliance with certain nondiscrimination

rules in the jurisdiction, particularly if there is a requirement that the expatriate's compensation be no greater than a comparable employee who is a direct hire in the jurisdiction. There is also a risk in some "acquired rights" jurisdictions that plan participation and benefits may not be terminated or revised unilaterally by the employer without consent of the employee.

Securities Laws

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

Coverage under Non-US Retirement Plans

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

Additionally, the local plan may provide more generous retirement benefits than the US plan. For example, in a number of European countries private pension plans provide for a cost-of-living indexation of retirement benefits. This indexation means that retirement benefits are increased for cost-of-living adjustments, which results in a larger benefit to the retiree over time. US tax-qualified plans generally do not provide this enhancement.

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

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

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

In the United Kingdom, pension plans fall into two general categories: the State Scheme and private pension schemes. The State Scheme consists of a basic (flat rate) pension and the State Earnings Related Pension or "SERP." The State Scheme is funded by mandatory contributions called "National Insurance Contributions" from employers and employees.

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

There are several different kinds of private pension plans in Canada. These plans fall into two basic groups: registered plans and unregistered plans.

Registered Pension Plans, which provide for tax-deductible employer contributions, are generally either defined contribution plans or defined benefit plans. Registration of a pension plan in Canada is similar to the process of obtaining a favorable determination letter for

a tax-qualified retirement plan from the IRS. Other types of registered plans include Deferred Profit Sharing Plans and Group Retirement Savings Plans (where one or more individual Registered Retirement Savings Plans are sponsored as a group plan by the employer).

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

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

ORSO requires a scheme to be registered if it has or is capable of having the effect of providing benefits, in the form of pensions, allowances, gratuities or otherwise, payable on termination of service, death or retirement, to or in respect of persons gainfully employed in Hong Kong or elsewhere under a contract of service. An exemption to the compliance requirements under ORSO may be granted if the scheme is registered with or approved by an offshore authority which performs functions similar to those of the Hong Kong Registrar, or fewer than 10 percent or 50 of the scheme members, whichever is lower, are Hong Kong permanent residents.

The Mandatory Provident Fund Schemes Ordinance (MPFSO) sets out the framework for the MPF system in Hong Kong. In keeping with Hong Kong's policy of encouraging market enterprise, the legislation establishes a mandatory retirement system which is largely run by the private sector. The fundamental requirement of the MPFSO is that every employer of relevant employees must establish or join a MPF scheme. Non-Hong Kong employers will be subject to the legislation

if they have employees in Hong Kong. A "relevant employee" is defined as an employee of between 18 and 65 years of age, including apprentices.

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

The employer is required to contribute five percent of the employee's relevant income to an MPF scheme. Employees who are members of an MPF scheme are required to contribute five percent of relevant income up to a ceiling contribution level. An employee who wishes to contribute in excess of the ceiling may do so.

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

- the unfunded severance benefit plan;
- the corporate pension plan; and
- the Employees' Pension Fund plan

The unfunded severance benefit plan usually makes a distribution of a lump sum severance benefit when an employee terminates employment.

There used to be in Japan the ability to establish a tax-qualified pension plan for employees. This type of plan was a voluntary, company-run plan that was managed by an external fund manager. Companies with tax-qualified pension plans were eligible for certain preferential tax treatment. However, the system had several deficiencies and the Japanese government decided to abolish it on March 31, 2012.

In its place, two new corporate pension systems were established; the Defined-Benefit Pension Plan and the Corporate Type Defined Contribution Pension Plan, both of which incorporate greater employee protections. Companies with a tax-qualified pension plan were required to (i) shift to one of the alterative systems; (ii) shift to

the Small and Medium Enterprise Retirement Allowance Cooperative System; or (iii) terminate and liquidate their existing pension fund by March 31, 2012. As of that date, tax-qualified pension plans no longer attract tax benefits.

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

US Tax Consequences of Participating in Non-US Plans

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

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

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

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

ERISA Implications

Because of the breadth of the definitions in the Employee Retirement Income Security Act of 1974, as amended (hereinafter "ERISA"), a non-US retirement plan may inadvertently become subject to ERISA.

In general, ERISA applies to an employee benefit plan established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce.

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

Equity Compensation

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

The tax consequences in each jurisdiction vary, and do not always match the US tax consequences. For example, some non-US jurisdictions tax a stock option at the time the employee actually exercises the option (*e.g.*, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom). Other jurisdictions tax employees at the time a stock option is granted (*e.g.*, in Belgium if the employee accepts in writing within 60 days of grant). Other jurisdictions tax the grant of stock options on vesting (*e.g.*, in Australia for options acquired after July 1, 2009, that satisfy the conditions for deferred taxation.).

In addition, some jurisdictions have local tax-qualified plans (*e.g.*, France and the United Kingdom). If the equity award is granted to the

expatriate under such a plan, then he or she will enjoy favorable income tax treatment (usually, deferred tax).

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

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

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

The grant of equity compensation to an employee may trigger local securities law compliance issues, such as the requirement to make a filing with the local securities authorities, or to distribute a prospectus document to employees. For example, an offer document and filing in Australia is often required. In Japan, grants to 50 or more employees of an indirect or less than wholly-owned subsidiary with an offering value equal to or greater than JPY100,000,000 will require an extensive filing and annual reporting obligation. Grants of equity

compensation in Europe may require compliance under the EU Prospectus Directive.

In certain jurisdictions, exchange control rules still play a large role in determining the ability of a corporation to offer equity compensation to an employee. In some jurisdictions (*e.g.*, in China), prior governmental approval with the State Administration of Foreign Exchange is required before an equity plan can be implemented. In other jurisdictions, it is not possible to send local currency outside of the jurisdiction to purchases shares of stock without obtaining a tax clearance certificate and submitting a funds application form to an authorized exchange control dealer (*e.g.*, in South Africa).

Further, the grant of an equity award to the employee may require compliance with local data privacy and labor rules. Certain jurisdictions have formal legislation prohibiting the transmission of certain personal information about their employees, such as name, age, seniority, and so forth, across borders, even to an affiliated company. Some jurisdictions require the employee to consent to the transfer of such information, some jurisdictions require the formal approval or notification to a local governmental authority, and some require both.

Further, the value of the equity compensation offered to the employee may give rise to acquired rights issues in certain jurisdictions, making it difficult to terminate the benefit in the future without the employee's consent. Also, the value of the equity compensation may need to be included for purposes of calculating a terminated employee's severance pay, creating a more expensive termination situation for the employer.

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

Continuing US Health Benefits

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

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

As a result, the employer should review the plan document and consult with its insurer, plan administrator or legal counsel before the employee leaves on his assignment to determine whether coverage can be extended. In this regard, the employer should determine whether the requirements of the Patient Protection and Affordable Care Act will continue to apply to the expatriate while he or she is working on foreign assignment.

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

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

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

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

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

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

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

- the enrollment of the employee and his family in a non-US nationalized or socialized health program.

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

Note that if the employee is no longer covered by the US group health plan he (or any "qualified beneficiary") will no longer be eligible to elect COBRA continuation coverage since the employee would no longer be a "covered employee." Query whether the employee's transfer of employment to a non-US employer could constitute a "qualifying event" for purposes of COBRA group health plan continuation coverage.

Non-US Health Benefits

Participation by the employee in a non-US health benefit plan may raise a number of issues. Many non-US countries have extensive governmental health programs. While non-local, private health plans exist in some countries, they may be structured to provide only supplemental benefits to the benefits provided by the governmental program. Whether an employee can participate in the underlying governmental program may depend on how long he or she is residing in the non-US country or the satisfaction of other conditions. Accordingly, many employees try to retain some health benefit coverage in the United States while they are overseas.

Because of limited non-US governmental program benefits, the employee may desire to have supplemental health benefits (if local law does not prohibit them). For example, some governmental programs may only provide ward level care (*e.g.*, no semi-private or private hospital rooms), require the use of certain governmental or

governmentally approved facilities or providers, have long waiting periods for certain types of non-emergency care, provide lesser quality care outside of major cities, not provide coverage of certain benefits (*e.g.*, dental coverage), not be used by employees due to a local class bias and may not cover all or part of the costs of health care received while the covered individual is temporarily out of the foreign country (*e.g.*, in the United States on home leave or in another foreign country on a temporary work assignment).

Income Tax and Social Insurance

Introduction

An employee who works abroad is always concerned about the possibility of increased income taxation and social taxation resulting from the foreign assignment. For example, will the employee be taxable in both the home country and the host country, resulting in double taxation of the employee's compensation? Whether such increased taxation is likely, and whether it can be avoided, depends upon a number of factors, such as the length of time the employee will be working in the foreign jurisdiction, the type of work the employee will do while working abroad, the employee's citizenship, nationality, or residency, and other similar factors. In order to assess whether a particular employee's situation will create increased income taxation and social taxation, the following rules need to be kept in mind:

- The income tax, social insurance, and other relevant laws of the home and host jurisdictions;

- Special rules, if any, governing the cross-border transfer of employees in the home and host jurisdictions; and

- The provisions of an income tax treaty, social security totalization agreement or other international agreement between the home and host jurisdictions.

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

The employer will also be concerned about the potential income tax and social tax issues, but from a different perspective. The employer will be interested in avoiding a permanent establishment ("PE") issue resulting from the activities of the employee working abroad, which would cause the employer to be taxable in the host jurisdiction on the

activities of the employee working there. See Permanent Establishment Risk discussion, below. The employer will also be interested in the availability of a corporate income tax deduction for the employee's compensation and assignment-related costs. Finally, to the extent the employee is taxable by the host jurisdiction, the employer will want to confirm that the applicable withholding and reporting rules are followed, both in the home and host jurisdictions. See Compliance: Withholding and Reporting, below.

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

US Federal Income Tax: Short-term Assignments

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

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

As of the date of publication, the United States has income tax treaties in force with more than 65 countries. Several income tax treaty provisions may be relevant to mobile employees. The provision addressing "dependent personal services" or "income from employment" is primarily directed at certain employees who are sent

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

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

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

- The individual is present in the host country for a period or periods not exceeding 183 days in any 12-month period commencing or ending in the taxable year;

- The remuneration is paid by or on behalf of, an employer who is not a resident of the host country; and

- The remuneration is not borne by a permanent establishment that the employer has in the host country.

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

Many of the US tax treaties have similar, but not always identical language. Some treaties look at whether the employee has spent more than 183 days in a calendar year in the host country (in addition to the

other requirements). In other cases, the time limit may be less than 183 days, or there may be a maximum compensation limit imposed.

It should be noted that the OECD has recently indicated that the "employer" for purposes of treaty analysis is not necessarily the legal employer. The OECD recommends that an "economic employer" concept be used in applying this type of income tax treaty provision.

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

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

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

Traveling and Temporary Living Expenses

Under US income tax rules, an employee may be able to exclude from gross income amounts paid by the employer for traveling and temporary living expense while "away from home" in the pursuit of a trade or business, including amounts expended for meals and lodging

that are not lavish. Internal Revenue Code ("Code") Section 162(a)(2) allows an exemption for living expenses that are ordinary and necessary while the employee is temporarily away from home.

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

US Federal Income Tax: Long-term Assignments

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

Foreign Earned Income and Housing Exclusion

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

The maximum amount of foreign earned income that can be excluded is indexed and is USD97,600 for 2013. It can be elected only by a "qualified individual," meaning a person whose "tax home" is in a foreign country and who is either:

- A citizen of the US who is a bona fide resident of a foreign country for an entire taxable year; or

- A citizen or resident of the US who, during any period of 12 consecutive months, is present in a foreign country or countries for at least 330 full days of such period.

A qualified individual must elect to exclude foreign earned income on IRS Form 2555, or a comparable form, which must be filed with the individual's US federal income tax return for the first taxable year for

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

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

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

If the individual's qualified housing expenses exceed USD15,616 (for 2013) *i.e.*, 16 percent of the maximum foreign earned income exclusion for a full taxable year, the individual may elect to exclude the excess up to a maximum of USD29,280 (for 2013) *i.e.*, 30 percent of the maximum foreign earned income exclusion for a full taxable year. However, the IRS has issued guidance providing upward adjustments to this maximum in a number of high housing cost locations.

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

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

Foreign Tax Credit

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

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

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

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

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

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

Participation in Non-US Compensation Programs

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

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

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

Since the Code Section 409A rules apply to all plans globally that have US taxpayer participants, the issue should be carefully considered for any non-US compensation plans (*e.g.*, retirement plans, equity incentive plans, cash bonus plans) in which the expatriate will participate. It is highly unlikely that such plans will be designed to avoid or comply with the Code Section 409A requirements.

As a first step of the analysis, it is critical to identify all of the potential compensation plans, including for example equity compensation plans, that will be offered to the employee. The Code

Section 409A rules do provide a few specific exemptions for foreign plans, although they are limited in scope.

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

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

The broad based plan must also meet the following requirements:

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

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

In addition, Code Section 457A can also apply to deferred compensation earned by a US taxpayer employee working abroad. It

limits the ability to offer deferred compensation in cases where employees (who are subject to US taxation) perform services for employers who are considered "nonqualified entities." In general, employers based in jurisdictions that do not have a corporate income tax will be "nonqualified entities."

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

US Federal Income Tax – US Inbound Assignments

Employees who are sent to work in other countries even for relatively short assignments may nonetheless be subject to local income tax on the compensation they earn for working abroad, unless there is a local tax exemption for such limited work or unless the provision of an income tax treaty provides an exemption. In the United States, for example, the Code provides a limited exemption for foreign employees working in the United States on a short-term basis, but it is practically of no use since the compensation earned during the period of assignment cannot exceed USD3,000. Other jurisdictions may have similar statutory exemptions for short-term assignments, but generally speaking they are rare.

Taxation as a "Resident"

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

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

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

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

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

- Is lawfully permitted to reside permanently in the US (*i.e.*, the "green card" test); or

- Is in the US a substantial amount of time (*i.e.*, the "substantial presence" test).

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

The "substantial presence" test is satisfied if, in general, the employee is present in the US for:

- At least 31 days during the current calendar year; and

- The sum of the days he is present in the US during the current calendar year, plus 1/3 of the days he was present in the preceding year, plus 1/6 of the days he was present in the second preceding year, equals or exceeds 183 days.

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

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

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

In addition, wages, fees or salary of an employee of a foreign government or an international organization are not included in gross income for US tax purposes if: the employee is a nonresident alien or a citizen of the Philippines, the services as an employee of a foreign government are similar to those performed by employees of the US government in foreign countries, and the foreign government grants an equivalent exemption to US government employees performing services in that country.

Finally, nonresident aliens may be entitled to reduced rates of, or exemption from, US federal income taxation under an applicable

income tax treaty between the country of which they are residents and the US.

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

Participation in Non-US Compensation Programs

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

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

Notwithstanding, there are some exemptions under Code Section 409A for deferred compensation which vests before the employee becomes a US tax resident. Again, as in the case of all US employees who go to work abroad, it is critical to identify all of the plans and

arrangements which could be potentially subject to taxation under Code Section 409A in advance of an employee's assignment to the United States.

US Social Security

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

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

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

- The US or any instrumentality thereof;
- An individual who is a resident of the US;
- A partnership, if two-thirds or more of the partners are residents of the US;
- A trust, if all of the trustees are residents of the US; or
- A corporation organized under the laws of the US or any state.

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

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

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

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

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

Under this voluntary agreement, the American employer pays the employer and employee portion of FICA taxes that would be imposed if such wages were subject to FICA taxes under the general rules. There is no legal requirement that the employee reimburse the

American employer for the employee's share of the tax, although some companies do in fact require such reimbursement.

Totalization Agreements

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

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

A further problem that may be encountered by the employee concerns fragmented social security coverage. A US citizen or resident who has worked for less than 10 years and who transfers employment to a foreign employer (that is, not an "American employer") will not continue to earn "quarters of coverage" for a maximum US Social Security benefit. In addition, if the expatriate's employment history includes a lot of temporary assignments in different foreign jurisdictions, the employee may find at the end of his career that the employee has not worked long enough in any one jurisdiction to qualify for an old age, retirement or other social benefit under any country's system.

To address these problems, many jurisdictions have entered into international agreements called "Totalization Agreements." A

Totalization Agreement provides a set of rules to determine which jurisdiction will cover the individual's employment under its own social insurance tax system. Note that a Totalization Agreement does not change the domestic rules of a country's social tax system. It does not impose social insurance tax coverage if employment would ordinarily not be covered.

In the case of the United States, there are 24 such agreements in force. In general, each Totalization Agreement follows the "territoriality" principle. That is, employment for purposes of social insurance taxes is covered only by the laws of the country in which the work is performed.

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

With regard to benefits, a Totalization Agreement permits an employee to combine or "totalize" periods of coverage for purposes of determining eligibility for coverage. For example, to qualify for a minimum US Social Security benefit under the Totalization procedure, the executive must have at least six quarters of coverage in the United States system. The Totalization Agreements contain parallel provisions for each country, so that if the combined or "totalized" periods of coverage are sufficient to meet the eligibility requirements for benefits, then pro rata benefits are payable from each country's social insurance system.

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

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

Social Security Implications for Inbound Assignments

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

An inbound employee who does not qualify for those exemptions from US Social Security will be subject to FICA tax withholding on compensation unless an exemption under a Totalization Agreement in effect with the home country can be claimed. For example, if the employee is here on a "temporary assignment," then the applicable Totalization Agreement can be relied upon as an exemption from the application of FICA tax withholding. In that event, the employee will need to produce a certificate of coverage from the home country authority to claim the exemption.

Selected Concerns from the Employer's Perspective

Availability of Corporate Income Tax Deduction

One of the primary issues from the employer's standpoint is whether the costs of the expatriate's compensation are deductible, and if so by which entity. Under US federal income tax principles, the entity that is the common law employer, that is, the entity that has the right to direct and control the activities of the employee, is entitled to the income tax deduction. Note this principle may be similar in non-US. jurisdictions, so it would be prudent to consult with a tax advisor on any tax deduction question.

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

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

Permanent Establishment Risk

One key issue that always needs to be considered in structuring international assignments is whether the employment structure will inadvertently create a "permanent establishment" or "PE" issue for the home country employer. A PE exists where the employing entity is considered to be doing business in the host country and is therefore subject to corporate income tax by the host country on an allocable

amount of the entity's net income. As discussed in the Chapter on Employment, under the secondment structure the employee remains employed by, and thus directed and controlled by, the home country employer. Accordingly, this structure creates a PE risk for the home country employer. The length of the assignment does not necessarily matter. Even, in the case of short-term assignments, or "informal" assignments, where the employee is seconded to work in another jurisdiction for just a few weeks or months, this risk may exist.

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

A local tax inspector may assume that a company has automatically created a PE if the expatriate is on secondment while working in the host jurisdiction. To mitigate this risk, many multinational companies will include express language in the expatriate's assignment letter to provide that the expatriate has no authority to conclude contracts on behalf of the home country employer while working in the host jurisdiction.

The activities that could constitute a permanent establishment vary by jurisdiction, based on income tax treaty provisions and the structure of the employment relationships. The concept of PE has been undergoing significant changes following guidance from the Organization of Economic Community and Development ("OECD"). As a result, in some jurisdictions a covenant that the expatriate does not have the authority to conclude contracts may not be enough to avoid a PE risk. In some jurisdictions (*e.g.*, China) secondment attracts special scrutiny, just because it is secondment, and creates a potential tax liability for the home country employer unless the expatriate is directed and controlled by the local entity in China. In other jurisdictions (*e.g.*, India and Canada), the secondment structure may run afoul of the Services PE concept, that is, a PE may exist merely because an employee of the home jurisdiction performs services in the

host jurisdiction. We recommend that companies work closely with their tax advisors to understand the nuances and potential exposures that may arise in connection with the PE risk.

Tax Equalization and Tax Protection Programs

In order to minimize the expatriate's potential exposure to a higher global income and social security tax burden, the employer will often implement a tax equalization or tax protection program for all of its expatriates and globally mobile employees. Such a program provides a consistent approach for handling the complex income and social security tax situation of any particular expatriate.

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

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

Thus, under a tax protection program, if at the end of the year the actual home and host country income and social taxes are more than the hypothetical tax deducted during the year, the employee is reimbursed for the difference. If the actual taxes are less than the hypothetical tax liability, the employee is not required to pay anything back to his employer and would realize a benefit.

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

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

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

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

Budgeting and Cost Projections

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

Compliance: Withholding and Reporting

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

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

Preliminary International Employment Transfer Checklist

Employee Information:

Employee Name:

Position:

Home Location:

Host Location:

Manager(s):

Location(s) of Manager(s):

Duration of International Transfer:

Employee's Citizenship (please also indicate if employee holds permanent residence/landed immigrant status in any other country):

Employee's Current Tax Residency:

Current Employee Benefits:

Planned Assignment Start Date:

Planned Assignment End Date:

Compensation (currency, amount and source):

Any Accompanying Family Members (names, relationships, citizenship and any permanent residence/landed immigrant status details):

Employment Structure:

Options:

- Secondment
- Transfer of Employment
- GEC (Transfer followed by Secondment)
- Dual employment
    - Consider pro's and con's of each option
    - Once structure has been determined, draft appropriate documentation
    - Determine applicable employment laws

Individual Income Tax:

- Applicable tax treaty?
- Home location withholdings required?
- Host location withholdings required?
- Tax reimbursement?

Social Insurance:

- Applicable Totalization Agreement?
- Home location withholdings required?
- Host location withholdings required?

Permanent Establishment / Doing Business:

- Local entity required?
- Permanent establishment exposure (applicable tax treaty)?
- Intercompany secondment agreement?
- Doing business exposure?

Benefits / Equity:

- Can/should home country benefits be maintained (applicable plans)?
- Can/should host country benefits be obtained (applicable plans)?
- Determine impact of assignment on equity (existing grants / new grants)?

Immigration:

- Can visa/resident permit/work permit be obtained (options)?
- What additional information/documents are needed?
- How long will it take to secure approvals?
- Any steps required to protect current resident status, if any?
- Any steps requires to protect eligibility to naturalize, if relevant?

Other:

- If an international transfer does not appear the right option, are there alternative staffing models (*e.g.*, local hires)?

Global Mobility Questionnaire

In general

Specific requirements vary, depending upon the countries and visa involved. The purpose of this questionnaire is to identify the documents and information generally required for most assignments. Additional documentation and information may be needed as the visa process continues due to variations in immigration and employment authorization laws in various countries.

The Applicant

1. Name

2. Contact information (including email and telephone/fax numbers)

3. Complete copy of passport(s)

4. Updated resume (include a description of all previous jobs, including general information about the number and titles of people supervised, and the dates of employment)

5. Copies of diplomas and/or transcripts for university and advanced degrees

6. ***Detailed*** description of the applicant's current job duties (including the number, titles, and duties of any employees the applicant supervises)

7. Copy of birth certificate (original may be required later)

8. Copy of marriage certificate, if applicable (original may be required later)

9. If any accompanying family members, please provide:

    - Relationship to primary applicant (e.g., spouse, child)

- Complete copy of relative's passport(s)
- Copy of birth certificate (original may be required later).

Proposed assignment:

1. ***Detailed*** Description of the applicant's proposed job duties (including number, titles, and duties of any supervised employees), compensation (amount and source of payment)
2. Proposed dates of assignment
3. Address of proposed new job site
4. Name of proposed employer abroad
5. Relationship to current employer, if any (*e.g.*, parent, subsidiary, branch office)
6. Name of company contact (including email and telephone/fax numbers.

Global Equity Compensation

Executive Summary

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

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

Key Government Agencies

The Internal Revenue Service ("IRS") and Social Security Administration ("SSA") are the government agencies responsible for overseeing the assessment and payment of federal income taxes and social security taxes (*i.e.*, Federal Insurance Contribution Act or "FICA" taxes which include social security and Medicare tax).

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

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

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

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

Current Trends

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

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

Historically, while employers and tax authorities have generally had arrangements in place to determine and assess the US and foreign taxes owed on salary paid to internationally mobile employees, the proper taxation of income from equity compensation awards has commonly been overlooked. Consideration has not always been given to the fact that equity award income has usually been earned over a period of one or more years, whether over the vesting or the exercise period, during which the equity award holder may have been employed and resident in a number of different countries.

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

Business Travel

Depending on the circumstances, foreign national employees coming to the United States on short-term business trips (*e.g.*, total stay of up to six months) may be subject to US federal income taxation on their foreign wages paid during periods spent on business within the US. This is based on the general US sourcing rule in Section 861 of the Internal Revenue Code that compensation for labor or personal services performed in the US is US source income and therefore subject to US income tax in the absence of an exemption. Where an individual such as a business traveler performs services partly in and partly outside the US, the applicable US Treasury Regulations provide that the portion of the individual's compensation for such services that constitutes US source income should, in many cases, be apportioned on a time basis.

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

As a result, if US federal income tax applies to income paid to a given foreign business traveler employee, it will also apply to any income the employee receives from an equity award that is attributable to the US under the above sourcing rule, due to the fact that a portion of the equity award vested while the employee was on business travel in the US. In such cases, the employer of the foreign national employee will have an obligation to withhold the US federal income tax due.

In practice, a foreign national employee on a business trip will be exempt from US federal income taxation on compensation for labor or personal services performed in the US if the individual qualifies as a "short-term business visitor" under Sections 861(a)(3) or 864(b)(1) of the US Internal Revenue Code, or if he or she is a resident of a country with which the US has an income tax treaty and meets the tax exemption requirements of the treaty for individuals employed in the US for a short period. Certain conditions must be satisfied for either exemption to apply, which generally require an assessment of the individual's length of stay in the United States, the amount of compensation paid to the individual while in the United States and the

nationality and/or business location of the employer. If an exemption applies, the employee should provide appropriate documentation to his or her non-US employer, including IRS Form 8233 if a tax treaty exemption is relied on for US income tax withholding purposes.

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

If the individual is from one of the 24 countries with which (as of the date of publication) the US has a social security totalization agreement, there should be an exemption from FICA tax under the temporary assignment provisions of such totalization agreement, provided that the foreign employee's wages (including equity award income) earned while temporarily working in the US are subject to social security taxes in his or her home country. If a totalization agreement does not apply, but there is an income tax treaty between the US and the country of which the foreign national is a resident, it may be possible to take the position that the treaty implicitly provides for an exemption from FICA taxes, depending on the treaty.

US State taxes also need to be considered in any US-inbound transfer scenario. Although it is highly unlikely that foreign nationals on short-term business trips would be considered residents of the applicable State for income tax purposes, some States may tax the individual's compensation, including equity award compensation, if the foreign national performed services in the State. Additionally, not all States recognize US federal income tax treaty exemptions.

Thus, before a foreign national is sent on a short-term business trip to the US, it is important to confirm the extent to which the foreign national may be subject to US federal income tax, State tax and/or

FICA tax and, assuming that an exemption is available, take any steps necessary to rely on such exemption. Assuming US income and/or social security tax applies to income earned or deemed to have been earned by the foreign national during the business trip, to the extent that the individual holds stock options or other equity awards that have partially vested while the individual was within the country, a tracking system needs to be established to ensure that appropriate taxes are paid when the individual ultimately realizes the income from the equity award (*e.g.*, when exercising the stock option, or exercising/vesting in such other form of equity award) after departing the US.

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

Training

The tax treatment of equity awards granted to foreign individuals coming to the US for training assignments will depend on a number of factors, including the immigration status of the individual and whether

the entity that granted the equity awards qualifies as a foreign employer under the US Internal Revenue Code.

Further, as discussed above, the US source portion of income employees receive from equity awards is generally based on the work-days the employee spent in the US during the award's vesting period relative to the total number of work-days in the vesting period. Thus, a key factor affecting the taxation of equity awards held by an individual on a training assignment is whether, pursuant to the terms of the stock plan under which the award was granted, services performed by an award-holder while on a training assignment can constitute continued employment for purposes of the award. In other words, whether the individual can continue to vest in the equity award while on the assignment.

If, under the plan terms, a period spent in training is not considered continued employment for vesting purposes and the vesting of the award is therefore suspended for the duration of the assignment, it is likely that US federal income taxes will not apply to any portion of the income the employee ultimately receives from the equity award, since no part of the award will have vested while the employee was in training within the United States. Note that while some stock plans permit employees to continue vesting during periods of company-approved leave of absence, such periods are usually limited to a maximum of 90 days, and thus would not be suitable for a longer-term training assignment.

Assuming, as is generally the case, that continued active employment with the issuer company or one of its subsidiaries or affiliates is required in order for an award-holder to continue vesting in an equity award, an appropriate US training visa for an individual holding an equity award is likely the J-1 exchange visitor visa. The J-1 visa enables non-US persons to come to the US for paid on-the-job training assignments for periods of up to 18 months, which would usually mean that the vesting of the individual's equity awards would not have to be suspended during the period of on-the-job training.

With regard to the US tax treatment of such individual, any salary income paid to the J-1 visa holder by the sponsoring company for services performed in the United States will likely be subject to US federal income tax under non-resident source taxation rules (provided such salary is not paid by a foreign employer under Section 872(b)(3)of the US Internal Revenue Code). However, different rules need to be analyzed to determine the US tax treatment of equity award income paid to J-1 visa holders.

For instance, if the entity that granted the equity award to the J-1 visa holder is a foreign corporation, the income the individual receives from the equity award should be exempt from US federal income tax under Section 872(b)(3) of the US Internal Revenue Code, notwithstanding that the foreign national spent a portion of the period over which the award vested employed within the US. On the other hand, US federal income tax likely would apply if, for example, the equity award was granted by a US corporation to an employee of one of its foreign subsidiaries, which subsequently sent the employee for a training assignment in J-1 visa status. This is because the income from the equity award that has been granted by the US parent corporation cannot be considered to have been paid by a "foreign employer," as required under the relevant US Internal Revenue Code tax exemption.

Tax treaties between the US and the country in which the foreign individual is a resident may also impact the tax result. Given the complexity of the tax treatment, particularly in the equity award context, it is important to assess tax liabilities in advance of any training assignment and develop structures to ensure such obligations can be met.

With regard to US FICA taxes, the situation is generally more straightforward since non-resident alien trainees temporarily present in the US in J-1 visa status are exempt from Social Security and Medicare taxes on wages paid to them for services performed within the US, as long as such services are permitted by the US Citizenship and Immigration Services and are performed to carry out the purposes for which the trainees were admitted to the United States. Therefore, if

a foreign individual has been granted an equity award due to the employment relationship, is subsequently sent to the US by the employer on a J-1 training program and the employment during the program qualifies as service under the relevant stock plan, such that the individual may continue to vest in the award while on the training program, it is likely that any income the individual may receive from the award will be exempt from FICA taxes.

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

Employment Assignments

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

US-Inbound Assignments

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

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

In addition, in the absence of a social security totalization agreement between the US and the foreign national's home country (or if there is a totalization agreement and the transfer to the US is for more than five years), with limited exceptions, FICA taxes will apply to the equity award income. Where a foreign national is from a totalization agreement country (with the exception of Italy) and is transferred to the US for a period of five years or less, FICA taxes generally will not apply, provided that the foreign national has obtained a Certificate of Coverage from the home country social security authorities (confirming the foreign national remains subject to the home country social security system) and furnished it to the US employer. Please refer to the 'Income Tax and Social Insurance' portion of this section of the handbook for further information on US FICA tax considerations.

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

On the regulatory side, if additional stock options or other equity awards will be offered to the US-inbound employee while he or she is in the US, the issuer must ensure that the offer of the securities complies with US securities laws. At the federal level, the shares

offered under the equity plan will need to be registered with the US SEC or determined exempt from registration. The shares will also need to be registered or qualified as exempt from registration at the State level based on the State in which the employee is resident. In addition, it is necessary to ensure that the resale of shares by the employee is permissible within the US under applicable federal and State securities law registrations or exemptions.

US-Outbound Assignments

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

An exclusion from US federal tax applies under Section 911 of the US Internal Revenue Code for a certain amount of foreign income earned by a US citizen or resident (*e.g.*, up to USD95,100 for 2012), although this is not helpful in the equity award context if, as may often be the case, the individual's salary income alone surpasses this threshold. (This foreign earned income exclusion is discussed in more depth in the 'Income Tax and Social Insurance' portion of this section of the handbook.)

An exception that may be useful for equity award income applies under Section 3401(a)(8)(A)(ii) of the US Internal Revenue Code if a US-outbound US citizen's income (including equity award income) is subject to mandatory foreign tax withholding in the country in which he or she is employed, which, for equity award income, varies by country and by whether the local employer entity bears the cost of the equity award. This exception also applies only to US citizens and not

to green card-holders, which increases the administrative complexity of applying the exception on a broad basis.

Another exception to US federal tax withholding may apply under the foreign tax credit provisions of Section 901b) of the US Internal Revenue Code, to the extent the transferred employee has indicated eligibility for a foreign tax credit on Form W-4, although the application of this exception needs to be carefully reviewed on a case by case basis (for further discussion of the foreign tax credit, please refer to the 'Income Tax and Social Insurance' portion of this section of the handbook).

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

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

Depending on the outbound US citizen or permanent resident's employer entity and the existence of a totalization agreement between the United States and the country to which the individual is transferred, US FICA tax may also apply to the individual's equity award and other income.

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

If a totalization agreement applies and an individual's equity award income would otherwise be subject to non-US social security taxes, US FICA taxes will generally no longer apply if the transfer is for more than five years, although there are some variations depending on the terms of the applicable totalization agreement. In this US-outbound context, it is important to consider equity award income separately from salary as a totalization agreement will not apply in the absence of double social security taxation and equity award income paid by a US parent company to employees working at a subsidiary or affiliate outside the US is sometimes not subject to local country social security taxes, while salary is rarely (if ever) so exempt. It should also be noted that, unlike the federal income tax regulations, the FICA regulations provide no basis for apportionment of multi-year compensation such as equity award income, which can increase the complexity of meeting US withholding obligations in cases where it is possible to apportion income for income tax purposes.

Solutions to Double Tax Issues

To ease the potential tax burden of internationally mobile employees or a select portion of such employees (*e.g.*, executive-level employees), most multi-national employers have a tax equalization or tax protection policy. These policies ensure that, from a tax standpoint, an international employment assignment is at least tax neutral and, in the case of protection programs, potentially tax favorable for the assignee.

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

Developing an Approach to Compliance

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

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

- The individual's citizenship;
- US or foreign permanent residency status;
- US or foreign visa status; and
- Time spent in each country during the periods over which the individual's equity awards have vested and whether the individual's employment transfer is intended to be on a short or long-term basis (including if it will for more or less than five years).

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

Where a tax equalization or tax protection policy exists and income from equity awards is covered under the policy (some policies cover regular wages or other specified items of compensation only), it is

necessary to be able to separately track the amount of equity award income paid to tax-equalized/tax-protected employees and calculate and pay both the US and foreign taxes actually due based on the individual's residency and/or citizenship status, and the amount of home country taxes that would have been payable had the individual not gone on assignment.

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

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

Other Comments

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

Legal issues affecting equity awards also need to be considered in certain transfer situations, particularly where US-based employees are transferred on a long-term basis from the US to countries where securities law, foreign exchange regulations, tax-qualified plan requirements or other legal restrictions impact the equity award agreements and mean that it is necessary or desirable to modify the terms of such awards to comply with local law or gain the benefit of a favorable local tax regime. To the extent possible in light of accounting issues and plan limitations, it is important to structure

equity award grants to allow for flexibility to address legal issues that may arise in the global employment transfer context when an employee is relocated after the grant date. For companies making new grants of equity awards on a global basis, a useful best practice in this regard is to adopt a single global form of award agreement that includes a country-specific terms appendix and a relocation provision. Then, if an award-holder goes on international assignment after the grant date, the agreement's relocation provision gives the issuer authority to apply the terms set forth in the appendix to the agreement for the country of transfer, to the extent necessary to comply with applicable laws or administer the grant.

Further Information

The Global Equity Services Practice, supported by tax treaty colleagues, works in coordination with the Global Immigration and Mobility Practice, on global mobility assignments. GES practitioners provide streamlined advice on both the US and non-US tax, social security and legal aspects of short- and long-term international employment transfers in the equity awards context. They also assist multinational companies in developing an approach to global equity compensation tax liabilities that combines the degree of legal protection and operating flexibility most appropriate to the interests of the relevant company.

Section 3 Country Guide

Argentina

Executive Summary

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

Key Government Agencies

The *"Dirección Nacional de Migraciones"* (National Migration Bureau) is the governmental office in charge of issuing residence permits.

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

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

The *"Administración Federal de Ingresos Públicos - AFIP"* (Federal Tax Authority) is involved in the process after the visa or residence is granted, to issue the *"CUIL"* or workers' identification number, to allow the foreign national's employment by a local entity.

Inspections and admission of foreign nationals are conducted by the National Migration Bureau and the Federal Police at Argentine ports of entry. Investigations and enforcement actions involving employers

and foreign nationals are handled jointly by the National Migration Bureau and the Ministry of Labor. These agencies are all part of the National Executive Branch.

Introduction

According to Argentine Migratory regulations, any individual assigned to render services in Argentina must have the corresponding work authorization issued by the National Migration Bureau.

If a foreign individual who is a national of the MERCOSUR or its associated countries (Uruguay, Brazil, Paraguay, Chile, Colombia, Peru, Bolivia, Venezuela, and Ecuador) intends to work in Argentina, he/she must obtain his/her residence directly in the National Migration Bureau.

If a foreign individual who is not a national of the MERCOSUR or its associated countries intends to work in Argentina, he/she should obtain an Entry Permit and the corresponding Working Visa.

Foreign individuals who intend to work in Argentina for less than 30 days may obtain Transitory Work Permits.

Employment Assignments

MERCOSUR Citizens

If a foreign individual who is a national of the MERCOSUR or its associated countries intends to work in Argentina, he/she must obtain his/her residence directly in the National Migration Bureau.

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

A Provisional Residence Certificate will be delivered to the applicant and will authorize the applicant to leave and re-enter the country.

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

This procedure also can be followed for nationals who are not of the MERCOSUR or its associated countries. In this case, the applicant will be granted the Temporary Residence and DNI with a term of one year, renewable upon expiration for an additional one year. In turn, upon expiration of this second year, it can be renewed for an additional one year. Upon two renewals, the applicant may apply for the Permanent Residence.

Non-MERCOSUR Citizens

If a foreign individual who is not a national of the MERCOSUR or its associated countries intends to work in Argentina, he/she should obtain an "Entry Permit" and the corresponding Working Visa ("Visa"), provided always that the individual has been hired or employed by an Argentine company ("Calling Entity") and the latter has been registered as such. We expand on these issues below.

Registration of the Calling Entity

Calling Entities must register themselves at the National Single Register for Foreigners (*Registro Nacional Único de Requirentes de Extranjeros* - "RENURE").

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

The application must be made in writing and filed with RENURE. The registration must be made only once and every year should be updated with the presentation of the Balance Sheet corresponding to the last fiscal year duly certified by the Economics Professional Council (*Consejo Profesional de Ciencias Económicas*) and the minutes evidencing the last appointment of corporate officers. This registration

is free of charge. The Calling Entity will receive a registration number; all future admission applications must be filed with such number.

The Calling Entity that requests its registration in the RENURE must provide the following documentation: (i) registration with the Public Registry of Commerce; (ii) bylaws; (iii) minutes evidencing the last appointment of corporate officers; (iv) Balance Sheet corresponding to the last fiscal year, duly certified by the Economics Professional Council; (v) taxpayer's identification number (*Clave Única de Identificación Tributaria* - CUIT); (vi) Income Tax registration; (vii) Value Added Tax registration; (viii) Gross Receipt Tax registration; and (ix) registration as employer in the public social security system.

First Stage – Entry Permit

The Calling Entity must require the National Migration Bureau to grant the foreign individual an Entry Permit which will allow him/her to obtain the Visa at the Consulate of his/her place of residence or country of origin. The following documentation must be filed with the National Migration Bureau along with such application:

- Taxpayer's Identification Number (*Clave Única de Identificación Tributaria* - CUIT) of the Calling Entity.
- Receipts of payment of the VAT, Gross Receipt, and Social Security contributions.
- Last income tax return.
- Full copy of the passport (blank pages to) of the foreign national and of the members of his/her family who are to require the Entry Permit.
- An original marriage certificate (if appropriate) per spouse.
- A certified copy of the birth certificates of the foreign national's children who are to apply for the Entry Permit.

- The foreign national's resume in Spanish.

- An employment contract, valid for at least one year, to be executed between the Calling Entity and the foreign national, in accordance with Argentine labor laws. The employment contract must specify that the labor relationship shall be conditioned to the granting of the Visa. The employment contract should be solely signed by a representative duly authorized of the Calling Entity (the foreign national should sign it after obtaining the Visa) and must be certified by a notary public and legalized by the Notaries' Association.

- A letter of the Calling Entity stating the description of the activities, the tasks to be performed by the foreign national in Argentina. The letter should be signed by the legal representative of the Calling Entity and duly certified by a notary public.

- Power of attorney granted by the Calling Entity to obtain the Entry Permit from the National Migration Bureau.

- A number of personal data of the foreign national.

This first stage finishes once the Entry Permit has been issued in approximately 20 days.

From the time the Entry Permit request is presented at the National Migration Bureau to the time it is granted the foreign national can not be in the country.

Second Stage - Visa

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

The foreign individual should require the granting of the Visa by filing the Entry Permit along with the following documents:

- Passports with a minimum validity of one year (and copies of all its pages) of the foreign national and of the members of his/her family who are to request a visa.

- Two original birth certificates of the foreign national and of the members of his/her family who are to request a visa.

- An original marriage certificate per spouse.

- The foreign national's academic certificate, diploma or degree.

- A certificate of criminal records for individuals over 16 years old, issued by the countries in which the foreign national has resided over the last five years before arriving Argentina.

- A personal 3/4 right profile format photograph.

- Consulate fee.

Documents mentioned in 2, 3, 4, and 5 must be duly translated into Spanish and previously legalized by the Argentine Consulate with jurisdiction over the place of issuance or by means of the "Apostille" (The Hague Convention of 1961, which overrules the mandatory legalization of public instruments).

Once all the documentation has been filed, the Consulate shall grant the Visa for a one year term, renewable upon expiration for an additional one year. In turn, upon expiration of this second year, it can be renewed for an additional one year. Upon two renewals, the applicant may apply for the Permanent Residence.

Transfer Visas ("Visas de Traslado")

Multinational companies seeking to temporarily transfer foreign employees to Argentina under an assignment or secondment

agreement must file a request for the so-called Transfer Visa or *"Visa de Traslado."* This visa is initially valid for assignments of less or up to one year and can be renewed. This renewal requires registration of the foreign national with the Federal Tax Authority.

The requirements for this Transfer Visa are basically the same as the one set forth above for Non-MERCOSUR Citizens. The difference is that the foreign national will not be hired or employed by an Argentine company; instead, he/she will maintain the employment relationship with the foreign entity and will be assigned to render services in Argentina under an assignment or secondment agreement.

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

National Identification Card ("Documento Nacional de Identidad" - DNI)

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

The DNI is the local identification document, which is necessary to obtain a definitive registration with the Federal Tax Authority, open bank accounts, register with health care providers, and obtain as a local driver's license, among others. The DNI shall be granted to the applicant for the same term of the Visa and shall only be renewed once the Temporary Residence has been extended.

Training / Technician work / Short-term Assignments

A special transitory residence visa will enable foreign employees to receive training or develop technician work in Argentina for brief periods of time, upon tourist visa.

Such transitory residence is granted for the term of 30 days, renewable upon expiration.

Business Visa

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

Foreign nationals from countries that need a Visa to enter the country should obtain the Business Visa in the Argentine Consulate, previous the granting of the Entry Permit in the National Migration Bureau in Buenos Aires.

Other Comments

There are additional visas less frequently used for global mobility assignments, including: student/study visas; retiree visas; pensioners; sports; *etc*.

Australia

Executive Summary

The advent of globalization has led to a dramatic increase in the movement of skilled workers seeking employment opportunities in different countries, and Australia remains a popular destination.

Key Government Agencies

The Department of Immigration and Citizenship ("DIAC") is the responsible government department that processes all visa applications. Depending on the type of visa applied for and the location of the applicant, applications may be lodged in or outside Australia. If lodged outside Australia, a DIAC officer within a local Australian mission (*e.g.*, an Australian Embassy, Australian High Commission or Australian Consulate) will process the application.

In addition to visa processing duties, DIAC is responsible for monitoring the activities of businesses that sponsor foreign national staff for work visas. DIAC conducts audits regularly to ensure employers of foreign national staff are complying with their immigration obligations. If non-compliance is established, DIAC has specific powers to sanction the employer (and the foreign employee, if applicable), which may result in serious ramifications for both business operations and reputation of the employer.

Recent Changes

On 24 November 2012, the Australian government introduced a new visa which provides a pathway to permanent residence for high net work individuals. The 'Significant Investor visa' subclass 188 is available to applicants willing to make an investment of at least AUD5 million in Australian government nominated investments.

After maintaining the investment for at least four years the applicant is eligible to apply for permanent residence.

Current Trends

Over the last few years, the Australian government has placed increasing emphasis on employment visas and compliance to achieve a delicate balance between addressing the skill shortages in the Australian labor market and ensuring this increased employment activity does not result in a breach of immigration and employment laws. Employers of foreign national staff working without a valid visa or in breach of their visa conditions may be subjected to civil and criminal penalties, including imprisonment in serious circumstances.

In addition to protecting the rights of foreign national staff, the government is tightening the requirements of employment visas. Australian employers must establish they are investing in training and career development opportunities for local staff. Another key trend is the requirement for visa applicants to meet English language benchmarks. While many visa streams have flexible exceptions to this requirement, there is a movement by the government to improve the English language ability of all foreign nationals seeking to live and work in Australia.

Business Travel

Business Electronic Travel Authority

The Business Electronic Travel Authority ("Business ETA") is an electronic visa designed to facilitate travel by foreign nationals of countries who, on the basis of statistical data, have shown to be genuine business visitors and are unlikely to overstay their visas.

Foreign nationals with passports from the following countries are eligible for a Business 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 authorities of Taiwan
Germany	Monaco	United Kingdom (including BNO)
Greece	Netherlands	United States of America
Hong Kong SAR	Norway	Vatican City

Primarily, the Business ETA is designed for business visitors who wish to undertake business-related activities such as attending conferences, seminars, business meetings or training sessions.

The Business ETA allows multiple trips to Australia and is normally valid for use for a period of 12 months. Visa holders may enter Australia and stay for a maximum of three months on each occasion (with no limit on the number of entries that may be made). While this visa does not generally allow employment, visa holders may engage in work in exceptional circumstances, that is, if the work is urgent, highly skilled or specialized in nature and for no more than six weeks.

Subclass 651 eVisitor Visa

The Subclass 651 eVisitor Visa ("651 visa") is also an electronic visa with the same effect and operation as the Business ETA. The holder of this visa may enter Australia for a maximum of three months on each occasion during the 12 month life of the visa. This visa also allows for

business activities and employment in exceptional circumstances as outlined above.

This visa is available to the following list of, generally European, passport holders:

Andorra	Iceland	Romania
Austria	Ireland	Republic of San Marino
Belgium	Italy	Slovakia
Bulgaria	Latvia	Slovenia
Cyprus	Liechtenstein	Spain
Czech Republic	Lithuania	Sweden
Denmark	Luxembourg	Switzerland
Estonia	Malta	United Kingdom
Finland	Monaco	Vatican City
France	Netherlands	
Germany	Norway	
Greece	Poland	
Hungary	Portugal	

The main benefit of this visa over the Business ETA is that the foreign national may make an online application without requiring the assistance of a travel agent or airline. There is also no application fee.

Subclass 456 Business Short Stay Visa

The subclass 456 Business Short Stay visa ("456 visa") is similarly intended for persons seeking a short-term stay in Australia for business purposes but who are not eligible for a Business ETA or a 651 visa (*e.g.*, nationals of India, the Republic of South Africa, and the People's Republic of China). This visa may be granted for travel to Australia for multiple trips over an extended period (such as one or more years) with a maximum stay of three months on each arrival. The 456 visa is similar to the Business ETA and the 651 visa in that the visa conditions do not permit employment except in exceptional circumstances.

Training

Subclass 402 Training and Research Visa

The subclass 402 Training and Research ("402") is for foreign nationals seeking to enhance their skills or education by undertaking structured workplace based training in Australia. The visa is primarily targeted towards young professionals seeking to further their career and develop their skills in a practical environment.

However, it may also be utilized by overseas students who must undergo a period of workplace based training in order to satisfy specific course requirements. Visa applicants may include their spouse and dependent children.

The 402 visa requires the trainee to be nominated by an Australian business or government organization. The training provided must be a clearly structured program that is workplace based. It must also be designed to improve the trainee's skills or area of expertise without adversely affecting the occupational training opportunities of Australian workers.

Employment Assignments

Subclass 457 Business Long Stay Visa (Temporary)

Australian and foreign businesses which meet certain requirements can be approved to sponsor foreign nationals for paid employment through the Subclass 457 Business Long Stay visa ("457 visa"). The 457 visa provides temporary residence in Australia to foreign nationals and their families for up to four years (with unlimited options to renew). The 457 visa is intended for skilled workers with the qualifications and/or experience required to accommodate Australia's labor shortages.

Foreign businesses with or without an operating base or representation in Australia can sponsor foreign nationals to work in Australia for various purposes, including the establishment of business operations in Australia or the fulfillment of contractual obligations.

Australian businesses, whether incorporated or unincorporated, can also sponsor foreign nationals for a 457 visa. In respect of Australian business sponsors, DIAC is careful to assess whether the business provides training and professional development opportunities to Australian employees and whether the level of training expenditure meets the requisite benchmarks at the time of assessment.

The 457 visa also accommodates related corporate entities in circumstances where it may be necessary for the foreign national to be sponsored by a business other than the direct employer or end user. This is possible in cases where the employer is an associated entity of the sponsoring business (*e.g.*, an Australian parent company sponsors a foreign national for a 457 visa to work as an employee of its smaller, newly established Australian subsidiary company).

Note, however, that there is an important exception to this requirement in instances where the sponsor will be a foreign business. In these circumstances, the foreign national must remain in the employment of the foreign business.

As part of the application process the sponsoring business, whether foreign or Australian, is required to give undertakings to DIAC in respect of the foreign national employees they sponsor. These 'sponsorship obligations' mirror the general obligations of employers under Australian employment and taxation laws but also consist of additional responsibilities specific to subclass 457 visa holding employees. The obligations cannot be waived nor can sponsors contract out of them as they are given by the sponsor to DIAC, not by the sponsor to the employee.

The sponsorship obligations include an obligation to be responsible for the cost of return travel of the foreign national employee and their family members. Another obligation is to cooperate with DIAC in relation to information requests and on-site visits by DIAC inspectors. Most obligations cease to apply once the foreign national employee has ceased employment or obtained another Australian visa.

Penalties for breaches of the obligations range from written warnings to fines. Foreign national employees applying for the 457 visa must be appropriately skilled and/or experienced in order to be eligible. University qualifications, although mandatory for some occupations, may not be required if the applicant can show that they have a specified level of relevant work experience (typically three to five years depending on the occupation).

Applicants must also demonstrate functional English language ability. Exemptions are available in certain situations, such as where the applicant is a native English speaker, the role is listed as exempt, the base salary meets the prescribed minimum or the applicant has completed at least five consecutive years of full time secondary and/or tertiary education where all instruction was delivered in English.

Employers seeking to sponsor a foreign national will also be required to demonstrate that the foreign national will be paid in accordance with the local labor market rate for their role, skills, experience and location of employment. This may be demonstrated in a number of ways, the most common being by comparative analysis of existing

Australian employees performing an equivalent role within the business or by providing salary survey data.

If the foreign national employee seeks to change employers in Australia, approval must first be obtained from DIAC in the form of a nomination application through sponsorship by the new employer or alternatively, the employee may apply for a new 457 visa.

Employer Nomination Scheme Visa (Permanent)

Australian businesses can sponsor skilled foreign nationals for permanent residence under the Employer Nomination Scheme ("ENS"). The ENS visa provides foreign nationals and their families with the opportunity to work and live in Australia permanently.

The application process is similar to the process for a 457 visa in that the employer must apply for approval from DIAC to sponsor the foreign national employee for permanent residence and the employee must demonstrate they are suitably qualified and experienced for the position.

There are some crucial differences between the ENS visa and the 457 visa including that the applicant for an ENS visa must be under the age of 50 (except in very limited circumstances) and the sponsor must be an Australian business.

Unlike the 457 visa, employers are not required to give undertakings to the Government in respect of the holder of an ENS visa. In addition, once the ENS visa is granted it ceases to be connected to the visa holder's employment.

Other Comments

The Australian government has introduced legislation which makes it an offence for an employer to knowingly or recklessly allow a foreign national to work without a valid visa or in breach of their visa conditions.

These sanctions also apply to employers who refer foreign nationals for work (and the employer knows, or is reckless as to whether the foreign national has a valid visa or will be breaching their visa conditions).

For example, an offence may occur if a foreign national is allowed to work after their visa has expired; or a foreign national is allowed to work even though their visa prohibits work.

An offence would similarly occur if a recruitment agency refers a foreign national employee whose visa has expired to work for an end user client; or refers a foreign national for full-time work even though their visa conditions only permit part-time work.

These laws place an obligation on employers to verify the work rights of their employees. The consequences of breaching these laws are severe and non-compliant employers risk criminal prosecution, financial penalty and, in some cases, imprisonment.

A foreign national's immigration status should, therefore, always be checked prior to an offer of employment being issued and/or prior to employment commencing.

In addition to the visas discussed above, there are a broad range of temporary visas that allow restricted work. From time to time these visas may be more appropriate for a foreign national employee if, for instance, sponsorship through a 457 visa is not possible or practical.

Working Holiday visas are available to nationals of certain countries (*e.g.*, United Kingdom, Germany and Canada) and permit the holder to work for up to six months with any one employer while also holidaying in Australia. Applicants must be between the age of 18 and 31 and extensions of this 12 month visa are available in prescribed circumstances.

Foreign nationals on student visas are also permitted to work for up to 40 hours per fortnight and full-time when their course is not in session. Often these visas may be more appropriate for short-term assignments or casual, less qualified workers.

In addition to temporary visas, Australian permanent residence is also available to foreign nationals who wish to apply independently (*i.e.*, without the sponsorship of an Australian employer) on the basis of their skills and experience. Applicants must meet the relevant pass mark in a points based system which allocates points for such factors as age, English language ability, work experience and occupation.

In general, the younger and more qualified and/or experienced the applicant, the greater the chance of achieving the relevant pass mark. Changes to the economic climate have resulted in slower processing of these applications.

The family migration program facilitates the movement of spouses, children and other family members of Australian citizens and Australia permanent residents to Australia. This program ultimately provides applicants with Australian permanent residence and unrestricted work rights.

It is important to note that foreign nationals holding permanent residence visas are required to continue to meet specific residence requirements in order to maintain their immigration status. Lengthy periods of residence overseas may jeopardize a permanent resident's ability to re-enter Australia. It is for this reason that Australian Citizenship is recommended for most foreign nationals once they are able to meet the requirements.

Applicants for Australian Citizenship are eligible if they can demonstrate that they have been living in Australia on a valid visa for four years immediately before applying, including one year as a permanent resident, and have not have been absent from Australia for more than one year in total during the four year period, including no more than 90 days in the year before applying.

In addition to the residence requirements, all applicants must pass the *Citizenship Test* aimed at ensuring that applicants comprehend their rights and obligations as an Australian citizen.

Further Information

CCH Australia publishes the *Australian Master Human Resources Guide* (online and in print). This publication contains commentary authored by Baker & McKenzie and provides more information on the Australian employment law and related disciplines including immigration law.

Austria

Executive Summary

Citizens from the European Economic Area (in the following the "EEA") do not need a work or residence permit in order to work or reside in Austria. Specific exemptions apply for Bulgarian and Romanian citizens until the end of 2013 and will apply to Croatian citizens after Croatia's accession to the European Union.

For non-EEA citizens, Austrian immigration law provides for a heterogeneous set of legal entitlements to immigration. Such entitlements include visas, temporary residence permits (*"Aufenthalts-bewilligungen"*) and settlement permits (*"Niederlassungs-bewilligungen"*). As a general rule, a separate work permit will have to be obtained in case the foreign national intends to take up employment in Austria.

As qualified employees are highly inquired on the Austrian labor market, the Austrian legislator established a criteria-based immigration model, the so called "Red-White-Red Card" ("RWR-Card) in order to facilitate immigration of qualified employees to Austria. The RWR-Card is deemed to be a settlement as well as a work permit.

Key Government Agencies

The Austrian Foreign Ministry's (*"Außenministerium"*) embassies and consulates are competent to accept applications for visas and temporary residence permits. In addition, they have ultimate responsibility in visa issues.

Within Austrian territory, temporary residence permits and settlement permits are handled by a number of governmental entities. Usually, the Governor of each federal province (the *"Landeshauptmann"*) is the competent authority for all residence and settlement proceedings. However, the Governors usually delegate their power to the local district administration authority *("Bezirksverwaltungsbehörde,"* in

Vienna the *"Magistratsabteilung 35"*) which then issues the decision on behalf of the Governor. The locally competent district administration authority is the one where the foreign national has currently his place of residence or planned place of residence. The competent authority for appeals is the Federal Minister of the Interior (*"Bundesminister für Inneres"*).

As far as work or posting permits are required, the Austrian Labor Employment Service (*"Arbeitsmarktservice Österreich"* or "AMS") is the competent authority. The AMS operates through several local offices in Austria.

Current Trends: The Red-White-Red Card

As already mentioned above, in 2011, the Austrian legislator established a criteria-based immigration model (the so called "Red-White-Red Card" or *"Rot-Weiß-Rot Karte"*) which shall offer highly qualified employees an easier way to work and live in Austria. The RWR-Card combines the legal privileges of a residence permit as well as a work permit (*i.e.* no separate work permit has to be obtained).

In order to determine whether a person is qualified, a specific credit system has been established which measures qualification based on objective criteria (such as prior education, professional qualification and experience, language skills or age). Therefore, a person willing to work in Austria is able to determine relatively easy, whether or not he or she is qualified by checking off the criteria on the respective list.

Basically, there are five ways to obtain a RWR-Card:

- Very highly qualified persons are allowed to enter Austria for a period of six months in order to search for an employment that matches their qualification. If the person succeeds in finding an adequate employment or has already found one, he or she may obtain a RWR-Card. In practice, however, this option is also used in case a foreign company sets up an Austrian branch office and transfers their respectively qualified employees to that branch office.

- Skilled workers in shortage occupations may obtain a RWR-Card if they are specially educated in a shortage occupation (as determined by the Austrian Secretary for Employment, Social Affairs and Consumer Protection) and may prove an adequate employment offer;

- Other key workers may obtain a RWR-Card if they have an adequate employment offer and a minimum salary is paid. In addition, there must be no equally qualified Austrian employee available on the job market.

- Foreign university graduates may extend their stay for six months after finishing their studies in Austria in order to find an employment that matches their qualification. A certain minimum salary will have to be paid;

- Independent key workers may obtain a RWR-Card in case they transfer capital or new technologies or know-how to Austrian and/or create new jobs for the Austrian labor market. In addition, a RWR-Card as independent key worker may be obtained in case the applicant's company has major regional impact.

Persons already in possession of the RWR-Card may additionally obtain the RWR-Card plus if they have fulfilled the admission requirements (as described above) during 10 out of the last 12 months before application. After the issuance of the RWR-Card plus, they have unrestricted access to the Austrian labor market and are entitled to take up every employment within the Austrian territory.

Family members of such highly qualified employees may also obtain a RWR-Card plus. Generally, they will have to prove basic German skills before coming to Austria (exception: family members of very highly qualified employees). Within two years after immigrating to Austria, all family members have to prove advanced basic German knowledge in case they want to prolong their RWR-Cards.

Citizens from the European Economic Area

Citizens of the EEA and Switzerland may be employed in Austria easily. They do not need any special residence or work permit in order to reside and work in Austria if they are employed or self-employed in Austria or earn a secure living and have sufficient health insurance coverage.

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

Additionally, quota-free "settlement permit for family members" (*"Niederlassungsbewilligung Angehöriger"*) may also be available to family members of EEA citizens under certain circumstances.

Specific exemptions apply for Bulgarian and Romanian citizens until the end of 2013 and will apply to Croatian citizens after Croatia's accession to the European Union.

Temporary Visa-based Immigration for Tourists and Business Visitors

According to Austrian immigration law, any residence of a non-EEA citizen which does not exceed a period of six months has to be covered by a respective visa. In case the residence is intended for a period exceeding six months, a respective temporary residence permit will have to be obtained (see below in chapter "Temporary Residence Permits").

As a general principle, all visas have to be applied for at the competent Austrian representation authorities abroad. Generally, a visa does not permit employment in Austria (exception: visa for a temporary employment in case a separate work or posting permit is

obtained). Severe administrative penalties may be issued in case the foreign national performs services illegally.

Travel Visa C

The most common visa for tourists and business visitors is the Visa C (*"Schengen-Visa")*, which allows traveling within the European Union (EU) and staying up to 90 days within a period of 180 days in Austria.

Visitor Visa D

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

Visa for Temporary Employment

In case only a temporary employment is intended (*i.e.* up to six months within a total timeframe of 12 months) the Austrian representation authority may issue a visa for temporary employment. Such employment may be executed either independently or dependently. However, this visa does not replace the work permit according to the Austrian Act on the Employment of Foreigners. Therefore, a respective work permit has to be obtained before applying for this visa-subtype.

Visa Waiver

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

Citizens of the following countries are currently entitled to a visa-free entry to Austria as described above:

Albania, Andorra, Argentina, Australia, Antigua and Barbuda, Barbados, Bahamas, Belgium, Bosnia and Herzegovina, Brazil,

Brunei, Bulgaria, Canada, Chile, Croatia, Costa Rica, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan (up to six months), Latvia, Liechtenstein, Lithuania, Luxemburg, Macau, Macedonia, Malaysia, Malta, Mauritius, Mexico, Monaco, Montenegro, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Romania, San Marino, Serbia, Seychelles, Sweden, Switzerland, Singapore, Slovakia, Slovenia, Spain, St. Christopher and Nevis, Taiwan (only holders of passports with id number), Turkey (only Turkish special passports), United States of America, UAE (only UAE special passports), Uruguay, Venezuela.

However, citizens from Albania, Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia must hold a biometric passport in order to be waived from the visa requirements.

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

http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/visumspflichten/start.aspx

Temporary Residence Permits ("Aufenthaltsbewilligungen")

In case foreign citizens enter Austria for a period of more than six months, they must apply for a temporary residence permit. Temporary residence permits are issued by the competent residence authorities in Austria. When applying for a temporary residence permit, the foreign national must not prove any German skills beforehand, contrary to certain settlement permits (also see below in the chapter "Settlement Permits").

All temporary residence permits share a number of common requirements. Applications must be submitted in person and require a passport which is valid for at least three months beyond the date of

travel. All applicants must present proof of sufficient funds, an adequate accommodation and upright health insurance. Additional documentation may be required, depending on the respective residence permit.

The application may either be filed personally at the Austrian representation authorities abroad or, insofar as the applicant is entitled to visa-free entry to Austria, at the competent immigration authority in Austria. The competent immigration authority is determined by the (temporary) place of residence of the applicant. It is not permissible to simultaneously file several applications or applications with differing purposes for residence. The residence permit, once issued, has to be picked up at the issuing authority in Austria.

It has to be noted that a temporary residence permit does not entitle the foreign national to take up an employment in Austria. In this case, a separate work or posting permit will have to be obtained. Alternatively, the foreign national may obtain a Red-White-Red Card in case he or she matches the requirements.

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

Rotational employee (*"Rotationsarbeitskraft"*)

This temporary residence permit is for foreign nationals who are employed as executives or junior executives and are being sent to Austria by multinational companies, but may also be sent to different places as decided by the company. The employment contract has to provide for a respective right of the employer to transfer the employee. Also, a respective work permit will have to be obtained.

Employee Sent on Temporary Duty (*"Betriebsentsandter"*)

This temporary residence permit is for foreign citizens who are being sent to Austria by their employer in order to perform services for a client (see also chapter "Posting of Employees to Austria"). A

respective work or posting permit according to the Austrian Act on the Employment of Foreigners will have to be obtained.

Self-employment (*"Selbstständiger"*)

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

Researcher (*"Forscher"*)

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

It has to be noted that researchers are generally exempt from the Austrian Act on the Employment of Foreigners and do therefore not require a separate work permit.

Special Cases of Dependent Employment (*"Sonderfälle unselbständiger Erwerbstätigkeit"*)

In case no other temporary residence permit is applicable in the case at hand, the authorities may issue a residence permit "Special Cases of Dependent Employment." This residence permit is, for instance used, for employees who are being exempt from the Austrian Act on the Employment of Foreigners.

Settlement Permits (*"Niederlassungsbewilligungen"*)

In case the foreign person intends to permanently settle in Austria, he or she may apply for a settlement permit. Settlement permits are usually only issued in case the foreign national is highly qualified, or a family member of a foreign national entitled to settlement or has been living lawfully in Austria (or the European Union) for a respective period of time.

In order to ensure permanent social and cultural integration in Austria, the foreign national usually has to prove basic German skills at the A1 level of the Common European Framework of Reference for Languages in case he or she applies for certain settlement permits (exception: foreign nationals who apply for the RWR-Card).

Work Permits

As already mentioned above, neither a visa nor temporary residence permit entitles the foreign national to take up an employment in Austrian. Therefore, any Non-EEA citizen generally has to obtain a respective work permit (however, please refer in this context also to the exceptions in the chapter "Exemptions from the Austrian Act on the Employment of Foreigners" below).

In case the employee matches the relevant criteria, it is highly recommended to obtain a RWR-Card, as this option includes a settlement permit as well as a work permit. In addition, no further requirements (apart from respective qualification) have to be met.

In case the employee does not match the criteria for a RWR-Card, he or she may only be employed in Austria if the employer has either obtained a work permit (*"Beschäftigungsbewilligung"*) or the employee has been granted a certificate of dispensation (*"Befreiungsschein"*).

Work permits may be issued if there are no other important public or economic reasons to preclude employment of a foreign national. Public reasons include the possibility to fill the job in question with an Austrian employee. Thus, no equally qualified and currently unemployed Austrian citizen may be registered with the AMS when applying for a work permit. There are special work permits for seasonal workers, specialists, nursing staff and university students to obtain.

In case of violation of those prerequisites, the district administration authority may levy severe administrative fines upon the employer.

Exemptions from the Austrian Act on the Employment of Foreigners

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

Citizens from the EEA and Switzerland

Obviously, citizens from the EEA and Switzerland do not have to obtain a work permit before taking up an employment in Austria. This exception also applies to certain family members.

International Researchers

Special rules apply to the employment of foreign researchers. As highly qualified scientists are highly demanded on the labor market, the Austrian legislator exempted all private or public scientific researchers from the obligation to obtain a respective work permit. Correspondingly, foreign researchers may fairly easy obtain a respective temporary residence permit.

However, scientific researchers will in most cases also qualify for the Red-White-Red Card. In this case, it is usually recommended to apply for a Red-White-Red Card because, via this option, the foreign researcher may also permanently settle in Austria.

Top Managers

Top Managers, their spouse and children, as well as their support and household staff (*i.e.*, secretaries, assistants, *etc.*), are also exempt. This category consists of executives of the board or management level of companies who receive a salary in a certain amount (2012: at least EUR5,076 gross monthly). There are no quota limits in force for Top Managers. In most cases, however, top managers will also qualify for the Red-White-Red Card.

Employee Training

Employees sent to Austria for training purposes have to obtain either a visa for temporary employment or a temporary residence permit as "Special Cases" as described above. Further requirements according to the Austrian Act on the Employment of Foreigners have to be met. Voluntary services, a professional or holiday traineeship or a joint venture need to be registered with the AMS at least two weeks before commencement.

Posting of Employees to Austria

Whereas working in Austria as an employee is limited as described above, providing services in general is not. However, restrictions might apply due to trade law.

Generally, companies may perform "projects" in Austria. In case employees shall be posted to Austria in order to perform services within such projects, a respective posting permit (*"Entsende-bewilligung"*) by the local AMS office has to be obtained. In this case, two conditions have to be met. First, the "project" may not exceed six months and, second, the employee must not work in Austria for more than four months during the whole project's duration. If these periods shall be exceeded, a work permit or Red-White-Red Card will have to be obtained.

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

In case Non-EEA employees working for a company that is situated within the European Union are being posted to Austria in order to perform services, they are only required to register beforehand with the AMS. In case the posting is lawfully, an EU-posting certification is being issued (*"EU-Entsendebestätigung"*).

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

Lease of Employees

Non-EEA employers may generally lease their employees to Austria in order to work under the direction of an Austrian company only if the local trade authority approves the lease of employees and confirms that:

- the employees are significantly well-qualified for the proposed tasks (*i.e.*, the employee has already held a specific position for a long period of time and therefore is "significantly well-qualified") and the assignment of such employees is required due to labor market and economical reasons;

- employment is only possible by leasing employees from foreign countries (*e.g.*, no equally qualified Austrian employees would be available on the Austrian labor market); and

- employment of those employees does not jeopardize payment and working conditions of comparable Austrian employees.

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

Applications for the assignment of employees undergo strict scrutiny of the Austrian authorities and permits are seldom issued. However, the lease of employees in the European Economic Area does not require the prior permission of Austrian authorities. But, in such case,

the notification of the assignment to the local trade authority is required.

Furthermore, Austrian law contains an important exception concerning corporations. The normal requirements do not have to be met if employees are leased within a corporate group, when both, the assigning and the receiving company have their seat in the European Economic Area (EEA). Thus, no special permit by the authorities is required. However, employees who have been sent from one corporation group member to another within the EEA are entitled to adequate payment according to applicable CBAs and further provisions of mandatory Austrian Law regarding vacation and working time apply to them.

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

Republic of Azerbaijan

Executive Summary

After assuming the central role in the regulation of labor migration, the State Migration Service of the Republic of Azerbaijan started to gradually tighten labor migration rules in the country. Based on the statutory requirements alone, Azerbaijan could be described as a country with "open" migration laws as the laws are relatively simple and easy to follow. At the same time, practical implementation of these laws is not always straightforward and consistent. In particular, the State Migration Service adopted internal regulations which are neither, in most cases, publically available, nor registered with the Ministry of Justice to constitute acts legally binding upon the general public. In addition to adding requirements which are rather difficult to comply with, some requirements are expressly contrary to the law.

Key Government Agencies

Visa processing is handled by the Consular Department of the Ministry of Foreign Affairs of Azerbaijan, as well as Azerbaijani embassies and consulates abroad.

The recently created State Migration Service is charged with implementing state policy in the regulation of labor migration. Pursuant to the Presidential Decree *On the Application of the "One-Stop Shop" Principle in the Management of the Migration Process*, dated July 1, 2009 (the "Decree"), the State Migration Service issues temporary and permanent residence permits and work permits, and grants and registers the extension of foreign nationals' stays.

The Cabinet of Ministers sets annual quotas on the maximum number of foreign nationals allowed to work (obtain a work permit) in any given year. Other state agencies involved in the regulation of labor migration include the State Customs Committee and the State Border Service, which register and control entry into and exit from the country.

Current Trends

Most foreign nationals working in Azerbaijan are involved, one way or another, in oil and gas operations. Given the tendency of "hidden" or "creeping" expropriation in some oil-rich countries, there have been suggestions that Azerbaijan might increase its control over foreign labor. Specifically, with respect to labor migration, the establishment of the State Migration Service in 2007 is believed to be driven by the State's desire to regulate the foreign workforce more effectively.

Shortly after the establishment of the State Migration Service, the regulations on the issuance of work permits to foreign workers were amended to require the State Migration Service's affirmative opinion as an additional requirement for issuing a work permit. Now, pursuant to amendments to the Decree effective June 25, 2011, the State Migration Service is solely responsible for issuing work permits.

Business Travel

A foreign national wishing to enter Azerbaijan must have a personal passport and an official permit (visa).

Visa

Visas grant general entrance into Azerbaijan. There are two types of entry visa: single entry visas and multiple entry visas.

Single entry visas are issued for periods of three days to three months, permitting a foreign visitor to enter Azerbaijan only once. This visa is usually granted to foreign nationals who come to Azerbaijan for tourism, non recurring business trips or other short-term visits.

Multiple entry visas are issued for periods of one to two years. Foreign nationals working in diplomatic missions, representative offices or consulates of foreign countries or in representative offices of international organizations in Azerbaijan or coming to Azerbaijan to study may obtain multiple entry visas. The family members of foreign nationals receiving multiple entry visas may also receive visas.

Visas are issued by Consular Sections of Azerbaijani Embassies worldwide. Except for Turkish and Israeli citizens and foreign nationals invited by the Azerbaijani government, visas are *no longer issued on arrival* at Heydar Aliyev International Airport.

Single entry visas for tourist purposes require a confirmation, invitation or tourist voucher from the receiving tourist organization or a hotel in Azerbaijan.

Single or multiple entry visas for business, education and employment purposes require an invitation from the receiving party in Azerbaijan sent through the Consular Department. If the invitation from a receiving party is not sent through the Consular Department, the traveler may submit an invitation received by fax directly from the receiving party in Azerbaijan or an employer request letter.

Entry visas become ineffective if not used during their stated duration.

A foreign national entering Azerbaijan without a visa pursuant to a bilateral agreement with Azerbaijan must obtain an entry visa if the duration of the stay will exceed 90 days.

Transit Visas

Single or multiple transit visas are issued to foreign nationals who travel to other countries through Azerbaijan. The holder of a transit visa is allowed to stay in Azerbaijan for up to five days unless there is a notation on the visa prohibiting such a stay. Some international agreements concluded with Azerbaijan allow transit through Azerbaijan without a transit visa.

Transit visas may also be obtained upon arrival from the Visa Section of the Consular Department at the Heydar Aliyev International Airport in Baku.

Visa Issuance Period

Applications of foreign nationals seeking visas with a term of more than 30 days are considered within a month of submission to an Azerbaijani embassy or consulate abroad or directly to the Consular Department. Tourist visas are issued within 15 days following the submission. If a foreign national's visit is for urgent medical treatment, serious illness or the death of relative, upon submission of documents confirming this, the visa application is considered within 48 hours.

Visa Waiver

The normal visa requirement is waived for nationals of CIS countries (excluding Armenia[1] and Turkmenistan) and Georgia. Holders of diplomatic and service passports from Hungary, Cuba, Argentina, South Korea, Morocco, Jordan, Mexico, Indonesia, Vietnam, Italy, Portugal and certain other countries may also enter and leave Azerbaijan without a visa.[2]

Exit Authorizations

We recently became aware that the State Migration Service had introduced so called "exit authorizations." Reportedly, the authorizations are needed for the foreign national to enable her/him to exit Azerbaijan, if s/he has been staying in Azerbaijan for 30 or more days per stay and:

- has failed to register with the police or the State Migration Service at the place of abode; or

[1] Azerbaijan is technically still in a state of war with Armenia over the Norgono-Karabakh region; therefore, as a practical matter, Armenian citizens may not enter Azerbaijan without special permission.
[2] Holders of diplomatic and service passports from Syria, Albania, Slovenia, France, Qatar, Libya, Estonia, UAE, Serbia, Egypt, Austria, Montenegro and Kuwait are also exempt from the visa requirement.

- has applied for work and temporary residence permits but has not obtained them yet provided that s/he has no valid registration at the place of abode.

The exit authorizations are not provided for by any statute or other binding regulations. Consequently, the enforcement of the newly-introduced requirement contradicts the law. However, the State Border Service reportedly *prohibits* foreign nationals from leaving Azerbaijan without the exit authorizations.

Temporary Residence

Temporary residence allows foreign citizens to live in Azerbaijan for up to five years on a "temporary" basis. A temporary residence permit is issued by the State Migration Service if the foreign national:

- is a close relative of or married to an Azerbaijani citizen;
- has obtained an individual work permit;
- has enrolled in an Azerbaijani institution of higher education on a full-time basis;
- has invested AZN500,000 in the Azerbaijani economy;[3]
- maintains AZN50,000 in an Azerbaijani bank account;
- is a "highly-skilled" professional.

Azerbaijani law does not set any definitive criteria as to the qualification of a foreign national as a highly-skilled professional and such qualification is believed to be determined by the State Migration Service on a discretionary basis.

As of the date of publication, the State Migration Service now issues temporary residence permits to only those sole proprietors who

[3] As of December 10, 2012, USD 1= AZN 0.7848

maintain AZN50,000 in an Azerbaijani bank account. The law does not specify whether this amount must be "frozen" for the period of the foreign national's stay in Azerbaijan or whether the type of account.

Employment Assignments

A foreign national coming to Azerbaijan to work may be required to obtain an individual work permit before starting work.

Eligibility requirements

Work permits are issued by the State Migration Service. By law, a work permit may only be issued if:

- the foreign worker is at least 18 years of age at the time of application (in contrast, Azerbaijani citizens under 18 may, in certain circumstances, be employed on a permanent basis);
- no Azerbaijani citizen with adequate professional training is available to fill the job vacancy; and
- state employment agencies are not able or have failed to propose a suitable local candidate to fill the vacancy.

The employer's application should address each of these points. See below for further details on the application process. Only Azerbaijani employers (*i.e.*, Azerbaijani legal entities and sole entrepreneurs, as well as Azerbaijani branches and representative offices of foreign legal entities) are entitled to obtain work permits for their expatriate employees.

Duration

A work permit may be issued for up to one year (most are issued for one year) and may be extended up to four times. Therefore, the cumulative maximum duration of a single work permit is five consecutive years. Extension beyond this term (a repeat work permit) is possible if the foreign employee spends a year outside Azerbaijan

after expiration of the cumulative term of the initial work permit or after his/her last employment in Azerbaijan.

As the State Migration Service determines whether to issue or extend a work permit at its own discretion (within the parameters of the law), the term of the employment agreement with a foreign employee must correspond with the term of the work permit. If the employment agreement is terminated earlier than the originally anticipated termination date, the employing company must inform the State Migration Service within five days. In any case, a work permit will be deemed expired upon termination of the employment agreement.

Transfer to New Job

An employing company may not transfer a foreign national to work on another job within the same company unless a new work permit is obtained for that new job. Similarly, a foreign national may not use his/her work permit to work for a new company unless a new work permit is obtained for that new company.

Exceptions

The following groups of foreign nationals working in Azerbaijan are exempt from the work permit requirement:

Sole proprietors

Foreign nationals registered as "individual entrepreneurs" (sole proprietors) are exempt from the work permit requirement. A sole proprietorship is defined as independent activity by a physical (natural) person for the primary purpose of deriving profit without establishing a legal entity. A sole proprietor must register with the tax authorities and obtain a tax identification number before engaging in business activities.

Managerial staff

A work permit is not required for the directors and deputy directors of foreign legal entities, their branches or representative offices in

Azerbaijan. If, however, a foreign company establishes a subsidiary in Azerbaijan, its foreign directors (managers) and deputy directors will be required to obtain a work permit.

Short-term secondees

A foreign national seconded to Azerbaijan for a period of less than three months (90 cumulative days per calendar year as interpreted by the Ministry of Labor) is also exempt from the work permit requirement. By definition, a secondment suggests that a foreign national has a permanent place of employment outside Azerbaijan. Therefore, it appears that the secondment exemption does not apply unless the foreign national is a genuine secondee.

Mass media workers

Employees of foreign media agencies accredited (seconded) to Azerbaijan are not required to obtain a work permit.

Education specialists

Foreign part time or full time professors engaged by local schools and universities, as well as other scholars involved in scientific research are exempt from the work permit requirement.

Diplomats and international civil servants

Foreign nationals engaged by their governments in diplomatic or consular services as well as the employees of international organizations such as the United Nations are not required to obtain a work permit.

Others

Other foreign nationals not required to obtain a work permit include foreign nationals permanently residing in Azerbaijan, foreign nationals employed by certain government authorities (*e.g.*, Office of the President, Cabinet of Ministers and Ministry of Defense), foreign nationals engaged in religious activity as members of registered

religious organizations, merchant marines, sportsmen, and artisans and craftsmen.

Belgium

Executive Summary

Nationals from the European Economic Area or "EEA" (the European Union Member States, plus Iceland, Norway and Liechtenstein) do not require a work permit to be employed in Belgium. EEA nationals are, however, required to obtain a residence permit if the stay in Belgium is longer than three months. Transition measures, remain in effect for citizens of Bulgaria and Romania, who still require a work permit (whether or not through the specific process for "bottle-neck professions"), at least until December 31, 2013.

Non-EEA nationals as a rule must obtain a work permit and a residence permit in order to work and reside in Belgium. In what follows, main focus is on the work permit B, whereby it is to be noted that the majority of the type B work permits issued to non-EEA nationals relate to highly qualified employees and executives who need not comply with the labor market criterion. Alongside the work permit B, specific rules have recently been implemented in the framework of the EU Blue Card directive, providing for a single work and residence permit for certain highly qualified employees (see below).

Upon receipt of the work permit, the employee will need to obtain a work visa (*i.e.*, authorization to stay in Belgium for more than three months) at the Belgian consulate or embassy abroad with jurisdiction for the latest place of legal residence. The visa and the work permit must be obtained prior to the start of the employment.

Within eight days after arrival in Belgium, the foreign employee must register with the local commune with jurisdiction for the intended place of residence in order to obtain a residence permit, which is valid for the same duration as the work permit. The work permit is valid only when combined with a residence permit. Working in Belgium while in possession of a work permit, but without a valid residence permit, is considered a serious offence, subject to substantial criminal sanctions and/or penalties.

Key Government Agencies

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

The FPS Foreign Affairs, Department of Federal Immigration is the competent authority for issuing Belgian residence permits, which need to be applied for at the local commune with jurisdiction for the place of residence. As a rule, upon obtaining a Belgian work permit and work visa, a residence permit will be issued, which is valid for the duration of the work permit.

Work permit applications – in all three regions – must be submitted directly to the regional immigration ministries, which are the competent government offices for issuing Belgian work permits. The federal state of Belgium indeed consists of three regions: the Brussels Capital region, the Flemish region in the North, and the Walloon region in the South.

EU Blue Card

As part of the efforts to attract foreign highly qualified workers, the European Union has implemented an EU work permit, the so-called "Blue Card" that allows employment of non-Europeans in any country within the EU. The "Blue Card" scheme is inspired by the US "Green Card" program and aims to attract top talent to the EU to combat the aging population and declining birth rate. The framework European regulations is set forth in the so-called Blue Card Directive,[1] which has only recently been implemented in Belgium. The Blue Card allows highly-qualified non-EEA nationals to work and reside on the territory of the Member State issuing the Blue Card.

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

The Belgian Act implementing the EU 'Blue Card' directive entered into force on September 10, 2012. Under Belgian law, the Blue Card can be delivered to highly-qualified third country nationals provided that they can demonstrate: (i) high professional qualifications (through a higher education diploma of minimum three years); (ii) a local employment contract for an indefinite term or for a definite term of minimum one year; (iii) a gross annual remuneration exceeding EUR 49,995 (2012 amount) and (iv) valid travel documents and health insurance.

It results from the foregoing that no Blue Card can be granted to seconded employees and that the salary threshold is considerably higher than the threshold under the current procedure for the granting of a work permit type B (*i.e.* EUR 37,721 in 2012).

A dual administrative procedure must be followed in order to obtain the Blue Card, *i.e.* (i) the Belgian employer of the highly-qualified employee needs to apply for a provisional work authorization with the competent regional immigration authorities in Belgium and (ii) the highly-qualified employee must subsequently apply for the Blue Card (residence permit type H) at the competent Belgian Embassy, if he/she resides abroad, or at his/her local Belgian residence commune. Importantly note that all changes to the employment relationship (*e.g.* change of salary, change of function, *etc.*) must be reported to the relevant authorities during the first two-year period.

The validity of the Blue Card will initially be limited to 13 months, renewable for another period of 1 months (subject to a new provisional work authorization application). After the renewal, the Blue Card will be valid for a period of three years, without prior provisional work authorization to be applied for.

The Blue Card will allow increased intra-Europe mobility. After five years of stay within the EU (of which two years immediately preceding the application in Belgium), the employee becomes eligible for long-term resident status in Belgium. Moreover, highly-qualified

employees who hold a EU Blue Card will not loose their status when leaving the country for 12 months.

The current work permit system for highly qualified employees (*i.e.* work permit type B) continues to exist alongside the EU Blue Card system. Based on a first assessment, the practical relevance of the Blue Card will most likely be rather limited due to the narrow scope of application, the administrative burden during the first two years and the rather limited advantages.

The EU Directive EG/810/2009 regarding the European Visa Code entered into effect on April 5, 2010. This European Visa Code constitutes a major step towards a common visa policy and to reinforce the cooperation within the Schengen area. The Visa Code sets out harmonized procedures and conditions for issuing short stay visas and airport transit visas.

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

Business Travel

Schengen Visa

The short stay or Schengen visa is valid for the territory of all the Schengen States and permits short trips for up to 90 days over a six month period.

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

Work permit exemption

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

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

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

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

Visa Waiver

Of course, citizens of EU/EEA countries do not need a visa when traveling to Belgium.

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

Citizens of certain privileged countries (*e.g.* USA, Canada, Japan, Brazil, Mexico, *etc.*) do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to enter Belgium on the basis of their nationality and upon presentation of their international passport. The length of stay is up to 90 days in any six month period only.

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

Training

Employee Training Assignments Not Exceeding Three Months

Foreign employees who come to Belgium to follow a training not exceeding three subsequent calendar months at the Belgian seat of the multi-national group to which their employer belongs, in the framework of a training agreement between the respective companies of the multi-national group, are exempted from the work permit requirement. The company organizing the training is, however,

required to inform the local immigration authorities about the employee's stay in Belgium at the latest at the start of the training.

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

- Employees who are employed with an associated company located within the EEA, irrespective of their citizenship;

- Employees who are employed with an associated company located outside the EEA and who are citizens of an OESO member state; and

- Employees who are citizens of countries with which Belgium has entered into a bilateral employment agreement (*e.g.*, Switzerland, Croatia, Bosnia-Herzegovina, Serbia and Montenegro, Macedonia, Morocco, Tunis, and Turkey).

The authorized scope of training is restrictive and may not result in any significant productive work. The exemption does not apply if the training is exclusively or primarily "on-the-job."

Other Employee Training Assignments

Employees employed in a foreign company belonging to an international group that has a seat in Belgium and who cannot call upon the work permit exemption are eligible to obtain a type B work permit allowing them to follow training at the Belgian seat, regardless of their regular place of employment abroad and irrespective of nationality. Such training may not include any productive work or be an "on-the-job" type of training. The duration of such training is not limited.

Specific Work Permit For Trainees/Interns

There is also a specific work permit designed for the trainee or intern who, immediately after receiving a diploma or degree, wishes to

undergo practical training with an employer as a continuation of the education.

In addition to the general requirements to obtain a work permit, the application for a specific trainee work permit requires the following:

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

Employment Assignments

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

Work Permit Exemptions

Some employees are, however, exempt from obtaining a work permit. The work permit exemptions only apply provided that the employee is in a situation of legal stay in Belgium. The most relevant categories are, without limitation:

Citizens From The European Economic Area

EEA nationals coming to work in Belgium are exempt from obtaining a work permit. This also applies to their spouse and children under the age of 21, even if they are not themselves EEA nationals. Such family

members are required to obtain a "family reunion visa" to accompany or join the EEA national coming to work in Belgium.

The following 30 countries belong to the EEA on December 1, 2012: Austria, Belgium, Bulgaria, Denmark, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Iceland, Norway and Liechtenstein. Although Switzerland does not form part of the EEA, Swiss nationals are also allowed to freely reside and work in Belgium without any prior formalities. Transition measures exist for Bulgaria and Romania.

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

New EU Member States

As indicated above, the Belgian government extended the "stand-still" regime for Bulgarian and Romanian nationals, who still need to obtain a work permit to enter the Belgian labor market at least until December 31, 2013.

Bulgarian and Romanian citizens can, however, benefit from a specific procedure in some cases (*i.e.*, the labor market criterion 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 (*i.e.*, Flanders, Brussels, Walloon region) have issued separate lists of "bottle-neck professions."

The free movement of services applies with immediate effect *vis-à-vis* all new Member States.

Indeed, Belgian law stipulates that the non-exemption of the prior work permit requirement for some citizens of the new Member States does not apply to workers employed by a company located in a EU Member State that perform services on Belgian soil, provided that:

- Such workers are legally employed in their residence Member State; and

- Such work authorization is valid for at least the period of the services to be performed in Belgium.

In practice, this rule means that Bulgarian and Romania citizens employed by a company located in an EU Member State do not require any work permit or authorization, if legally employed by the employer located in such Member State and coming to Belgium for that employer to perform services in Belgium.

European Headquarter

Executive employees working under a local employment contract of a European Headquarter in Belgium are exempt from obtaining a work permit. This exemption has been introduced to compensate for the fact that the former coordination center status no longer exists. Indeed, the European Commission ruled that coordination centers should disappear as coordination centers would benefit from unfair tax advantages and therefore would be incompatible with European state aid rules.

The exemption does not apply to foreign employees who are temporarily seconded to a Headquarter in Belgium from abroad and remain employed by their foreign employer. Such executives still need a work permit.

"European Headquarter" is defined as a Belgian company or subsidiary of a foreign company, provided that such company can be

qualified as an associated company and performs activities of a preparatory or supporting nature on behalf of the companies of the group to which it belongs, activities in relation to provision of information to clients, and activities which passively contribute to sales transactions and/or activities which imply an active intervention in the sales.

"Executive" is defined as a manager holding a high-level function that requires a certain level of education or equivalent professional experience and whose annual remuneration exceeds EUR64,508 for 2013 (indexed annually). Although no formal work permit is required, the Belgian Headquarter must inform the immigration authorities, at the latest at the start of the employment, that the executive will commence employment in Belgium, and a certificate from a recognized auditor confirming that the company qualifies as a "European Headquarter" must be submitted.

Belgian *"van der Elst Visa"*

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

To qualify, the employee must be working on a temporarily based project (*i.e.*, 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.

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

- are entitled to residence, or have a valid residence permit, for a period of more than three months in the Member State of the EEA where they have established residence;

- are lawfully employed in the Member State where they have established residence and hold a permit which is at least valid during the period of the services to be carried out in Belgium;

- possess a valid employment contract; and

- possess a passport and a residence permit, of which the duration is at least equivalent to the duration of the services to be carried out in Belgium in order to ensure their return to their home country or residence country.

Students and Interns

Full-time students lawfully residing in Belgium do not require a work permit for work activities 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 an internship in Belgium within the context of their study program in Belgium and interns employed by the Belgian government or by a recognized international institution are exempt from obtaining a work permit.

Non-EEA Nationals

Except when qualifying for a specific work permit exemption, non-EEA nationals require a work permit for any work activities in Belgium. In general, work permits are issued only provided 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 specific function concerned (*i.e.*, 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:

Highly Qualified Employees or Executives

Work permit type B

The labor market criterion is not taken into account if the foreign employee is considered either: a highly qualified employee; or an executive whose annual remuneration amounts to at least respectively EUR38,665 or EUR64,508 gross for 2013 (indexed annually). The validity of their residence corresponds to the duration of their work permit.

For highly qualified employees:

- If the employee earns at least EUR38,665 gross salary per year in 2013, subsequent annual work permit can be issued for up to four years, renewable once for maximum another four years' period. In case of renewal beyond the initial four years, 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.

For executives:

- For executives earn at least EUR64,508 gross salary per year in 2013 (indexed annually) and holding an executive position within

the company, successive annual work permits can be obtained without any limitation.

The application process to obtain a type B work permit takes about two to four weeks. The employee will have to provide, amongst other documents, a medical certificate, an employment contract or assignment letter and copies of academic certificates and professional qualifications. A work permit type B is always granted for a one year period and must be renewed each year.

The non-EEA family members of highly qualified employees or executives, if more than 18 years old, are equally eligible for a work permit type B. The validity of their work permit will, however, be limited to the duration of the work permit of the non-EEA national they are joining. The minimum salary requirements do not apply to this category.

EU Blue Card

The main provisions can be summarized as follows:

Whereas currently non-EEA nationals coming to work in Belgium need to obtain a separate work permit, a visa and residence permit, the European Blue Card takes the form of a specific residence permit, which will equally serve as a work permit. The Blue Card will allow the holder not only to enter and reside in Belgium but also to be employed on Belgian soil. The conditions for employment and access to the Belgian labor market will be indicated on the Blue Card.

The European Blue Card can be delivered to highly-qualified third country nationals provided that they can demonstrate:

- high professional qualifications (through a higher education diploma of minimum three years);

- an employment contract for an indefinite term or for a definite term of minimum one year;

- a gross annual remuneration exceeding EUR49,995 (amount in 2012, subject to indexation);

- valid travel documents and health insurance.

The employer of the highly-qualified employee needs to apply for a provisional work authorization with the competent regional immigration authorities, which will be delivered within 30 days as of the application provided the aforementioned conditions are met. The highly-qualified employee can subsequently apply for a European Blue Card at the competent Belgian Embassy, if he resides abroad, or at his local Belgian residence commune. In case the employee resides abroad, a long stay type D visa will be issued, based upon which the employee can register with his local Belgian residence commune in order to obtain the European Blue Card permit (valid for 13 months, renewable). The European Blue Card allows the highly-qualified employee to work in Belgium with the employer who applied for the provisional work authorization.

The currently applicable regime for highly-qualified / executive employees, as set forth above, will continue to apply in parallel with the European Blue Card regime.

The European Blue Card, however, will allow increased intra-Europe mobility. After five years of stay within the EU (of which two years immediately preceding the application in Belgium), the employee becomes eligible for long-term resident status. Moreover, highly-qualified employees who hold a European Blue Card will not loose their status when leaving the country for 12 months. Once they have obtained long-term resident status, they may leave the EU territory and Belgium for respectively maximum two years and maximum six years.

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. It should be noted that the study and analysis of the factual situation at the location of the Belgian customer, the so-called "requirement capturing stage," prior to the development of the installation or software application, is not included. A foreign employee coming to Belgium to perform such preparatory study and analysis services should obtain a normal work permit.

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

Long-Term EU Residents

By Royal Decree, dated June 9, 2009, the Belgian government partially implemented the EC Directive 2003/109/EG with respect to long-term residents from non-EEA countries. Non-EEA nationals, who have obtained the status of long-term resident in another EU Member State, can obtain access to the Belgian labor market subject to certain conditions. The long-term residence status is a very specific status in accordance with the EC Directive for which a specific residence permit is delivered (*i.e.*, in Belgium, this takes the form of an electronic residence card type D).

Professional Card

Non-EEA nationals require a professional card for any self-employed activity in Belgium, including - depending on the factual circumstances - corporate mandates held with a company established in Belgium. The card is applied for at the Belgian consulate or embassy 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

interests will play a major role in obtaining a professional card. The application procedure takes six months on average.

Prior Limosa declaration of employment

Caution is to be had for the "Limosa" registration obligation when employing foreign staff or developing self-employed activities in Belgium.

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

In the long run, the "Limosa" project will lead to the creation of one electronic platform which can be accessed in order to apply for various permits. For the time being, the "Limosa" project implies an additional administrative obligation for employers. Indeed, the first step of the "Limosa" project consists of the obligation for employers who employ foreign employees (including trainees) in the Belgian territory and for self-employed individuals who perform their activities on Belgian soil to communicate a number of details in relation to such professional activities to the Belgian government (*i.e.*, through a mandatory prior electronic notification of employment/self-employed activities).

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

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

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

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

Other comments

- The identity card for foreign nationals is also worth a brief mention. Upon legally residing in Belgium for an uninterrupted period of three to five consecutive years, and subject to certain conditions, non-EEA nationals can obtain the so-called "identity card for foreigners" or a residence permit for an indefinite term at the local commune of residence. A residence permit for an indefinite term or an identity card for foreign nationals allows them to work in Belgium without having to obtain a work permit.

- A work permit type A is valid for an indefinite term and for employment with any Belgian employer, as opposed to the more frequent type B work permit that has a limited duration and is valid for employment with one specific employer/location only. The type A work permit can be granted to qualified employees who have worked four years, which can be reduced to three years in some circumstances, under a type B work permit combined with a legal and uninterrupted residence in Belgium during the 10 years immediately preceding the application. Note that not just any previous employment under a type B work permit is taken into account. Previous employment as, for example, a highly-qualified employee, a specialized technician, a seconded employee, *etc.*, is excluded. The type A work permit is not usually requested, as most foreign employees receive residency rights for

an indefinite term, and thus no longer need a work permit, after five years of uninterrupted stay anyway.

- Finally, a type C work permit can be obtained by some individuals who legally reside in Belgium and have obtained a valid residency title (*e.g.*, refugees, students) subject to certain conditions. Such type C work permit is valid across Belgium for an employment with any Belgian employer and its duration is dependent on the duration of the residence title with a maximum of 12 months (renewable).

Brazil

Executive Summary

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

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

Key Government Agencies

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

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

The Department of Foreigners (*"Departamento de Estrangeiros"*) of the Ministry of Justice deals with requests for modification or extension of some types of visas, deportation, expulsion, extradition and naturalization issues.

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

Business Travel

VITUR (Tourist) Visa

Tourist visas may be granted to the foreign national traveling to Brazil for a recreational purpose or visit. The foreign national must have no intention to immigrate and may not participate in activity with monetary reimbursement of any kind.

Scientists, professors or researchers attending cultural, technological or scientific conferences, seminars or meetings may be eligible for a tourist visa if their services are not paid for by organizations or corporations in Brazil, with the exception of their *per diem* allowances or expenses. Artists or athletes participating in amateur sporting competitions may receive a tourist visa if they will not receive any payment for such participation, except in the case of prizes for the winners.

The period of validity for the tourist visa is up to five years and multiple entries into the country are allowed, with each visit not exceeding 90 days. One renewal for an equal period is allowed and may be granted by the Federal Police in Brazil. The total length of stay may not exceed 180 days per 12-month period.

All tourist visa applications are submitted to and approved by the Brazilian Consulate with jurisdiction over the foreign national, that is, where the foreign national has maintained residence for a minimum period of one year immediately prior to the request.

VITEM II (Business Trip) Visa

Foreign nationals entering Brazil for a business trip, except when the trip involves the provision of technical assistance (see VITEM V), are eligible for a VITEM II temporary visa. With this type of visa, the foreign national cannot receive any form of payment from the Brazilian company, will remain on the foreign company payroll, and will be rendering services on behalf of the foreign company.

VITEM II visas are valid for up to five years, with a maximum yearly length of stay of 90 days, with one renewal; thus, the total number of days in the country may not exceed 180 per 12-month period. The days counted are only those days spent within the country, interrupted upon the moment of exit from the country, and recommenced on return.

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

Renewal of the visa is obtained through the Federal Police Department, and usually requires presentation of a letter from the Brazilian company being visited by the foreign national stating that the business which brought the applicant to Brazil is not yet completed and additional time, and thus an extension, is necessary.

Tourist and VITEM II Temporary Visa Waiver

Foreign nationals holding passports from the countries listed below do not require a VITUR or VITEM II visa if their intended stay in Brazil does not exceed 90 days (or 180, if duly extended):

Argentina	Hong Kong	Romania
Austria	Hungary	San Marino
Belgium	Iceland	Slovakia
Bolivia	Ireland	Slovenia
Bulgaria	Israel	South Africa
Chile	Italy	South Korea
Cyprus	El Salvador	

Colombia	Lithuania	Spain
Costa Rica	Luxembourg	Suriname
Croatia	Macau	Sweden
Czech Republic	Monaco	Switzerland
Denmark	Morocco	Thailand
Ecuador	New Zealand	The Netherlands
Finland	Norway	Trinidad Tobago
France	Paraguay	Tunisia
Germany	Peru	Turkey
Great Britain/UK	Philippines	Uruguay
Greece	Poland	Vatican City
Honduras	Portugal	

Foreign nationals holding passports from the countries listed below are not required to obtain tourist visas, however, they are required to obtain VITEM II visas for business trips:

Andorra	Guatemala	Malaysia
Bahamas	Guiana	Namibia
Barbados	Liechtenstein	Panama

Holders of passports from Venezuela are only required to obtain VITUR visas after 60 days of stay and VITEM II for business trips regardless of length of stay.

Foreign nationals holding passports from any country not listed above are required to obtain a tourist visa or a temporary visa (VITEM II) for business trips to Brazil. An updated list of countries with reciprocity agreements with Brazil is available at *www.dpf.gov.br*.

VITEM I Visa

Cultural trip, training program, study mission or student exchange

The VITEM I temporary visa is granted to scientists, professors, researchers and participants in cultural, technological or scientific missions. Depending on the particular circumstances, the foreign national may or may not receive remuneration for services rendered except for payment of a *per diem* allowance and of living expenses. Non-professional athletes under 21 participating in training programs in Brazil may also qualify for a VITEM I visa, which is valid for two years and is not renewable.

Students pursuing a course of study under a program maintained by an agency dedicated to student exchange may also enter pursuant to a VITEM I. The student exchange entity must be duly registered with the competent controlling agency of the Public Administration.

The visa application, which includes extensive documentation, including proof of the student's acceptance into the exchange program and financial resources, should be filed with the local Brazilian Consulate authority with jurisdiction over the student. Once issued, the visa is valid for a term of one year, no renewal allowed.

Internship

The VITEM I visa is also appropriate for foreign nationals entering Brazil to participate in an internship, conditioned upon the agreement between the intern and the company or institution, with the involvement of an intervening party (such as an officially recognized

exchange program). “Internship” is defined as a practical part of a higher-learning or professional course, which in theory contributes to the professional improvement of the intern. The intern may only receive payments of “support” or living expenses for their service, which is not legally considered a work relationship. Visas for interns are requested in the applicant’s home country from the Brazilian

Consulate authority with jurisdiction, are valid for one year and are not renewable..

VITEM V Visa

Professional training for companies of the same economic group

A foreign national employed by a foreign company traveling to Brazil for the purpose of training alongside an affiliate, subsidiary or Brazilian headquarters of the same economic group of the foreign national company may qualify for a VITEM V temporary visa. The Brazilian company must submit the application for the work permit and visa to the Ministry of Labor and Employment. The foreign national must continue to be paid outside of Brazil by the foreign company, and not by the Brazilian company. If the work authorization is given, the foreign national may enter Brazil for one year and may not be renewed. This visa can be requested by foreign nationals who are ordinary employees of the foreign company

Employment Assignments

VITEM V Visa

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

Unless otherwise noted, the VITEM V is valid for a term of up to two years, or the duration of the agreement or contract, if less than two

years. The VITEM V is renewable for an equal period, unless specific stipulation is made to the contrary within the agreement or contract.

If contracted to work in Brazil, the foreign national will be paid by the Brazilian company and is prohibited from altering or modifying the contract without the express permission of the Ministry of Labor. If the foreign national enters under a technical assistance agreement, then compensation must continue to be sourced from the company abroad and the foreign national is prohibited from engaging in activity outside the realm of the agreement.

Prior to the granting of the visa by the Immigration division, the foreign national must obtain approval of the conditions of the work, in compliance with the requirements set forth by the National Immigration Council. In essence, this work permit allows the applicant to work for remuneration in the Brazilian company in the capacity set forth by the contract.

Professionals under work contract

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

VITEM V visa requests for professionals must prove that the foreign national has at least one of the following:

- Two years of relevant professional experience and at least nine years of education (intermediate level);
- One year of professional experience after graduation with a relevant university degree; or
- In case the candidate has a relevant post-graduate diploma, no professional experience is required.

Brazil has undertaken to protect and preserve job opportunities for its citizens, and to this end enforces the principle of proportionality, under which all industrial or commercial firms are required to ensure that at least two-thirds of their personnel are Brazilians. The same proportionality (2/3) must exist regarding salary. This means that the total sum of salaries paid to Brazilian employees must be more than twice the amount paid to foreign nationals.

Technical Assistance

In contrast to the work situations discussed previously, the foreign national entering for the purpose of providing technical assistance is contracted in anticipation of directly benefiting the Brazilian company and remains on the payroll of the foreign company.

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

Short-term Technical Assistance Temporary Visa

In case the foreign national that will provide the technical assistance does not need to stay in Brazil for a period over 90 days, a short-term technical assistance temporary visa may be granted without all the requirements that need to be accomplished in order to obtain the ordinary Technical Assistance Temporary Visa. The application process for this work permit is usually faster than the other ones, which may be helpful in case the Brazilian company cannot wait too long to receive the technical services to be provided by the foreign national.

Emergency Technical Assistance Temporary Visa

In cases of urgent need or emergency, the Brazilian Consulate authority may issue a VITEM V emergency temporary visa for foreign nationals providing technical assistance. The visa is valid for 30 days, with no renewals allowed. In addition, the emergency temporary visa may only be granted one time within a period of 90 days to each foreign national.

This visa may only be granted when the applicant provides evidence of a situation of emergency in a Brazilian company, which requires urgent travel to provide technical services.

An "emergency" is considered to be one that, caused by unexpected circumstances, puts in risk life, the environment or property/assets patrimony, or that had caused the interruption of the operation of the activities of the Brazilian company.

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

In view of a Residence Agreement (*"Acordo de Residência Mercosul"*), Brazil signed with the Mercosul countries (Argentina, Paraguay and Uruguay) and also with Chile Bolivia, Peru and Colombia which were included later on the Mercosul Agreement, citizens of those countries do not need to apply for and obtain work permits in order to live and work in Brazil.

Any person holding a passport from any of those countries and wishing to move to (or, if applicable, remain in) Brazil - with or without the purpose of working – may apply for a simple "permanence authorization" before the Federal Police (if the individual is in Brazil) or to the closest Brazilian consulate (if the individual decides to apply from his/her home country). Essentially, the requirement in order to obtain a "permanence authorization" is the submission of proof of nationality, as well as of a clean criminal record.

Even though the authorization in question is temporary (valid for two years), the foreign national may, at any time, apply for a "permanent residence" in case he/she decides to permanently reside in Brazil. To grant this permanent residency in Brazil is necessary to submit some documents into the Ministry of Justice analysis *e.g.* new clean criminal record.

Other Comments

There are other types of temporary visas less commonly applicable to employment assignments for multinationals.

In addition, a permanent visa may be issued conditioned upon specific qualifications of the applicant, including specialization of skills offered, technology assimilation and attraction of resources to particular sectors of the economy. Further, the Brazilian Consulate may grant permanent visas for "family reunion," where the foreign national is joining a family member of Brazilian nationality or holder of a Brazilian visa.

In practice, executives who are appointed to management positions (Administrator, Director) in Brazilian companies are also eligible for a permanent visa. The granting of this visa to the executive is conditioned upon the experience of the applicant in managerial positions within the company's group, as well as their particular managerial abilities.

The granting of some permanent visas require approval of a work permit by the Ministry of Labor and Employment, which may be granted based upon consideration of the factors noted (foreign investment, experience, skills, *etc*.).

The granting of the permanent visa is conditioned, for a time not to exceed five years, on the exercise of activity of a fixed and certain nature in a determined region within the national territory. The foreign national may not modify the employment conditions before completion of the five-year period, otherwise the permanent visa may be cancelled. The fixed activity and the determined region may not be

altered without express consent from the appropriate immigration authority.

Further Information

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

Canada

Executive Summary

Canadian immigration law facilitates both the temporary and permanent movement of workers. In fact, the fastest growing area of movement into Canada, and a key focus of the federal government, is the temporary foreign worker program. The government has continued to expand opportunities for these workers to remain permanently in Canada. In addition, provincial governments have over the last decade rapidly strengthened their own immigration selection programs, many of them focusing on employee recruitment. No relocation strategy is complete without a review of all federal, provincial and territorial programs.

Key Government Agencies

Citizenship and Immigration Canada (CIC) is the largest of the Canadian government immigration departments, with visa offices around the world and local offices for certain temporary and permanent immigration processing. By and large, the 11 Provincial Nominee Programs are run through provincial and territorial ministries responsible for citizenship and immigration, usually located in government offices within their capital cities. The federal government's department responsible for the labor market, Human Resources and Social Development Canada (HRSDC), receives applications for nearly half of all temporary worker applications where labor market opinions (LMOs) are required. The remainder of all foreign workers are LMO exempt, meaning they are eligible to apply directly to CIC at a visa office abroad, or Canadian port of entry if visa exempt.

Finally, provincial governments regulate employment standards through their labor ministries, and are increasing their involvement in the area of foreign workers, and enforcement of employers that do not comply with their laws.

Current Trends

Whereas immigration levels have remained at a steady level (approximately 250,000) for the past decade, the level of temporary entry has substantially increased due largely to labor market demand. Students, workers, and business visitors have seen healthy increases and the trend is expected to continue for the foreseeable future, despite the recent recession. Stronger economic fundamentals and industry performance relative to the G8, with burgeoning natural resources, IT, financial services and advanced manufacturing sectors, ensure a growing demand for foreign workers. Each year, more than 180,000 foreign nationals enter Canada as temporary workers. Canadian work experience is highly advantageous for anyone who wishes to obtain permanent residence in Canada.

On the compliance and enforcement side, both federal and provincial governments will balance the trend to expand economic immigration, with increased vigilance of employers that participate in foreign worker and immigration programs, by introducing new programs to fine and sanction employers. Compliance with foreign worker and immigration programs is crucial for domestic and multinational companies that wish to do business in Canada and avoid serious repercussions.

Business Travel

Foreign nationals may enter Canada to engage in business or trade activities. Generally, the employer's remuneration, principal place of employment and accrual of profits must remain outside Canada. Furthermore, there must be no intent to enter the Canadian labor market (*i.e.*, no gainful employment in Canada), and the foreign national's activities must be international in scope. Most often, these activities fall within the areas of research, design, growth, manufacture, production, marketing, sales, distribution, and both general and after-sales services. Attending business or board meetings, conventions, conferences and negotiating contracts are common reasons for business entry. Dependents of business visitors may apply for visitors status to enter into Canada, as can persons employed in a

personal capacity by short-term temporary residents, such as caregivers.

There is no standard amount of time granted to applicants for business entry. Canadian immigration officers consider the activities being conducted. Generally, sales trips, business meetings, conference attendance or training sessions last only a few days, and the entry time permitted will be consistent with the business needs. However, longer amounts of time will be granted where appropriate. Individuals will generally not be issued a business stay of over six months. Rather, they will have to apply for an extension while in Canada, which is filed at Canada's inland processing center in Alberta.

Visa-Exempt Nationals

Canada exempts nationals from the following countries from the need to obtain a visa:

Andorra	Antigua/ Barbuda	Australia	Austria	Bahamas
Barbados	Belgium	Brunei	Croatia	Cyprus
Denmark	Estonia	Finland	France	Germany
Greece	Holy Sea	Hungary	Iceland	Ireland
Israel	Italy	Japan	Korea	Latvia
Lithuania	Liechtenstein	Luxembourg	Malta	Monaco
Netherlands	New Zealand	Norway	Papua New Guinea	Poland
Portugal	St. Kitts/Nevis	San Marino	Singapore	Slovakia
Solomon Isl.	Spain	Sweden	Slovenia	Switzerland
Taiwan	United Kingdom	United States	Western Samoa	

This visa exempt list changes from time to time and should always be checked before travel at http://www.cic.gc.ca/english/visit/visas.asp#exemptions.

Training

There is a fine line between when a foreign national can simply enter as a business visitor, and when a work permit is required. Employers must carefully consider the parameters of the training, or plans may go awry at the border, delaying business requirements and training plans.

Training under business entry vs. training requiring work permit

Short-term trainees, particularly employees of a related corporation abroad, will be permitted under the business provisions as long as the trainees continue to be paid abroad, and do not cross over into work, while in Canada.

Those coming to provide training can, in certain circumstances, enter as business visitors, including training contemplated in the after-sales service provisions of a contract. For instance, coming to train Canadians on machinery or software does not require work permits, as long as the contract clearly sets out the training requirement.

Public speakers (for conferences/company meetings) may also qualify as business visitors, or require work permits, depending on the situation. Guest speakers for short-term events of less than five days (such as conferences) may qualify as business visitors, or require work permits, depending on the situation. These speakers normally qualify as business visitors if they rent out their own space and charge their own admission. However, commercial speakers hired by Canadian companies to provide training services for their employees require work permits.

Work permits must be obtained for commercial trainers or speakers contracted from outside a company to train Canadian employees (unless the training falls under the after-sales service provisions of a

contract). US and Mexican nationals may benefit from the North American Free Trade Agreement ("NAFTA") provisions that allow professionals to obtain work permits for pre-arranged training sessions for subject matter within the trainer's profession.

Employment Assignments

In most cases, employers should consider work permits for international assignments. Canadian immigration regulations provide various routes to work permits. Still others have recently been made available through the ongoing development and expansion of provincial nominee programs, which provide for work permits as an adjunct to permanent residence (nomination) applications.

There are three ways in which foreign nationals may enter Canada for international assignments involving activities considered to be ''work." They are, from the most straightforward to complex:

- Work that is exempt from the need for a work permit;
- Work requiring a work permit, but exempt from a labor market opinion (LMO); and
- Work requiring an LMO.

Before the most appropriate entry category can be selected, a company must determine whether the employee will be engaged in "business" or ''work" activities while on assignment in Canada. There is often a fine line between these two types of entry, as discussed above: business visitors must enter Canada to be doing business, not work.

"Work" generally means an activity for which wages or commission is earned, or one that competes directly with activities of Canadians (even where wages are not being paid). International assignments of a period of more than a week or two tend to fall under the classification of work, save for after-sales services provisions of a contract, or

longer-term training assignments, if the employer and remuneration remain outside Canada.

Activities not considered to be work include volunteer and charity duties for which a person would not normally be remunerated, or helping a friend/family member while in Canada (such as babysitting or small household repairs). Work done via internet or telephone when the employer and remuneration are outside Canada, and self-employment where the individual does not enter the labor market are also not considered to be "work" but rather "business."

Work that is exempt from the need for a work permit

The vast majority of foreign nationals entering Canada to do ''work'' rather than ''business," require a work permit. There are, however, certain exceptions to this rule. Individuals who qualify for work permit-exempt work would not typically be international assignees of companies. The most frequent work permit-exempt foreign nationals include:

- diplomats and representatives of international organizations (of which Canada is a member), and their accompanying dependents;
- visiting members of armed forces;
- on-campus work for full-time international students;
- certain athletes, speakers, performing artists, crew, and referees;
- certain individuals on conference organizing committees;
- certain religious workers and clergy;
- students with practicums in the health field;
- emergency workers, including those rendering medical services; and

- certain transportation workers, including aviation inspectors and crew involved in international transportation.

As is evident from this specialized list, the vast majority of companies hiring foreign workers cannot benefit from exemptions and require work permits.

Work permits exempt from Labour Market Opinions

The general rule states that any foreign national doing ‘‘work” must obtain a work permit unless there is an available exemption (*i.e.* business visits and other activities in the bulleted list above). There are two types of work permits applicable to international assignments: work permits requiring labour market opinions (LMOs), and those which are LMO-exempt.

LMOs add complexity and time to the process, particularly during and in the aftermath of an economic downturn, when unemployment is higher than normal. Therefore, in considering any international assignment, companies should consider whether any LMO-exempt work permits are available. Canadian immigration law establishes various categories for LMO exemptions. The most common of these categories for international assignees follow in the next section.

Intracompany transfers

Multinational companies seeking to assign foreign employees to Canadian positions often use the LMO-exempt intracompany transferee category. These work permits are initially valid for assignments of up to three years, and extendable in two-year increments. Executive and managerial-level employees can obtain this status for seven years, whereas specialized knowledge employees are limited to five years.

Executive and managerial-level staff must generally manage other employees, although management of crucial company functions or processes may qualify. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the

organization's products, services, research, equipment and techniques or an advanced level of knowledge about the position that is unique, and not ordinarily held by others within the industry. The applicant should be coming from a similar position at an affiliate outside Canada, which he/she has occupied for at least one continuous year in the past three.

There are a number of affiliate relationships that qualify to be eligible under this category, but all generally rely on common control (*e.g.*, parent-subsidiary, sister corporations, branch or representative offices).

Under Canada's previous immigration law, the intra-company provisions were more generous to US and Mexican nationals under both NAFTA and General Agreement on Trade in Services (GATS). Current law creates parity between nationals qualifying under these international agreements, and all other workers, such that it no longer makes a difference which intra-company transfer provisions are used. That being said, there are other clear advantages provided by these and other international agreements for international assignees.

International Agreements

Many International Agreements other than NAFTA and GATS allow international assignees with certain nationality to obtain work without labour market opinions, as long as they have employment opportunities in Canada. These agreements include:

- Artists Residencies Program (USA, Mexico)
- Professional Trainees (Bermuda)
- Canada Chile Free Trade Agreement ("CCFTA")
- Film Co-Production Agreements
- International Air Transport Association ("IATA")

- Seasonal Agricultural Program (Certain Caribbean countries)
- Professional Accounting Trainees (Malaysia)
- Scientific and Technical Cooperation Agreement (Germany)

The most widely commonly used of the international agreements for international employment transfers are still the NAFTA, CCFTA and GATS, which both allow certain professionals and skilled workers to come to work in Canada for periods of up to a year (90 days in the case of GATS, subject to extensions).

North American Free Trade Agreement (NAFTA)

The NAFTA provides expanded mobility and foreign workers rights for citizens of the United States and Mexico, although in the case of Mexico some of the benefits have been undermined by the visa requirement imposed by Canada in June 2009.

The ‘‘NAFTA Professional” category contains a list of over 60 occupations, the most commonly used of which include accountants, architects, economists, engineers, hotel managers, industrial/graphic/interior designers, lawyers, management consultants, research assistants (in post-secondary institutions), scientists (botanists, geologists, chemists, *etc.*), scientific technicians and technologists, teachers, technical publications writers, urban planners and computer systems analysts. Some of these require licenses, and/or a post-secondary education. Health professions (which all require degrees and provincial licenses) include doctors; nurses, dentists, nutritionists, dietitians, medical laboratory technologists, occupational/physiotherapists, pharmacists, psychologists and veterinarians.

These NAFTA Professional work permits are issued for up to three years, but may be extended multiple times in most occupations.

General Agreement on Trade in Services (GATS)

GATS' international mobility provisions are much narrower than NAFTA's, although GATS applies to 157 signatory countries (including the US and Mexico). GATS only provides for one 90-day work permit in any 12-month period. Its list contains period for nine occupations: engineers, agrologists, architects, foresters, urban planners, foreign legal consultants, land surveyors, geomaticists and senior computer specialists. All but the last two occupations require licensing and degrees. Computer specialists are given the choice between post-secondary credentials, equivalent or work experience.

Reciprocal Employment

This category can be used for international exchanges both in public and private sector contexts. The purpose of this LMO exemption is to provide complementary opportunities for international work experience and cultural interchange. It includes well-known student work-abroad programs (such as SWAP and AISEC), which are negotiated on a reciprocal basis by Canada's Department of Foreign Affairs and International Trade.

Companies can also use this exemption category if they create equivalent opportunities for Canadians abroad. For companies to benefit from these work permits, a formal exchange or employee transfer program, or at minimum positions for Canadians sent abroad, should be provided. Entry under this exemption category must result in a neutral labor market impact. Note that direct reciprocity does not need to be demonstrated for academic exchanges.

Provincial Nominee Programs (PNPs)

PNPs are run by each province and territory and result in a nomination for permanent residence in Canada. A side benefit of receiving a nomination in most PNP employment categories is the ability to receive an LMO-exempt work permit. Specific rules cannot be neatly summarized because the 11 PNPs each have distinct rules. Suffice it to

say, PNPs are another valuable tool in an HR manager's arsenal in avoiding the need for an LMO.

Other types of common LMO-exempt work permits

Several other LMO-exempt categories are available, and include:

- "Significant Economic Benefit" work permits;
- Entrepreneurs/self-employed work permits;
- Post-graduation employment (for international students); and
- Research, educational or training programs, including post-doctoral fellows and award recipients.

These categories are not traditionally used for company international assignments, but are useful alternatives to consider for recruitment strategies in other contexts.

IT/Software Workers

A special program was created in 1996 to facilitate processing of work permits for IT specialists in seven then high demand occupations: senior animation effects editors; embedded systems software designers; MIS software designers; multimedia software developers; software developers (services); software developers (products); and telecommunications software designers. The occupational descriptions became somewhat outdated, and the government considered changes to them, but in the aftermath of economic downturn, decided to eliminate this exemption category. Most IT workers now have to obtain work permits through a Labour Market Opinion, or other LMO exempt category, such as NAFTA, GATS, or a PNP. Ontario and B.C. exempt digital media professionals from LMOs.

Work permits requiring Labour Market Opinions

International assignees who do not fit into any of the exemption categories discussed above must obtain a labour market opinion

before they are eligible to receive a work permit. LMOs would typically be necessary for persons who are not being transferred from a foreign affiliate, who have not studied in Canada, and who do not have a designation that could qualify under one of the NAFTA or GATS professions. LMOs are obtained from Human Resources and Skills Development Canada (HRSDC) through their customer-facing arm, Service Canada, offices across the country.

The LMO process is lengthy: it can take anywhere from three weeks to six months to adjudicate (depending on the province, and the case). The HRSDC officer takes six factors into account in adjudicating the foreign worker request, namely whether:

- the work is likely to result in the direct job creation or job retention for Canadian citizens or permanent residents;
- the work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- the work is likely to fill a labor shortage;
- the wages and working conditions offered are sufficient to attract Canadian citizens or permanent residents and retain them;
- the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents;
- the employment is likely to adversely affect the settlement of any labor dispute in progress.

The process is also complex in that it includes the requirement to recruit and advertise, screen out non-qualifying and interview qualifying applicants and explain why Canadians do not qualify for the position.

Even if the application for the foreign worker confirmation is successful, employers must undertake to train Canadians to ultimately take over the position, hence the "temporary foreign worker" program title. An employer must ultimately satisfy the government that the foreign worker will have a neutral or positive economic effect on the Canadian labor market.

Given the lengthy LMO timelines, companies can apply simultaneously for the work permit with CIC. However, a work permit cannot be issued by CIC until HRSDC grants the LMO. Visa-exempt individuals may apply directly with Canada Border Services Agency (CBSA) at a port of entry if in possession of an LMO, avoiding CIC.

Furthermore, if companies have received at least one positive LMO in the prior two years, and are otherwise in compliance with the law, they may benefit from the Accelerated LMO program, which has a 10-day processing time, rather than weeks or months for a regular LMO.

Companies requiring many foreign workers may apply for unnamed (bulk) LMOs, which facilitate the issuance of individual-specific LMOs at a later date. Unnamed approvals are useful where larger-scale labor market shortages can be demonstrated, and recruiting may occur at a later date.

The "low-skilled" LMO category allows companies to obtain LMOs for semi and low-skilled foreign workers if the employer meets hiring conditions, including transportation costs and providing affordable housing.

It should be noted that any of the various LMO options outlined above are more subject to refusal in periods with unemployment and in vocations with an oversupply in the labor market. Back-up strategies should always be considered.

Accelerated Labour Market Opinions

In April 2012, HRSDC implemented the accelerated LMO initiative (A-LMO) in all of Canada except Quebec. The initiative intends to

bring efficiencies to this part of the temporary foreign worker program, which has been plagued of late by excessive waiting times and other inefficiencies. The A-LMO program allows employers to submit much simpler and smaller application packages for adjudication within a target service standard of days, rather than potentially up to six months as explained above. Specifically, Service Canada hopes to achieve 10-day processing times for A-LMOs.

In order to qualify for participation in the A-LMO program, employers must:

- have been issued at least 11 positive LMO in the previous two years;
- have a clean record of compliance with the program within the last two years;
- not have been the subject of an investigation, infraction or a serious complaint; and
- not have any unresolved violations or contraventions under provincial laws governing employment and recruitment.

Employers must also complete a series of attestations on the application form which attest to a range of commitments including for wages, occupation, working conditions, recruitment, and compliance with federal and provincial recruitment and employment law. These attestations are significantly further reaching than what employers previously attested to in prior LMOs.

If genuine, the A-LMO will be provided on the basis of the genuineness of the job offer, the wage offered, and whether the job is likely to resolve a labor shortage.

The employer is still expected to comply with all recruitment requirements. There have recently been updates to the prevailing policy wage for LMOs. Specifically, every employer is now expected

to pay wages that are in line with what Canadian workers in the same job, at the same location, are being paid. In fact, this requirement has always been the case. However, what has been newly implemented is the ability to pay less than the prevailing (median) wage.

Under the previous system, employers were expected to always meet the average (prevailing) wage. Now, "median wage" replaces the previous "average wage," and along with this change, employers have been advised that for higher skilled occupations (NOC 0, A and B), they can pay up to 15 percent less than the posted median wage for the region in question. For lower skilled positions (NOC C and D occupations), employers may now pay up to five percent less than the posted median, if that is what they can prove similarly situated Canadians are making in their workplace.

This shift in policy is intended to remedy situations in which employers were forced to prejudice Canadian employees, by paying foreign workers a higher amount due to the posted prevailing wage. In most cases, the wages posted on the government website will be lower than the actual prevailing wage due to the fact that the economic data trails current industry conditions. However, in times of economic recession, or for other valid reasons, a company's wages may be lower than the median.

It must be noted, that the lower wage policy only intended to be used in cases where the shortfall can be proven by employer evidence including pay slips and other proof, and should not be used as the default position. Indeed, if an application submitted with lower-than-prevailing wages, the organization is certain to be audited.

Province of Quebec

Quebec is the only province that has its own immigration selection system which is distinct from other provincial nominee programs. In terms of work permits, international assignees who benefit from any of the above-mentioned foreign worker exemptions need not apply to the province. Those who require an LMO must first obtain a *Certificat*

d'Acceptation (CAQ) from Quebec, and only then can apply for a work permit.

Quebec has facilitated CAQ (and LMO) processing for 44 occupations, which can be found at http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/qcocclist.shtml. These occupations (i) need not be advertised, and (ii) benefit from far quicker processing.

Spouses and Children

Spouses are eligible for open work permits, and dependent children are eligible for study permits for most international transfers. In order for spouses and children to qualify for dependent status, the transferee simply has to be entering Canada for a high-skilled position that falls under Canada's National Occupation Classification codes O, A and B. These classifications cover both professional occupations and skilled trades. For instance, managers, financial analysts, engineers and scientists fall under the NOC O and A codings. Secretaries, bookkeepers, bricklayers and drywallers are all NOC B codings.

Spouses, including common-law and same sex spouses, receive open work permits with the payment of a filing fee. This work permit generally lasts the duration of the spouse's permit, and allows for work at any employer, in any occupation (subject of course to licensing and other workplace laws of Canada). One caveat is that the accompanying spouse must pass a medical examination before being able to work with children or in a health care occupation. In a recent Pilot program, adolescents whose parents are working in the Province of Ontario may also obtain a work permit. This rule does not apply across the country.

Turning to studies, school children entering Grade I (about six years old) usually require study permits when accompanying international transferee parents.

Spouses and children, along with the primary worker, are also eligible for public health insurance in most cases. This insurance is

provincially run, and provincial rules must be checked on a case-by-case basis.

Other Comments

Finally, in terms of permanent residence, two major changes introduced in late 2008 have changed processing priorities to favor long-term options for temporary foreign workers. Both (Bill "C-50"), and the Canada Experience Class (CEC) provide quick routes to permanent residence for foreign workers in NOC A, O and B categories. Aside from these federal permanent residence programs, foreign workers should also consider provincial nominee programs, which also provide quick routes to both work permit and immigrant status. Any intracompany transferees considering long-term moves to Canada should also consider both customs and tax strategies, such as the creation of an immigration trust. Our Toronto Office has written a Canadian Immigration Manual on these topics, and we would be pleased to provide you with a copy upon request.

Changes to Canada's foreign worker program include new enforcement measures, including penalties against non-complying employers.

Another new initiative is the establishment of provincial-federal Temporary Foreign Worker Agreements, which are expected to create new opportunities for companies' international assignments. Many of these groundbreaking initiatives in Canada were precipitated by the significant growth of temporary entry to Canada, driven by broadly accepted statistical and policy findings that the future growth of Canada's labor market will be entirely driven by immigrants (and foreign workers) by 2013.

Finally, we expect major changes to the Federal Skilled Worker, Investor, and Entrepreneur programs in 2013.

Further Information

Baker & McKenzie's *Canadian Immigration Alerts* provide regular updates on current developments and the firm's *Canadian Business Immigration Manual* provides a detailed overview of Canada's immigration laws.

Chile

Executive Summary

Chilean law provides many solutions to help employers of foreign nationals. These range from temporary, nonimmigrant visas to permanent residence. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The respective Chilean Consulate, if the applicant is outside Chile, is responsible for visa processing at consular posts abroad. In case the applicant is already in the country, the Ministry of Interior, through its Immigration Department ("Departamento de Extranjería y Migración") will process visas. Inspection and admission of travelers is conducted by the National Customs Service at Chilean ports of entry and pre-flight inspection posts.

Current Trends

Chile has changed in the last two decades from an exclusive emigrants generating country to a place of interest to immigrants from several nationalities. Yet compared with other countries, foreign nationals represent a small part of the country's population. Even so, the presence of so many multinational companies in Chile has increased the number of visa applications significantly in the last decade.

Foreign workers are protected by Labor Law almost in the same way as Chilean employees. Only a few differences are observed (*e.g.*, a company operating in Chile must not have more than 15 percent of foreign employees, with the exception of foreign professionals and technicians).

Immigration is taking on more importance in the country's legislation. A new Immigration Regulation that includes international commitments made by Chile, is part of the current Government's agenda.

In addition, a bill regarding immigration rules will be discussed in Congress soon. The main objectives of this bill are the following:

- To establish wider options for different types of visas, such as a visa for executives that will allow foreign managers to hold board meetings of the company in Chile, as attending board meetings is considered work, which currently requires a tourist work permit.
- Define guidelines for the creation of a national policy on this matter.
- Streamline the process of expulsion of foreign offenders.
- Facilitate the process of revalidation of foreign professional qualifications.
- Keep the limit of 15 percent foreign employees, but excluding visa holders of less than one year of validity that do not allow them to apply for permanent residence.

Business Travel

Tourist in Business Travel

Foreign nationals coming to Chile with short-term business purposes and without engaging in remunerated activities are considered tourists and, as a general rule, do not require previous authorization to enter the country. Only individuals from certain nationalities (*e.g.*, Cubans, Chinese) require such authorization, called the Consular Tourist Visa, which can be requested at the Chilean Consulates of the country of origin.

Tourist status authorizes a foreign national to hold business meetings, and conferences. Employment in Chile, however, is not authorized.

The permitted length of stay is up to 90 days, with the possibility of a stay extension applications for up to another 90 days (days are counted from the date of entry to Chilean territory). The Border Control Authority may limit the period of stay at the moment of entering the country.

An accompanying spouse or children can be admitted under the same Tourist status. Proof of financial ability to stay in Chile may be required at Police discretion.

Training

As Tourist

For short-term training for up to 180 days - including all possible extensions, which are discretionary - tourist status is not sufficient. The features of tourist status described above for Tourist in Business Travel are applicable.

Remunerated activities are not allowed unless the foreign national receives a Work Permit, which is a special permit for tourist visa holders that enables foreign nationals to work for a limited period of time. In order to obtain it, a letter from the visa sponsoring company in Chile and abroad is required.

As Holder of a Temporary Visa

A Temporary Visa allows its holder to stay in the country for a maximum period of one year and may be renewed only once for the same period. The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for the country and allows its holder to carry out any legal activities without special limitations. This is the case of executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than 90 days for reasons of their activities or interests in the country.

This visa is granted as a "holder" to the interested person, as well of a "dependent" to the members of the family.

Once the one year period has elapsed, the holder may apply for an extension thereof or permanent residency in the country. After two years of residence in Chile, the holder shall either apply for permanent residency or leave the country.

Student Visa

In case training involves studying in an educational institution duly acknowledged by the State, a Student Visa can be used. The duration of this visa is up to one year renewable for equal terms. This visa does not allow its holder to execute remunerated activities, yet an additional work permission can be requested.

Employment Assignments

Work Contract Visa

This is a visa granted to foreign nationals who come to Chile with the purpose of complying with a work contract. The same visa is given as dependents to the family of the applicant. The dependents cannot perform, as such, remunerated activities, unless they apply for their own visas.

In order to obtain this visa, a number of conditions must be satisfied.

First, the employer (company or individual) has to be legally domiciled in Chile.

Second, professionals or specialized technicians must document their qualifications with copies of their corresponding degrees or titles.

Third, the work contract on which the visa is based must be signed and notarized in Chile by the employer and the employee or their representatives. If the contract is signed abroad, the signatures have to be authorized by the corresponding Chilean Consul and then legalized

in Chile before the Chilean Foreign Affairs Ministry. The work contract has to comply with Chilean labor and social security laws.

Fourth, the parties have to stipulate to a special clause in the work contract stating the obligation of the employer to afford the employee and his family the costs of their return to their country of origin or to the foreign country that both parties agree.

The Work Contract Visa has a maximum duration of two years and it may be extended for the same term. If the duration term is not specified in the passport, it will be understood that such term is the maximum.

In any event, termination of the work contract will cause the visa to expire. The sponsor company is obliged to notify the Immigration authorities upon termination of the corresponding employment agreement, within 15 days as of the date of termination. This is without prejudice to the right of the visa holder to apply for a new visa or permanent residency.

The holder of the Work Contract Visa will be able to apply for permanent residency only after two years as a holder of such visa.

In case the foreign national executes his activities in a company in Chile, but will be remunerated abroad, a Temporary Resident Visa is the appropriate one.

Temporary Resident Visa

The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for the country. This is the case of executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than 90 days for reasons of their activities or interests in the country.

As in the case of the Work Contract Visa, this visa is also granted as a "holder" to the interested person and as a "dependent" to the members of his family.

The temporary resident visa has a maximum duration of one year and may be renewed only once for the same period. If the visa stamp does not specify the term for which it was granted, it will be understood that its duration is the maximum. Once the one year period has elapsed, the holder may apply for an extension thereof or permanent residency in the country. After two years of residence in Chile, the holder shall either apply for permanent residency or leave the country.

Work Permit

For work assignments of up to 30 days, including possible extensions, a Work Permit is a sufficient authorization. This is a special permit for tourist visa holders that enables foreign nationals to work for a limited period of time.

Entry based on International Agreements

Chile has subscribed Free Trade Agreements with numerous counties in the world, (*i.e.* US, Canada, Mexico, the EU, etc.) that contain alternatives for entering the country.

Foreign nationals from these countries coming as business visitors, professionals, and intra-company transferees, as well as traders and investors, may obtain temporary residence which allows them to work. It is possible for them to work for more than one employer at the same time, provided that such jobs are within the category applied for, as mentioned in the respective application. The permitted length of stay varies from up to six months to one year according to the business person category. Extensions can be requested.

Family dependents may accompany the principal visa holder if they meet the general immigration regulations or may be qualified separately according to the Agreement or according to the general immigration rules.

Business persons may apply for these specific visa categories in any Chilean General Consulate abroad. Visa applications may also be

submitted at the Aliens and Migration Department of the Ministry of the Interior, in Santiago.

Please note that the Free Trade Agreement between Chile and the US exempts for the first 18 months US citizens from the foreign employment limitation.

For more information on these Free Trade Agreements please visit:

- www.direcon.cl
- www.extranjeria.gov.cl/filesapp/manual_tlc_usachile_en_ingles.pdf
- www.extranjeria.gov.cl/filesapp/manual_castellano_canada.pdf
- www.extranjeria.gov.cl/filesapp/manual_mexico.pdf

Other Comments

Permanent residence can be obtained after residing in the country. Terms of residence varies according to the type of residence held. In the case of a Work Contract Visa, permanent residence can be required after a stay of two years without interruption. For Temporary Visa holders, the request can be made after a stay of one year without interruption. Student Visa holders can make their request after a stay of two years without interruption, with the additional requirement that the student must have finished studies.

A resident with Permanent Residence has the right to reside in Chile indefinitely and carry out any type of legal activity. Permanent Residence is tacitly revoked if the main holder remains outside Chile during an uninterrupted period of one year or more.

Chilean Nationality can be obtained by children born in Chile of foreign parents in a transit status (*e.g.*, tourists, irregular residents) and children of foreign nationals who are in Chile performing a specific service to their Government. In addition, Chilean Nationality can be

granted by special grace through a law. This does not occur frequently, but has been granted to entrepreneurs who have made a significant contribution to Chile.

Colombia

Executive Summary

Colombian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Depending on the activities to be executed in the country, foreign citizens can obtain temporary permits or visas. Requirements, the need to validate professional degrees or obtain temporary licenses and the possibility of earning salaries or fees in the country vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs located in Bogota, D.C. and the Colombian Consulates abroad are responsible for visa processing. The issuance of employment visas for the first time must be performed abroad before a Colombian Consulate - unless (i) the foreign citizen holds a Colombian business visa or (ii) before the Ministry of Foreign Affairs if this entity considers it's convenient because of national interest or due to the reciprocity with other state - In certain cases involving restricted nationalities, the consulates require prior authorization from the Ministry of Foreign Affairs.

The Special Administrative Unit *"Migración Colombia"* is in charge of the issuance of temporary permits and foreign IDs, and performs the investigations and enforcement actions involving local employers, sponsoring entities, and foreign nationals. The Professional Councils are also part of the visa process in case foreign citizens plan to execute activities involving their professional experience in the country. The determination of whether a foreign national executes activities that involve professional experience is a prerogative of the professional councils. In any case, it is advisable to verify if the employee requires his/her undergraduate education studies in order to develop the job.

Current Trends

Colombian Consulates are extremely discretional and in occasions are inclined to go beyond the law and ask for additional documentation or requirements.

Resolution 779, 2012 establishes the requirements that have to be fulfilled for the immigration procedures that have to be performed before the Special Administrative Unit "Migración Colombia." The resolution clarifies the requirements that have to be fulfilled for temporary technical permission.

Business Travel

Business Visa

As a general rule, foreign nationals who visit the country on short-term visits without receiving any fees or compensation in Colombia may request a business visa. The business visa applies to the foreign national that exercises the legal representation, or occupies a directive or executive position in a foreign company. This company must have economical connections with a national or foreign company established within Colombia. The foreign national that obtains this kind of visa may perform activities of business promotion related with the interests of the company, such as the assistance to boards of partners or directors, and the supervision of the operations of economically, strategically and legally related companies. This kind of visa is acknowledged for a term of up to four years for multiple entries and authorizes a stay of up to one year per each entry. The foreign national entering Colombia under a business visa cannot settle in Colombia or receive fees or compensation in Colombia.

Foreign nationals who come to work on issues connected to any kind of free trade agreement involving Colombia may also enter by means of a business visa. Exceptionally, for foreign nationals that intend to enter to Colombia in the frame of a negotiation of a free trade agreement, this visa may be granted for up to four years for multiple entries and authorizes a stay of up to two years per each entry. Under

this scenario, foreign citizens are allowed to receive fees or compensations in Colombia as payment for their work as negotiators of the agreement. Foreign nationals are able to apply for a general business visa for the first time within Colombian territory. Family members of the person entitled to a business visa are now allowed to obtain a temporary beneficiary visa. Normal government fees are waived for nationals of Spain, South Korea, Japan, United States and Ecuador.

Visa Waiver

The normal visitor visa requirement is waived and citizens of certain countries may be issued a temporary visitor permit by the Special Administrative Unit "*Migración Colombia"* at the time of entry, authorized to engage in one of the following activities, provided that the foreign national does not have a labor relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or fees):

- Academic activities in seminars, conferences or expositions.
- Courses or studies for less than six months.
- Medical treatment.
- Interviews within recruitment processes.
- Commercial contacts or visits of less than one week.
- Provide training for a maximum term of 45 calendar days.

Visa waiver benefits are available to citizens of: Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bhutan, Bolivia, Brazil, Brunei-Darussalam, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Federal State of Micronesia, Fiji, Finland, France, Germany, Granada, Greece, Guatemala, Guyana, Holy See, Honduras, Hungary, Iceland,

Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Korea, Malaysia, Malta, Marshal Islands, Mexico, Monaco, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Saint Kitts and Nevis, Saint Vincent and Grenadines, Saint Marino, Saint Lucia, Salomon Islands, Samoa, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, and Venezuela.

Temporary Technical Permit

A temporary technical permit may be granted by the Special Administrative Unit "Migración Colombia" to foreign nationals seeking to perform urgent technical services for a maximum term of 45 calendar days. This kind of permit is commonly granted to technicians or engineers to inspect, test, or install equipment, or perform any duties related to their technical expertise. The temporary technical permit must be requested by the local sponsoring company, and must submit the required documents to the Special Administrative Unit "Migración Colombia" at least three business days in advance. If the foreign national has to be in the Country more than 45 calendar days and depending on the Country, a Temporary Technical Visa, which is issued for a maximum term of 180 calendar days, has to be obtained.

Employment Assignments

Employment Visa

Under Colombian immigration laws, any foreign national that intends to undertake work activities in the country must request an employment visa or a visa under a different category that allows him/her to work (*e.g.* spouse of Colombian national, resident or parent of Colombian national). The employment visa allows foreign nationals to stay and work in Colombia usually for a one or two years period or for a lower period, depending on the information given to

immigration authorities. The employment visa is usually granted to foreign nationals in the presence of the following events:

- Engagements by private or public entity, foreign or national, to perform a job or an activity in the foreign national's profession or specialty or to execute technical activities.

- Executives, directive personnel, technicians or administrative personnel of private or public foreign entities, transferred from abroad, to cover specific positions in their companies, Colombian branches or subsidiaries.

- An employee of a Colombian entity to work on specific projects requested by Colombian companies.

- Foreign nationals transferred to Colombia from abroad in order to render independent services to companies domiciled within the country without having a labor relationship with said local companies.

- Paid services performed by academics required by higher education institutes, foreign nationals appointed by an entity of the Colombian Government, artists or athletes, journalists who are foreign correspondents.

Employment visas are issued for a maximum term of two years and allow multiple entrances. They expire automatically if the foreign national is absent from the country for a period that exceeds 180 continuous days and may be renewed for a period of two years or less according with the term of the labor contract and the evaluation of the submitted documents.

The visa must be issued previous to the date the foreign national begins to render his/her services in favor of the local company.

The spouse or permanent companion, parents and children of the person obtaining a work visa may obtain a temporary beneficiary visa,

which allows them to enter Colombia to study or engage in home activities but does not entitle them to work.

The foreign national will only be allowed to perform the activity authorized in the employment visa and only for the company authorized in the employment visa. In the event there is any change of activity or position, the foreign national and the sponsoring company must inform in writing to immigration authorities notifying the change and, if such is the case, request the change of the visa.

Obligations of Register and Control

Any foreign national who obtains a visa for more than three months of validity should appear before the Foreigners Department of the Special Administrative Unit "Migración Colombia" in order to be registered on the immigration files and if the foreign national is 18 years old or more should obtain a foreign identity card (*"cédula de extranjería"*). When immigration authorities issue or renew any visa, the foreign national and the family[1] must appear before the Special Administrative Unit *"Migración Colombia"* within 15 calendar days of the day of entry or visa issuance (*e.g.*, in the case of renewals) to register and obtain the foreign identity card. Employers (entities, institutions or individuals) must inform the Special Administrative Unit *"Migración Colombia"* of the hiring and termination of foreign nationals within 15 calendar days of hiring or termination. This also applies to renewed or changed visas. In such case, employers must inform in writing to the Special Administrative Unit *"Migración Colombia"* the continuation of the labor relationship. Foreign citizen must notify the Special Administrative Unit *"Migración Colombia"* and the Ministry of Foreign Affairs about any change of residence or domicile within 15 days of the change.

Other Comments

The issuance or renewal of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions

[1] Children above seven (7) years old.

without the opportunity to appeal the decision. Prior to application, the best practice is to informally visit the immigration authorities in order to review the respective documents with them. It is important to minimize the risk of denial, since a new petition may be presented only after a six-month wait if a visa request is denied.

Renewals of any visas may be obtained before the Ministry of Foreign Affairs in Bogotá D.C. or before the respective Colombian Consulate abroad, provided that visas are not expired. The requirements to obtain visas change periodically and should be verified. The process to obtain the visa before the Colombian Consulate abroad normally takes three to seven business days, and the process to renew the visa before the Ministry of Foreign Affairs normally will conclude in the same day. Foreign nationals that stay or visit Colombia can only practice the profession or the activity authorized by the respective visa and by the appropriate professional council. In the event the foreign national changes activity, there is a requirement to submit a petition to have a new visa with the change of activity to the Ministry of Foreign Affairs in Bogotá, D.C.

Non-compliance of immigration regulations will be sanctioned with the impositions of fines to the foreign national and the company and, in some cases, with the deportation or the expulsion of the foreign national.

Czech Republic

Executive Summary

The Czech Republic provides many solutions to assist employers of foreign nationals. These range from short-term Schengen visas to country-specific long-term visas. Often, more than one solution is worth considering. Requirements, processing time periods, employment eligibility and benefits for accompanying family members vary by visa classification and purpose of stay. The immigration process may be lengthy in some cases. Therefore, the application should be filed sufficiently well in advance.

Key Government Agencies

The relevant Czech Labor Office is responsible for the processing of a work permit. The Department for Asylum and Migration Policy of the Czech Ministry of the Interior is responsible for visa processing with the assistance of the Czech Consulate abroad and the Foreigner Police. Applications for short-term Schengen visas are assessed and decided by Czech consular posts. Most non-EU citizens' visa applications require first a notification of unoccupied job by the potential employer as well as that the foreign national applies and obtains the work permit to be employed in a specific job, time, place and for a specific employer, *i.e.*, prior to applying for a Czech employment visa.

Current Trends

Border protection activities and enforcement of immigration-related laws that impact employers and foreign nationals increased once the Czech Republic joined the EU in 2004. Since April 2010, local regulations relating to short-term visas have been harmonized by EU Regulation (EU Visa Code).

It is difficult to obtain a work permit for foreign nationals from certain countries and employers of foreign nationals unauthorized for employment and the foreign nationals themselves are subject to administrative penalties.

As of January 2009, a concept of Green Cards has been introduced. A "Green Card" is a type of long-term residence permit in the Czech Republic for citizens of some non-EU countries issued for employment purpose that encompasses both residence permit and employment permit in the Czech Republic. There are three types of Green Cards (A, B, C) which vary according to employee's required qualifications.

As of January 2011, a concept of Blue Cards has been introduced. A "Blue Card" is a type of long-term residence permit in the Czech Republic for citizens of all non-EU countries issued for employment purpose in special cases, *i.e.* when the foreign national will be employed at a job position requiring high qualification (*i.e.* university education) and such position can be occupied by a non-EU citizen. As with the Green Card, the Blue Card encompasses both residence permit and employment permit in the Czech Republic.

As of May 2011, residence permit cards containing biometric data are issued to the foreign nationals (*i.e.* data on a facial image and fingerprints). In this context, it is necessary for the foreign national who filed an application for a long-term permit or for permanent residence in the respective consular post and whose request was successful, to visit in person within three business days from the date of entry into the Czech Republic the Ministry of the Interior to create biometric data.

General Stay Requirements of the Czech Republic for Foreigners

A non-EU citizen staying in the Czech Republic is obligated to report the beginning of the stay, place of residence and expected length of stay to the Foreigner Police within three working days from his/her arrival. If the non-EU citizen will stay with a person/entity who accommodates more than five foreign nationals or provides accommodation in return for a consideration (*e.g.*, a hotel), a registration must then be done by the provider of the accommodation. The preceding sentence will not apply in case the provider of accommodation is a related person to the non-EU citizen.

The change of place of residence of a non-EU citizen is subject to notification to the appropriate Foreigner Police or Department for Asylum and Migration Policy of the Czech Ministry of the Interior. For example, non-EU citizens having long-term visa notify change of their place of residence within 30 days from the date on which such change occurred if the foreign national assumes that the change will last at least 30 days.

An EU citizen is obligated to register with the Foreigner Police no later than within 30 days of the date of the last entry into the Czech Republic, if his/her stay is expected to exceed 30 days. Such obligation also applies to their family members, if they stay in the territory of the Czech Republic. This obligation does not apply to those EU citizens who fulfill the obligation via the person/entity providing them with accommodation, based on the assumption that the person/entity providing the accommodation fulfills such duty.

The change of place of residence of an EU citizen and his/her family members is subject to notification to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior, if they assume that the change will last at least 180 days.

All foreign nationals (incl. EU citizens) are obligated to report respective changes regarding their stay in the Czech Republic to the appropriate Foreigner Police or to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior. The changes shall be reported mostly within three working days from the date on which such change occurred. Changes that trigger reporting requirements include:

- Change of travel document;
- Change of marital status; and
- Change of surname.

Foreign nationals are further obligated to:

- Possess a travel document that is valid for three months beyond the intended stay in the Czech Republic (*i.e.*, beyond the applied visa period, if the visa is granted);

- Prove their identity with a valid travel document or a residence permit card, if requested by appropriate authority, and prove that their stay in the territory is legitimate;

- Surrender immigration document to the authority that issued the immigration document, if its validity has expired or if it is filled in with official records;

- Surrender immigration document to the authority that issued the immigration document at the latest three days before termination of residence in the Czech Republic (with the exemption of visa and travel identification card if such was issued for the purpose of travel out of the Czech Republic);

- Report a loss, destruction, damage or theft of an immigration document within three days from the date on such occurrence;

- Immediately report a loss or theft of travel documents to the Foreigner Police; and

- Submit to such actions as taking fingerprints, video recording, medical examination, *etc.* in manner and to the extent provided by Czech law.

In principle, all foreign nationals must have valid and effective health insurance covering the entire period of stay in the Czech Republic. In case of a short-term visa, evidence on travel health insurance shall be presented when applying for a short-term visa. The minimum coverage is EUR30,000. In case of a long-term visa, evidence on travel health insurance shall be presented before the issuance of the long-term visa. The minimum coverage is EUR60,000 per one insured

event. The foreign national is obliged to submit the evidence on travel health insurance when inspected by the Foreigner Police.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Visa

Short-term visa

In relation to short-term visa, Czech law currently refers to the EU Visa Code. The EU Visa Code lays down conditions for granting short-term visa, the reasons for its denial, conditions for extension of the period of stay for short-term visa and the reasons for revocation of its validity.

In accordance with the EU Visa Code, the short-term visas are granted by the Embassies or Consulates of the Member States. The request for an extension of stay in the Czech Republic on a short-term visa shall be submitted by the foreign national to the Foreigner Police.

Schengen Visa: Airport Transit Visa

Generally, a person is able to stay in the international transit area at the Czech airport without a Czech visa while waiting for a connecting flight. However, some nationalities are required to have a valid visa, even if they do not leave the international transit area. The Airport Transit Visa only authorizes the holder to transit through the airport's international transit area.

Schengen Visa: Uniform Visa

A single-entry visa allows foreign nationals to enter, stay and leave only once. The visa may be used at any time stipulated in the visa. A multiple entry visa allows foreign nationals to enter, stay and leave the country several times. The visa may be used at any time stipulated in the visa until the permitted number of days of entry and stay is reached.

Allowed purposes are tourism, visit of a person (invitation required), cultural purposes, sports purposes, study purposes, business trip, official (political) reasons and other purposes.

The total duration of the stay of a foreign national in the territory of the Member States under a Uniform Visa may not exceed 90 days during six months from the first date of entry into the Member States.

Schengen Visa: Visa with limited territorial validity

Schengen Visa with limited territorial validity is only valid in the territory of the Member State which issued the visa. Exceptionally, it may be valid in several Member States, provided that each of these Member States agrees with it. This visa is granted mainly on humanitarian grounds, on grounds of national interest or the implementation of international commitments.

Long-term Visa

A long-term visa is a visa for a stay exceeding the period of 90 days.

Allowed purposes are employment, business, participation in a legal entity, study, joining his/her family, sports, medical care, to take over permanent residency, for scientific research.

The long-term visa is issued for a period of up to six months.

If the purpose of residence of a foreign national in the territory of the Czech Republic requires a stay longer than six months, the foreign national is required to apply for a long-term residence permit no earlier than 90 days and no later than 14 days before the expiration of the long-term visa. This application must be submitted in person by the foreign national to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior.

Please note that there is no legal entitlement for granting a Czech visa or long-term residence permit.

Visa Waiver

EU citizens do not need visa to stay in the Czech Republic. They are subject to the registration requirement only. A similar treatment also applies to citizens of Norway, Lichtenstein, Iceland, and Switzerland. Some non-EU citizens travelling to the Czech Republic as tourists are not required to obtain a Czech visa, only provided that their stay does not exceed the stipulated number of days. These individuals are then subject to the registration requirement only.

For example, US citizens entering the Czech Republic for tourist purposes may only stay in the territory of the Czech Republic and countries of Schengen territory for a period of up to 90 days within a six-month period. If he/she interrupts his/her stay in the Schengen territory (including Czech Republic) within these six months (*i.e.*, he/she travels outside the Schengen territory), the days out of the Schengen territory are not calculated into the 90 day period.

Work Permit

EU citizens do not need a work permit to work in the Czech Republic. They are subject to the registration requirement only. A similar treatment applies to citizens of Norway, Lichtenstein, Iceland and Switzerland.

Other foreign nationals may be employed, provided that they have been granted a work permit and a residence permit, a "Green Card" or a "Blue Card" that contains both residence and work permit.

For the purpose of the work permit, the employer must notify an unoccupied job to the Labor Office. The employer must show that the job cannot be conducted by Czech or other EU citizens.

An application for a work permit for a foreign national is filed at the appropriate Labor Office. Thereafter, the foreign national may use the approved work permit to apply for a long-term visa at a Czech Embassy or a consular post in a country of his/her origin or country where the foreign national's long-term or permanent residence is

permitted. A long-term visa may only be granted by the Czech Ministry of the Interior. Following granting the long-term visa, the foreign national may apply for long-term residence permit.

Work permits are valid only for employment, the specific job, site and the employer listed on the permit. A change in any of these will require a new work permit.

Please note that a work permit to employ a non-EU citizen in the Czech Republic is not required (however, residence permit is still required), if the foreign non-EU citizen does not perform work within the territory of the Czech Republic for more than any seven consecutive calendar days or, in total, 30 days within a calendar year, and provided that the citizen is at the same time a:

- Performer, performing artist, pedagogical worker, academic worker of an university;
- Scientific research or development worker, who is a participant of a scientific meeting;
- Scholar or student up to 26 years of age;
- Sportsman; or
- Person providing the delivery of goods or services within the territory of the Czech Republic, or delivers such goods, or provides installation, or provides a guarantee, or repair services, under a business agreement.

A work permit to employ non-EU citizens in the Czech Republic is also not required for employing (accepting secondment of) a foreign national who was seconded (posted) to the Czech Republic within the framework of providing services by his/her employer residing in another EU Member State. However, there are special requirements to meet these criteria.

Residency in the Czech Republic

Temporary Residence Permit

This type of permit may be issued to EU citizens if they intend to stay for more than three months in the Czech Republic.

Long-term Residence Permit

This type of permit is issued to a foreign national that has a Czech long-term visa and is willing to stay in the Czech Republic for a period longer than six months, based on the assumption that the purpose of the stay will be the same for the entire period of stay.

For example, it may be issued for purposes of study in the Czech Republic, for purposes of being protected in the territory of the Czech Republic, scientific research, asylum and diplomatic purposes.

The long-term residence permit may be issued in form of a "Green Card" or "Blue Card." The "Green Card" or "Blue Card" contains both the long-term residence permit and the work permit.

Permanent Residence Permit

In general, this permit may be issued to a foreign national after five years of continuous legal stay in the territory of the Czech Republic. Under some special circumstances (*e.g.*, asylum), it may be issued immediately and, in some special cases, after four years of continual stay in the territory of the Czech Republic (*e.g.*, international protection purposes). A foreign national is obligated to submit evidence that his/her income is regular for the purposes of proving funds for permanent residence.

Other Comments

All Czech immigration procedures are time-consuming and administratively demanding; therefore, advanced planning is crucial. As an example, here is a summary of the key steps and the timeline of the immigration procedure applicable to a non-EU citizen intending to

work in the territory of the Czech Republic in employment relationship with a local employer:

- Preparation stage: four-six weeks to obtain all documentation.

- Notification of the Czech employer to the Labor Office on existence of unoccupied job - the period of the administrative proceeding is up to 30 days;

- Application of the non-EU citizen to be employed by the Czech employer – the period of the administrative proceeding is up to 30 days;

- According to the length of stay, the non-EU citizen shall apply for visa (if he/she shall have visa), namely

    - Schengen unified visa – the period of administrative proceedings is up to 15 days (30 days in specific cases); or

    - long-term visa – the period of administrative proceedings is up to 90 days (120 days in specific cases).

- Application of the non-EU citizen for long-term residence permit – the application for long-term residence permit may be granted if the non-EU citizen has been already granted long-term visa. The period of administrative proceedings is up to 60 days.

Please note that the steps 3, 4 and 5 above do not apply in case of a "Blue Card" or "Green Card." Application of a non-EU citizen for a Blue Card or Green Card shall be made at the consular post. The period of the administrative proceeding is up to 90 days in case of a Blue Card or 30 days in case of a Green Card; if the application is granted, the consular post will issue a long-term visa for the collection of the respective card. A separate application for a work permit is not required.

France

Executive Summary

France is a popular destination for holiday and business travelers alike. While brief visits generally pose no issue, coming to France to work or for longer stays means complying with a strict procedure with various authorities.

It is very important to apply for the appropriate visa in the foreign national's home country before coming to France. Personal appearance at the consular post is required in most cases.

Key Government Agencies

Visa applications are processed at French embassies and consular posts around the world.

The Labor Department (*"Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi"* or "DIRECCTE") countersigns employment contracts required for certain working visas.

Work permits required for long-stay visas are handled by a specific immigration office, the National Agency for the Reception of Foreign Nationals and Migration (*"Office Français de l'Immigration et de l'Intégration" or "OFII"*), which approves files and sends them to the consular post for visa issuance.

Registration may also be required at the local Police station (*"Commissariat de Police"*) located near the place of residence in France.

Current Trend

French immigration policy pursues four objectives: controlling migration flows; favoring integration; promoting the French identity; and encouraging development partnership.

In addition, France wishes to improve the system of immigration for professionals. Therefore, in response to recruitment needs in certain economic sectors, the French government has decided to encourage immigration for professionals and make it easier for foreign nationals to enter France for selected professions.

Business Travel

Short-Term Visas (less than three months)

In general, and subject to the visa waiver described below, foreign nationals must, prior to coming to France even for a short visit, obtain a visa from the French Consulate in the country where they reside.

The applicant will apply for a Schengen visa, if the main destination is France. The Schengen visa allows entry to France and to move freely within other countries in the "Schengen area."

Currently, the members of the Schengen area are the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

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

The visa is granted for a maximum period of three months, and allows single or multiple entries. During the validity of the visa, the foreign national is authorized to stay in the Schengen area for the period indicated in the visa.

The application must provide a return ticket and evidence of sufficient resources for the stay in France (provided by 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 foreign national has

the burden of proving the actual date of entry in to France (*e.g.*, showing travel ticket).

Visa Waiver

Visas are not required for EU (*i.e.*, 27 countries, Romania and Bulgaria benefiting from that specific status) and EEA (*i.e.*, Norway, Liechtenstein and Iceland) citizens to visit France.

In addition, the normal visa requirement is waived for trips of up to three months for citizens of the following countries: Andorra, Argentina, Australia, Bolivia, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, San Marino, Singapore, South Korea, United States, Uruguay, Vatican, and Venezuela. Also included are holders of passports from the Hong Kong Special Administrative Region of the People's Republic of China and the Special Administrative Region of Macao of the People's Republic of China, and holders of a valid residence document in France.

Training

Citizens of EU/EEA are able to live and work in France without a visa. Therefore, they are authorized to remain in France for training without securing a French visa.

Citizens of other countries must qualify for one of the visas set out below. In addition, non-EU/EEA citizens will generally be required to hold a valid work permit, which is obtained at the competent Préfecture in France after the visa is issued. A contract approved by the DIRECCTE is required for the visa application.

Short-stay Visa ("visa de court séjour")

The Short-stay Visa can authorize training assignments for up to 90 days. No extension of stay is possible. Further, no more than 90 days can be spent in France during a six-month period. No further administrative steps are required at the French Préfecture.

Long-stay Temporary Duration Visa ("visa de long séjour pour durée temporaire")

The Long-stay Temporary Duration Visa authorizes training for up to six months. No extension of stay is possible. No further administrative steps are required at the French Préfecture.

Long-stay Visa ("visa de long séjour")

The Long-stay Visa authorizes foreign nationals to remain for periods longer than six months. Once in France, it is necessary to apply for a residency permit (*"carte de séjour"*).

However, as of June 1, 2009, the following categories of foreign national can obtain a Long-stay Visa equivalent to a one-year residence permit (no obligation to apply for a residence permit once in France) from the French Consulate:

- spouses of French citizens;
- visitors;
- employees having an employment contract approved by the DIRECCTE (fixed-term contract or indefinite-term contract; employees under the Intra-company Transferee classification do not benefit from this procedure – they must apply for residence permits); and
- students.

For the four above-mentioned categories of foreign national, the visa is generally valid for one year. If the foreign national wishes to stay longer than one year in France, then two months before the expiration date of the visa, a residence permit application must be filed at the Préfecture which is competent for the domicile of the foreign national.

Employment Assignments

Corporate Executive Visa

Corporate executives for visa purposes include: the President and/or Managing Director of a French corporation (*"Société Anonyme"* or SA), the President and/or the Managing Director of a simplified corporation (*"Société par Actions Simplifiée"* or SAS), the Managing Director (*"Gérant"*) of a French limited liability company ("Société à Responsabilité Limitée" or SARL) or the Managing Director (*"Responsable en France"*) of a branch or a liaison office.

Corporate executives are required to obtain a visa in order to both reside and hold the positions in France. Their visa is processed through the Trade and Foreign Affairs Department.

To hold the above position without residing in France, a non-EU national must still obtain a prior simplified authorization (*"récépissé de declaration"*).

Employee Visa

Employee visas require first that the French employer file an application with the DIRECCTE. When approved, it is then processed by the OFII, which in turn will forward it to the French Consulate. The employee and family members will then be able to collect their Long-stay Visas from the French Consulate. This process can take approximately six weeks.

The French government is currently testing a new work permit application process in three cities: Lyon, Nanterre and Paris. In these cities, applications must be filed directly with the OFII which centralizes the entire process up to the obtainment of the residence permit.

When the employee and family arrive in France, they must undergo a medical examination with the Immigration Office. If entering France under the Regular Employee classification, the employee must also

take French language lessons, if he/she is not fluent, and follow civic training.

Upon presentation to the Préfecture of the visa and evidence of their domicile in France, the employee and family will receive a provisional residence permit valid for three months (*"récépissé"*) and then a one-year residence permit (*"titre de séjour"*). They may also directly obtain a one-year residence permit depending on the Préfecture involved. The employees under the Intra-company Transferee classification receive a three-year residence permit.

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

In principle, the spouse is not allowed to work. However, under certain circumstances, in particular if the employee's spouse entered France under the Intra-company Transferee classification, permission to obtain a work permit may be granted.

In addition to the residence permit, the seconded employees must obtain a work permit (*"autorisation provisoire de travail"*) from the DIRECCTE.

The one-year residence permit and the work permit, when applicable, are renewable. Such renewal must be requested two months prior to the expiration date.

Regular Employees

In principle, new immigrants are not allowed to arrive and work in France. However, a French employer may face difficulties in recruiting a local employee meeting the requirements for the position available. Consequently, the Labor authority, prior to the approval of such an application, must take into account the context of employment in France in the relevant sector. In order for the application to succeed, the employer should therefore characterize difficulties of employment in his/her sector.

In the event the employer finds a non-EU employee abroad who fulfills the conditions, such employer could be requested to obtain clearance from the National Employment Agency. This clearance is not a guarantee that the work permit application will be approved.

Temporary assignments

Intra-company Transferee

The employees in this category (*"salariés en mission"*) are those who are working in a group and who are assigned by a foreign company of that group to a French company which is part of the group. The work permit applications must meet the following conditions:

- The employee has been working for the group for at least three months before the assignment in France;

- The monthly gross salary to be paid while working in France must exceed 1 and 1/2 the legal minimum salary (known as the SMIC), which currently for 2012 represents EUR2,139 gross.

The above category includes two types of employees: the ones who become employees of the French company; and the others who, while working in France, remain employees of the foreign employer (*"détachés"*).

The employees will obtain a renewable three-year residence permit. Such a permit enables the employees to work only in the defined position with the same employer.

Short-term assignment

For intra-company assignments of less than three months a new procedure has been implemented for filing work permit applications.

The documents required are the same as for the normal intra-company procedure. However, after approval of the Labor Administration, the employee goes directly to the French Consulate with such approval

and obtains a visa enabling him/her to work in France. In addition, it is not necessary to undergo a medical examination or to obtain a residence permit.

Citizens who do not require a visa, can enter France and start working and, in case of control, must only show the work permit authorization obtained from the Labor Administration.

Employee seconded in the framework of a service agreement

This category concerns employees temporarily seconded to France by their foreign employer to a third party company for the performance of specific services (*i.e.*, technical assistance) in the scope of a service agreement.

The secondment should not result in the employee's effective involvement in the daily running of the French host company's activities.

EU Blue Card

The European Directive 2009/50/CE dated May 25, 2009 has created an EU Blue Card for highly qualified workers from third countries.

The Directive is designed to facilitate the entry of these persons by harmonizing entry and residence conditions throughout the European Union and simplifying admission procedures.

The law dated June 16, 2011 implements this Directive in France and has set up a short visa "EU Blue Card." A decree dated September 6, 2011, sets out the conditions to obtain this EU Blue Card in France.

Criteria for entry:

- present a valid employment contract of at least one year;

- have a gross annual salary equivalent to at least 15 times the average gross annual salary (determined each year by the Immigration Minister); and

- present documents which attest the applicant has a diploma equivalent to at least three years of higher education or present documents which attest to at least five years of professional experience of an equivalent level.

The Prefect's decision to issue the EU Blue Card must be notified in writing to the applicant within a 90-day period following his/her application. Beyond the 90 day period, the application is automatically deemed refused.

Length of validity

The EU Blue Card is valid for a period of three years maximum, but is renewable.

Mobility

With this card, third world country nationals and their families can enter and stay in France and pass through other Member Sates.

In addition, a third world country national who can attest that he/she has stayed at least 18 months in another European Member State under an EU Blue Card can obtain the latter in France if he/she complies with the conditions set forth above.

Other Comments

It is possible for non-EU nationals, after five years residency in France, to obtain a 10-year residence permit (*"Carte de resident"*), if they can prove that they have a regular business activity in France (*e.g.*, as corporate executive, regular employee 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.

The non-EU spouse of an EU employee working in France may be entitled to obtain a 10-year residence permit. In contrast, the non-EU national who is a spouse of a French national can receive only a one-year residence permit, which is renewable once before obtaining the 10-year residence permit. Such a one-year residence permit allows the spouse to work as an employee.

The 10-year residence permit enables the holder to hold any position in France. This permit is renewable. The holder who is absent from France for up to three years may retain the benefit of such a permit.

Children of non-EU nationals residing in France must secure a residence permit (*"titre de séjour"*) after their 18th birthday for the same duration as the permit of their parents. Such residence permit does not allow the children to work.

Children of non-EU nationals born in a foreign country may secure a specific document known as *"Document de Circulation pour Enfant Mineur"* ("DCEM").

Children of non-French nationals born in France may secure a specific document named *"Titre d'Identité Républicain"* ("TIR").

These documents enable the child to prove his/her identity, to travel freely in France and to prove that he has a regular domicile in France while traveling outside the country.

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

French residents may be eligible to naturalize and become French citizens after continuously residing in France for five years. Residency during the five-year qualification period may be achieved by living in France under certain categories of valid residency (*e.g.*, visitor, student, regular employee or corporate executive).

Approval criteria includes assimilation into France (*i.e.*, knowledge of French, integration into the French community), health (*e.g.*, absence of a chronic condition), morality (*i.e.*, no police record indicating an unlawful act in France or abroad), and an acceptable professional and financial profile.

Germany

Executive Summary

Many different kinds of people immigrate to Germany each year. The reasons for leaving their home countries vary, but most foreign nationals come for employment, business or tourist purposes. In order to enter and reside in Germany, any non-European Economic Area ("EEA") national needs permission in the form of a residence permit for the purpose of the stay.

Key Government Agencies

Depending on their nationality and the purpose and length of their stay, foreign nationals may either require an entry clearance in the form of a visa or they may enter Germany without a visa and apply for a residence permit within Germany.

In case the foreign national is required to obtain a visa, the application is submitted to the German Embassy (*"Botschaft"*) or Consulate General (*"Generalkonsulat"*) at the place of residence abroad. Before issuing the visa, the German representation will involve the Aliens' Office (*"Ausländerbehörde"*) responsible for the place of intended residence in Germany and the Federal Labor Agency (*"Bundesagentur für Arbeit"*), if necessary, for approval. Such approval of the Federal Labor Agency is required for most work and employment activities that are carried out in Germany.

Foreign nationals from a privileged or semi-privileged country, which is party to a non-visa movement treaty signed by Germany or the EU, may enter Germany without an entry clearance and may submit the application to the local Aliens' Office directly. As far as necessary, the Aliens' Office will internally involve the Federal Labor Agency as well.

The updated list of the (semi-) privileged countries can be found at *http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/StaatenlisteVisumpflicht_node.html*

Current Trends

According to the latest studies commissioned by the Federal Ministry of Economy, Germany is currently faced with a lack of qualified employees, which costs German business billions every year. In particular, there is a lack of skilled labor for such positions as technicians, as well as in the academic subjects of mathematics, information technology, natural science and technology. The Federal Government intends to deal with this deficit of specialists not only by a national campaign for better education, but also by considerably facilitating access to the German employment market for foreign specialists in the areas sought after.

Currently, the possibility exists for some occupational groups, as well as for highly specialized employees, to obtain a residence permit for employment purposes without first having to go through the so-called "labor market check" by the Labor Agency.

Highly specialized employees may apply for a so-called "Blue Card EU" which shall facilitate the foreign national's access to the German labor market and his/her move within the Schengen Territory.

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.

Besides Germany, the following countries belong to the EEA: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

Since May 1, 2011, the citizens of the Middle and East European countries (MOE countries) which entered the EU in May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) also benefit from the right to reside and work in Germany without performing any prior formalities. However, citizens from Bulgaria and Romania (which joined the EU only in January 2007) are still excluded from the rights of freedom of domicile and work for up to a maximum period until May 1, 2014. They are, however, privileged in the respect that they do not need entry clearances (visas) and may apply for employment- related residence permits from within Germany.

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

Business Travel

Temporary Business Visitor

Except for nationals of non-privileged countries, business visitors are not required to obtain a visa or a residence permit if their stay does not exceed 90 days within a 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 normally lives and works outside Germany and comes to Germany to transact business, attend meetings and briefings, for fact-finding, or to negotiate or conclude contracts with German businesses to buy goods or sell services. The visitor must not intend to produce goods or provide services within Germany.

Short-term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Germany and have, therefore, to apply for such visa at the German diplomatic post abroad.

A valid Schengen Business Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen area.

Training

The German Immigration Act does not provide a specific visa category for foreign employees who want to receive on-the-job training in Germany. In principle, training is considered as a kind of employment from the authorities' perspective, therefore trainees must apply for a residence permit for employment purposes. Exemptions may apply if the duration of the inter-company training will not exceed three months within a 12 month period, but only if the major focus is on the training of the foreign employee and not on his/her employment. Besides that, there may also be some privileges for specific occupational groups, such as information technology specialists or for the case of an international personnel exchange.

Employment Assignments

For most work and employment activities that are carried out in Germany, a residence permit for employment purposes must be requested. This will only be granted with the approval of the Federal 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 permit can be granted after five years (for "Blue Card EU" holders: after 21 or 33 months) 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 foreign nationals under the ordinance on employment of foreign nationals, which is a detailed catalogue of possible qualifying professions.

International Personnel Exchange Members

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany may apply for their residence/work permit under simplified conditions provided that the intended assignment can be seen as part of a personnel exchange program for internationalization of the group. Furthermore, the assignment must be of crucial interest for the cooperation and development of the group or the company in the international market. It is essential that the employees are permanently employed by the company and that they possess a university diploma or similar education. Moreover, it is required that, from time to time, the company also sends skilled employees from Germany to other countries. A work-related residence permit under this provision can be granted for up to three years.

The approval of an intended employment like this has to be granted by a special labor authority (*"Zentralstelle für Arbeitsvermittlung"* or "ZAV") without a labor market check, which usually speeds up the application process considerably.

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 they are employed at the company's place of residence and if the assignment to Germany is temporary.

Senior Executives

No approval of the Labor Agency is required in case the foreign national is:

- Chief-Executive Officer with full power of attorney (*"Generalvollmacht"*) or *"Prokura"* as certified/verified by the German commercial register; or
- Member of the executive body of a legal entity (*e.g.*, Managing Director of a GmbH); or
- Partner and/or shareholder of trading or commercial companies with the power to represent the company.

Highly qualified Specialists

Highly qualified specialists may apply for a settlement permit that gives unlimited residence rights to them and their family members. Prior approval for the intended employment from the Labor Agency is not required in these cases. Highly qualified persons include:

- Scientists with special technical knowledge;
- Teaching or scientific personnel in prominent positions.

Blue Card EU

Foreign employees with a university diploma who earn a salary corresponding to at least two-thirds of the earnings ceiling of the statutory pension insurance (*i.e.*, at present at least EUR46,400 gross/year) may apply for a so-called "Blue Card EU." The permit

enables the holder not only to reside and work in Germany, but, under specific conditions, also in the Schengen Territory. Foreign nationals holding a "Blue Card EU" can be eligible for an unlimited settlement permit for Germany after the duration of 33 months, after 21 months at the earliest, if German language skills on "B1"-level can be ascertained.

Specific assignments

The following categories of visitors are privileged in such a way that no approval of the Labor Agency is required for the issuance of their residence permit for employment purposes, provided the foreign national retains residency abroad:

- Sportsmen and women who take part in official sport festivals (provided that the person has completed their 16th year and that the association or organization pays a gross salary which amounts to at least 50 percent of the contribution assessment ceiling for the statutory pension insurance and the sports qualification as professional athlete or the professional expertise as a trainer has been ascertained by the German sport association);

- Artists who take part in art festivals or guest performances (for a temporary limitation of three months within a 12 month period);

- Pupils and students of foreign universities or vocational schools for a holiday job placed by the German Labor Agency (for a temporary limitation of three months within a 12 month period);

- Journalists, who are accepted by the German Press and Information Office (*"Presse- und Informationsamt"*) or who are only temporarily in Germany (for no longer than three months within a 12 month period);

Employees of a company whose business is in a country outside of Germany for the installment or setting up of a "ready-to-use" machine or a (computer) system delivered by their foreign company; for the provision of training for the use of such machine or system and the

maintenance or repair thereof. An individual is only eligible for this exemption if it can be shown that the company has sold a product or computer system that its employee shall implement in its customer office and that some installation or training is necessary. The exemption from the Labor Agency's approval only applies if the employer has notified the authority prior to the commencement of work.

Other Comments

There are privileges for additional groups (*e.g.*, for foreign students, who may stay in Germany for 18 months after the successful completion of their exams for the purpose of looking for work, or for foreign nationals who come to Germany for mainly charitable or religious purposes).

Foreign nationals may apply for a settlement permit, which gives unlimited residence rights to the applicant and the family in case the foreign national 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*.). The holder of a "Blue Card EU" may already apply for a settlement permit after 33 months, respectively after 21 months, if the foreign national can give proof of his/her German language skills on "B1"-level.

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 of the ability to financially support the family members during their period of stay in Germany. Generally, spouses and dependentdependents of the applicant are not entitled to work during the first two years in Germany 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.

Foreign nationals who want to be naturalized to German citizenship must have been legally residing in Germany for at least eight years and must fulfill some other preconditions. Such naturalization

generally requires that the foreign national is established in Germany (*i.e.*, is able to sustain him-/herself and the family without the help of welfare benefits or unemployment assistance), has no criminal record, and possesses adequate command of the German language. Furthermore, applicants are generally requested to give up their present citizenship. In this category, naturalization is generally not possible from abroad.

The same requirements apply in the case of a foreign national who is the spouse or legal partner of a German citizen that wants to become naturalized, provided that they have been married for two years and have been residing in Germany for three years.

Hong Kong Special Administrative Region

Executive Summary

On July 1, 1997, Hong Kong became a Special Administrative Region of the People's Republic of China ("PRC"). Although part of the PRC, Hong Kong continues to operate under a common law legal system that is distinct from other parts of the PRC.

Key Government Agencies

The Hong Kong Immigration Department ("HKID") is responsible for all immigration related matters. It monitors and controls the movement of people in and out of Hong Kong by land, sea, and air. The HKID is also responsible for processing applications for visas, right of abode (*i.e.*, permanent residency), naturalization, Hong Kong travel documents, Hong Kong identity cards, and registrations of births, deaths, and marriages for Hong Kong residents.

Business Travel

Visitor Visa

Foreign nationals who wish to travel to Hong Kong for tourism or business purposes may apply for visitor visas at an overseas PRC consulate or embassy, or directly with the HKID.

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

Nationals of the following countries require visas prior to entering Hong Kong, except in direct transit by air and when the individual does not leave the airport transit area: Afghanistan, Albania (holders

of non-biometric passports), Armenia, Azerbaijan, Belarus, Cambodia, the PRC, Cuba, Georgia, Iran, Kyrgyzstan, Laos, Lebanon, Libya, Republic of Moldova, Myanmar, Nicaragua, Nigeria, North Korea, Palestine, Panama, Senegal, Republic of Serbia (holders of non-biometric passports), Solomon Islands, South Sudan, Sudan, Syria, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

PRC nationals residing in Mainland China must apply for and secure appropriate entry permits and exit endorsements through relevant Chinese authorities in Mainland China prior to traveling to Hong Kong. Mainland Chinese residents may apply through an authorized travel agent in the PRC to visit Hong Kong on group tours. Mainland Chinese residents from certain provinces may also directly apply through relevant Chinese authorities in the PRC to visit Hong Kong under the Individual Visit Scheme.

Alternatively, Mainland Chinese residents traveling on PRC passports who transit through Hong Kong to and from another country may be granted a stay of seven days without the need to obtain a prior entry visa to Hong Kong or entry permit and exit endorsement from the PRC provided the usual immigration requirements are met, including possession of a valid entry visa for the destination country and a confirmed onward booking.

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

A visitor may request a limited extension of stay in Hong Kong by applying in person at the HKID. A satisfactory explanation must be given to the HKID before the extension of stay will be considered.

Visa Waiver

Citizens of certain countries do not need to obtain visas as tourists or business visitors if they are staying in Hong Kong for a limited period of time. Their permitted period of stay varies depending on their country of citizenship. Extensions of stay are considered on a case-by-

case basis by the HKID. Citizens of the following countries may visit Hong Kong visa-free for the period of stay shown below:

Country	Period of Stay in Days
Australia	90
Austria	90
Bulgaria	90
Canada	90
Finland	90
France	90
Germany	90
Greece	90
India	14
Ireland	90
Italy	90
Japan	90
Netherlands	90
Philippines	14
Russian Federation	14
Singapore	90
Spain	90
St. Kitts - Nevis Anguilla	90
Sweden	90
Switzerland	90
Thailand	30
United Kingdom	180
United States	90

The government's regularly updated list of visa-free countries and countries requiring visitor visas is published at: www.immd.gov.hk/ehtml/hkvisas_4.htm.

Non-Visitors

In General

A foreign national who wishes to enter Hong Kong, other than as a tourist or business visitor, may consider applying for one of the following visas based on the eligibility criteria described below. Please note that special guidelines apply to PRC nationals.

- Training;
- Employment;
- Employment (investment);
- Dependent;
- Capital investment; and
- Quality migrant.

Training

Training Visa

In general, training visas are granted to enable foreign nationals to acquire skills, knowledge, or experience that they may take to their respective home countries and make use of what they have learned at the conclusion of the training.

In reviewing training visa applications for company personnel traveling to Hong Kong for training purposes, the HKID will consider the nature and importance of the training program. Training visas may be issued for the period of training or a maximum of 12 months, whichever is shorter. Training visas may also be issued to foreign

students pursuing tertiary degree studies overseas, provided the training in Hong Kong is relevant to their studies.

This visa category does not apply to nationals of Afghanistan, Cambodia, Cuba, Laos, North Korea, Nepal, and Vietnam. Training visas for PRC nationals residing in Mainland China are discussed below.

Employment Assignments

An employment visa is required for a foreign national to work in Hong Kong, regardless of whether the foreign national is paid or unpaid for services rendered in Hong Kong, regardless of the locality of the employer, and regardless of the duration of the employment or assignment in Hong Kong. Failure to do so is an offence under the Hong Kong Immigration Ordinance.

The HKID processes each employment visa application on its own merits and typically considers the following three main issues:

- Whether the business sponsoring the employment visa is beneficial to the economy, industry, and trade of Hong Kong;
- Whether the foreign national's services are essential to such business; and
- Whether the position may be easily filled by someone locally in Hong Kong.

It is important to show that the foreign national possesses skills, knowledge, and experience that are not readily available or are in shortage in Hong Kong. This may be demonstrated by showing the foreign national:

- Is a very highly qualified professional;
- Possesses technical knowledge or know-how indispensable to the company in Hong Kong;

- Possesses acclaimed experience and relevant knowledge; or

- Generally, the proposed stay in Hong Kong will benefit not only the company, but also Hong Kong.

To make this demonstration, the foreign national should possess a bachelor's degree and some work experience in a related field, or, where a bachelor's degree is lacking, significant work experience in a related field. In the case of an intra-company transfer, it is generally sufficient to show that the foreign national acquired knowledge of the internal administration and operation of the company during employment with the company abroad and that this type of knowledge is not readily available locally in Hong Kong.

Extensions of the employment visa are available. The renewal pattern is two years, two years, and three years thereafter.

The employment visa is employer specific. A foreign national granted an employment visa is only authorized to work for the sponsoring employer in Hong Kong. If the foreign national leaves the employer, notwithstanding the fact that the visa has not expired, the foreign national may not work for another employer in Hong Kong unless prior approval is obtained from the HKID.

If an employment visa holder is required to perform work for another entity in addition to the approved employer, the foreign national must first obtain side-line approval from the HKID. This requirement is noteworthy in cases where a foreign national may be required to supervise or engage in activities for several related companies in Hong Kong.

Upon termination, the sponsoring employer in Hong Kong must inform the HKID. The employer may be required to bear the cost of the foreign national's repatriation.

This visa category is not available to nationals of Afghanistan, Cambodia, Cuba, Laos, North Korea, Nepal, and Vietnam.

Employment visas for PRC nationals residing in Mainland China are discussed below.

Employment Visa under the Immigration Arrangements for Non-local Graduates ("IANG")

Foreign nationals and PRC nationals who have completed their full-time and locally-accredited program in Hong Kong (*e.g.*, bachelor's degree or higher level studies) may remain or re-enter Hong Kong for employment after graduation.

Foreign nationals who wish to remain and work in Hong Kong after graduation may submit their employment visa application to the HKID without first securing an offer of employment. Foreign nationals who wish to re-enter and work in Hong Kong after graduation are required to secure an offer of employment at the time of application.

Foreign nationals who have obtained their employment visa under the IANG are free to take up and change employers during their permitted stay without the need to seek prior approval from the HKID.

This visa category does not apply to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, North Korea, Nepal, and Vietnam.

Employment (Investment) Visa

A foreign national investing and starting a business in Hong Kong may apply for an employment (investment) visa. The investment amount must be "substantial," which generally means a minimum of HKD500,000, depending on the proposed business venture. The business must be beneficial to the local economy, commerce, and industry of Hong Kong, usually shown by the creation of jobs. Further, it is important to show that the foreign national has the expertise and financial resources to carry on the business.

This entry arrangement does not apply to PRC nationals residing in Mainland China and nationals of Afghanistan, Cambodia, Cuba, Laos, North Korea, Nepal, and Vietnam.

Dependent Visa

Foreign nationals not subject to a limit of stay in Hong Kong (*i.e.*, foreign nationals who are Hong Kong permanent residents, residents with the right to land, or on unconditional stay), may sponsor their spouse, unmarried dependent children under the age of 18, and dependent parents aged 60 and above to take up residence in Hong Kong as their dependents. Foreign nationals admitted to Hong Kong to take up employment, investment, or training, or to study in full-time undergraduate or post-graduate programs in local degree-awarding institutions, or as capital investment entrants or quality migrants, may sponsor their spouse and unmarried children under the age of 18 for dependent visas.

Dependent visa holders are free to study and take up employment in Hong Kong without the need to apply for separate visas (but for dependents sponsored by student visa holders), so long as their principal sponsors maintain their resident visa status, or if their sponsors are not subject to a limit of stay in Hong Kong.

Common law and same sex spouses are not eligible for dependent visas but may be able to obtain prolonged visitor visas. The success of a prolonged visitor's visa application is at the sole discretion of the HKID.

This visa category does not apply to nationals of Afghanistan and North Korea.

Other Visa Categories

Capital Investment Entrant Scheme

Foreign nationals who have sufficient assets to invest in Hong Kong may be eligible for a visa under the Capital Investment Entrant

Scheme ("CIES"), which does not require employment in Hong Kong. Foreign nationals may be eligible if they:

- Have net assets or net equity with a market value of not less than HKD10 million to which they are absolutely beneficially entitled throughout the two years preceding the application; and

- Make the HKD10 million investment in permissible investment assets within six months of application lodgment, or within six months after obtaining the approval-in-principle from the HKID.

As of October 14, 2010, real estate has been suspended as a qualifying investment asset.

CIES currently applies to foreign nationals (except nationals of Afghanistan, Cuba, and North Korea), Macao and Taiwan residents, PRC nationals who have obtained permanent resident status in an acceptable foreign country, and stateless persons who have obtained permanent resident status in an acceptable foreign country with proven re-entry facilities.

The foreign national is not allowed to realize or cash in any capital appreciation of the qualifying portfolio during the stay in Hong Kong. If the value of the portfolio falls below the original level of HKD10 million, no topping up is required.

Quality Migrant Visa

The Quality Migrant Admission Scheme is available for highly skilled or talented persons. Applicants need not secure an offer of employment prior to application. There are two types of points-based assessments: General Points Test and Achievement-based Points Test.

The General Points Test allocates 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
Total Points	165

Applicants must achieve above a minimum mark set by the HKID. The minimum mark is subject to change.

The Achievement-based Points Test is for individuals with exceptional talent or skills, requiring receipt of awards of exceptional achievement (*e.g.*, Olympic medals, Nobel prize) or by showing work recognized by industry peers or significant contribution to the development of the individual's field (*e.g.*, lifetime achievement award from an industry). Applicants must obtain the maximum mark of 165 or face refusal.

High-scoring applicants assessed under either the General Points Test or Achievement-based Points Test will be short-listed for further selection by the Director of Immigration. 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 for verification of supporting documents. Upon a satisfactory verification, applicants will receive formal approval and will normally be issued 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 take steps to settle in and make contributions to Hong Kong.

Nationals of Afghanistan, Cambodia, Cuba, Laos, North Korea, Nepal, and Vietnam are excluded from the Quality Migrant Admission Scheme.

Mainland PRC Nationals

Despite Hong Kong's reversion to the PRC in 1997, the entry of Mainland PRC nationals into Hong Kong remains restrictive. For example, a PRC national residing in Mainland China traveling to Hong Kong from China as a visitor or resident is required to carry an Exit-entry Permit for Traveling to Hong Kong and Macao ("EEP") with the appropriate exit endorsement issued by the Public Security Bureau ("PSB") in Mainland China. Restrictions on the use of available visa categories by PRC nationals are noted in the sections above.

Employment and training visa applications for PRC nationals are evaluated under the Admission Scheme for Mainland Talents and Professionals ("Admission Scheme"). The eligibility criteria for these visa categories as described above are applied quite strictly under the Admission Scheme. The Admission Scheme is quota-free and non-sector specific. Document requirements for PRC nationals will be more extensive than for foreign nationals.

The sponsoring entity should submit the application directly to the HKID on behalf of the PRC national. Upon application approval, the HKID will issue an entry permit. The PRC national must present the entry permit to the PSB in Mainland China and apply for an EEP and a relevant exit endorsement before traveling to Hong Kong.

Hong Kong Identity Card

Once a foreign national (including a PRC national) has secured the appropriate resident visa, registration for a Hong Kong identity card with the Registration of Persons Office is required if the foreign national is permitted to reside in Hong Kong for more than 180 days. Hong Kong residents aged 11 and above must register for a Hong Kong identity card. Hong Kong residents aged 15 or above must carry

at all times a Hong Kong identity card. Failure to do so is an offence under the Immigration Ordinance.

Other Comments

Foreign nationals may be eligible to apply for right of abode (permanent residence) after maintaining continuous ordinary residence in Hong Kong for seven years or more.

A Chinese national who is a Hong Kong permanent resident and holder of a valid Hong Kong permanent identity card may apply for a Hong Kong SAR passport. Naturalization to become a Chinese national is possible under strict criteria. However, because the PRC does not recognize dual nationality, naturalization applicants must relinquish foreign citizenship.

Hungary

Executive Summary

Hungarian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Usually, there are several possible solutions for entry and stay in Hungary that are worth considering during the planning phase of the Hungarian residence.

Hungarian immigration law also provides various exemptions to simplify the residence and employment of foreign nationals who are executive employees of Hungarian entities, or international companies sent to Hungary on secondment, scientific researchers, students, *etc.* As a result of this, foreign nationals can easily choose the form of their residence and employment in Hungary that fits as close as possible to their expectations and needs.

Key Government Agencies

Depending on their nationality as well as the purpose and length of their stay in Hungary, foreign nationals may either require an entry permission, by obtaining a specific visa or residence permit, or they may enter the territory of Hungary without any visa.

If the foreign national is required to obtain a visa, the application must be processed in accordance with the Visa Code regulation adopted by the European Parliament and the Council in July 2009 entered into force ("Visa Code"). This regulation aims to include the European legislation on visa matters into a unified document and, thus, to increase transparency, enhance the rule of law and the equal treatment of visa applicants and to harmonize the rules and practice of Schengen countries where the common visa policy is applicable.

The Visa Code involves all the currently effective provisions applicable to the Schengen visa. It defines the common rules on the conditions and procedure of issuing a visa as well as the conditions for

obtaining a visa. The Visa Code also harmonizes the rules on processing applications and orders.

Pursuant to the Visa Code the visa application must be submitted generally to the Hungarian Embassy (in Hungarian: *"Nagykövetség"*) or Consulate (in Hungarian: *"Konzulátus"*) at the place of residence abroad. The visa application may also be processed by various forms of cooperation of member states, such as limited representation, co-location, common application centers, recourse to honorary consuls and cooperation with external service providers. The application for residence permit is forwarded to the regional office of the Office of Immigration and Nationality (in Hungarian: *"Bevándorlási és Állampolgársági Hivatal"*) which is authorized to issue such permits in Hungary.

The issuance of the visa or the residence permit is only a preliminary requirement for entry; however, it does not ensure an automatic entry for foreign nationals. At the Hungarian border, third country nationals must establish border guard officer that specific requirements set out in the 562/2006/EC regulation are met (*i.e*. valid passport and visa, justify the purpose of their stay, the cost of their living in Hungary is covered by sufficient financial resources, they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry; they are not considered to be a threat to public policy, internal security, public health or the international relations of Hungary).

If gainful activity is the purpose of foreign national's entry into Hungary, a work permit must be obtained and attached to the application for visa or residency permit, provided that the performance of said gainful activity does require a work permit. The work permit is issued by the regional office of the Public Employment Service (in Hungarian: *"Állami Foglalkoztatási Szolgálat"*) in Hungary. Usually no work permit is required if the foreign national is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation.

Current Trends

Foreign nationals from a privileged or semi-privileged country, for which the European Community has abolished or simplified the visa requirement, may enter Hungary without a visa and may submit the application for residence permit to the regional office of the Office of Immigration and Nationality directly.

Simultaneously with the European integration, Hungary developed a unified immigration system of regional immigration offices that are responsible for immigration issues of any kind. Hungary joined the EU on May 1, 2004 and became a party to the Schengen Treaty effective as of December 31, 2007. These milestones of Hungary's integration had substantial impact on the Hungarian immigration law, because the applicable law has been harmonized with the EU law and the specific provisions applicable for EEA citizens has been introduced to the Hungarian legal system.

Hungary has developed extensive business and commercial relations within Europe, as well as to Asia and the oversees in the last two decades. As a consequence of this, there is a significant demand on flexible immigration rules that decrease the bureaucratic burdens for business travelers as well as foreign nationals who are employed by Hungarian entities or international corporations, but sent to Hungary for work.

Although, in the case of short-term stay in Hungary foreign nationals from non-privileged countries are still obliged to obtain a visa, the visa is issued within 15 calendar days. This period may be extended to 30 calendar days when further scrutiny of the application is necessary, or in cases where diplomatic delegation processes the visa application and certain authorities of Hungary e are consulted. In exceptional situations, where additional documentation is necessary in, the period may be extended to a maximum of 60 calendar days.

For long-term residence in Hungary, non-EEA nationals are required to obtain a residence permit. The immigration law provides various categories of the residence permit depending on the purpose of stay in

Hungary (*e.g.*, performing work, studying, family reunification, scientific research, visiting, healthcare, performing voluntary activities), therefore, applicants can easily choose a category that fits to their stay in Hungary. In addition, the applicable law also provides specific provisions on foreign nationals who intend to work seasonal or whose residence is related to the care or study of the Hungarian language, culture, or family relations except for the case of family reunification.

In line with Council Directive 2009/50/EC of May 25, 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, the Hungarian Office of Immigration and Nationality issues EU Blue Cards to support work and residence of third-country nationals having specially high skills.

Simultaneously, with the increased number of foreign nationals employed in Hungary, there is a significant growth in the number of foreign nationals employed illegally. In the scheme of the fight against illegal employment, the applicable law has been amended to enhance the rigor of the immigration rules and consequently, the employers of foreign nationals are increasingly subjected to penalties and other sanctions in Hungary for unauthorized employment.

Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Hungary 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 Hungary. EEA-nationals and their family members are free to work for a company or be self-employed without the need to obtain work permit. If the EEA nationals stay for longer than three months, they are required to notify the competent regional office of the Office of Immigration and Nationality about their residence in Hungary at latest on the 93rd day of their stay in Hungary and the competent office will issue a registration card certifying the notification.

Besides Hungary, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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

EEA citizens and family members who have resided legally and continuously within the territory of Hungary for five years have the right of permanent residence. However, in certain cases, less than five years residence is required for EEA citizens who have been residing in Hungary with the purpose of gainful activity (*e.g.*, more than three years is required, if the EEA citizen performing a gainful activity is entitled to receive pension upon termination of his/her employment). The right of permanent residency must be terminated if such EEA citizen spends more than two years outside of Hungary or if such EEA citizen is subject to residence restriction in Hungary.

Business Travel

Short-term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Hungary and have, therefore, to apply for such visa at the Hungarian diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the country being the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen area.

Long-Term Visa

Foreign nationals may enter and stay in Hungary for a period exceeding three months if they meet the specific requirements (*e.g.*, justify the purpose of their stay, have sufficient financial resources to cover their healthcare services and similar) included in the Third-Country Nationals Act.

The applicable law distinguishes between the following type of visas and permits:

- a visa for a longer period than three months (*i.e.*, a visa for acquiring the residence permit; a seasonal employment visa, for single or multiple entry and for the purpose of employment for a period of a minimum of three months but no loner than six months; or a national visa may be issued under specific international agreement, for single or multiple entry and for a period of longer than three months);
- a residence permit;
- an immigration permit;
- a permit for settling down;
- an interim permit for settling down;
- a national permit for settling down;
- an EC permit for settling down; or
- an EU Blue Card.

Residence Permit

Based on the residence permit a foreign national is entitled to stay longer than three months, however such permit can only be obtained for two years and occasionally be extended for an additional two years. If the purpose of the stay is the performance of work, the residence permit at the first occasion may be issued for a maximum period of three years, but later it may be extended for an additional three years. However, if the foreign national intends to perform an activity which requires a work permit, the validity period of the residence permit must be identical to the validity period of the work permit. In addition to the gainful activities, under specific circumstances, a residence permit may be issued for the purpose of family reunification, studying, scientific research, *etc*.

Settlement permit

The applicable law specifies three types of settlement permit: (i) an interim settlement permit; (ii) a national settlement permit; and (iii) an EC settlement permit. However, the Third-Country Nationals Act also acknowledges the settlement permits which were issued prior to the Third-Country Nationals Act coming into force.

A third-country national intending to settle down in Hungary may obtain (i) an interim settlement permit, (ii) a national settlement permit or (iii) an EC settlement permit, if specific requirements are satisfied (*e.g.*, expenses related to the third-country national's living and accommodation in Hungary is covered or similar) of the Third-Country Nationals Act.

A third-country national, holding an EC settlement permit granted by an EU Member State in accordance with Council Directive 2003/109/EC of November 25, 2003, can obtain an interim settlement permit, if the purpose to stay in Hungary is to: (i) work, except seasonal employment; (ii) engage in studies or vocational training; or (iii) other certified reason. Such permit can be obtained for five years, but occasionally it can be extended for another five years.

A national settlement permit may be issued to third-country nationals holding a residence visa or a residence permit or an interim settlement permit and the particular person satisfies the specific requirements included in the Third-Country Nationals Act.

An EC permit for settling down may be issued to a third-country national, after living legally at least for five years in Hungary prior to the filing of the application.

EU Blue Card

The Hungarian Office of Immigration and Nationality issues EU Blue Cards to support work and residence of third-country nationals having specially high skills. An EU Blue Card is a work permit and a residence permit and is issued for at least one year; it is valid for a maximum of four years and can be extended for an additional four year period.

Spouses and children

Hungarian immigration law provides specific provisions on the residence permit and work permit of spouses and other close relatives of foreign nationals holding a residence permit, a settlement permit or other valid long-term visa. These specific provisions aim to facilitate the cohabitation of families during the residence in Hungary.

Training

There is no visa category exclusively for training. Training is considered either (i) as a kind of employment; or (ii) if the foreign employees only attend lectures and classes in the scheme of the training, as a kind of visit from the authorities' perspective. In light of this, trainees must apply for a residence permit for gainful activities or visiting purposes.

Employment Assignments

EU nationals are not required to obtain a work permit or visa to stay or work in Hungary. They are subject to registration requirement only.

Similar treatment applies to citizens of Norway, Lichtenstein, Iceland, and Switzerland. However, the employer is required to notify - not later than on the commencement date of the employment - the competent labor center concerning the employment of an EEA nationals without a work permit, furthermore, the employer must also notify the labor center on the termination of such employment.

Other foreign nationals may be employed, provided that they have been granted a work permit and a residence permit.

As a general rule a work permit must be obtained if a foreign national would like to perform work in Hungary. A work permit is also necessary if a foreign individual who is employed by a foreign company performs work in Hungary on secondment.

A work permit is issued by the labor center having competence over the area where the place of work in Hungary is located. The Hungarian entity for which the foreign employee will work must apply to obtain a work permit. The law technically requires that the work permit be issued or denied within 10 working days following the submission of an application including the above listed documents; however, the applicable law provides that in certain cases the statutory period is two working days. If issued, the work permit will be valid for two years.

The competent labor center will issue the work permit if the documentation referred to above satisfies the legal requirements and if:

- the employer, prior to the submission of an application for a work permit, filed a valid manpower request in respect of the position to be taken by the potential foreign employee;

- after the labor center receives the employer's manpower request it examines the unemployment database to determine whether there are any unemployed workers who might be able to fill the position. If no Hungarian employee, or citizen of the European

Economic Area or the relative thereof having the qualifications prescribed by law or requested by the employer for the relevant position, has been directed by the labor authorities to the employer; and

- the potential foreign employee has the qualifications prescribed by law or requested by the employer for the relevant position.

The employer's manpower request qualifies as a "valid manpower request" if it is filed with the labor center at least 15 days, but maximum 60 days earlier, or it was filed earlier than 60 days, but the manpower request was renewed after 60 days and the most recent renewal took place not later than 60 days, prior to the employer's submission of a work permit application. The work permit request is rejected if the employer does not intend to commence the applicant's employment within 120 days following the date on which the work permit request has been submitted.

Under certain circumstances the work permit may be issued in a simplified procedure, without examining the conditions set out above. Among others, the following circumstances may give rise to simplified procedure:

- if one or more foreign firms (or persons) have majority ownership interest in the company applying for work permit, provided that the total number of foreign nationals to be employed by the applicant in one calendar year does not exceed five percent of the total work force of the company as of December 31 of the immediately preceding year; or

- if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreign national for installation work, or to provide guarantee, maintenance or warranty related activities for more than 15 consecutive working days (however, no work permit is required at all, if the foreign national nationals are to be employed by the applicant for less than 15 consecutive working days occasionally).

Exceptions

Without providing an exhausting listing of each category exempted from the requirement of the work permit, we summarize below those categories that are relevant for business travelers and foreign nationals sent by multinational corporations for the performance of work in Hungary.

No work permit is required for the performance of work by a foreign national:

- who is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation;
- who is the head of the branch of representative office of an enterprise having its registered seat abroad based on international treaties;
- who performs work related to the installation, warranty and other repairing activities based on a contract concluded with a foreign enterprise, provided that such activity does not exceed 15 working days per occasion;
- who performs work science, education or art related work for a period of no more than five working days per calendar year.

Spouses and children

Similar to the residence permit, special provisions apply for family members in the field of the work permit. There is no need to examine the labor market by the local office of the Public Employment Service, if the spouse of a foreign national living together at least for one year in Hungary, or a close relative of a foreign national employed at least for eight years in Hungary living together with the said foreign national at least for five years in Hungary apply for a work permit.

Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exception and residence authorizations that apply to professors or other university lecturers as well as researchers performing research or educational activities; students sent to Hungary by international student organizations for vocational trainings; sportspeople; students with Hungarian student card for performing work in Hungary; foreign nationals employed in Hungary in the scheme of the Leonardo da Vinci program of the EU; or the reunification of families.

The issuance of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions without the opportunity to appeal the decision; however, the applicant may submit a complaint to the head of the Embassy or Consulate, if they complain the process of rejecting their visa application. The applicant may appeal within five working days, if his/her application for residence permit was rejected. Since the duration of the general application process is 30 days, the best practice is to visit the consulate or contact the immigration authorities in order to clarify any issues that may arise in connection with the application. This can prevent the applicants from the rejection of their application due to formal or material deficiencies of the application documents.

Republic of Indonesia

Executive Summary

In May 2011, the government of Indonesia passed Law No. 6 of 2011 on Immigration ("New Immigration Law"), revoking the previous law on the same matter. However, in essence, there is no change as to the types of visas and other permits and documents for foreign nationals visiting, staying and working in Indonesia. In addition, the procedure for obtaining these visas and permits remain the same.

Indonesian law offers several visas to allow foreign nationals to enter for business purposes. For working in Indonesia, however, foreign nationals generally must be sponsored by an Indonesian entity to allow them to enter Indonesia using a Limited Stay Visa. The sponsoring entity also needs to obtain a work permit.

It should be noted that certain positions are not open for foreign nationals working in Indonesia.

Key Government Agencies

The Immigration Attaché at an Embassy or Consular Office of the Republic of Indonesia or other designated official such as a Visa Officer is authorized to issue or refuse requests for Visit Visas and Limited Stay Visas.

Visa issuance must be in accordance with the decision of the Director General of Immigration ("DGI") on behalf of the Minister of Law and Human Rights ("*Kementerian Hukum dan Hak Asasi Manusia" or "MOLHR*"). The DGI may fully authorize the Visa Officer to issue or reject applications for Visit Visas.

The Ministry of Manpower and Transmigration ("*Kementerian Tenaga Kerja Dan Transmigrasi*" or "MOMT") processes applications for work permits.

Admission to Indonesia remains under the authority of the Immigration Officer at the port of entry. A Visit Visa may be issued at an immigration check point.

Business Travel

Foreign nationals coming to Indonesia for business trips may use a Visit Visa (Single Entry or Multiple Entry), a Visit Visa on Arrival or a Non-Visa Short-term Visit facility.

Visit Visa (Single Entry or Multiple Entry)

A Visit Visa is provided for non-working purposes including all aspects related to governmental duties, tourism, socio-cultural visits, business visits (but not for working), family visits, or transits with a stay of 60 days at the maximum for the Single Entry Visit Visa. Multiple Entry Visit visas can be granted if the activities concerned require several visits to Indonesia, with a maximum validity period of one year and with a stay of no longer than 60 days for each visit. Examples of activities permissible for a holder of a Visit Visa are:

- Tourism;
- Family;
- Social;
- Arts and Culture;
- Governmental Duties;
- Sports (non commercial);
- Comparative Study, Short Training or Courses;
- Carrying out guidance, counseling, and training in the implementation and innovation of industrial and technology to

increase the quality and industrial product design and also foreign marketing cooperation for Indonesia;

- Carrying out emergency and urgent works;
- Carrying out journalism activities that have received a permit from the competent institution;
- Making a non-commercial film that has received a permit from the competent institution;
- Conducting business discussion;
- Carrying out purchase of goods;
- Giving lectures (seminar) or joining seminars;
- Attending international exhibitions;
- Attending meetings with headquarters or the representatives in Indonesia.
- Conducting audit, quality control of production or inspection to a company branch in Indonesia;
- Foreign employee candidates participating in a required fit and proper test prior to commencing employment;
- Continuing travel to another country; and
- Joining a transportation vessel within the territory of the Republic of Indonesia.

Non-Visa Short-term Visit

Citizens of Thailand, Malaysia, Singapore, Brunei Darussalam, Philippines, Hong Kong SAR, Macau SAR, Chile, Morocco, Peru, Vietnam and Ecuador are entitled to enter Indonesia on Non-Visa

Short-term Visits. This status can be used for the purpose of tourism, socio-cultural visits, business visits (but not for working) and government duties. It can be used for a stay period of 30 days at the maximum.

This visa cannot be extended or converted to other types of visa. The regulations on Non-Visa Short-term Visits do not list examples of activities allowed to be performed by a Non-Visa Short-term visitor. However, it is generally accepted that the type of activities that can be performed by this kind of visitor are the same as those of the holder of a Visit Visa.

Visa Waiver

Visit Visa on Arrival

Citizens of 64 countries may also obtain a Visit Visa on Arrival to enter Indonesia. The Visit Visa on Arrival is provided for the purpose of tourism, socio-cultural visits, business visits (but not for working) or governmental duties and will be given on arrival in Indonesia with a stay period of 30 days, which can be extended for another 30 days with approval from the Director General of Immigration. The Visit Visa on Arrival can be given at the determined Special Economy Area.

The types of activities that can be performed under Visit Visa on Arrival are theoretically the same as those of a Visit Visa.

Citizens of the following countries are presently qualified under this program: South Africa, Algeria, United States of America, Argentina, Australia, Austria, Bahrain, Belgium, The Netherlands, Brazil, Bulgaria, Czech Republic, Cyprus, Denmark, the United Arab Emirates, Estonia, Fiji, Finland, Hungary, India, England, Iran, Ireland, Iceland, Italy, Japan, Germany, Cambodia, Canada, South Korea, Kuwait, Laos, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Mexico, Egypt, Monaco, Norway, Oman, Panama, France, Poland, Portugal, Qatar, People's Republic of China, Romania, Russia, Saudi Arabia, New Zealand, Slovakia,

Slovenia, Spain, Suriname, Sweden, Switzerland, Taiwan, Timor Leste, Tunisia, and Greece.

Visit Visa on Arrival is only available at major international gateways and seaports in Indonesia. The seaports are: Sekupang, Citra Tritunas (Harbour Bay), Nongsa, Marina Teluk Senimba, and Batam Centre in Batam (Riau Islands); Bandar Bintan Telani Lagoi and Bandar Seri Udana Lobam in Tanjung Uban (Riau Islands); Sri Bintan Pura in Tanjung Pinang (Riau Islands); Tanjung Balai Karimun (Riau Islands); Belawan (North Sumatera); Sibolga (North Sumatra); Yos Sudarso in Dumai (Riau); Teluk Bayur in Padang (West Sumatra); Tanjung Priok in Jakarta; Tanjung Mas in Semarang (Central Java); Padang Bai in Karangasem (Bali); Benoa in Badung (Bali); Bitung (North Sulawesi); Soekarno-Hatta in Makassar (South Sulawesi); Pare-pare (South Sulawesi); Maumere (East Nusa Tenggara); Tenau in Kupang (East Nusa Tenggara); and Jayapura (Papua);

The airports are: Sultan Iskandar Muda in Banda Aceh (Nanggroe Aceh Darussalam); Polonia in Medan (North Sumatra); Sultan Syarif Kasim II in Pekanbaru (Riau); Hang Nadim in Batam (Riau Islands); Minangkabau in Padang (West Sumatra); Sultan Mahmud Badaruddin II in Palembang (South Sumatera); Soekarno-Hatta in Jakarta; Halim Perdana Kusuma in Jakarta; Husein Sastranegara in Bandung (West Java); Adisutjipto in Yogyakarta; Ahmad Yani in Semarang (Central Java); Adi Sumarmo in Surakarta (Central Java); Juanda in Surabaya (East Java); Supadio in Pontianak (West Kalimantan); Sepinggan in Balikpapan (East Kalimantan); Sam Ratulangi in Manado (North Sulawesi); Hasanuddin in Makassar (South Sulawesi); Ngurah Rai in Denpasar (Bali); Selaparang in Mataram (Wet Nusa Tenggara); and El Tari in Kupang (East Nusa Tenggara).

Visa on Arrival is also available at the land point of entry at Entikong (West Kalimantan).

Training

As noted above, Visit Visa and Visit Visa on Arrival allow foreign nationals to enter into Indonesia to participate in short-term trainings.

However, it is not advisable for participants of on-the-job training to enter Indonesia using a Visit Visa or Visit Visa on Arrival, if they will receive remuneration/wages from the Indonesian entity conducting the on-the-job training or if the length of the training is relatively long (*e.g.*, more than three months). Limited Stay Visa should be obtained for that purpose, and the Indonesian entity carrying out the on-the-job training should also arrange a work permit for the foreign national participants.

Limited Stay Visa

Under the New Immigration Law, Limited Stay Visa shall be given to a foreign national as a clergy, expert, worker, researcher, student, investor, elderly, and their families, and to a foreign national legally married to an Indonesian individual, travelling to Indonesia territory to stay for a limited period of time or to work on board of a ship, floating devices or other installations which are operating within the Indonesian seas, territorial seas, continental shelf and/or Indonesian Economic Exclusive Zone.

Employment Assignments

Work Permit

Indonesian law requires any employer intending to employ foreign nationals to obtain a written permit ("*Izin Mempekerjakan Tenaga Kerja Asing*" or "IMTA") from the MOMT. Employers who fail to obtain an IMTA for employing a foreign national may be subject to a criminal sanction of imprisonment for a minimum of one year and a maximum of four years and/or a fine of a minimum ofIDR100,000,000 and a maximum of IDR400,000,000.

The process to obtain an IMTA begins with an application by the sponsoring Indonesian entity at the MOMT for the approval of the Foreign Manpower Utilization Plan ("*Rencana Penggunaan Tenaga Kerja Asing*" or "RPTKA").

Once the RPTKA approval is obtained, the Indonesian sponsoring entity must submit an application for a recommendation letter for visa

application for working purposes, known as "TA.01 Recommendation."

TA.01 Recommendation is issued by the MOMT to the DGI. Based on the TA.01 Recommendation, DGI will then issue a pre-approval for the Limited Stay Visa ("Telex VITAS").

The foreign national can then proceed to obtain the Limited Stay Visa (*Visa Tinggal Terbatas* or "VITAS") by submitting an application to the relevant Indonesian Embassy. The VITAS is valid for up to 90 days during which time the foreign national must enter Indonesia. If the initial entry is not made within the 90-days period, the pre-approval process must be re-filed.

After the issuance of the Telex VITAS, the Indonesian sponsoring entity can apply for the IMTA. At this stage, the Indonesian sponsoring entity is required to pay the Expertise and Skill Development Find (*Dana Pengembangan Keahlian dan Keterampilan* or "DPKK") amounting to USD100 per month (payable in advance). If the foreign national will work in Indonesia for one year, the amount of DPKK to be paid is USD1,200. The payment is made to the account of the MOMT through the bank nominated by the MOMT.

The foreign national does not need to be in Indonesia during the above process.

The accompanying spouse and children up to 17 years old may also enter Indonesia by applying for their respective VITAS. Dependent family members are only entitled to stay with the working spouse parent - this VITAS is not entitled them to work. If a spouse would also like to work in Indonesia, the spouse will also need to be sponsored by an Indonesian entity to obtain the appropriate IMTA and other related documents.

KITAS, MERP and Blue Book

Once the foreign worker has arrived at an Indonesian airport (using the VITAS), the immigration officer who is in charge at the airport

will provide a stamp of admission that indicates the foreign worker is permitted to enter Indonesia and must report to the Local Immigration Office within seven days from the date of arrival at the airport. This means that within this seven-day period, the foreign worker is required to process a Limited Stay Permit ("KITAS"), Multi Exit Re-Entry Permit ("MERP"), and Immigration Control Book ("Blue Book") at the Local Immigration Office where the foreign worker is domiciled.

The foreign worker is required to present himself to the Local Immigration Office as his fingerprints will be taken and he will need to sign various forms.

By holding the KITAS, MERP and Blue Book, the foreign worker has legally complied with the Indonesia immigration law and regulations. However, as a KITAS holder, the foreign worker will also be required to obtain in due course the following additional certificates or permits:

- Police Report Certificate ("STM") issued by the Local Police Office where the foreign worker is domiciled (in Indonesia);
- Foreign Domicile Certificate ("SKTT") issued by the Local Village Office where the foreign worker is domiciled (in Indonesia);
- Certificate of Family Composition of Foreign Citizen ("SKSKP") issued by the Local Population and Civil Registry Office;
- Temporary Residence Card for Foreigner issued by the Local Population and Civil Registry Office;
- Certificate of Police Registration ("SKLD") issued by the Indonesian Police Headquarters; and
- Report on the existence/arrival of foreign citizen issued by the Local MOMT office where the foreign worker is domiciled.

19 Positions that Cannot be Held by Foreigners

On February 29, 2012, the Minister of Manpower and Transmigration issued Decree No 40 of 2012 on Certain Positions That Are Restricted for Foreign Workers ("Decree 40").

The attachment to Decree 40 lists 19 positions that cannot be held by foreign nationals ("List") (see prohibited positions below). 18 of the 19 positions are related to human resources. This is not a surprise as Article 46(1) of the Law No. 13 of 2003 on Labor ("Labor Law") includes a prohibition on foreign workers holding a position "*managing personnel and/or certain positions.*" Article 26 paragraph (2) of the Labor Law provides that "certain positions" are to be regulated in a Ministerial Decree.

The List is as follows:

NO.	NAME OF POSITION		
	INDONESIAN	ISCO CODE	ENGLISH
1.	Direktur Personalia	1210	Personnel Director
2.	Manajer Hubungan Industrial	1232	Industrial Relations Manager
3.	Manajer Personalia	1232	Human Resources Manager
4.	Supervisor Pengembangan Personalia	1232	Personnel Development Supervisor
5.	Supervisor Perekrutan Personalia	1232	Personnel Recruitment Supervisor
6.	Supervisor Penempatan Personalia	1232	Personnel Placement Supervisor
7.	Supervisor Pembinaan Karir Pegawai	1232	Employee Career Development Supervisor
8.	Penata Usaha Personalia	4190	Personnel Declare Administrator

NO.	NAME OF POSITION		
	INDONESIAN	ISCO CODE	ENGLISH
9.	Kepala Eksekutif Kantor	1210	Chief Executive Officer
10.	Ahli Pengembangan Personalia dan Karir	2412	Personnel and Career Specialist
11.	Spesialis Personalia	2412	Personnel Specialist
12.	Penasehat Karir	2412	Career Advisor
13.	Penasehat Tenaga Kerja	2412	Job Advisor
14.	Pembimbing dan Konseling Jabatan	2412	Job Advisor and Counseling
15.	Perantara Tenaga Kerja	2412	Employee Mediator
16.	Pengadministrasi Pelatihan Pegawai	4190	Job Training Administrator
17.	Pewawancara Pegawai	2412	Job Interviewer
18.	Analis Jabatan	2412	Job Analyst
19.	Penyelenggara Keselamatan Kerja Pegawai	2412	Occupational Safety Specialist

Positions Open for Foreigners in Certain Sectors

On June 29, 2012, Minister of Manpower and Transmigration also issued 3 decrees describing positions that foreign nationals can hold in certain sectors. The sectors are for:

- Category of Educational Services.

  Positions range from school principals, vice principals, advisors and academic specialists to teachers and lecturers of certain particular subjects.

- Category of Processing Industry, Main Classification of Industry of Chemical Substance and Products from Chemical Subs.

  Positions range from President Commissioner to certain Engineers.

- Category of Wholesaler and Retail and Reparation and Maintenance of Cars and Motorcycles.

  Positions range from President Commissioner to certain Engineers.

Working and Holidaying In Indonesia For Australians

The Minister of Law and Human Rights issued Regulation No. M.HH-04.GR.01.06 of 2009 to facilitate the issue of limited stay visas to Australian citizens based on a Memorandum of Understanding signed between the Governments of Indonesia and Australia on March 3, 2009. The regulation sets out the immigration facilities that are to be offered within the framework of these special limited stay visas.

Applications for the limited stay visas should be made in Australia and if granted will be valid for 12 months. The visa will allow the holder of the visa to work, with or without pay (volunteer work) in the education, tourism, health, social, sport, and cultural sectors. However, the work should not be an ongoing matter which requires a longer commitment of the person working on it.

There is an annual quota for the special limited stay visas. For each year from July 1st until June 30, the maximum number of special limited stay visas is one hundred. The visas are also subject to strict conditions:

- the main purpose for the foreign national to visit Indonesia during another season;

- the applicant is aged between 18 and 30;

- the applicant holds, at least, a certificate at academy level or is two years into a higher education qualification;
- the applicant holds a recommendation certificate from the Department of Immigration and Citizenship in Australia;
- the applicant is functionally literate in Indonesian;
- the applicant holds a return air ticket and has a minimum of AUD5000 in a bank; and
- the applicant has not previously been a participant in the working holiday scheme.

Presumably, the above conditions would need to be proven along with the visa application.

Certain fees are applicable for the visa application. However, the regulation does not specify the amount of the fees.

Other Comments

The Visit Visa, and Visit Visa on Arrival both allow their holders to enter Indonesia for business purposes. However, some immigration officials (in Jakarta) have viewed that a Visit Visa on Arrival and a Non-Visa Short-term Visit facility are only for "tourism purposes" (not applicable for business purposes). While this view is not necessarily correct from the legal perspective, a better solution to minimize risks of possible difficulties it is more advisable to use a Visit Visa to enter Indonesia for business purposes – keeping in mind, however, that an application for a Visit Visa for business purpose needs to be supported by an Indonesian sponsoring company.

Israel

Executive Summary

Israeli law generally provides for only one type of legal status relating to the employment of foreign nationals: the B-1 visa category (hereinafter: "the B-1 work visa").

Israeli work visa procedure is set forth in the regulations of the Ministry of Interior's Population Immigration and Border Authority ("PIBA"). These regulations define the various sub-categories in which an Israeli employer may sponsor a foreign national for a B-1 work visa. These sub-categories include the following: Foreign Experts; Construction; Agriculture; Nursing Professionals; Industry; Hotel Workers and Ethnic Restaurant Experts. This article will focus primarily upon the options available to Foreign Experts relating to temporary work and residence in Israel.

Key Government Agencies

In July 2008, in accordance with Government Decision 3434, the government established a national immigration authority, the Population, Immigration and Border Authority ("PIBA") which functions under the auspices of the Ministry of Interior. In an effort to centralize the immigration process, PIBA unified 16 different government agencies which had previously been involved in various aspects of immigration and border control. Under the new system, the Israel Police; the Israel Defense Forces; the Ministries of Internal Security, Justice, Labor, Trade and Industry, Housing and Construction and Absorption; and the Jewish Agency will all be able to share information and contribute to PIBA's operations.

Most work visa applications first require the approval of a visa petition by the petitioning employer filed with PIBA. The Ministry of Foreign Affairs is responsible for visa processing at Israeli consular posts abroad. Consular notification is requested at a local office of the Ministry of Interior (MOI) following PIBA approval of a visa petition.

Inspection and admission of travelers is conducted by PIBA at Israeli ports of entry.

Investigations and enforcement actions involving employers and foreign nationals are executed by PIBA, in cooperation with Israel's Immigration Police force.

Current Trends

The employment of foreign experts in Israel has risen significantly in recent years. The demand for foreign experts in Israel can be attributed largely to the rapid advancement of the country's high-technology sector beginning in the 1990s, combined with the steady progress of globalization in general.

To illustrate: According to a recent research study by the Israel Venture Capital Research Center and KPMG, 85 Israeli companies were acquired or merged in 2011, 27 percent more than the 67 companies that were acquired or merged in 2010, and four percent more than the previous five-year average of 81. The average deal size increased by nearly 85 percent, to USD60 million from USD32.5 million in 2010. This increase in deal size reflects a relatively high number of deals above USD100 million, with 18 percent of the number of deals accounting for 75 percent of total M&A deal proceeds. Five M&A deals exceeded USD300 million and one deal – the acquisition of the online advertising company MediaMind by DG – surpassed the USD500 million mark.[1]

Although international high-tech giants such as IBM, Motorola, Hewlett-Packard, the Intel Corporation, and others have maintained local presences in Israel since as early as the 1960s, many foreign firms have opted to establish a presence in Israel only during the past 10 years, due to security considerations and the unstable peace process through the mid-1990s.

[1] Press Release, IVC Research Center, "Israeli High-Tech M&As in 2011 Up 134 percent IPOs on the Decline Again" (Feb. 14, 2012), http://www.ivc-online.com/Portals/0/RC/Survey/2011_Exits_PR-English_Final.pdf.

Since 1995, a significant number of foreign firms have established a local presence in Israel by setting up operations directly (subsidiary, affiliate, or branch offices), incorporating in Israel as foreign entities or acquiring existing Israeli entities. In many such cases, managers perceived that certain technology transfers, managerial and technical know-how, and marketing and business development skills could be obtained only through the employment of intracompany transfers from the acquiring foreign parent organization.

The result of these developments has been that the specialized skills possessed by foreign managers and employees with specialized knowledge have become key to an Israeli company's success in the international marketplace. The issuance of B-1 work visas to such individuals is on the rise because foreign experts are now seen as critical to further industrial growth and employment creation.

In response, Israel is seeking to revise its policies with regard to the employment of foreign experts, beginning with the establishment of PIBA discussed above.

As part of the changes implemented following the establishment of PIBA, a new system for obtaining work permits also took effect. On January 1, 2009, PIBA's "Permit Unit" became the authority responsible for the issuance of work permits to foreign nationals. Prior to that date, applications for the employment of foreign workers were handled solely by the Ministry of Industry, Trade and Labor's (MOITAL) "Semech Unit."

Under the new system, applications for foreign workers must be submitted to PIBA's Permit Unit for consideration. While all employees of MOITAL's Semech Unit are now employed directly by PIBA, PIBA will continue to work in conjunction with MOITAL to receive guidance on issues relating to the issuance of work permits to foreign experts and foreign workers in the industrial field.

In addition to the organizational changes discussed above, another government decision set forth a number of restrictions relating to

foreign workers in the industrial field, such as numerical limitations and testing of the local labor market, in an effort to gradually reduce the number of foreign workers in Israel in this sector of the economy. As such the 2009 annual cap for workers in the industrial branch stood at 700 work permits, and in 2011 was reduced to 200.

The government decision specifically states that the numerical limitations do not apply to foreign experts, as special procedures apply to foreign workers in this field.

Business Travel

Business Visitors

The term "business trip" is not specifically defined in Israeli law. As a general rule, if the purpose of the proposed travel to Israel entails productive work of any kind, a work permit must be obtained. This is regardless of the expected duration of the individual's stay in Israel.

Because "business trip" is not specifically defined in Israeli law, the proposed activities of some foreign nationals may fall into a "grey area." Examples include individuals seeking to (1) participate in R&D groups; (2) install hardware; or (3) provide field service support. In such cases, it is recommended that the company first consult immigration counsel with regard to appropriate visa options.

Like tourists, business visitors from non-visa waiver countries seeking admission to Israel in order to attend meetings or conferences are required to apply for a B-2 visa at an Israeli consulate. The application should contain the following documentation:

- A valid passport valid for at least one year from the date of entry
- Travel itinerary, flights, and timetable
- Completed Application for Entry form
- Two passport photos

- An invitation letter from the host Israeli company or business contact, explaining the business need for business visit and containing contact information of the Israeli host company or individual. The invitation letter should be sent to the Israeli consulate in advance of submission of the visa application.

- Visa application fee

Visa Waiver Program

As a rule, nationals of the European Union, the United States, Canada, Japan and other nations may be admitted to Israel under the Visa Waiver Program for a period of up to 90 days for either business or pleasure purposes. No employment of any kind is permitted during this period. Extensions of this initial 90 day period may be approved by the Ministry of the Interior on a case by case basis at the Ministry's discretion.

The complete list of qualified visa waiver countries includes:[2]
Albania, Andorra, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia, Brazil, Bulgaria, Canada, Central African Republic, Chile, Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji Islands, Finland, France, Germany, Greece, Grenada, Guatemala, Haiti, Honduras, Hong Kong, Hungary, Iceland, Ireland, Italy, Jamaica, Japan, Korean Republic (south), Latvia, Lesotho, Liechtenstein, Lithuania, Luxemburg, Macau, Macedonia, Malawi, Malta, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Montenegro, Netherlands, New Zealand, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tonga, Trinidad & Tobago, Ukraine, United States of America, United Kingdom, Uruguay and Vanuatu.

[2] http://www.mfa.gov.il/mfaheb/sherut/ashrot/

Tourists

Nationals of non-visa waiver countries need to apply for a B-2 entry visa. Moreover, nationals of countries that do not have diplomatic relations with Israel are required to obtain an Israeli security clearance as a condition for visa issuance. Israeli officials will only accept clearance requests that are submitted within one month of arrival to Israel. A response regarding a security clearance will only be provided one week prior to the requested arrival date.

Admission for tourists is generally granted for a period of 90 days. Extension of this 90 day period will be granted by a local Ministry of Interior office on a case by case basis, and only if circumstances justify the need. The application for a B-2 tourist visa must be made at an Israeli consulate, and should contain the following documentation:

- A valid passport valid for at least one year from the date of entry
- Travel itinerary, flights, and timetable
- Completed Application for Entry form
- Two passport photos
- A bank statement detailing the last 30 days of activity
- Visa application fee

Training

There are no dedicated training permits – a foreign employee seeking to attend mid to long-term training in Israel will likely require a B-1 work visa.

Employment Assignments

Unlike many countries in North America and Europe that offer a wide range of work permits with varying eligibility criteria, Israel offers only one type of work permit, the B-1 visa. Under the B-1 “umbrella,”

foreign experts, unskilled workers, foreign spouses of Israeli citizens and potential Jewish immigrants may apply for work authorization.

In distinguishing between an expert and an unskilled foreign worker, the Israeli government applies various directives and regulations on handling applications for foreign experts, which are based on internationally accepted concepts commonly applied in other countries.

Parenthetically, Israeli immigration law does not allow for change of status in country from tourist/business visitor to temporary worker, unless the applicant is applying under a special provision for foreign nationals of the Jewish faith (a category detailed immediately below). As a result, B-1 work visas for temporary workers will be issued only at an Israeli consulate abroad, upon notification from a local Ministry of Interior office in Israel.

The following six defining criteria are typical characteristics of foreign experts:

- First, the expert will receive a monthly salary and benefits which equal at least double that of the prevailing wage in Israel. This salary requirement is a minimum condition for consideration as a foreign expert, since individuals possessing special skills and expertise are typically paid higher wages than lower skilled or average employees.

- In addition to this minimum requirement, an employee must meet at least two out of the next five criteria to be recognized as an expert:

    1. The Expert possesses special qualities and skills. “Special qualities and skills” can be acquired through years of experience in a certain field of endeavor or knowledge of certain work processes and procedures not generally found in the Israeli labor market. In order for an employee to meet this criterion, the Israeli employer must prove that the prospective

foreign worker will transfer such qualities and skills to a local employee. This criterion underlies the temporary nature of the employment of the foreign expert, as he/she will ultimately be replaced by an Israeli employee upon completion of "skills transfer."

2. The Expert will create jobs for Israelis at a ratio of 110 (*i.e.*, 10 job opportunities created for each foreign expert hired).

3. The Expert possesses a high level of education (academic credentials) and professional background.

4. The Expert will transfer to Israel specialized knowledge which is not commonly found in the local job market.

5. The Expert will be employed in a managerial or specialized capacity.

As a member of the World Trade Organization (WTO) and a partner in the General Agreement on Trade in Services (GATS), Israel has committed to allowing managers and executives of foreign multinational companies to enter the country for the purpose of participating in foreign-invested projects operating in Israel. GATS sets forth the criteria for both "managerial" and "executive" capacity that are used to determine whether a foreign worker is eligible for a B-1 visa in this regard.

According to the Regulations, the following categories of workers are considered foreign experts:

- **Expert earning "an expert wage"** – This category is intended for an individual who possesses a high level of expertise or specialized and essential skills that are required for the service provided by the employer, and which cannot be found in the Israeli labor market. For this category, the Israeli employer must pay the expert a monthly wage at least twice the average monthly wage paid to salaried employees in the Israeli job market.

- **Manager, Senior Representative, or Employee of a foreign or multi-national corporation in a position requiring a great deal of personal trust** – A foreign corporation (with no corporate presence in Israel) or a multinational corporation (with an Israeli subsidiary, affiliate or branch office) may apply for a work permit for a foreign expert who will function as a Manager, Senior Representative, or other Employee in a position requiring a great deal of personal trust. A "Manager" is defined by the Regulations as "a person who guides or establishes the goals and policies of an organization or a department of an organization, and who functions at a senior level, and maintains responsibility for company operations through supervision, control and authority to hire and fire employees or to recommend other personnel related actions." The criteria for a "Senior Representative or Employee in a position requiring a great deal of personal trust" are not specifically defined by the regulations. However, the Regulations do emphasize that a foreign corporation or multinational corporation is not be permitted to employ more than two foreign workers in this category.

- **Senior Staff Member in a foreign airline or foreign shipping company.**

- **Lecturer or Researcher in an Institution of Higher Learning.**

- **Medical trainee or expert in a hospital.**

- **Foreign Artist or Foreign Athlete.**

- **Foreign national coming to Israel to perform a temporary task which does not exceed a period of three months.**

The Regulations also set forth special procedures for foreign employees in the diamond industry, foreign journalists and photographers, and family members of foreign diplomats.

The accompanying family members of a foreign expert are issued B-2 tourist visas that are generally valid for the same duration as the foreign expert's B-1 visa. Accompanying family members holding B-2 visas are permitted to remain in Israel and attend school, but they are not authorized to work.

Other Comments – Israel's Underlying Immigration Policy

In order to understand Israel's policy towards foreign experts, it is imperative to first consider the country's attitude towards non-Jewish foreign nationals in general. Israeli immigration policy has been a topic of debate since the establishment of the State in 1948.

Founded as the Jewish State, Israel's underlying immigration policy is that it is not a "nation of immigrants" but rather a "nation of olim" (Jewish immigrants)." As such, Israel encourages immigration of Jewish people under the Law of Return, which provides that every Jew has the right to enter Israel as a new immigrant and enjoy a plethora of social and health benefits.

For example, under an amendment to the directives governing implementation of the Law of Return,[3] foreign nationals of the Jewish faith are eligible for a general B-1 work permit. Such individuals may seek to enter Israel as tourists and, following admission, submit an application to the Ministry of Interior (MOI) in the jurisdiction of their residence for a change of status to B-1 worker. Upon approval, the MOI will issue a B-1 visa valid for up to three years, with the possibility of extending this status for an additional two years. In this context, the B-1 visa permit is not employer-specific and the visa holder may work for any bona fide Israeli employer.

The expressed goal of this process is to encourage Jews living abroad to consider immigrating to Israel by offering a fast-track process for

[3] Law of Return, 5710-1950, CTR. on Israel Ministry of Foreign Affairs, July 5, 1950, http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law%20of%20Return%205710-1950.

temporary work and residence in the country. This process differs radically from the previous legal situation in which foreign nationals – Jewish or otherwise – were subject to the same legal procedures involved in obtaining an Israeli work visa.

In parallel, Israeli law makes it extremely difficult for non-Jewish persons to reside temporarily or permanently in the country. Indeed, the ethnic-religious nature of nationalism in Israel, the absence of an egalitarian conception of citizenship for non-Jews, and the highly restrictive nature of the country's naturalization policy significantly impact upon the ability of foreign workers to obtain work authorization. Even if a foreign expert B-1 visa is obtained, the concept of "employment based legal permanent residence" does not exist.

In short, Israel is still seeking the right balance between its desire to promote a homogeneous national home for the Jewish people, while accommodating the needs of a thriving economy which has become part and parcel of the Global Village.

Italy

Executive Summary

Italian law provides many solutions to help employers of foreign nationals. These range from short-term to long-term visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

Italian diplomatic authorities and consular representatives are responsible for visa processing. In order to obtain an entry-visa, an application will have to be filed with the Visa Department along with a number of documents. The issuance of the visa is at the discretion of such diplomatic authorities, meaning that under the applicable laws, the Diplomatic and Consular Representations are entitled to discretionally ask for any additional information or documents they deem necessary to evaluate the application.

Many visa applications firstly require the approval of a work permit ("nulla osta") petition by the prospective Italian employer, filed with the Italian Immigration Office through a dedicated public office (*"sportello unico per l'immigrazione"*) responsible for many aspects of the immigration process, together with a number of documents. The issuance of the *"nulla osta"* is at the discretion of the Immigration Office.

The Immigration Office processes work permit applications through the local Labor Office (*"Ufficio Provinciale del Lavoro"*) and the "nulla osta" through the local Foreigner's Bureau of Police Headquarters (*"Questura"*), which also handles the permit to reside (*"permesso di soggiorno"*) after arrival in Italy.

Current Trends

A distinction should be made between EU citizens and non-EU citizens as far as immigration and becoming a resident in Italy are concerned.

EU citizens have the right of free movement throughout the EU. If an EU citizen wishes to work or reside in Italy, presence in the country needs to be declared at the local register office, specifying the purposes and financial means to support the citizen and accompanying family members in Italy.

Non-EU citizens are subject to stricter requirements in order to obtain work and residence permits. There is a fixed quota of permits available each year, and a non-EU citizen needs gainful occupation with an Italian employer or the financial means to support him/herself while in Italy.

Further, Italian immigration laws provide for a number of different immigration permits that are granted for specific reasons, independent of the restricted quota.

It is increasingly important for employers to ensure that foreign employees in Italy comply with all legal formalities. Employers of foreign nationals unauthorized for such employment are subject to civil and criminal penalties.

Employers involved in mergers, acquisitions, reorganizations, *etc.*, must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

Business Travel

Business Visa

Foreign nationals coming to Italy on short-term business trips may use the business visa. In general terms, in order to obtain a business visa,

it is necessary that the individual/employee concerned be traveling to Italy for "economic or commercial purposes, to make contacts with local businesses or carry out negotiations, to learn, to implement or to verify the use of goods bought or sold via commercial contracts and industrial cooperation."

Employment in Italy is not authorized with a business visa. Each individual may benefit from one 90-day business visa in any given 180-day period, and it allows multiple entries in the Schengen Area during its validity period. This visa requires a return-trip booking or ticket or proof of available means of personal transport, proof of economic means of support during the journey, health insurance with a minimum coverage of EUR30,000.00 for emergency hospital and repatriation expenses, the business purpose of the trip and the status as financial-commercial operator of the applicant.

Visa Waiver

As noted previously, EU citizens have the right of free movement throughout the EU. The normal requirement of first applying to an Italian consular post for the business visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as the business visa. The length of stay is up to 90 days only, without the possibility of extending or changing status. A departure ticket is required.

The following countries are presently qualified under this program:

Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia-Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, El Salvador, Former Yugoslav Republic of Macedonia (FYROM), Guatemala, Honduras, Hong Kong, Israel, Japan, Malaysia, Macao, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Northern Marianas, Panama, Paraguay, Saint Kitts and Nevis, Serbia, Seychelles, Singapore, South Korea, Taiwan, United States, Uruguay, Venezuela.

The list of qualified countries might change and the regularly updated list can be found at www.esteri.it/MAE/IT/Ministero/Servizi/Stranieri/ServReteConsolare.htm#ingresso.

Training

Study Visa

A study visa allows foreign nationals to come and stay in Italy for a short or long period in order to attend ordinary university courses, as well as other training courses or vocational training held by qualified or certified entities, or as an alternative to foreign nationals who will perform educational and research activities. This visa requires:

- Documents concerning the study, training or vocational courses to be attended by the applicant;
- Proof of economic means of support during the entire stay in Italy;
- Health insurance covering health care and hospitalization, unless the applicant is entitled to public health assistance in Italy according to any bilateral agreement in force between Italy and his/her country of origin; and
- Age older than 14 years.

Employment Assignments

Permits granted to non EU citizens outside quotas

Permit issued pursuant to article 27, par. 1, lett. a) of the Italian immigration law (Legislative Decree 286/1998).

This is a special type of permit, valid for up to five years, for managers or highly skilled employees employed by a company abroad and who come to Italy in order to perform activities within an Italian company through secondment.

In order to obtain a work and residence permit, an application must be filed through an online system, containing the terms and conditions of a subordinate employment relationship (*"contratto di soggiorno per lavoro"*) that will be entered into with the foreign national. This "contratto di soggiorno per lavoro" is a substantially new type of employment agreement and will have to contain two requisitions to be valid:

- The guarantee that the employer shall provide the foreign national with a house or other living facilities; and

- The undertaking to pay travel expenses for the foreign national to return to his country of origin, once his permit has expired or he does not obtain a renewal.

The *"contratto di soggiorno per lavoro"* has to be signed with the mediation of the sportello unico per l'immigrazione. The duration of the permit shall be as follows:

- For seasonal employment, no longer than nine months;

- For fixed-term employment, one year; or

- For employment for an indefinite period of time, one or two years, at the discretion of the Immigration Authorities.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Permit issued pursuant to article 27, par. 1, lett. i) of Italian immigration law (Legislative Decree 286/1998)

This is a special type of permit for a non-EU citizen, regularly employed and salaried by foreign employers who come to Italy for employment reasons on a temporary basis through secondment in

order to perform their activities under a contract (*"contratto di appalto"*) executed between their employer and an Italian client.

Permits are valid for a maximum period of two years and may be renewable. Also this type of work permit is granted independent of quota restrictions that otherwise generally apply to non-EU citizens.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Employers must promise to give foreign employees wages, working conditions and benefits equal to those normally offered to similar employed workers in Italy.

In order to obtain a work and residence permit, an application must be filed through an online system, containing the terms and conditions of a subordinate employment relationship, known as *"contratto di soggiorno per lavoro,"* that will be entered into with the foreign national. This "contratto di soggiorno per lavoro" is a substantially new type of employment agreement which will have to contain two requisitions to be valid:

- The guarantee that the employer shall provide the foreign national with a house or other living facilities; and

- The undertaking to pay travel expenses for the foreign national to return to the country of origin, once the permit has expired or is not renewed.

The *"contratto di soggiorno per lavoro"* has to be signed with the mediation of the sportello unico per l'immigrazione.

Other Comments

There are additional visas less frequently used for global mobility assignments worth a brief mention. One of them is the Mission Visa, which is issued at the discretion of the Italian diplomatic authorities and consular representatives in the place of residence of applicants coming to Italy for, *int. al.*, "reasons of public utility between a foreign state/international organization and Italy." This type of visa is granted independent of quota restrictions. This visa requires:

- An invitation letter prepared by the foreign state or international organization concerned outlining clearly the purposes of the invitation, the scope and the description of the mission that the invited applicant will have to perform, the duration of the stay in Italy, and the entity that will bear the travel and living costs;

- Letter from the applicant outlining the proposed itinerary and confirming the purpose of the trip and the duration of the stay as indicated in the invitation letter; and

- A confirmed return airplane ticket or return airplane ticket reservation print-out (open airplane tickets are acceptable).

Processing time for this application will depend on the caseload of the Italian Consulate at the time of application. It is normal for the process to take 90 - 120 days or longer. Once the visa has been issued and within eight days from entering Italy, the employee concerned will have to file an application, via an Italian post-office, to the local police station (*"Questura"*) in order to complete the immigration procedure and obtain the final stay permit - a meeting with the local police office and the foreign national is required for this purpose.

A non-EU citizen, who has legally resided (*i.e.*, by means of a regular work and residence permit) in Italy for more than 10 years, may request Italian citizenship. Citizenship is discretionally granted by decree of the President of the Republic, upon proposal of the Ministry of Internal Affairs.

EU Blue Card

Another possibility that exists for a non-EU national to be hired by an Italian company is the EU Blue Card. Essentially, the Blue Card is a fast-track permit for non-EU employees that have a special skill proven by a university diploma.

These employees will be able to apply for a 14 year renewable residence permit giving them rights almost equal to EU nationals. It will be easier to bring along family members, and also move to other EU countries after the first 18 months in Italy.

Promise to Integrate

Starting March 10, 2012, all applicants for residence permits of a minimum of one year duration must sign an Integration Agreement. This new integration requirement is a point-based system concerning the permission to stay, according to which each applicant starts with 16 points and must obtain 30 points within the first two years of their residence permit.

Upon signing of the agreement, within 30 days the applicant is required to attend a five hour course in English (eight other languages are also available) to learn about Italy and Italian culture. Failure to attend this course results in the loss of 15 points.

One month before the expiry of the Integration Agreement, the Prefecture will do an audit, to verify the number of points the applicant has obtained. The applicant may take a test to demonstrate the degree of knowledge of Italian language, civic culture and civic life in Italy. The result of the audit can be a finding that the requirement has been completed (if 30+ credits obtained), a one year extension (if less than 30 credits), or final resolution (zero credits or less - permit of stay revocation and expulsion from Italy).

Japan

Executive Summary

In general, foreign nationals who come to Japan must apply for landing permission at the port of entry. If Japanese border officials grant landing permission, the appropriate Status of Residence (*Zairyu Shikaku*) from among the 27 different types of Status of Residence will be granted corresponding to the nature and period of the stay. Foreign nationals in Japan are allowed to engage only in those activities permitted under the Status of Residence granted.

Except for temporary visitors, in most cases it is recommended for foreign nationals to obtain a Certificate of Eligibility prior to coming to Japan.

In addition, foreign nationals are generally required to obtain an appropriate visa from a Japanese consulate. In Japan the term "visa" carries all, or at least one, of the following meanings:

- a visa issued from a Japanese consulate located overseas;
- landing permission applicable at the port of entry; or
- a visa granting residency status.

For the purpose of avoiding confusion, this chapter will refer to 1 above as a visa, 2. above as Landing Permission, and 3. as a Status of Residence.

In Japan, the focus is on facilitating entry and residency for foreign nationals with specialized knowledge and skills, while the admission of unskilled foreign laborers has generally been outside the scope of discussion.

Key Government Agencies

The Immigration Bureau of the Ministry of Justice has jurisdiction over immigration and residence in Japan. The Immigration Bureau has

eight regional immigration bureaus, six district offices, 63 branch offices and three detention centers. The Immigration Bureau is in charge of entry into and departure from Japan, residency, deportation and recognition of refugee status.

The issuance of visas is handled by Japan's Ministry of Foreign Affairs through consulates and diplomatic offices abroad.

Current Trends

- Beginning in November 2007, all applicants (with limited exemptions) upon arrival must submit personal identification, be fingerprinted and photographed as part of an immigration inspection.

- Effective July 1, 2010, the government created a new Status of Residence tentatively entitled "Technical Intern Training," and, in addition, unified the College Student and Pre-College Student statuses under "Student" status.

- The Immigration Control and Refugee Recognition Act was revised in July 2009 and the revisions entered into force on July 9, 2012. Previously, records for foreign residents were separately controlled by the Immigration Bureau and local municipal offices. The management of records for foreign residents in Japan has now been consolidated under the Immigration Bureau to ensure that administrative services are available for foreign residents of Japan. In addition, the alien registration system was replaced with a new system which uses a "Resident Card." Upon the implementation of the Resident Card system, the validity periods for visas and re-entry permits can be extended for up to five years. Holders of Resident Cards will not be required to obtain re-entry permits for absences from Japan lasting no more than one year.

- Preferential Treatment Policy for Increased Acceptance of Highly-Skilled Foreign Professionals

In expectation of their contributions to improved economic growth and the global competitiveness of Japan, the Point-Based Preferential Immigration Treatment for Highly Skilled Professionals was introduced effective May 7, 2012 in order to promote increased acceptance of highly skilled foreign nationals.

A qualified applicant must engage in activities categorized as "academic research activities," "advanced specialized/technical activities," or "business management activities" and earn 70 points or more under the points-based system in order to be recognized as a "Highly Skilled Foreign Professional." A Highly Qualified Foreign Professional will be given preferential immigration treatment such as: (1) permission to engage in multiple types of activities during his/her stay in Japan; (2) a five-year period of stay; (3) relaxation of the requirements for the granting of permission for permanent residence in line with his/her history of staying in Japan; (4) preferential processing of immigration and stay procedures; (5) employment permission for his/her spouse; (6) permission to bring his/her parents into Japan; and (7) permission to bring a domestic servant employed by him/her.

Business Travel

Temporary Visitor

The status of "temporary visitor" is for foreign nationals who intend to stay in Japan for a limited amount of time (up to 90 days) for such business purposes as meetings, contract signings, market surveys and post-sale services for machinery imported into Japan.

Activities involving business management (*i.e.*, profit making activities) or remuneration other than those activities permitted under the Status of Residence ("paid activities") by temporary visitors is not permitted. Violation of Status of Residence rules is considered illegal labor. Both the foreign worker and employer may incur criminal liability.

"Paid activities" means activities for remuneration for certain services, such as employment by another person or organization for compensation or any other activities for compensation (both financial and material) for completion of any project, work or clerical work. There is an exemption for certain types of incidental or nonrecurring compensation of certain amounts that occur within a regular, daily life.

In principle, temporary visitor status may not be extended because it is intended for foreign nationals who stay in Japan for a short period of time.

Visa Waiver

Currently, Japan has entered into reciprocal visa exemption agreements with 61 countries and regions. Foreign nationals from these areas are not required to obtain a visa to enter Japan if: the purpose of their stay is authorized under the temporary visitor visa status; and the length of the stay does not exceed the terms of the agreement between their country and Japan (either six months, 90 days (three months), 30 days or 15 days).

List of Countries and Regions With 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

Countries and Regions	Term of residence
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

Countries and Regions	Term of residence
Andorra	90 days or less
Bulgaria	90 days or less
Czech Republic	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
Romania	90 days or less
Serbia	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 Republic	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
Middle East	
Israel	3 months or less
Oceania	

Countries and Regions	Term of residence
Australia	90 days or less
New Zealand	90 days or less
Africa	
Mauritius	3 months or less
Tunisia	3 months or less

It should be noted that if there is a waiver of visa requirements for up to three months or 90 days, upon landing, foreign nationals are granted temporary visitor status for a period of 90 days (15 days for Brunei).

Nationals of countries and regions that have taken measures concerning the waiver of visa requirements with Japan for stays of up to six months are granted permission to stay in Japan for 90 days at the time of entry. Nationals of these countries and regions who wish to stay in Japan for more than 90 days must apply at their nearest immigration authority in Japan for an extension of their period of stay.

However, nationals of some of these countries that have taken measures concerning the exemption of visa requirements, including Malaysia (since June 1, 1993), Peru (since July 15, 1995), and Colombia (since February 1, 2004), are still encouraged to obtain visas before entering Japan; otherwise these nationals without visas will be strictly examined upon entering Japan.

Similarly, the above measure applies to those who possess Non-Machine-Readable passports commencing on April 1, 2010, in the case of nationals of Barbados and Lesotho.

Further, in the case of nationals of Serbia, the visa waiver program applies to those holding e-passports only.

Employment Assignment

Foreign nationals may engage in the activities authorized for the specified period of time under their visa only after obtaining the appropriate Status of Residence. Therefore, it is crucial that the applicant and intended activities meet the criteria for at least one Status of Residence category, as well as fulfill the criteria required specifically by the Status of Residence for which they are applying.

Among the 27 types of visas allowed in Japan, 21 create Status of Residence and allow the applicant to engage in profit making activities and paid activities. The four most common Status of Residences for employment are Engineer, Specialist in Humanities/International Services, Intra-company Transferee and Investor/Business Manager visas, as well as the Dependent visa for dependent family members.

Engineer

Foreign nationals coming to engage in services that require technology and/or knowledge pertinent to physical science, engineering or other natural science fields on the basis of a contract with public organizations or private companies in Japan generally rely on Engineer Status of Residence. For these purposes, natural science includes such fields as agriculture, medicine, dentistry, pharmacology, *etc.* Typical professions requiring Engineer visa status are IT or biotechnology engineers.

The law requires the activities to be based on a contract with public organizations or private companies in Japan, therefore, the applicant must enter into an employment agreement, service contract or consignment agreement, *etc*. The applicant's employer must have an office located in Japan and, in many cases, is required to arrange social and labor insurance for the applicant.

Applicants must either:

- Have graduated from or completed a course at a college or acquired an equivalent education majoring in a subject relevant to the skills and/or knowledge necessary for the proposed employment;

- Have at least 10 years experience (including time spent studying the relevant skills and/or knowledge at a college or upper secondary school, *etc*.); or

- Be coming to work in a job that requires skills or knowledge concerning information processing for which the applicant has passed an information processing skills examination designated by the Minister of Justice or has obtained the information processing skills' qualification designated by the Minister of Justice.

In addition, the applicant must be offered a salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which satisfies this requirement; however, it is currently understood that a minimum of JPY200,000 is to be paid as monthly salary.

Specialist in Humanities/International Services

This visa was designed to authorize services that require knowledge pertinent to jurisprudence, economics, sociology or other human science fields; or to engage in services that require specific training or sensitivity based on experience with foreign cultures.

Examples are professionals in international trade and/or sales, translation and interpretation requiring language skills, copywriting and public relations requiring sensitivity unique to foreign background and fashion design.

This visa also requires an employment agreement, service contract or consignment agreement, *etc*. with public organizations or private companies. The applicant's employer must have an office located in

Japan and in many cases is required to arrange social and labor insurance for the applicant.

Applicants must either:

- Have graduated from or completed a course at a college or acquired an equivalent education majoring in a subject relevant to the skills and/or knowledge necessary for the proposed employment;

- Have at least 10 years experience (including time spent studying the relevant skills and/or knowledge at a college or upper secondary school, *etc*.); or

- If the job requires specific training or sensitivity based on experience with foreign cultures, the applicant must have a minimum of three years experience in the relevant field, except where the applicant is to engage in translation, interpretation or language instruction.

Furthermore, the applicant must receive salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which satisfies this requirement; however, it is currently understood that a minimum of JPY200,000 is to be paid as monthly salary.

Intra-company Transferee

This visa authorizes activities for personnel transferred to business offices in Japan for a limited period of time from business offices established in foreign countries by public organizations or private companies which have head offices, branch offices or other business offices in Japan and where applicants' work at these business offices is encompassed by the activities described in the Engineer or Specialist in Humanities/International Services status.

The applicant must be transferred from a business office located overseas to a business office in Japan, both offices being of the same

company, to engage in a job requiring skills or knowledge pertinent to physical science, engineering or other natural science fields, or knowledge pertinent to jurisprudence, economics, sociology or other human science fields, or to engage in services which require specific training or sensitivity based on experience with foreign cultures.

The main difference among the Inter-company Transferee, Engineer and Specialist in Humanities/International Services Status of Residence categories is that an Inter-company Transferee status does not require the applicant to have a contract with public organizations or private companies in Japan. The applicant therefore may receive his/her salary from business offices overseas.

Transfers between offices of the same company include transfers between the parent company and its subsidiary as well as transfer between group companies that have a certain level of financial ties with each other. In addition, applicants for Intra-company Transferee Status of Residence are different from applicants who are to operate or manage businesses of business offices located in Japan (who should apply for the Investor/Business Manager status).

Applicants must have been continuously employed at business offices outside of Japan for at least one year immediately prior to the transfer to Japan in a position that falls under the Status of Residence categories of Engineer or Specialist in Humanities/International Services.

Further, the applicant must receive salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which satisfies this requirement; however, it is currently understood that a minimum of JPY200,000 is to be paid as monthly salary.

Investor/Business Manager

This visa authorizes foreign nationals to commence the operation of international trade or other activities, invest in international trade or other businesses, and operate or manage international trade or other

business on behalf of a foreign national (including foreign corporations). This includes foreign nationals who intend to:

- Invest in and operate a business in Japan;
- Operate a business on behalf of foreign nationals who have invested in such business;
- Operate a business on behalf of foreign nationals who have begun operations of such business;
- Manage business on behalf of foreign nationals who have begun such operations or have invested in such businesses; or
- Manage businesses operated in Japan by foreign nationals.

Investor/Business Manager Status of Residence is for applicants who substantively operate or manage a business ("Business Operator") by making decisions regarding important business operations or the duties of the company auditors and for employees engaged in management of the company's internal departments of a certain level or higher ("Managers"). Examples of Business Operators include the president, director and auditor, *etc*. Examples of Managers includes department managers, factory heads and branch manager, *etc*., subject to the size of the business and the number of employees at the office in Japan.

To qualify, the office for the business concerned must be located in Japan (for private companies, the office needs to be registered with the Legal Affairs Bureau) and the business must have the capacity to employ at least two full-time employees residing in Japan in addition to those who operate or manage the business. Full-time employees mentioned here excludes foreign nationals residing in Japan, except for those foreign nationals with Status of Residence as "Permanent Resident," "Spouse or Child of Japanese National," "Spouse or Child of Permanent Resident" or "Long-term Resident."

Further, if the applicant is to invest in international trade or other business in Japan and operate or manage that business, or if the applicant is to operate or manage international trade or other businesses on behalf of foreign nationals who have begun such operations in Japan or have invested in such a business in Japan, the following condition must be satisfied:

1. The office for the business must be located in Japan (for private companies, the commercial registration must be completed prior to the visa application); and

2. One of the following conditions should be satisfied:

    - The business concerned must have the capacity to employ at least two full time employees residing in Japan in addition to those who operate and/or manage the business. Full time employees mentioned here excludes foreign nationals residing in Japan, except for foreign nationals with Status of Residence as "Permanent Resident," "Spouse or Child of Japanese National," "Spouse or Child of Permanent Resident" or "Long-term Resident;" or

    - The amount of investment should be at least JPY5 million, which may vary depending on the size of entire business operating in Japan.

If the applicant is to engage in the management of international trade or other business in Japan, the applicant must:

3. Have at least three years experience in the operation or management of the business (including the time during which the applicant majored in business operation and/or management at a graduate school); and

4. Receive salary equal to salary a Japanese national would receive for comparable work.

Dependent

Status of Residence as a Dependent is for applicants whose daily activities are as the spouse or dependent child of foreign nationals who stay in Japan with a Status of Residence other than "Diplomat," "Official," "Temporary Visitor," "Pre-college student" or "Designated Activities."

A dependent spouse must be legally and substantively married to the principal applicant. The Immigration Bureau does not recognize common-law or same-sex marriages. Dependent children include adult children (age 20 or above) and adopted children.

Permissible "daily activities" include non-profit making activities which family members are reasonably expected to be engaged in, such as household duties or attending elementary and high schools. Profit making activities and paid activities are excluded. However, job hunting is considered to be within a Dependent's authorized activities. Subject to obtaining special permission from the Immigration Bureau, a family visa holder may engage in profit-making activities within the limit of 28 hours per week.

Other Comments

Certificate of Eligibility

The Certificate of Eligibility ("CoE") is a document issued by the Minister of Justice prior to arrival at a port of entry in Japan, certifying that the applicant fulfills the requirements for the Status of Residence requested. It is the applicant's responsibility to prove conformance to the disembarkation and residency requirements. The CoE procedure, which aims to complete the inquiry into the applicant's qualification prior to arrival, helps to expedite the process for landing permission at the port of entry.

The CoE evidences that the examination of Status of Residence and disembarkation permission have already been completed. Therefore a CoE will speed up the visa process at the Japanese consulate overseas

(usually completed within three to five business days after filing) as well as the process for obtaining landing permission at the port of entry.

In principle, the applicant's proxy (*e.g.*, staff of the sponsoring company) or its agent (*i.e.*, authorized attorney at law and administrative scrivener or "*gyoseishoshi*") in Japan must submit the CoE application to the local Immigration Bureau. The application documents, as provided by the Immigration Control Act Enforcement Regulations, differ depending on each visa category.

Landing Permission and Resident Card

When a foreign national enters Japan, he/she will be granted Landing Permission, which includes his/her Status of Residence and an authorized period of stay if he/she is proven to meet the landing requirements upon screening at the port of entry.

When Landing Permission is granted, a Resident Card will be issued to a foreign national authorized to stay in Japan for three months or more (called a "medium- to long-term resident"). A Resident Card carries the ID photo, name, address in Japan, sex, Status of Residence, period of stay (expiration date), *etc.* of its holder, and contains an IC chip which also contains information on the holder.

Medium- to long-term residents are now required, as with Japanese nationals, to file resident registration in order to allow their relevant local city governments to provide them with same services that are available to Japanese nationals.

Where any items stated/recorded in a medium- to long-term resident's Resident Card are changed, the medium- to long-term resident is required to report such change(s) to his/her local city government so that they can be reflected in the Resident Card and resident registration.

Reentry Permit

The Status of Residence granted to foreign nationals at the time of their entry automatically expires upon departure. If a foreign national subsequently wishes to re-enter and continue the Status of Residence they were previously granted, it is important to obtain re-entry permission prior to departure. By obtaining re-entry permission prior to leaving, the procedure for entry and landing can be simplified and the foreign national can retain Status of Residence for the stay period originally granted.

A Resident Card holder is considered to hold a re-entry permit valid for one (1) year from the date of his/her last departure from Japan, because the act of presenting a Resident Card to an immigration official at the port of departure from Japan is considered to be the equivalent of issuing a valid re-entry permit.

However, if a Foreign National leaves Japan and presents the Resident Card at the port of his/her departure without holding an actual re-entry permit and fails to return to Japan within one year after such departure, the Foreign National will lose his/her Status of Residence. This is because the one year period during which a Resident Card holder is deemed to hold a re-entry permit cannot be extended while outside Japan.

Further, a foreign national with a re-entry permit may register personal identification information (*e.g.*, fingerprints and photograph) with the Immigration Bureau prior to departure in order to further simplify the immigration inspection at the time of departure and re-entry.

Extension of Period of Stay

If a foreign national wishes to remain in Japan under the same Status of Residence beyond the period originally approved and for the same purpose, they must apply for permission at their local Immigration Bureau before the current visa expires.

Filing an application does not mean an extension of stay will be approved. The Minister of Justice will give permission only if the Minister determines there are reasonable grounds to grant an extension.

As mentioned earlier, Temporary Visitor status generally may not be extended because it is intended only for foreign nationals who plan to stay in Japan for a short period of time.

Change of Status of Residence

If a foreign resident in Japan wishes to change the activities authorized under their current Status of Residence, they must obtain permission to change their Status of Residence from the local Immigration Bureau.

Certificate of Authorized Employment

A Certificate of Authorized Employment certifies that a foreign national seeking employment in Japan is legally authorized to be engaged in certain types of jobs. This certificate may be issued by the Minister of Justice when a foreign national files an application with the local Immigration Bureau for such purposes, such as when intending to switch to another company for a job which falls under their current Status of Residence.

Republic of Kazakhstan

Executive Summary

Overview of the Immigration Environment

In the Republic of Kazakhstan, the immigration related procedures are complicated and time-consuming. Foreign nationals coming to Kazakhstan for work, studying, living or other purposes may face a heavy bureaucracy. Further, it must be mentioned that the immigration environment in Kazakhstan is very volatile, changing on a regular basis, highly discretionary, and non-transparent (as an example, officials are not required to provide any reasons for their refusal to issue (or revoke) a visa). There are some legal ambiguities in relation to the immigration regulations, and there is a lack of consensus as to the proper interpretation of certain aspects of the legislation, which allows the authorities a great deal of discretion in exercising their functions.

Please note that this summary provides a general overview of the immigration rules, process and procedures most pertinent to the business-related immigration - *i.e.*, those associated with the business, investor, permanent resident, work permits and work visas only.

Permanent Residents and Temporary Visitors

In Kazakhstan, foreign nationals are divided into the following two general categories:

- Foreign nationals permanently residing in Kazakhstan ("Permanent Residents"); and

- Foreign nationals temporarily staying in Kazakhstan ("Temporary Visitors").

Permanent Residents are foreign nationals who have been issued a Kazakhstani permanent residence permit. Permanent Residents are exempted from the work permit and any visa requirements (once they receive a permanent residence permit). That is, they may reside and

work in Kazakhstan without any visa or work permit (if working) on the same basis as the citizens of Kazakhstan. They are also covered by the social and pension schemes adopted in Kazakhstan.

In contrast, Temporary Visitors are foreign nationals who stay in Kazakhstan on the basis of their national passport and an applicable type of Kazakhstani visa (citizens of certain countries, however, as discussed in further detail below in the "Visa Waiver" section, are exempted from the visa requirement and may enter and stay in Kazakhstan for specified periods of time). Furthermore, if a Temporary Visitor arrives to Kazakhstan for work purposes (or arrives on a business visa, but stays in Kazakhstan for a period exceeding 120 days in any calendar year), in addition to the work visa, a work permit would be required in connection with his/her employment in Kazakhstan (generally, the work permit obligation lies on the local employer, but certain foreign professionals included in the list of 30 specified professions (including software engineers, computer graphics specialists, professors, ballerinas, *etc*.) may apply for a work permit directly without the local employer's involvement).

Types of Visas

Subject to certain exceptions, some of which are specifically addressed below, a foreign citizen must obtain a visa in order to be able to enter, stay in, and exit Kazakhstan. There are 13 categories of visas available in Kazakhstan based on the purpose of stay and the status of the foreign national, which are:

(1) Diplomatic Visas;

(2) Official Visas;

(3) Investor Visas;

(4) Business Visas;

(5) Private Visas;

(6) Tourist Visas;

(7) Missionary Visas;

(8) Student Visas;

(9) Work Visas;

(10) Medical Treatment Visas;

(11) Permanent Residence Visas;

(12) Exit Visas; and

(13) Transit Visas.

Further, visas can be single-, double-, triple-, or multiple-entry ones. Single-entry visas give a foreign national the right to enter the Republic of Kazakhstan once and exit the country, while double-, triple-, and multiple-entry ones give the foreign national the right to enter the country two, three, and multiple times, respectively, and exit Kazakhstan, in each case within the validity period of the subject visa.

Process overview

Generally, obtaining a Kazakhstani visa consists of the following two stages (please note that a different procedure applies to certain categories of visas, such as exit visas):

- I Stage: - filing applicable application documentation (including an invitation letter) with, and obtaining a visa endorsement number from, the Consular Service Department (the "Consular Department") of the Ministry of Foreign Affairs (the "MFA") in Almaty or Astana city;

- II Stage: - obtaining a visa on the basis of the visa endorsement number from a Kazakhstani Consulate or Embassy abroad.

Key Immigration Authorities

The MFA is responsible for processing of first- time issuances of all categories of visas (except exit visas) in Kazakhstan and at the Kazakhstani consular posts abroad.

The Ministry of Internal Affairs issues on the territory of Kazakhstan medical treatment and permanent residence visas in certain limited circumstances and exit visas.

Liability for Violating Immigration Regulations

Violation of immigration regulations of Kazakhstan carries administrative and potentially criminal liability as discussed in further detail in the "Liability for Violation of Immigration Laws" section below.

Visa Waiver

There are a number of foreign states that have signed international agreements with Kazakhstan, which allow citizens of these countries to enter and stay in Kazakhstan without any visa for a prescribed period of time. Please bear in mind that the list below reflects the current status of affairs and may change. In addition, the list below applies to the persons without any diplomatic or other special status. Finally, please note that absence of a visa requirement does not necessarily exempt from the work permit requirement. Only Permanent Residents and certain other limited categories of foreign employees (*e.g.*, professors, heads of the branch or representative offices of the foreign entities, and citizens of Russian or Belarus) are exempted from the work permit requirement.

- Armenia (for a term not exceeding 90 days)
- Azerbaijan**
- Belarus*
- Georgia (for a term not exceeding 90 days)

- Kyrgyzstan**
- Moldova (for a term not exceeding 90 days)
- Mongolia (for a term not exceeding 90 days)
- Russia*
- Serbia (for a term not exceeding 30 days)
- Tajikistan**
- Turkey (for a term not exceeding 30 days)***
- Hong-Kong Special Administrative Region of KNR (for a term not exceeding 14 days)
- Ukraine (for a term not exceeding 30 days)***
- Uzbekistan**

* The citizens of Russia and Belarus may enter and stay in Kazakhstan on a valid national passport without a visa for an unlimited period of time. Further, citizens of Russia and Belarus are allowed to work in Kazakhstan without a work permit.

** Citizens of Uzbekistan, Kyrgyzstan, Tajikistan, and Azerbaijan may also enter and stay in Kazakhstan on a valid national passport without a visa for an unlimited period of time.

*** Turkish and Ukrainian citizens may enter and stay in Kazakhstan without a visa for up to 30 days (it is not clear from the applicable agreement, however, whether this 30-day visa-free stay limitation is a per stay or a per year limitation; in practice, Turkish nationals re-enter Kazakhstan every 30 days); provided, they are not allowed to work in Kazakhstan (if the purpose of the stay is business or employment, a Turkish citizen must obtain an appropriate visa for entering

Kazakhstan, and if the purpose of the stay is work, a work permit must be obtained (with certain exceptions)).

Business Related Immigration

Business Visa

Business visas are issued for single, double, triple and multiple entries. The maximum term of a multiple entry business visa is three years, during which, its holder may not stay in Kazakhstan for more than 120 days per year cumulatively. Single, double and triple entry visas, as a general rule, may be issued for a period of up to 90 days. Business visas are generally not extendable.

Business visas are issued to foreign nationals coming to Kazakhstan:

- On a business trip (*e.g.*, attending business meetings incl. fact gathering (no hands-on activities);
- For contract negotiations and execution;
- To render consulting or auditing services (*e.g.*, analyze and assess data; providing recommendations, but no hands on activities);
- To participate in conferences, symposiums, forums, exhibitions, concerts, cultural, scientific, sport and other events;
- On a youth /student exchange program (other than for purposes of studying in the Kazakhstani educational institutions);
- For international car delivery/transportation;
- As members of the regular and charter flight crews who are not holders of a certificate of the International organization of civil aviation, ship crews, and train brigades;
- To accompany humanitarian aid;

- For short-term lectures and teaching at local universities;
- For assembly, installation, repair and technical servicing of equipment (installation / maintenance of software/IT will unlikely fall within this category as not being qualified as equipment); and
- To the incorporators/shareholders/participants of the entities registered in Kazakhstan.

A foreign national holding a business visa should not. among other things:

- Receive compensation from the host entity in Kazakhstan
- Receive/send directions from and to the host country entity officers and employees
- Act as a representative of the host company (*i.e.*, having business cards, personal assistant, office, work place *etc.*)
- Stay longer than 120 days within one calendar year

The business visas are generally issued on the basis of an invitation letter from a local (Kazakhstani) governmental or non-governmental entity, an embassy/diplomatic mission or a consulate of a foreign state, or an international organization accredited in Kazakhstan. The invitation letter is filed with the Consular Department. Once approved a visa number is assigned and the host entity sends the invitation letter and the visa number to the foreign national, who obtains the business visa at the embassy/consulate in his/her home country. From filing it usually takes five business days until a visa number is assigned.

Citizens of the countries listed in Annex A hereto (and foreign nationals of Kazakh nationality), however, may apply for a single-entry business visa (for up to 30 days) directly at an applicable embassy /consulate without an invitation letter and visa support (recommendation) from the Consular Department/ the MFA.

A foreign national may stay in Kazakhstan on the basis of a business visa for up to 120 calendar days per calendar year. If the foreign national works or stays for business purposes for a longer period, this is deemed to be employment in Kazakhstan. In such cases, as a general rule, subject to certain limited exceptions, the local employer must obtain a work permit (or, if such foreign national is a professional in one of the 30 specified specialty areas, the foreign national may apply for a work permit on his/her own), and the foreign national must obtain a work visa.

Work Authorization

Generally, a foreign employee coming to Kazakhstan for work purposes (or who comes to Kazakhstan for business purposes but stays in Kazakhstan for more than 120 days in any calendar year) would be required to have a work permit (the work permit is issued either to the local employer or the employee, as discussed below) and a work visa. The law provides for a number of exceptions to the work permit requirement. For instance, certain categories of the foreign employees are exempt from the work permit requirement, including, among others, Permanent Residents, heads of the representative or branch offices of the foreign entities in Kazakhstan, citizens of Russia, citizens of Belarus, professors, actors, conductors, professional athletes, certain airspace specialists, and members of the sea/air/railroad crews.

Work Permits

General

Generally, work permits are issued on the basis of an application by a local employer (the "Sponsor," and such work permits being the "Employer WPs"). If a foreign entity sending its employees to Kazakhstan for work purposes does not have legal presence in Kazakhstan (*i.e.*, no subsidiaries, representative offices, or branch offices) and if such foreign entity sends its personnel to work exclusively for a counter-party/client (host) based in Kazakhstan, then such local counter-party/client (host) would be responsible for

obtaining the applicable work permits, subject to satisfaction of all applicable requirements (including quotas, ratios, *etc.*, as applicable). However, once IBM establishes legal presence in Kazakhstan, this secondment option, whereby the local counterparty/client (host) would "sponsor" work permits for the foreign employees of IBM would no longer be available. There is also a corporate transfer option available to the foreign employees temporarily transferred to an affiliate of a foreign entity registered in Kazakhstan.

Certain foreign employees, however, might be able to avoid the local sponsor requirement and apply for a work permit themselves, which offers a number of advantages (at least in theory) over the Employer WP process (*e.g.*, no need to satisfy the local content ratios, no imposition of the special conditions, a faster processing, including due to the absence of the local labor market search, *etc.*). The very recent amendments to the work permit rules now allow a very specific and narrow group of foreign professionals to apply for a work permit directly without the local employer's sponsorship (the "Employee WP").

Among such foreign professionals who qualify for the Employee WPs are certain professors, anthropologists, computer science specialists and software design engineers, specialists in the field of information technologies and electronics, specialists in the field of electro-technology and electronic engineering, animation specialists and computer graphic specialists. A full list of foreign professionals who qualify for the Employee WP option is set forth in Annex B.

However, due to the fact that the Employee WP option has been introduced only recently, there is no established practice in place in connection with the Employee WP application process. This, in practice, may result in delays and procedural complications.

Validity Term

- The Employee WPs are issued and extended, subject to the annual quota availability, for a term of up to three years. Extension is available for up to two times not exceeding five years in total.

- The Employer WPs are valid for the following periods depending on the foreign employee category:

Category	Validity period	Extension
Category 1 (chief executives and their deputies) (other than small businesses) For "small business" enterprises	up to 3 years 12 months	annually for a period up to 12 months not more than 2 times
Category 2 (department heads)	12 months	for a period up to 12 months, not more than 2 times
Category 3 (specialists)	12 months	for a period up to 12 months, not more than 2 times
Category 4 (qualified labor) + seasonal workers	up to 12 months	no right of extension

Annual Quotas

Work permits are issued by taking into account work permit quotas allocated to an applicable region for that year. Every year by September 1, the Kazakhstani labor authorities request the interested local employers to submit a request outlining their work permit needs for the following year. Theoretically, these numbers are consolidated and used to determine the overall annual quota for work permits, which is distributed among different regions and categories of employees. Theoretically, the local labor authorities (the Ministry of Labor and Social Protection of the Republic of Kazakhstan) may,

upon "suggestion" of the interested governmental authorities (*e.g.*, city and regional departments of labor and employment), reallocate the annual quotas among the regions and cities, but within the established quotas for that year.

The annual quotas apply in both the Employer WP and the Employee WP scenarios.

Local Content Ratios

The local content ratios apply only in the context of the Employer WP process (the Employee WP applications are exempt from this requirement). The local content requirement also does not apply to (i) small businesses, (ii) governmental organizations, and (iii) certain "priority" projects.

Basically, in addition to the annual quotas, in connection with an Employer WP application, the local employer (other than the local employers that are small businesses, governmental organizations or that are engaged in certain "priority" projects) must maintain and certify that the ratio for local versus foreign employees outlined below is met:

- 70/30 for the first (chief executives and their deputies) and second (department heads) categories combined - in order words, the number of citizens of the Republic of Kazakhstan shall be not less than 70 percent of all employees in the first and second categories combined

- 90/10 for the third (specialists) and fourth (qualified workers/ labor) categories combined - in other words, the number of citizens of the Republic of Kazakhstan shall be not less than 90 percent of all employees in the third and fourth categories combined.

Labor Market Search

Labor market search is triggered in conjunction with the Employer WP application only. Labor market search is not required in conjunction with the Employee WP application.

Labor Market Search is required to demonstrate that there is no other local resource available for the position (in this regard, a job assessment must be performed, whereby a job title and job description for the foreign employee must match the requirements of the Job Classification Handbook and the Common Sourcebook of Tariffs and Qualifying Requirements for Occupations and Professions adopted by the Ministry of Labor and Social Protection). As part of this process, the local employer is required to send a notice to the local labor authorities notifying of availability of a vacant position. An application for Employer WP can be filed then not earlier than 15 calendar days from the date of such notice and receipt of an official confirmation of absence of qualified local candidates.

Special Conditions

Another aspect to bear in mind in connection with the Employer WPs is that their issuance is generally conditioned on fulfillment by the employer of various specified special conditions, such as professional training of the citizens of Kazakhstan, creation of additional jobs for the citizens of Kazakhstan, *etc.* Employee WPs are not subject to the special conditions.

Work Visas

Multiple entry work visas are issued for the term of an applicable work permit, but may not exceed three years in any event. Further, the expiration date of the foreign employee's passport must be at least six months after the expiration date of the work visa.

Work visas are issued on the basis of an approved and valid work permit (if the work permit is required) and an invitation letter from the local sponsor/local employer filed with the Consular Department. The

Consular Department then, based on its review of the application materials, makes a recommendation to the applicable visa issuing authorities (embassies/consulates in the case of the first time issuances to the employees located outside of Kazakhstan). Typically, it takes five business days for the Consular Department to conduct such a review from the moment it accepts the application materials and issue a visa endorsement number.

A visa then can be obtained on the basis of the visa endorsement number from a Kazakhstani Consulate or Embassy abroad. It is important to consult the specific Kazakhstani Consulate or Embassy abroad where the work visa application will be filed, as the requirements vary from one country to another.

Permanent Residence

Permanent residence visas are also issued on the basis of visa endorsement by the Consular Department to the persons coming to Kazakhstan for permanent residence, those who arrived to Kazakhstan on private business and who have made a request to stay permanently in Kazakhstan, and those asking for refugee status. Permanent residence visas can be single - or double- entry, which are issued, in each case, for up to 90 days. In addition, permanent foreign nationals must receive a residence permit, which allows them to reside in Kazakhstan for an unlimited period of time.

Investor Visa

The investor visas are granted to the CEOs and representatives of senior management (and members of their families) of foreign firms and companies investing in the economy of Kazakhstan or participants of the Regional Financial Center of Almaty.

The investor visa application procedures for participants of the Regional Financial Center of Almaty (*e.g.*, dealers, brokers and issuers) and members of their families are simplified and they may obtain single-entry and multiple-entry investor visas the same day.

Multiple-entry investor visas are given for a period of up to three years.

Liability for Violating Immigration Laws

Depending on the nature and seriousness of the violation, a foreign citizen who violates any visa, work permit or other immigration laws of Kazakhstan, may face the following penalties:

- an administrative fine (up to approx. USD500);
- an invalidation of authorized stay in Kazakhstan;
- an administrative arrest (up to 15 calendar days); and/or
- a forced deportation from Kazakhstan.

A foreign national may be deported from Kazakhstan only on the basis of a court decision to this effect. Foreign nationals who are deported from Kazakhstan are precluded from re-entering Kazakhstan for five years from the date of their deportation.

In addition, if a foreign national does not leave Kazakhstan within the timeframe specified by the migration police, potential penalties include:

- a penalty in the amount of approx. USD1,000 - USD5,000 (or five times monthly salary);
- an administrative arrest (up to six months); and/or
- imprisonment (up to one year).

For intentional illegal crossing of the Kazakhstani border, *e.g.*, without a national passport or a proper visa, a foreign national may also be penalized in the form of:

- an administrative fine (USD2,000 – USD5,000); and/or

- an imprisonment (up to two -five years).

A Kazakhstani company/employer that violates the work permit or other immigration laws of Kazakhstan may face the following penalties:

- an administrative fine (up to approx. USD10,000);
- a suspension or revocation of all valid work permits issued to the company/employer; and/or
- a temporary ban on issuance of work permits to retain foreign labor force to such entity/employer for a period of up to two years.

An officer/manager, who repeatedly violates the work permit rules of Kazakhstan, may face the following penalties:

- an administrative fine (USD5,000 – USD9,000); and/or
- a community service work (100-240 hours).

Annex A

The following is a list of countries the citizens of which can apply for a single-entry business visa (for a period of up to 30 days) without an invitation letter:

1. Australia
2. Austria
3. Luxembourg
4. Hungary
5. Hellenic Republic
6. Israel
7. Qatar
8. Ireland
9. Italy
10. Denmark
11. Saudi Arabia
12. Spain
13. Iceland
14. Canada
15. Liechtenstein
16. Monaco
17. Netherlands
18. Norway
19. Sweden
20. Belgium
21. Lithuania
22. Latvia
23. New Zealand
24. United Arab Emirates
25. Portugal
26. Singapore
27. Poland
28. Croatia
29. The Republic of Korea
30. Bulgaria
31. Cyprus
32. Malta
33. Slovenia
34. Romania
35. United States of America
36. UK
37. Slovakia
38. Oman
39. Finland
40. France
41 The Federal Republic of Germany
42. Malaysia
43. Brazil
44. The Czech Republic
45. Switzerland
46. Estonia
47. Japan
48. Jordan

Annex B

1.	Anthropologist
2.	System Architects
3.	Astronomer
4.	Ballet Dancer
5.	Dramatic / Lyrico-Dramatic Soprano
6.	Dramatic / Lyrico-Dramatic Tenor
7.	Editing Engineer – Audio and Video Editing
8.	Film Development Engineer
9.	Marine Equipment Controls Engineer
10.	Marine Pipeline Engineer
11.	Engineer-Controller for Aircraft Maintenance, Repair and Diagnostics
12.	Climatologist
13.	Museum Management Specialist
14.	Software Design Engineer (Computer Science)
15.	Faculty Members with Academic Degrees
16.	Radar Astronomer
17.	IT and Electronics Specialist
18.	Electrical Technology and Engineering Specialist
19.	Animation and Computer Graphics Specialist
20.	Spacecraft Ballistics Specialists
21.	Spacecraft On-Board Systems Specialists
22.	Flight Safety Specialist
23.	Property Master
24.	Computer Effects Designer
25.	Specialist for Aviation Requirements Compliance and Aviation-Related Publications
26.	Marine Pipeline Specialist
27.	Specialist for Equipment of Aircraft Passenger Cabins
28.	Flight Management Specialist
29.	Specialist for Technical Education and Standards
30.	Marine Structures Supervisor

Luxembourg

Executive Summary

Luxembourg is a popular destination for business travelers. While brief visits generally pose no issue, coming to Luxembourg to work or for longer stays means complying with a strict procedure with various authorities.

For stays longer than three months or work in Luxembourg, it is very important to apply for a temporary residence certificate and for the appropriate visa in the foreign national's home country before entering Luxembourg.

Key Government Agencies

Visa applications are processed at Luxembourg embassies and consular posts around the world or to a diplomatic mission which represents Luxembourg (Luxembourg has no diplomatic mission everywhere in the world and concluded agreement with other countries. See http://www.mae.lu/Site-MAE/Missions-diplomatiques-et-consulaires). Personal appearance at the consular post is required.

Every request for working in Luxembourg is submitted to a prior temporary authorization of the Minister of Foreign Affairs (*"Direction de l'Immigration"*).

Residence permits are also granted by the Minister in charge of Immigration issues, currently the Minister of Foreign Affairs.

If the person resides in a non-European Economic Area (EEA) country, temporary residence certificate and visa request must be made in the foreign national's country of residence and submitted to the Minister of Foreign Affairs in Luxembourg.

Registration or Declaration of arrival will be required at the commune of the place of residence in Luxembourg.

An employer who intends to employ a person must file a declaration of vacant job with the Employment Administration Office (*"Administration de l'emploi"*-"ADEM"). If ADEM has no candidates to submit, it will give the employer an authorization to take on a third-country applicant.

Non EU nationals (or assimilated) who wish to stay for more than three months in Luxembourg must undergo a medical check-up involving a medical examination by a doctor established in Luxembourg and a TB screening by the Health and Social Welfare League (*"Ligue médico-sociale,"* "LMS").

Current Trend

Luxembourg has a very pragmatic approach to the issue of immigration.

One Ministry is in charge of the matter and the timeframe of the procedures is short compared to some other countries. Luxembourg authorities are available in case of difficulties or questions.

Special status apply for intra-group transfer, highly-qualified employed persons, family members, students, searchers, and sportsman and woman.

Business Travel

Short-term Visas (less than three months)

In general, and subject to the visa waiver described below, foreign nationals must, prior to coming to Luxembourg even for a short visit, obtain a visa C from the Luxembourg embassies and consular posts where they reside or to a diplomatic mission which represents Luxembourg in the country (see http://www.mae.lu/fr/Site-MAE/Missions-diplomatiques-et-consulaires/Missions-diplomatiques-et-consulaires-luxembourgeoises).

The applicant will apply for a Schengen visa, if the main destination is Luxembourg. The Schengen visa allows entry to Luxembourg and to move freely within other countries in the "Schengen space."

Currently, the members of the Schengen space are the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

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

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

The application must provide a hotel reservation, a return ticket, an insurance policy and evidence of the reasons for travelling as well as sufficient resources for the stay in Luxembourg.

Visas are valid for a duration of six months and allow a three months authorized stay in Luxembourg.

Visa Waiver

Visas are not required for EU and EEA (*i.e.*, Norway, Liechtenstein and Iceland) citizens to visit Luxembourg.

In addition, the normal visa requirement is waived for trips of up to three months for citizens of the following countries: Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Hong Kong, Israel, Japan, Macao, Macedonia, Malaysia, Mauritius (Isle), Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Saint Kitts

and Nevis, San Marino, Serbia, Seychelles, Singapore, South Korea, Taiwan, United States of America, Uruguay, Vatican City, Venezuela.

Training

Citizens of EU/EEA are able to live and work in Luxembourg without a visa. Therefore, they are authorized to remain in Luxembourg for training without securing a Luxembourg visa.

Except in case of visa waiver, citizens of other countries must qualify for one of the visas set out below. If the non-EU national has a valid residence permit as a family member of an EU citizen or a valid residence permit issued by another EU Member State, a visa is not required.

Before entering Luxembourg

Short-stay Visa ("visa de court séjour")

The Visa C can authorize training assignments for up to 90 days. No extension of stay is possible. Further, no more than 90 days can be spent in Luxembourg during a six month period.

Long-stay Visa ("visa de long séjour")

The Visa D authorizes foreign nationals to remain for periods longer than three months. In order to receive a Visa D, the foreign national must obtain a temporary residence certificate (see below).

Once in Luxembourg, it is necessary to make a declaration of arrival in the new commune of residence, to undergo a medical check and to submit an application for a residence permit (*"carte de séjour"*).

Visa application

Before travelling and leaving the country of origin, the foreign national subject to a visa must complete the visa application form and submit it personally to the Luxembourg diplomatic or consular mission in his country of residence or, failing this, the embassy or

consulate of the country in the Schengen area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

If the applicant's passport is due to expire in less than six months, he/she is advised to renew it before coming to Luxembourg.

Temporary residence certificate (for long stay only)

If the person resides in a non-European Economic Area (EEA) country, an application for a temporary residence certificate must be filed in the foreign national's country of residence and submit its application to the Ministry of Foreign Affairs in Luxembourg.

Among the documents annexed to the application, evidence must be made of the training in Luxembourg.

The temporary residence certificate must be use within the 90 days as of its deliverance (entering Luxembourg as well as declaration of arrival).

After entering Luxembourg

Declaration of arrival/accommodation form

Non-EU/EEA citizens will generally be required to make a declaration of arrival in their new commune of residence within the three days of arrival or to complete an accommodation form at the establishment where they are staying (hotel, bed & breakfast).

For a stay of more than **t**hree months, EU nationals must make a declaration of arrival within eight days of arrival in Luxembourg at the offices of the authorities of the commune where they intend to take up residence.

Further steps will be required for long stay only (more than 90 days):

Registration certificate (EU nationals)

EU nationals must also register in their commune of residence and will receive a registration certificate at the latest three months after their arrival.

Medical check (non EU nationals)

The non-EU national must undergo a medical check as soon as possible which consists in:

- a medical examination by a doctor established in Luxembourg; and
- TB screening by the Health and Social Welfare League (*Ligue médico-sociale* - LMS).

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Residence permit application (non EU nationals)

Non-EU nationals must submit an application for a residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The documents sent together with the residence permit application will prove the fulfillment of the previous obligations, the existence of a suitable housing and a valid medical certificate based on the medical check detailed above.

The residence permit takes the form of a chip card containing the biometric data.

Employment Assignments

1) EU/EEA employee

Citizens of EU/EEA are generally entitled to free circulation within the EU, giving them the right to work and live anywhere in the EU, except that Bulgarian and Romanian nationals must have a work permit for their first year of work in Luxembourg.

EU/EEA nationals must hold a valid national identity card or passport.

They must make a declaration of arrival within eight days of arrival in Luxembourg, at the offices of the authorities of the commune where they intend to take up residence.

EU/EEA nationals must also fill in a registration form at the offices of the same communal authorities, at the latest 90 days after their arrival in Luxembourg. The registration form must be accompanied by their employment contract or by a commitment to hire, dated and signed by the future employer.

The EU/EEA national will receive a registration certificate as a result of his application.

2) Third-country Employee with no special status

Before entering Luxembourg

Declaration of vacant position

Before recruiting a non EU/EEA salaried worker, employers must make a declaration of vacant position to the ADEM ("Administration de l'Emploi"). The declaration will allow the ADEM to check whether there is a suitable candidate available on the local or EU job market.

If the job offer cannot be filled with a person registered with the ADEM within a three week deadline, the employer is allowed to conclude an employment contract with a person of his choice under certain conditions, including a non-EU national.

The employer must submit an application and request a certificate granting him the right to hire a third country national.

Temporary residence certificate

The future third-country employee must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate from his country of origin. The application must be submitted and approved before entering the country.

The application for a temporary residence certificate must contain notably a police clearance certificate, a copy of the applicant's diplomas or professional qualifications, a copy of the employment contract (compliant with Luxembourg law) dated and signed.

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

Visa D

Before travelling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in his country of residence or, failing that, the embassy or consulate of the country in the Schengen area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

An applicant is advised to renew it before coming to Luxembourg, if the passport is due to expire in less than six months,

After entering Luxembourg

Declaration of arrival

A third-country national must come to Luxembourg holding valid travel documents (passport and visa, where required) within 90 days of issue of the temporary residence certificate.

A declaration of arrival must be made at the administration of the commune where the person intends to establish residence within three days of arrival in Luxembourg.

The applicant will receive a copy of the declaration of arrival.

The copy of the declaration of arrival together with the residence certificate are valid as a work and residence permit.

Medical check

The third-country national salaried worker must undergo a medical check as soon as possible which consists in:

- a medical examination by a doctor established in Luxembourg; and
- TB screening by the Health and Social Welfare League (*Ligue médico-sociale* - LMS).

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Residence permit

Third-country national salaried workers must submit an application for a residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The documents sent together with the residence permit application will prove the fulfillment of the previous obligations, the existence of a suitable housing and a valid medical certificate based on the medical check detailed above.

The residence permit takes the form of a chip card containing the biometric data.

3) Intra-company Transferee

The employees in this category are the third-country nationals who are working under an employment contract for indefinite duration in a group and who are assigned by a foreign company of that group to a Luxembourg company which is part of the group.

Before entering Luxembourg

In this case, the authorization is not subject to the impossibility to find a suitable candidate available on the local or EU job market.

Temporary residence certificate

The future employer must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate. The application must be submitted and approved before entering the country.

The application for a temporary residence certificate must contain notably a police clearance certificate, a copy of the employment contract between the Foreign employer and the employee and a copy of the new employment contract between the Luxembourg new employer and the employee (compliant with Luxembourg law) dated and signed.

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

Visa D

Before travelling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in his country of residence or, failing that, the embassy or consulate of the country in the Schengen area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

If the applicant's passport is due to expire in less than six months, he is advised to renew it before coming to Luxembourg.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above for 2) Third-country Employee with no special status:

- Declaration of arrival;
- Medical check; and
- Residence permit.

4) Employee seconded in the framework of a service agreement

This category concerns employees temporarily seconded to Luxembourg by their foreign employer to a third party company for the performance of specific services (*i.e.*, technical assistance) in the scope of a service agreement.

The secondment should not result in the employee's effective involvement in the daily running of the Luxembourg host company's activity.

Before entering Luxembourg

In this case, the authorization is not subject to the impossibility to find a suitable candidate available on the local or EU job market.

Temporary residence certificate and (collective) secondment authorization

The Luxembourg host company must submit an application for a secondment to the Luxembourg Immigration Directorate. The application must be submitted and approved before entering the country. If more than one employee are concerned, a collective secondment application will be filed.

The application for a temporary residence certificate must contain notably a police clearance certificate, a copy of an employment contract for an indefinite duration with a minimum of six months length of service with a Foreign employer and a copy of service contract between this Foreign employer and the Luxembourg host company.

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

Visa D

Before travelling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in his country of residence or, failing that, the embassy or consulate of the country in the Schengen area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

If the applicant's passport is due to expire in less than six months, he is advised to renew it before coming to Luxembourg.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above for 2) Third-country Employee with no special status:

- Declaration of arrival;
- Medical check; and
- Residence permit.

5) Highly-qualified employee (European blue card)

The employees in this category are the third-country nationals with high qualifications or experience in a specific sector who will work under an employment contract for minimum one year in Luxembourg and who will earn at least 1.5 times the minimum gross salary in Luxembourg (except for some listed jobs).

Before entering Luxembourg

In this case, the authorization is not subject to the impossibility to find a suitable candidate available on the local or EU job market.

Temporary residence certificate

The Highly-qualified employee must submit a Temporary residence certificate to the Luxembourg Immigration Directorate. The application must be submitted and approved before entering the country.

The application for a temporary residence certificate must contain notably a police clearance certificate, a copy of an employment contract with a minimum of one year duration and a salary amounted to 1.5 times the minimum gross salary (except for some listed jobs).

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above for 2) Third-country Employee with no special status:

- Declaration of arrival;
- Medical check; and
- Residence permit.

Other Comments

It is possible for non-EU nationals, after five years residency in Luxembourg, to obtain a long-term residence permit (*"Carte de resident"*), if they can prove that they have a regular business activity in Luxembourg (*e.g.*, as corporate executive, regular employee or otherwise) from which they derive sufficient income and declare that they intend to reside in Luxembourg for a long period or on a permanent basis.

Malaysia

Executive Summary

As the domestic economy continues to enjoy foreign direct investments notwithstanding the current economic climate and with the continued requirement for foreign expertise in Malaysia, Malaysian immigration laws provide a range of visas and passes to non-Malaysians in entering and remaining in Malaysia for business purposes.

Key Government Agencies

While certain government bodies have the authority to approve the employment of non-Malaysians, the Malaysian Immigration Department (*"Jabatan Imigresen"*) processes all applications for and is the issuing body of all immigration passes and visas. It also enforces immigration laws and policies in Malaysia together with the Royal Malaysian Police Force. Visas are issued by the Malaysian Immigration Department at all points of entry into Malaysia.

Depending on the nationality, it may be necessary to obtain a pre-entry visa. Applications from abroad for visas which permit a longer duration of stay in Malaysia may be sent to a Malaysian embassy/consulate.

Current Trends

Malaysia has always welcomed skilled foreign nationals. The government recognizes foreign expertise as instrumental in achieving the goal of the population becoming a high-income one. The government has also continued to implement steps to reduce Malaysia's dependency on blue collar foreign employees. While this will largely affect less skilled workers, employers may need stronger justification for bringing into Malaysia foreign nationals, as a whole, in the nearer term. It is expected that this may affect certain industries more than others.

Generally, the Malaysian Immigration Department has not unreasonably withheld approvals for skilled foreign employees who will assume managerial, technical or executive posts in Malaysia. A higher success rate in obtaining immigration passes may be seen in certain industries or fields, such as oil and gas, science and medicine, information technology and aerospace.

The Malaysian Immigration Department has continued to improve on its delivery systems. The relative lack of transparency and processing timeframes have been officially acknowledged as impediments to foreign investment.

Having said that and in light of the current economic conditions, the Malaysian Immigration Department is becoming more stringent in respect of approving immigration passes for foreign nationals for employment in the country. This has the indirect purpose of reserving more job opportunities for Malaysians. The government is also looking into various means to encourage skilled Malaysians who are currently working abroad to return. The Malaysian Immigration Department continues to be somewhat unpredictable in requiring applicants to obtain a letter of support or a letter of no objection from government agencies, which may or may not be relevant to the foreign national's industry.

Extensive reform of Malaysia's immigration laws in the near future appears to be unlikely.

Business Travel

Social Visit Pass

For a short stay in Malaysia for social or business purposes, other than for employment, a Social Visit Pass may be obtained at the point of entry into Malaysia. The validity period of the Social Visit Pass varies, depending on the nationality of the traveler. Depending on the nationality, a visa issued from the Malaysian embassy may be required.

The Social Visit Pass is solely for the purpose of a social, tourist or business visits. 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 survey on investment opportunities or setting up a factory; or
- Attending seminars.

The Social Visit Pass does not permit its holder to exercise employment in Malaysia nor to undertake any activity which are outside the scope of the above permitted activities.

As the Social Visit Pass permits its holder to remain in Malaysia for a limited period, Social Visit Pass holders should be mindful of not overstaying the stipulated duration. Generally, extensions will not be granted unless there are special personal circumstances.

Training

Visit Pass (Professional)

Employers who wish to second their non-Malaysian employee to Malaysia on a temporary basis, should arrange for the employee to be issued with the Visit Pass (Professional).

For background, a Visit Pass (Professional) is for engaging in a professional occupation or work in Malaysia. A Visit Pass (Professional) may be used only for secondments; there must be no employee-employer relationship with the local sponsor (the Malaysian entity at which the employee is seconded). Normally, a Visit Pass (Professional) is granted only for a period of three to six months, but may be extended to a maximum period of 11 months.

The intended holder of a Visit Pass (Professional) must register with the Malaysian Inland Revenue Board before submitting the application.

In the application for a Visit Pass (Professional) submitted by the local sponsor, the local sponsor must disclose the activities that the applicant intends to conduct in Malaysia. The local sponsor must also agree to be responsible for the maintenance and repatriation, should it become necessary. A Visit Pass (Professional) holder may only 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) is issued must be made with the written consent of the Director-General of Immigration.

Employment Assignments

Employment Pass

An Employment Pass is issued to a director, manager or professional-level foreign national who is to be appointed/employed by a Malaysian entity (*i.e.*, Malaysian incorporated subsidiary, Malaysian registered branch of a foreign corporation or a Malaysian representative office). The Employment Pass is valid for two to three years.

Any Malaysian employer applying for an Employment Pass must show why the foreign national must be employed, rather than a Malaysian citizen or permanent resident. An 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 the arrival of the foreign employee. It is common, although not always advisable, for a foreign national to enter on a Social Visit Pass obtained by oral application at the point of entry (or at the relevant Malaysian embassy prior to traveling) and for the employer thereafter to apply for an Employment Pass prior to taking up employment. The Social Visit Pass encompasses the permissible business activities mentioned above and employment is not permitted.

A limited number of Employment Passes may be granted to foreign nationals employed by a Malaysian subsidiary. Generally, the Malaysian Immigration Department is less willing to grant Employment Passes to foreign employees of a branch of a foreign company except with a letter of support from a Ministry or government body, such as where the branch is involved in a government project.

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

First, the applicant is required to apply for an expatriate post (an application "for the services of an expatriate") prior to the application for the Employment Pass, by submitting a completed Form DP 10. This form must be accompanied by a letter of justification in the Malaysian language from the intended employer justifying why the post must be held by a foreign national, whether there are any prerequisites, qualifications, and experience not available in Malaysia and whether steps have been taken to recruit a Malaysian. The letter of justification should indicate the benefits the company and the expatriate could bring to the Malaysian economy and the labor force.

Generally, the application is made to the Malaysian Immigration Department. However, for certain industries, separate government agencies have been authorized to approve the employment of

expatriates and applications should be sent to these appointed agencies instead:

- Manufacturing and its related services sectors, regional office, operational headquarters and international procurement center - Malaysian Industrial Development Authority

- Information technology sector, specifically companies that have been awarded MSC Malaysia (formerly known as the Multimedia Super Corridor) approval - Multimedia Development Corporation

- Financial, insurance and banking sectors - Central Bank of Malaysia

- Securities and the futures market - Securities Commission

- Health and education sectors – Public Service Department of Malaysia

Applications for the above industries may be more expedient. However, sector-specific guidelines and requirements are imposed by the relevant approving agencies.

Second, once approval of the expatriate posting is granted, the application for the issuance of the Employment Pass can be submitted. An application for renewal before its expiry may be submitted but there is no guarantee of approval.

After the Employment Pass is issued, the passport needs to be submitted to the Malaysian Immigration Department for the endorsement of the Employment Pass. The Employment Pass issued is specific to the employer entity for which the pass has been approved. If the holder changes employers, the existing Employment Pass will need to be shortened and the new employer will have to apply for a new Employment Pass.

Reference Visa

Nationalities of certain countries are required to obtain a Reference Visa for purposes of employment. The Reference Visa must be applied for and obtained prior to entry into Malaysia. The Reference Visa can be collected from a Malaysian mission in any country once the issuance of the Employment Pass is approved by the Malaysian Immigration Department.

Only holders of passports of Commonwealth countries do not require a Reference Visa for the purposes of employment. Holders of passports of all other countries not listed are required to obtain a Reference Visa prior to entering Malaysia for the endorsement of the employment passes onto the passport.

Visit Pass (Temporary Employment)

A Visit Pass (Temporary Employment) may be obtained where the foreign national is to be employed by a Malaysian entity for 12 months or less. The procedure, timing and the supporting documents to apply for a Visit Pass (Temporary Employment) are generally similar to that for the Employment Pass.

Other Comments

Many holders of the Employment Pass would like to bring their families to Malaysia. Dependent passes are available for the spouse and children below 21 years of age. Dependent passes should be applied for simultaneously with the application for the issuance of the Employment Pass.

Residence Pass

The Resident Pass ("RP") is an initiative by the Malaysian Government to attract and retain non-Malaysian talent who are able to contribute to the country's economic transformation. It is essentially a 10-year renewable pass for highly-qualified foreign nationals to continue to reside and work in Malaysia. Unlike the Employment Pass, the RP-holder has the flexibility to change employers without

having to renew the pass. The RP is specific to the RP-holder, and not to the employer.

Additionally, the spouse and dependents (under 18 years old) of the RP-holder are also eligible for the RPs. The spouse may exercise employment in Malaysia without having to apply for an Employment Pass.

The individuals who are eligible to apply for RPs are those who:

- have worked in Peninsular Malaysia for at least three years;
- hold a valid Employment Pass at the time of application;
- hold a PhD / Masters / Degree or Diploma in any discipline from a recognized university or a professional / competency certificate from a recognized professional institute;
- possess a minimum of five years' work experience;
- earns a gross taxable income of MYR144,000 per annum; and
- have an income tax file number in Malaysia and have paid their income taxes in Malaysia for a minimum of two years.

Malaysia My Second Home Programme

For foreign nationals who are not employed in Malaysia and yet would like to reside in Malaysia, the government of Malaysia has introduced the Malaysia My Second Home Programme ("MM2H") to encourage non-Malaysians to reside in Malaysia. Non-Malaysians under the program remain in Malaysia on a Social Visit Pass, together with multiple entry visa.

The Social Visit Pass is valid for 10 years, subject to the validity of the passport, with the possibility of an extension for another 10 years. Under this program, qualified MM2H participants aged 50 and above with specialized skills and expertise that are required in the critical

sectors of the economy are allowed to work not more than 20 hours per week. Additionally, the MM2H participants are allowed to invest and actively participate in business, subject to existing government policies, regulations and guidelines, which are in force for the relevant sectors. This program does not guarantee permanent resident status.

There are financial requirements, but participants are also provided with various incentives during their stay in Malaysia under the program. These include, amongst others, acquisition of residential units, car purchase, education and tax exemptions.

Further Information

Our *Immigration to Malaysia Manual* provides further information relating to residing in Malaysia and citizenship.

Mexico

Executive Summary

This chapter outlines how foreign nationals may remain in Mexican territory under the proper immigration condition, authorized to performed activities remunerated or not remunerated in Mexico. Companies and foreign nationals need to know, in a clear and concise manner, the different type of visas and immigration documents and the conditions of those visas and documents.

The New Immigration Law ("IL") determines the different conditions under which visas and immigration documents may be authorized. The Regulations ("ILR") and Guidelines ("ILG") determine to process to be followed in order to obtain the different visas and documents. The IL, ILR and ILG now require anticipated planning for visa and immigration documents issuance since changes of immigration condition are no longer authorized for most cases.

Fines for sponsoring companies have also been eliminated, although fines, deportation and expulsion from Mexico are still penalties for foreign nationals not complying with the law.

Key Government Agencies

The local, state and central offices of the National Immigration Institute (*"Instituto Nacional de Migración"* or INM), under the Ministry of the Interior (*"Secretaría de Gobernación"* or SEGOB), hold the power to authorize visas for work, renewals and notifications of changes of address, nationality, marital status and change of place of work, among other processes.

The Ministry of Foreign Affairs (*"Secretaría de Relaciones Exteriores*") is the authority responsible for granting citizenship through the naturalization process, as well as all communication between the INM and the Mexican Embassies and/or General Consulates. The Embassies and the General Consulates incorporate

them and are authorized to issue visas and authorizations to enter the country.

Current Trends

The ILR and ILG entered into effect on November 9, 2012. These laws, regulations and guidelines have created ongoing confusion in immigration processes, since the processes have been changed completely. There is still a lot of confusion on how these new processes will be implemented in practice, and immigration officers have been very slow in responding to companies and foreign national's queries in regards to the same. The common denominator has been slower processes. This has been in part due to the fact that the immigration documents are now authorized by immigration authorities but actually processed by a company hired by the INM.

Business Travel

There is a new business immigration form called the FMM (Multiple Immigration Form). This form is used for all Visitor Visa authorizations.

Visitor Visas

Visitor Visas are authorized for activities not remunerated or remunerated in Mexico.

Visitor visas for activities not remunerated in Mexico allow foreign nationals to perform any activities in Mexico that will not be paid by a company located in Mexico, with a maximum stay authorized of up to 180 days per trip. Theses visas and immigration forms may not be renewed, but may be requested each time the foreign nationals travel to Mexico.

Nationals of the following countries require a visitor visa prior to entering Mexico:

Afganistán	Albania	Angola	Antigua y Barbuda	Arabia Saudita	Argelia	Armenia
Azerbaiyán	Bahrein	Bangladesh	Belarús	Benin	Bolivia	Bosnia-Herzegovina
Botswana	Brazil	Brunei Darusalam	Burkina Faso	Burundi	Bután	Cabo Verde
Camboya	Camerú	Chad	China República Popular	Comoras	Congo	Congo, Rep. Dem. (Zaire)
Corea del Norte	Costa de Marfil	Cuba	Djibuti	Dominica	Dominicana República	Ecuador
Egipto	El Salvador	Emiratos Árabes Unidos	Eritrea	Etiopía	Federación Rusa	Fiji Islas
Filipinas	Gabón	Gambia	Georgia	Ghana	Grenada	Guatemala
Guinea	Guinea Bisau	Guinea Ecuatorial	Guyana	Haití	Honduras	India
Indonesia	Irak	Irán	Jordania	Kazajistán	Kenia	Kirguistán
Kiribati	Kuwait	Laos	Lesotho	Líbano	Liberia	Libia

Macedonia	Madagascar	Malawi	Maldivas	Mali	Marruecos	Mauricio
Mauritania	Mianmar	Moldova	Mongolia	Montenegro	Mozambique	Namibia
Nauru	Nepal	Nicaragua	Niger	Nigeria	Omán	Pakistán
Palestina	Papua Nueva Guinea	Qatar	República Centroafricana	República Árabe	Saharaui Democrática	Ruanda
Salomon Islas	Samoa Occidental	San Cristobal y Nieves	San Vicente y Las Granadinas	Santa Lucía	Santa Sede	Santo Tome y Príncipe
Senegal	Serbia	Seychelles Islas	Sierra Leona	Siria	Somalia	Sri Lanka
Sudáfrica	Sudán	Surinam	Swazilandia	Tailandia	Taiwán	Tanzania
Tayikistán	Timor Oriental	Togo	Tonga	Túnez	Turkmenistán	Turquía
Tuvalu	Ucrania	Uganda	Uzbekistán	Vanuatu	Vietnam	Yemen
Zambia	Zimbawe					

Nationals of other countries may be granted an FMM at the port of entry in Mexico.

Documents supporting the foreign national's trip into Mexico may be requested by immigration authorities (*i.e.* invitation letter, support letter, proof of sufficient funds, return airplane tickets, among others).

These visas will authorize any activity not remunerated in Mexico, including work, technical activities, and training, as long as the conditions are met.

Employment Assignments

Visitor Visas

Visitor visas may also be requested for work assignments of less than 180 days in Mexico. This authorization is requested only when a Mexican Company or establishment will pay the foreign nationals salary or remuneration. These authorizations must be first requested at the INM, which will send the proper authorization to the Mexican consulate abroad ("MC"). The foreign national will receive a Visitor Visa at the MC, and will then travel to Mexico where they will receive an FMM, authorized to receive remuneration in Mexico, for up to 180 days.

This visa and immigration document may not be renewed and the foreign national must leave Mexico after the authorization has expired.

Temporary Residents

Temporary residents are allowed to stay in Mexico for up to four years, depending on the time requested on the initial authorization for work condition. These visas and immigration documents also authorize multiple entries and exits into Mexico. Temporary residents are allowed to enter to perform activities not remunerated in Mexico, or activities remunerated in Mexico. When the foreign nationals will perform activities not remunerated in Mexico, they must request a visa for a temporary resident at any MC. If however, they will perform activities remunerated in Mexico, the authorization must be requested

at the INM first, which will send the authorization to the MC abroad so that they MC may issue a visa.

After foreign nationals receive a temporary resident visa, they may travel to Mexico where they will receive an FMM that authorizes a change from FMM to a Temporary Resident document. Foreign nationals must request this change within the next 30 days, if they do not, their temporary resident authorization will no longer be valid.

Foreign nationals may decide to request the immigration form for up to the maximum time granted on their Temporary Resident condition (up to four years) or may request yearly renewals. The initial authorization granted may not be extended.

Foreign nationals that where authorized and remain in Mexico four years as temporary residents may request a permanent residence after their initial four years in the country.

Foreign nationals that are not authorized to receive remuneration in Mexico may request a work authorization while in Mexico in order to receive salary or remuneration from a Mexican company or establishment.

Permanent Residents

Permanent residents may remain in the country indefinitely and are authorized to work in Mexico. The permanent resident status may be obtained by having stayed four consecutive years in Mexico, by being married to a Mexican national and remaining two years in the country, by having Mexican children, among others.

The permanent resident status may also be requested by a special points system that has yet to be published. We expect that the rules for the points system will be published sometime in 2013.

Other Comments

Mexican Entities Receiving Services from Foreign Employees

Federal Labor Law protects the economic development of the country and the Mexican workers. For that purpose, all companies or businesses are obligated to at least employ 90 percent of Mexican workers.

In the technical and professional categories, the employees must be Mexican citizens with the exceptions when there are no specialized employees in that field; in such case, the employer could temporarily hire foreign employees, provided that they do not exceed 10 percent of the total workforce. The employer and foreign employees in the technical and professional categories have the joint liability of training the Mexican employees in their specialty. In addition, company physicians must be Mexican citizens.

Note that these rules are not applicable in the case of foreign general managers and corporate officers.

The IM also states that there will be a visa quota for specific activities. This has not yet been implemented, so we are still not aware of how this will impact immigration into Mexico.

Employer Certificate

A company or institution that has foreign nationals rendering services must request the INM to open a "Employer Certificate" which shall be incorporated with the information of the company or institution and the Mexican and foreign employees that work for it. This information must be updated periodically. Local INM offices will request that a Employer Certificate be incorporated in order to process authorizations for foreign nationals, as a prerequisite.

Notifications

Foreign national must notify the INM of changes in domicile, marital status, nationality and place of work. These changes must be notified within 90 days, otherwise, foreign nationals are also subject to administrative sanctions, may have to regularize their situation in Mexico, or may even be deported.

Temporary Permits to Leave and Return to Mexico

Foreign nationals with pending immigration processes may request a temporary permit to leave and return to Mexico in order to travel internationally. This permit may be requested at the INM or at port of entry, in case of urgent travel.

Foreign nationals that are processing a regularization in Mexico, that had a irregular document in Mexico (did not notify changes, did not renew in time, or did not leave Mexico in time) may not request a temporary permit to leave and return to Mexico and may only leave Mexico by cancelling their immigration process.

Further Information

Baker & McKenzie's *Mexico Immigration Manual* provides further information about Mexican business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Kingdom of The Netherlands

Executive Summary

Under Dutch immigration law, there are various procedures available in order to obtain the required work- and residence permits for foreign employees. These procedures range from temporary business visa to permanent residence permits. Often more than one procedure is worth consideration. Requirements and processing time vary by procedure.

Key Government Agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service (*"Immigratie- en Naturalisatiedienst"* or "IND") is part of the Ministry of Justice and, in general, is responsible for the decision in the visa applications and residence permit applications.

The Public Employment Service (*"UWV WERKbedrijf"*) handles work permit applications, with investigations and enforcement actions involving employers and foreign nationals being the particular focus of the Labour Inspectorate.

Current Trends

A new Act was passed on October 1, 2012 for family migration (*i.e.* family travelling together with the employee or travelling after the employee has arrived in the Netherlands) measures. The most important measures are:

- Family reunion and formation is only possible if the partners are married or have concluded a registered partnership. Unmarried partners cannot submit an application for family reunion or formation.

- Sponsors who have a residence permit can only bring a partner to the Netherlands if they have resided for at least one year in the Netherlands.

Business Travel

Not exceeding three months

Foreign nationals coming to the Netherlands from most countries are generally required to have a tourist or a business visa to enter the Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required, since the countries qualifying for visa waiver can change.

The visa is issued for a maximum period of 90 days, and is not extendible. Furthermore the holder of the visa may remain no longer than 90 days within 180 days within the Schengen Area, whose member states include: Austria, Belgium, the Czech Republic Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and Switzerland.

Visa Waiver

Passport holders of the following countries do not require a visa for a stay of 90 days or less: Andorra, Argentina, Austria, Australia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany (Federal Republic), Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania, Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay, Vatican City, and Venezuela.

Temporary Stay (MVV) Visa

A foreign national intending to remain in the Netherlands for more than three months must apply for a residence permit. The conditions for obtaining a residence permit depend entirely on the purpose of coming to the Netherlands. A foreign national wishing to work in the Netherlands must, usually, obtain three types of documents:

- A temporary residence permit (*"Machtiging tot Voorlopig Verblijf"* or "MVV"), which enables the holder to enter the Netherlands. An MVV is not required for citizens of the European Economic Area, the European Union and Switzerland, Japan, Canada, Australia, United States, Monaco, and New Zealand. Foreign nationals in the possession of these nationalities may enter the Netherlands without an MVV or business visa and may apply for a residence permit;

- A residence permit, which enables the holder to live in the Netherlands; and

- Under certain conditions, a work permit, which enables the holder to work in the Netherlands.

The foreign national can apply for the MVV visa in the country of residence, or the employer in the Netherlands or the person with whom the foreign national will be staying in the Netherlands can file the application in the Netherlands.

Processing takes between two weeks to four months, depending on the purpose of stay. For employment purposes, and if the Dutch employer applies by means of the expedited procedure, the MVV will usually be granted within 2-three weeks. During the MVV procedure, the foreign national is not allowed to enter or reside in the Netherlands.

Residence permit

A foreign national who intends to stay in the Netherlands for more than three months and who has gained entrance to the Netherlands, is

required to obtain a residence permit (*"verblijfsvergunning"*). A residence permit will not be granted if the foreign national was first required to obtain an MVV.

The residence permit is generally issued for a maximum of one year and if no changes of circumstances have occurred, it is extendible on a yearly basis. After having been in the possession of a residence permit for five years, the foreign national may apply for a permanent residence permit. This permanent residence permit is renewable every five years.

Training

A trainee is a foreign employee that will receive on-the-job training for a maximum period of 24 weeks. The purpose is to allow foreign nationals to receive training and experience abroad that is required for their function back in their home country.

A work permit application must be filed with the UWV. A detailed training program must be presented as well as declarations from the employer and the Dutch company that the trainee will not fulfill a vacancy in the Netherlands. Compensation for the training is required.

As soon as the foreign employee has gained entrance to the Netherlands and, if intending to remain for a period longer than three months (and up 24 weeks), a residence permit application must be filed. This residence permit will be granted as soon as the work permit has been issued.

Employment Assignments

An employer who wants to recruit an employee from outside the European Union ("EU") or European Economic Area ("EEA") usually needs to apply for a work permit for that employee. The Netherlands has temporarily opted out for the full mobility of the workforce in respect of two new EU members (Romania and Bulgaria), which means that those nationals require work permits.

There are different procedures for the work permit applications. The applicable procedure depends entirely on the applicant's specific circumstances, the nature of the current employer abroad, and the nature of the company offering the work in the Netherlands.

Generally, the Dutch employer must prove that the labor market has been scanned for workers who have priority. In this respect, the employer must prove that the vacancy has been reported to the UWV and, usually, to the European Employment Service ("EURES") for at least five weeks prior to the work permit application. Furthermore, the employer is required to advertise the job in a Dutch national newspaper, a professional journal, and must have engaged a recruitment office. If a company is unsure whether it must report the vacancy, the company is advised to consult an attorney. In order to avoid unexpected refusals, companies should be cautious about assuming that a job does not need to be reported to the various authorities.

The new Dutch Cabinet is considering tightening the rules more under this category. Work permits that are granted based on the state of the Dutch and European job markets will not be issued for more than one year meaning that employers will need to renew the work permit each year. The work permit will only be renewed if there is no alternative personnel enjoying priority in the Dutch and European labor market.

The application procedures for different types of employment require extensive preparation. This is not only necessary for the application as described above, but also for those who want to stay in the Netherlands as self-employed, for those who want to work in a university, the field of sports, or elsewhere.

The different types of procedures for which a recruitment period as stated above is not necessary, are mentioned in the below paragraphs.

Intra-company Transfer

Multinational companies seeking to temporarily transfer foreign employees to the Netherlands can do so under the intra-company transfer, if:

- The employee will receive an annual salary of at least EUR51, 239;
- The multinational company has affiliates in at least two different countries;
- The employee is in possession of (at least) a Bachelors degree; and
- The multinational company has a worldwide turnover of at least EUR50 million.

The work permit application generally takes between three-five weeks (nearer to three than five weeks) and will be valid for a maximum of three years (under the new proposed regulations, the Cabinet is considering lengthening this period to five years).

The residence permit will be granted within six months after the approval of the work permit and is valid for one year. The residence permit can be extended on a yearly basis as long as all the conditions (intra-company transfer) are still met with. As soon as the foreign employee has been in the possession of work and residence permits for three consecutive years, work in the Netherlands is permitted without having to be in the possession of a work permit. As mentioned above, the Cabinet is considering lengthening this period to five years.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Customer producer relationship

The "customer producer relationship" allows foreign nationals to work in the Netherlands on a work permit if:

- There is not an actual employer in the Netherlands, but only a customer;
- The employee will be sent to the Netherlands in order to supply/adapt/install goods on a contract basis as well as provide instructions on the use of the goods;
- The employee has been employed for at least one year;
- The salary of the employee is less than the value of the supplied goods; and
- The supplied goods must be produced primarily by the employers company.

The work permit application will take three to five weeks and the work permit will be valid for a maximum of three years (this period can be lengthened to five years once the Cabinet makes a formal decision). The residence permit will be granted within six months after the approval of the work permit and is valid for one year. The residence permit can be extended on a yearly basis as long as all the conditions are still met. As soon as the foreign employee has been in the possession of work and residence permits for three consecutive years (please see the comments about the five year period above), work in the Netherlands is permitted without having a work permit.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Knowledge Migrant

As of 2004, skilled and highly educated foreign workers do not require work permits for employment. In order to define the so-called

"knowledge migrant," the choice has been made for one objective criterion - the salary. A knowledge migrant is a foreign national who will be employed in the Netherlands and receives an annual salary of at least EUR51, 239 or EUR37, 575,00 if age 30 years or younger. As of January 1, 2013, there will be a slight raise in the salary level condition. At this point it is not yet clear by how much.

An important requirement is that the Dutch affiliate must be admitted to the knowledge migrant regulation. The IND will first investigate whether there are any objections to the admittance of the affiliate. This procedure takes approximately two-three weeks after the IND has received a complete request for admittance.

After admittance, the Dutch affiliate may apply for the residence permits for employees who fulfill the salary criterion. The employee will receive a residence permit for five years, assuming that the passport and employment contract are valid for at least five years. Should this not be the case, then the residence permit will be issued for the shortest validity period mentioned in the employment contract or passport.

The employee may start working in the Netherlands upon receipt of the decision in the residence permit application. The spouse or partner of the employee may work in the Netherlands without a work permit as soon as the residence permit of the spouse or partner has been granted.

Self Employment

A foreign national can be classified as a self-employed person upon proof:

- Of ownership of more than 25 percent of the shares in a Dutch limited liability company or if the sole owner of a company; and

- That an essential Dutch interest will be served. This latter requirement is extremely difficult to fulfill and, as such, residence permits as a self-employed person are rarely issued.

Although a work permit is not required, a residence permit is. The residence permit will be issued as long as the company serves an essential Dutch interest. In order to judge this, the Ministry of Economic Affairs has developed a point system based on the level of education, experience as an entrepreneur, work experience, the innovative aspects of the business, *etc.*

Dutch-American Friendship Act

Under the Dutch-American Friendship Act, US citizens are allowed to remain in the Netherlands as a self-employed person without having to serve an essential Dutch interest. To qualify, the US citizen must be coming either to conduct trade and activities related to this trade between the Netherlands and the US or engage in a professional practice in which a considerable amount of money has been invested. In this context, it should be noted that "professional practice" does not include the free profession (*i.e.*, lawyers, dentists, doctors *etc*.).

The amount of money that is brought into the company is one of the determining factors as to whether or not to grant the residence permit. The following is applicable:

- General partnership ("vennotschap onder firma"). At least 25 percent of the firm capital, with a minimum of EUR4,500;

- Limited partnership ("vennootschap onder commandite"). For the managing partner, the same as the general partnership is applicable. Since the limited partner cannot be classified as a self-employed person under Dutch immigration law, limited partners cannot qualify;

- Private company with limited liability ("Besloten vennootschap"). At least 25 percent of the firm capital.

- Corporation ("Naamloze venootschap"). At least 25 percent of the firm capital is at least EUR45,000). The substantial capital must be at least EUR11,250; or

- One-man operation. A minimum investment of EUR4,500.

Other Comments

In addition to the employment-based permits, immigration to the Netherlands is possible through family-based immigrant permits or exchange programs.

Immigrants to the Netherlands are often interested to become Dutch citizens. This is possible after they have been in the possession of a Dutch residence permit for five consecutive years.

New Zealand

Executive Summary

With the current unemployment in New Zealand transferring of employees has to be justified by either being international transfers of key people and skills in order that it can be seen that the vacant position is not disadvantaging a New Zealand resident or citizen.

New Zealand does have skill shortages. There is always a shortage in the Education, Medical and Engineering professions. In addition there is also a looming trade skilled shortage with the rebuilding required after the Christchurch Earthquakes. This is more likely to impact 2012 once decisions have been made by Central and Local Government along with the Insurance industry on how the rebuild will proceed.

International employers who have a company or subsidiary registered in NZ should consider joining an elite group known as accredited employers to overcome difficulties with Immigration. The process speeds up processing of applications and provides visas for a period of 30 months with the applicant becoming eligible for a Residence application after holding their visa for two years.

Business owners have good opportunities of gaining Residence in NZ.

Investors are very welcomed with a number of different categories available. Some of these categories lead directly to Residence from inception.

Key Government Agencies

Immigration New Zealand under the Department of Labour is the Government department responsible for migration and entry into New Zealand. NZ Customs also have a role to play with some strict criteria relating to the movement of migrant household goods into the country. “Immigration New Zealand under the new Ministry of Business, Innovation and Employment is the Government department responsible for migration and entry into New Zealand”

Warning: Total lack of consistency of information provided by Immigration New Zealand between case officers and branches. Care needs to be taken that the right path is taken to avoid declines.

Inland Revenue is the Government tax department.

The Department of Internal affairs handles citizenship and the registration of births deaths and marriages.

Current Trends

The New Zealand Government has put emphasis on attracting migrants with the right qualification and experience to fill the skill shortage. In a country growing as quickly as New Zealand, there is an ongoing need for highly skilled and educated workers. As a way of encouraging such workers to make New Zealand their new long-term home and place of employment, New Zealand has streamlined the application and acceptance procedures for individuals and families that meet the criteria of what is called the "Skilled Migrant Category," however due to serious backlogs processing residence can take three to six months or longer.

The number of people approved for residence in the 2011/12 financial year was 47,749 compared to 48,128 for the previous year, and although down this still comes within the range of the Governments expectation of 45,00 - 50,000 pa. of the total for the period 25,224 of these were residence gained through the business/skilled streams and the balance through humanitarian/family streams.

The UK was the largest source country of Skilled Migrants followed by the Philippines and India. The Uncapped Family Sponsored Streams, showed China was the largest source country of approvals followed by the UK and Fiji.

Work approval numbers in the financial year to date were down 3 percent on last year.

> The number of applications through the labor market tested Essential Skills policy is down 6.56 percent compared to the same period last year.

Considerable net outward migration continues as New Zealanders leave to further their careers overseas, but the Christchurch earthquakes are creating a need for migrant trades people to work in the rebuilding of this city.

New Zealand's Immigration department has also combined the Long-term Skills Shortage List (LTSSL) with the Immediate Skills Shortage List (ISSL) to create the Essential Skills in Demand List, through which LTSSL categories and ISSL categories can be viewed together or separately. The lists help potential migrants determine which visa entry category is most applicable, based on experience and skills relevant to particular industries and regions. ISSL categories can be viewed together or separately, there is also a new list for the City of Christchurch earthquake rebuild, listing all the shortages of trades and professions required for the rebuilding of the city. The lists help potential migrants determine which visa category is most applicable, based on experience and skills relevant to particular industries and regions.

Business Travel

NZ does not have a Business Travel Visa. People from some countries do not need a visa to enter NZ for business trips, however they can V3.5 Business visitors

a. Business visitors who are not considered to be undertaking employment (see W2.2.1) may be granted a visitor visa, provided that they intend a stay in New Zealand for no longer than three months in any one year.

b. Business visitors who are not considered to be undertaking employment include the following:

i. representatives on official trade missions recognized by the New Zealand Government;

ii. sales representatives of overseas companies in New Zealand for a period or periods no longer than a total of three months in any calendar year;

iii. overseas buyers of New Zealand goods or services for a period or periods no longer than a total of three months in any calendar year;

iv. people undertaking business consultations or negotiations in New Zealand on establishing, expanding, or winding up any business enterprise in New Zealand, or carrying on any business in New Zealand, involving the authorized representatives of any overseas company, body or person for a period or periods no longer than a total of three months in any calendar year.

c. Business visitors who need to be in New Zealand for longer than three months in any one year, and all other business visitors, must apply for a work visa (see WS2).

Note: Business visitor instructions reflect New Zealand's international trade commitments (see E9).

People from some countries do not need a visa to enter New Zealand, however they can only attend meetings or be visiting on a look see visit to fall under this category,. Short visits are visiting for three months or less and are from a country in the list below, other requirements may apply.

Andorra	Argentina	Austria
Bahrain	Belgium	Brazil
Brunei	Bulgaria	Canada
Chile	Cyprus	Czech Republic
Denmark	Estonia	Finland

France	Germany	Greece
Hong Kong	Hungary	Iceland
Ireland	Israel	Italy
Japan	Korea (South)	Kuwait
Latvia	Liechtenstein	Lithuania
Luxembourg	Malaysia	Malta
Mexico	Monaco	Netherlands
Norway	Oman	Poland
Portugal	Qatar	Romania
San Marino	Saudi Arabia	Singapore
Slovak Republic	Slovenia	South Africa
Spain	Sweden	Switzerland
United Arab Emirates	United States of America	Uruguay
Vatican City		

Employment Assignments

Principal applicants coming to NZ for work reasons must designate a NZ employer who is responsible for them. The NZ employer is responsible for the individual and is liable for repatriation at the end of assignment, all medical and health costs and any other charges incurred during the period of time in NZ.

Limited Purpose

An individual who does not meet all the requirements for a specific purpose or visitor can, at the indulgence of Immigration NZ, be issued a Limited Purpose visa. The limited time would be for 12 months or under. The individual would have to leave the country on conclusion of the specified period without eligibility to extend.

Specific Purpose

An individual is required in the country for a period of limited time to work on a specific job within a company's employment. The limited

time depends on the time frame of the project. This permit can be extended if extra time is required to complete the specific reason they are being brought in for or changed to another visa once they are in NZ. Commonly used as inter-company transfers or specific contract within an industry group.

Essential Skills

Essential Skills will differentiate between occupations on the basis of skill level.

For an individual to gain a visa under this category it must be proven:

- there must be no New Zealand Resident or NZ Citizen workers available before an employer is allowed to recruit an overseas worker; and

- the terms and conditions of employment, including the paid hours of work, meet those of the New Zealand market and NZ Labor Laws.

Work to Residence Visa

The Work to Residence category allows you to get a temporary work visa as a step towards gaining permanent residence. Applicants may be qualified in occupations that are in demand in New Zealand, or may have exceptional talent in sports culture or the arts, OR

If you are highly skilled and qualified, meeting the points threshold, the opportunity exists with a Work to Residence Visa, to come into NZ, find a job relevant to qualifications, work three months for the employer and be granted NZ Residence.

Talent (Accredited Employers)

The objective of the Talent (Accredited Employers) Work Policy is to allow Accredited Employers to supplement their own New Zealand workforce in their core area of business activity through (i) the recruitment of workers who are not New Zealand citizens or residents

whose talents are required by the employer and (ii) the accredited employer having direct responsibility for those employees and their work output. (iii) The employer may employ someone who they consider has the skills they require to build their business but may not hold a formal qualification, and therefore give them a path to permanent residence.

Talent (Arts, Culture and Sports)

If you are considered to have an exceptional talent in a declared field of art, culture or sport where Immigration New Zealand is satisfied that (i) you have an international reputation and record of excellence in your declared field, (ii) you are still prominent in your declared field and (iii) your presence in New Zealand will enhance the quality of New Zealand's accomplishments and participation in the declared field of art, culture or sport.

Long-term Skills Shortage List (LTSSL)

The Long-term Skill Shortage List (LTSSL) is a list of occupations in which Immigration New Zealand, in consultation with Industry New Zealand, relevant industry groups and unions, has identified an absolute (sustained and ongoing) shortage of skilled workers.

Long-term Business (LTBV)

With the exception of two categories under the Investor, this is the only policy leading to permanent Residence that has no age limit.

The Long-term Business Visa (LTBV) category caters for self-employed business people who are interested in applying for residence under this category.

This category allows you to get a temporary work visa for 30 months as a step towards gaining permanent residence. Applicants must have previous run/operated their own business and be seeking to purchase a similar type of business or establish a new business in the same industry.

Entrepreneur Plus

Originating from the Long-term Business Visa, proving you have successfully established a business in NZ, investing at least NZD0.5 million in the business, working in the business and creating three full time positions for NZ Residents or Citizens – residence can be obtained more quickly.

Residence Visa

New Zealand is looking for skilled migrants with the right qualifications and experience, and English language proficiency, to fill skill shortages and to help the country grow and prosper in the future.

Skilled Migrant Category

The Skilled Migrant Category for residence allows skilled migrants to become permanent residents. It is the main path to residence in New Zealand.

Additional Paths to Residence

Investor 1 Or Investor Plus
Investing NZD10 million for three years, spending 20 percent of your time in each year or 44 days in NZ – residence path.

Investor 2
Prove you have a minimum of three years business experience, provide evidence of NZD1.5 million to invest over a four year period, plan on spending 146 days or more of each calendar year in NZ, be under the age of 66 years – path to residence.

Temporary Retirement Category
Visitors who want to stay longer in NZ can apply for a two year multiple entry visitor's visa. This approach is for applicants aged 66 and over. Required to hold comprehensive travel and/or health insurance for the duration of the stay.

Other Comments

The visa process for New Zealand has been simplified by the abolition of permits - in line with most other countries only visas are now issued clearing up the confusion between the two. The visa originally allowed travel to the country and a permit was issued for the stay, a visa now allows both entry and stay until the date stated.

On a recent study the five main reasons given for migrating to New Zealand were:

- Relaxed pace of life
- Climate or clean, green environment
- A better future for children
- Employment opportunity
- Friendly People

The New Zealand Government has recognized the need and importance of migrants receiving expert and professional immigration advice and has, specifically for this purpose, enacted legislation that requires all immigration advisers practicing or giving New Zealand Immigration advice and/or assistance with completion of documentation to be licensed (unless exempt) from May 2009. Licensing for Immigration Advisers. This new law is defined in the Immigration Advisers Licensing Act (IALA) which is managed by the Immigration Advisers Authority (IAA).

Similar to United Kingdom and Australia, Working Holiday Visas are available to nationals of certain countries and permit the holder to work for periods of six to 12 months depending on your country of citizenship (a further application for 12 months for UK citizens but with the right of working a total period of 12 months in the two year stay) while on holiday in New Zealand. Applicants must be under the age of 30.

All Migrants entering NZ are subject to health and character checks.

An offence occurs should a migrant be employed in NZ beyond the period of the visa or should the migrant change employers or job or location without applying for a variation of conditions.

NZ employers are subject to large fines for employing a person without a valid work visa.

Accompanying Family Members

For any accompanying family members of the principal applicant:

- The partner of the principal applicant is entitled to an open work visa to work in any occupation; and

- for any tertiary education undertaken by family members, they will be subject to the payment of International fees until such time as the permanent residence is granted.

Further Information

Baker & McKenzie does not have an office in New Zealand, but is able to coordinate global mobility services there through locally licensed immigration advisors, who assisted in the preparation of this chapter of the Handbook: Woburn International, +64 4 569 4861, www.woburn.co.nz.

The People's Republic of China

Executive Summary

Having become the world's second largest economy in 2010, the People's Republic of China ("PRC") remains the number one destination for multinational companies seeking investment opportunities in the Chinese market. From business trips to negotiate customer contracts to employment assignments to manage subsidiary manufacturing operations, most human resource managers must eventually, if not frequently, deal with PRC visa and work permit issues.

To encourage economic growth and firmly establish its role in the global economy, the PRC has comprehensive laws and regulations governing foreign nationals coming to do business (see "Current Trends" below). While the laws are generally national in scope, practice and procedure are often dictated by local government offices, giving rise to significant variation within the country.

The Special Administrative Regions (*e.g.*, Hong Kong and Macao) have retained their own immigration systems. Hong Kong is discussed in a separate chapter.

Key Government Agencies

The Ministry of Foreign Affairs operates the PRC diplomatic missions, consular posts, and other agencies abroad, which are responsible for processing visa applications.

The Divisions of Exit and Entry Administration of local Public Security Bureaus ("PSB"), which are under the Ministry of Public Security, are responsible for processing extension and change of visa applications domestically and foreign nationals' Residence Permit applications. The PSB also is responsible for enforcing applicable laws and regulations and carrying out penalties for non-compliance.

The local labor bureaus, which are under the Ministry of Human Resources and Social Security, are responsible for issuing Employment Permits and the overall administration of the employment of foreign nationals, as well as Hong Kong, Macao, and Taiwan ("HMT") residents and overseas Chinese (*i.e.*, PRC nationals with permanent residency in foreign countries).

The State Administration Bureau of Foreign Experts Affairs and its local counterparts are responsible for processing Foreign Expert Certificates, which give qualified foreign nationals the authorization to work in the PRC in lieu of Employment Permits.

Current Trends

In June 2012, the National People's Congress passed the *Law of the People's Republic of China on Entry and Exit Control*. The new law takes effect July 1, 2013 and supersedes the existing entry and exit control laws. In the coming months, implementing regulations are expected on key provisions, including the "talent" visa category introduced under the new law. Existing regulations governing the administration of the employment of foreign nationals, such as work permit procedures and requirements, also may be impacted by the implementing regulations. The guidance in this chapter is based on existing regulations but is subject to change once implementing regulations are issued.

Local rules and policies governing foreign nationals' Employment and Residence Permits vary by city and can change on a regular basis. For example, in Beijing, the PSB regularly audits Residence Permit applications. The PSB will not disclose the scope of each audit review or the audit triggers. The audits may include an on-site inspection and a request for proof of the sponsor's proper registration.

Documentation requirements also vary by city. For example, police clearance certificates issued in the foreign national's home country are required in some cities but not in others. Some, but not all, PSBs require kinship certificates (such as birth and marriage certificates) to be legalized. These documentation differences can affect the overall

processing time for a foreign national to complete the work authorization process in the PRC.

Business Travel

Business Visa

Foreign nationals who travel to the PRC for business visits, for speaking engagements, or to exchange knowledge on scientific and cultural topics, should apply for an F business visa.

Foreign nationals should apply for an F business visa at PRC consular posts, many of which require an official "invitation letter of duly authorized unit" or its equivalent issued from an authorized government unit in the city where the foreign nationals will visit. The most common types of F visas are as follows.

Type (or number) of Entry	Visa Validity	Duration of Stay Per Visit
Single	30 or 90 days	30 or 90 days
Double	90 days	30 days
Multiple	180 or 365 days	30 days

Visa Waiver

Currently, nationals of Brunei, Japan and Singapore may enter and stay in the PRC for a period of not more than 15 days without applying for a visa for the purpose of tourism, business, visiting relatives or friends, or transit.

Training

F Business Visa

There is no specific visa designed exclusively for training. Foreign nationals coming to the PRC for training of less than six months may

apply for an F visa. They may not be compensated locally and are not authorized to engage in productive, on-the-job training.

Employment Assignments

Z Work Visa

Foreign nationals who wish to work in the PRC must apply for a Z work visa. In addition, they need to secure an Employment Permit (or a Foreign Expert Certificate) and Residence Permit after entering the PRC on the Z visa. Before a foreign national may apply for a Z visa, the PRC host entity (typically, the employer) must first sponsor the foreign national for an Employment License or, under certain circumstances, a Foreign Expert License, as described below.

Employment License

Foreign nationals seeking employment in China must meet the following conditions:

- Be 18 years of age or older and in good health;
- Have professional skills and job experience required for the intended employment;
- Have no criminal record;
- Have a clearly-defined employer; and
- Have a valid passport or other international travel document in lieu of the passport.

In principle, foreign nationals who meet the above conditions are eligible to apply for an Employment License. However, the local labor bureaus may interpret the above conditions according to their own practice. For example, applications from foreign nationals over the age of 60 are in general not entertained. In many cities, a university degree plus two years post-degree, relevant work experience are deemed to be the minimum requirement for a foreign national

applying for an Employment License. In some locations, the foreign national even has to assume a managerial-level position or a post requiring special knowledge to be eligible for an Employment License.

The applicant is also required to undergo a medical examination. If the examination is completed at an approved hospital overseas, the medical report can be forwarded to the relevant health center in the PRC for verification. However, health centers in the PRC sometimes will not verify overseas medical reports and will require the applicant to complete a new medical examination in the PRC. Accompanying dependents 18 years and over also must complete medical examinations.

It is not necessary for a Resident Representative Office of a foreign enterprise to apply for an Employment License when appointing a foreign national as its Chief Representative or Representative in the PRC. The Representative Office must, however, seek authorization from the appropriate "approval authority" and register such approval, generally with the Local Administration for Industry and Commerce ("AIC"). Upon registration, a Representative Certificate will be issued to the Chief Representative and each of the other Representatives. Under governing regulations, Representative Offices may only register up to four Representatives, effectively capping the number of foreign Representatives.

Upon the issuance of an Employment License or a Representative Certificate, the PRC host entity may then apply for an official Z Visa Invitation Letter from the relevant authority - usually the local commerce bureau or the local commission of commerce. If the foreign national will be accompanied by family members (*e.g.*, spouse, parents or children under 18), Visa Invitation Letters should be obtained for them as well.

The Foreign Expert License

In lieu of an Employment License, some foreign nationals may elect to apply for a Foreign Expert License, which is issued by the PRC

National Foreign Expert Bureau or its local counterparts. Foreign nationals who apply for the license must be in good health, with no criminal record and meet the definition of one of the following categories:

- Foreign professional technical or administrative personnel who work in China to implement agreements between governments or international organizations.

- Foreign professional personnel in the areas of education, scientific research, news, publishing, culture, art, or health or sport. The foreign national should also have a degree higher than a bachelor's degree and more than five years working experience. For language teachers, a degree higher than a bachelor's degree and more than two years of working experience is required.

- Foreign nationals who hold a position higher than Deputy General Manager, or foreign senior professional technical or management personnel who enjoy the same treatment in enterprises in the PRC. The foreign national should also have a degree higher than a bachelor's degree and more than five years of working experience.

- Foreign representatives of overseas expert organizations or agencies for talented people.

- Foreign professional technical or management personnel in the areas of economics, technology, engineering, trade, finance, accounting, taxation or tourism, who have special skills that are urgently needed in the PRC.

Once the Foreign Expert License has been obtained, the PRC host entity may then apply for a Z Visa Invitation Letter from the relevant authority for the foreign national and accompanying family members.

Z Work Visa

Upon receipt of the Employment License/Representative Certificate/Foreign Expert License and the Z Visa Invitation Letter, the foreign national must apply for a Z work visa from the appropriate PRC consular post (usually in the foreign national's home country).

Post-Arrival Requirements

A Z work visa is single entry and typically valid for 90 days, during which time the foreign national must enter the PRC. Within 15 days of arrival, the foreign national holding an Employment License or a Representative Certificate must apply for an Employment Permit from the local labor bureau. The foreign national holding a Foreign Expert License should apply for a Foreign Expert Certificate instead.

Within 30 days of arrival and upon issuance of the Employment Permit or Foreign Expert Certificate, the foreign national and accompanying family members must apply for Residence Permits with the PSB. Residence Permits function as multiple-entry visas, replacing the single-entry Z visas.

Employment Permits and Residence Permits are employer and location specific. A foreign national may not work for other employers or reside in a location outside the area where the Permits are issued. If there are any changes in the registration items shown in the Employment Permit or Residence Permit, amendments must be promptly filed with the relevant authorities. If a foreign national no longer works for the employer, the Employment Permit must be de-registered with the local labor bureau while the Residence Permit should be cancelled with the PSB.

Other Comments

HMT Residents and Overseas Chinese

HMT residents who wish to travel to the PRC need not apply for a visa. Instead, they may use their Mainland Travel Permit for Hong Kong and Macao Residents or their Mainland Travel Permit for Taiwan Residents.

HMT residents are required to obtain a type of Employment Permit and, in some locations, a Residence Permit to work in the PRC. In some locations such as Shanghai, overseas Chinese may also be required to obtain a type of Employment Permit and Residence Permit.

Temporary Residence Registration

Foreign nationals, HMT residents and overseas Chinese 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 they move to a new residence or obtain new visas during their stay in the PRC, they are required to re-register with the local police station.

Philippines

Since 1989, the Philippines relaxed immigration policies for the benefit of foreign nationals who wish to work, invest, retire or obtain permanent residence in the Philippines.

Key Government Agencies

The Bureau of Immigration ("BI") is responsible for visa processing and the monitoring of the entry and exit of foreign nationals in the Philippines. Unlike in other jurisdictions, the work visa application process is usually and preferably initiated after the arrival of the foreign national in the Philippines as a tourist or temporary visitor.

The Department of Labor and Employment ("DOLE") is also involved in the process of authorizing a foreign national to work in the Philippines. The DOLE determines whether the foreign national is competent, willing and able to perform the requested services and issues an Alien Employment Permit ("AEP") to the foreign national.

The Department of Foreign Affairs, through embassies and consulates around the world, is responsible for granting entry visas to "restricted" foreign nationals.

Business Travel

Temporary Visitor/Tourist Visa

"Restricted nationals" are required to obtain a Temporary Visitor/Tourist Visa from the Philippine Embassy or Consulate in their country of origin or residence before entering the Philippines. In addition to a Temporary Visitor/Tourist Visa, "restricted" nationals must also hold valid tickets for their return journey to the port of origin or next port of destination. Department regulations require that their passports should be valid for a period of not less than six months beyond the contemplated period of stay.

An alien who wishes to extend his or her stay must obtain approval from the BI.

Visa Waiver

Non-restricted nationals are allowed to enter the Philippines without visas for a limited period, depending upon their nationality.

As of this writing, nationals from the following countries are allowed to enter the Philippines without a visa for a stay of 21 days or less: Andorra, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guinea, Guinea, Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kiribati, Kuwait, Lao People's Democratic Republic, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Solomon Islands, Somalia, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Vietnam, Zambia, and Zimbabwe.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding 59 days: Brazil and Israel.

Holders of following passports are allowed to enter the Philippines without a visa for a stay not exceeding seven days: Hong Kong SAR, British National Overseas (BNO) passports, Portuguese Passports issued in Macao, and Macau Special Administrative Region (SAR) passports.

If you intend to travel to the Philippines, we suggest that you check the Department of Foreign Affairs website (www.dfa.gov.ph) for the latest restrictions.

Visa waiver visitors are still required to comply with the passport and return ticket requirements stated above.

Employment Assignments

Pre-arranged Employment Visas/9(g) Visa

The most common work visa is the 9(g) visa. The 9(g) visa is available to foreign nationals who intend to occupy an executive, technical, managerial or highly confidential position in a Philippine company. It is also available to foreign nationals who proceed to the Philippines to engage in any lawful occupation, whether for wages or salary or for other forms of compensation where a *bona fide* employer-employee relationship exists. The petitioning company must establish that there is no person in the Philippines that is willing and competent to perform the labor and service for which the foreign national is hired, and that the admission of the foreign national will be beneficial to the public interest.

The foreign nationals' dependents who will join him in the Philippines are entitled to the same visa.

Special Non-immigrant 47(a)(2) Visas

The Philippine President is authorized to issue this visa when public interest warrants. The President, acting through the appropriate government agencies, has exercised this authority to allow the entry of foreign personnel employed in supervisory, technical or advisory

positions in Export Processing Zone Enterprises, Board of Investments registered enterprises, and Special Government Projects.

The employing entity must apply with the relevant government agency for authority to employ the foreign nationals. This visa is generally valid for an initial period of one year and is renewable from year to year.

The foreign nationals' dependents who will join him in the Philippines are entitled to the same visa.

Multiple Entry Special Visa

Multiple Entry Special Visas are available to:

- foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philippines to operate as such. The foreign personnel shall be issued a multiple entry special visa (also known as visa under Presidential Decree No. 1034) valid for a period of one year; and

- foreign personnel of regional or area headquarters of multinational companies which are officially recognized by the Philippine Government.

These foreign nationals, 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.

The Holder of this visa is exempted from obtaining an AEP from the DOLE as a condition to working in the Philippines.

Treaty Traders' or Investors' Visa

An alien investor is entitled to enter the Philippines as a treaty trader or investor 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 foreign national 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 the 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 the employer has invested, or is in the process of investing, a substantial amount of capital.

"Substantial trade" refers to a non-nationalized business in which an investment in a substantial amount in Philippine currency has been made. It is important to note, however, that the size of the investment is merely one of the factors considered in determining what is deemed "substantial trade."

When granted, the visa extends to the investor's spouse and unmarried children below 21 years of age. It is generally valid for a one-year period subject to extension upon application of the investor.

Alien Employment Permit ("AEP")

In addition to acquiring the appropriate work or employment visa, a foreign national who wishes to work in the Philippines must, through the petitioning Philippine company, obtain an AEP from the DOLE.

The issuance of an AEP is subject to the non-availability of a person in the Philippines who is competent, able and willing to perform the services for which the foreign national is desired.

Under present immigration rules, a pending AEP application constitutes a provisional permit for the foreign national to work during the pendency of AEP and work visa application.

Short-term Employment

Special Work Permit ("SWP")

An SWP is a special permit issued to a foreign national who intends to work in the Philippines for a short-term not exceeding six months and occupy a temporary position. The SWP is issued for an initial period of three months and is extendible for a final period of another three months. It may also be obtained by a foreign national who intends to engage in a professional or commercial undertaking, which is not considered purely local employment, such as:

- professional athletes competing only for the limited period of their authorized stay;
- foreign nationals 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 foreign nationals, 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;
- foreign nationals authorized to search for hidden treasure;
- movie and television crews filming in the country; and

- foreign journalists pursuing their profession in the country.

Immigrant Visas

Generally, a foreign national may acquire immigrant status in the Philippines if his country reciprocally allows Philippine citizens to become immigrants in that country. This privilege is usually embodied in a reciprocity agreement between the Philippines and the foreign national's country. There are three types of immigrant visas: quota (or preference); non-quota; and special resident visas ("SRRV" and "SIRV").

The issuance of quota or preference visas is governed by an order of preference and requires possession of qualification, skills, scientific, educational or technical knowledge that will advance and be beneficial to Philippine national interest. They are issued on a calendar basis and cannot exceed the numerical limitation of 50 in a given year. The most common type of non-quota visa is one that is issued to a foreign national on the basis of marriage to a Philippine citizen.

The SRRV visa is available to foreign nationals and former Filipinos at least 35 years of age, and who deposit the minimum amount required by law with an accredited bank, to be invested in any of the specifically designated areas. The required deposit is USD50,000 for applicants who are 35 to 49 of age; while it is USD20,000 for applicants above 50 years of age (if the 50 year old applicant receives a monthly pension, the required deposit is USD10,000).

The SIRV 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 their required USD75,000 investment subsists.

A variation of the SIRV is issued to investors in tourist-related projects and tourist establishments. A foreign national who invests the amount of at least USD50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.

Special Visa for Employment Generation ("SVEG")

The SVEG is granted to a foreign national with controlling interests in an entity, firm, partnership or corporation that establishes, expands or rehabilitates a business activity, investment, enterprise or industry that enables the proportional employment of at least 10 full-time/regular Filipinos on a long-term basis in the Philippines.

A foreign national exercising managerial functions in an entity, firm, partnership or corporation that has the power to hire, dismiss and promote employees may apply for the SVEG, provided that they are nominated and their SVEG applications are endorsed by such entity, firm, partnership or corporation.

Naturalization

It is possible for foreign nationals who reside in the Philippines to naturalize and become citizens. Dual citizenship of former Filipino citizens is permitted.

Further Information

Baker & McKenzie's *Philippine Immigration Manual* provides further information about Philippine business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Poland

Executive Summary

All nationals of the European Union ("EU") and the European Economic Area Member States ("EEA"), and Switzerland (jointly "EU citizens"), enjoy freedom of movement and the right of residence, as well as being exempt from the obligation to have a work permit to be employed, in Poland.

Citizens of countries that are not members of the EU, EEA, or Switzerland (the "non–EU citizens") who wish to stay and/or work in Poland are subject to a different legal regime than the EU citizens. The non–EU citizens have to obtain an appropriate visa and/or a work permit, depending on the purpose of their entrance to Poland. Grant of any of this document usually depends on the citizenship and profession of the person applying for them.

As a general rule, in order to perform work in the Republic of Poland legally, a non–EU citizen should have a work permit issued by a Polish local authority – *"Voivode* (wojewoda)." Work authorization is required regardless of whether a foreign national is to perform work in Poland on the basis of an employment contract or on the basis of another type of agreement such as a service agreement, or is entrusted with the performance of any other kind of remunerated work within Poland. The exceptions to that rule are detailed in the part concerning employment assignments.

Key Government Agencies

Polish consulates abroad are responsible for processing Polish visas. When crossing the border a foreign national may be required to prove financial means sufficient to cover the cost of entry, stay, and exit from Poland. The decision to refuse entrance into the Republic of Poland may be issued by the Commander of the Border Guards, if the foreign national's details are included in the register of foreign nationals denied the right to stay within the Republic of Poland or the foreign national lacks a valid travel document or another valid

document certifying his/her identity and citizenship. The decision to refuse entry may be appealed with the Commander of the Border Guard Unit.

Applications for registration and issuance of residence cards are submitted to the Voivodeship Office (Department of Citizen's Affairs) competent for the place of residence of the foreign national in Poland. Applications for issuance of visas are in principle submitted to the Polish consular offices.

The Head of the Office for Foreigners is the central authority of the Polish central government administration competent for handling all matters connected with foreign nationals' entry into, transit through, residence in, and leaving of the Republic of Poland, granting to foreign nationals the refugee status, asylum, tolerated stay and temporary protection with reservation to the competencies of other authorities as provided for in the applicable laws. The Minister competent for internal affairs exercises supervision over activities of the Head of the Office for Foreigners.

In order to perform work in Poland legally, a non–EU citizen, should have a work permit issued by one of Polish Voivodes (*wojewoda*). The basic overview of the procedure for obtaining the work permit and categories of foreign nationals exempted from the obligation to have it, are presented below. All the information concerning the procedure and obligations are also available at the Social Affairs Departments of Voivode Offices.

Current Trends

After Poland's entry into the EU on May 1, 2004, all nationals of the EU Member States as well as the EEA Member States (including Switzerland) are allowed to enter Poland without having to obtain a visa – simply on the basis of a valid travel document (passport or national identity card) issued by his/her state of origin confirming the person's identity and citizenship.

The Member States of the EU (currently 27 countries) are: Belgium, France, Holland, Luxemburg, Germany, Italy (first countries of the United Europe), Denmark, Ireland, Great Britain (since 1973), Greece (since 1981), Spain, Portugal (since 1986), Austria, Finland, Sweden (since 1995), Poland, Slovakia, Slovenia, Lithuania, Latvia, Hungary, Czech Republic, Estonia, Malta, Cyprus (since 2004), Bulgaria, Romania (since 2007).

The Member States of the EEA are: all of the EU Member States, plus Iceland, Norway, Lichtenstein.

Switzerland is not a member state of the EU or the EEA.

A total of 29 states, including 25 EU states (except for Ireland, United Kingdom, Bulgaria and Romania) and four non-EU members (Iceland, Norway, Liechtenstein and Switzerland), are bound to the full set of rules in the Schengen Agreement, which deals with the abolition of systematic border controls among the participating countries. On December 21, 2007, Poland joined the Schengen Agreement, which means that as of that date there are no EU internal borders (on land and water) between Poland and other EU countries. The air borders at airports were internally opened for the other Schengen zone countries on March 30, 2008.

According to the Council Regulation (EC) No 539/2001 of March 15, 2001 (with further amendments) following on from the Schengen Agreement, today nationals of the following countries are not required to be in possession of a visa for entry and stay as tourists for a period not exceeding three months when crossing the external borders of the Schengen Agreement Member States: Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei Darussalam, Chile, Canada, Costa Rica, Croatia, Guatemala, Honduras, Israel, Japan, Malaysia, Mauritius, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Salvador, San Marino, Saint Kitts and Nevis, Singapore, South Korea, United States of America, Uruguay, Venezuela, Vatican, Special Administrative Regions of the People's

Republic of China: Hong Kong SAR and Macao SAR, and British Nationals (Overseas) not holding United Kingdom citizenship.

As a basic rule in Polish law, a foreign national who is a citizen of two or more states is treated as a citizen of the state whose travel document was the basis for entry into the Republic of Poland.

Business Travel

EU Citizens

EU citizens may enter and reside in the Republic of Poland for a period not exceeding three months, on the basis of a valid travel document or another valid document certifying his/her identity and citizenship. A family member of an EU citizen who is a non–EU citizen, may enter Poland on the basis of a valid travel document or a visa, if required. During the stay within Poland for up to three months, a family member who is a non–EU citizen must have a valid travel document.

A EU citizen has the right to stay in Poland for a period more than three months, if he/she fulfills one of the following conditions:

- He/she is an employee or a self-employed person in Poland (in this case the right to stay extends over family member staying in Poland with an EU citizen);

- He/she is covered by the general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the regulations on coordination, and is in possession of enough funds to provide for the cost of the stay in Poland without the need to make use of social insurance benefits (in this case the right to stay extends over family member staying in Poland with an EU citizen);

- He/she studies or receives vocational training in Poland and is covered by the general health insurance, is a person entitled to health insurance, or is a person entitled to health insurance

benefits on the grounds of the regulations on coordination on health insurance benefits financed from public funds and is in possession of enough funds to provide for health coverage in Poland without the need to make use of social insurance benefits (in this case the right to stay extends over the spouse and child supported by an EU citizen or by the spouse who are staying with or joining the EU citizen in Poland);

- He/she is married to a Polish national.

If the residence in Poland lasts for more than three months, an EU citizen is obliged to register the residence address in the Voivodeship Office competent for the place of residence in Poland. A family member who is a non–EU citizen is obliged to obtain an EU citizen family member residence card.

The application for registration of or issuance of the residence card for a member of an EU citizen's family must be submitted personally to the competent Voivodeship Office no later than on the next day following the end of three months from the day of entry into the territory of Poland.

Non–EU Citizens

Foreign nationals coming to Poland on short-term business trips will most likely use one of these types of visitor's visas:

- A Schengen visa – gives right of entry and continuous stay inside the Schengen member states or for several consecutive stays for a total period not exceeding three months within the period of six months, counted from the day of the first entry into the said territory.

- A national visa – gives right of entry and continuous stay in the Republic of Poland or for several consecutive stays for a total period not exceeding one year during the visa's validity period.

A national visa can be issued if the circumstances require a foreign national to stay for more than three months.

The examples of purposes of entry and stay for both the Schengen and national visa are:

- a visit;
- carrying on economic activity;
- conducting cultural activity or participation in international conferences;
- performing official tasks by representatives of authorities of a foreign state or an international organization;
- participating in proceedings for granting an asylum;
- performing work, receiving or providing education or training,
- enjoying temporary protection;
- participating in a cultural or educational exchange or humanitarian aid program, or program of holiday jobs for students.

The period of stay under the national visa must be defined within the limits specified above, according to the purpose indicated by the foreign national.

Training

According to the Polish law, there is no specific type of visa designed exclusively for training.

EU citizens have the right to stay in Poland for the purpose of studying according to the regulations described above.

For non–EU citizens the most suitable solution for training purposes is to obtain a visitor's visa (either uniform or domestic), depending on the type and length of training. The regulations concerning the domestic visitor's visa provide that this type of visa can be issued for the purposes of performing work, receiving or providing education and training, *etc*.

It should also be noted that EU citizens do not need any visa or work permit to receive training in Poland. According to the specific regulations, there are also several categories of non-EEA nationals who are not required to possess a work permit in Poland in connection with training, such as:

- trainers and qualified advisors participating in programs financed by the EU, other international organizations or by loans taken out by the Polish government;
- foreign language teachers fulfilling additional criteria;
- people who occasionally give lectures and presentations (not exceeding 30 days a year), if they have permanent residence abroad;
- students of Polish universities – during summer break – in July, August and September;
- students on internships arranged by international student associations;
- students within a framework of co-operation between Polish employment services and their partners abroad;
- foreign students on paid internships (for a maximum period of six months during one calendar year); and
- scientists in research and development institutions.

In case a non–EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of education, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but not longer than two years. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreign national is in Poland, application for that permit is made to the Department of Citizen's Affairs at the Voivodeship Office in the capital city of the respective Voivodeship.

Employment Assignments

EU Citizens

All nationals of the EU citizens are exempted from the obligation to have a work permit to be employed in Poland.

As long as EU citizens are in paid employment (or perform work in Poland as independent service provider or on other basis), they are subject to the same legislation for social contributions and benefit from the same advantages as national employees.

Every EU citizen may make use of public employment services.

Non–EU Citizens

According to Polish law, a foreign national wanting to work legally in the Republic of Poland must obtain – a work permit (*"pozwolenie na pracę"*), issued by one of Polish Voivodeship Offices, and a document confirming his/her legal stay in Poland with the right to perform work, which is either a: visa for the purpose of work (*"wiza krajowa pobytowa w celu wykonywania pracy"*), issued by a Polish consulate or a temporary residence permit in Poland for a specified period of time (*"zezwolenie na zamieszkanie na czas oznaczony"*) issued by the Department of Citizen's Affairs at the Voivodeship Office.

There are several categories of foreign nationals who are exempted from the obligation to obtain a work permit. These categories are in particular:

- all nationals of the EU Member States as well as the EEA Member States (including Switzerland) and members of their families;
- foreign nationals with a settlement permit;
- foreign nationals granted a long-term EC resident status in Poland and their spouses;
- foreign nationals granted a long-term EC resident status in another EU country, with a temporary residence permit in Poland, issued on the basis of employment;
- foreign nationals with a temporary residence permit in Poland issued on the basis of the declared intention to start business or study in Poland, marry a Polish citizen and other reasons;
- refugees, people granted temporary protection, people granted the tolerated stay status;
- foreign nationals holding a valid Pole Card;
- foreign nationals who are allowed to perform work in Poland without having to obtain a work permit according to international contracts and agreements binding the Republic of Poland and signed with the country of their citizenship;
- members of Military Forces stationed in Poland;
- journalists and other foreign mass media correspondents;
- artists (individual or in groups) participating in different kinds of artistic events (not exceeding 30 days a year);

- sportsmen performing for institutions registered in Poland;
- people posted by their foreign employers (provided that they have permanent residence abroad), for the period not exceeding three months, for the purpose of:
    - assembly, maintenance or repairs of devices, equipment *etc*., if the foreign employer is a manufacturer thereof;
    - acceptance of goods produced by a Polish company;
    - assembly and disassembly of exhibition stands.
- people temporarily posted by the EU employer to provide services in Poland;
- management board members of legal entities that have been registered under respective provisions in Poland or are in organization, if they stay in Poland on the basis of a working visa and their stay in Poland does not exceed six months within 12 consecutive months; and
- citizens of neighboring countries, for the period not exceeding six months within the period of 12 months on the basis of the future employer with the intent to employ such person.

A work permit is a specific type of authorization issued following an investigation by labor authorities into the reasons for employing foreign nationals in Poland. There are several types of the work permits, depending on the position the employee would take or the place of seat of the employer (in Poland or abroad). As a rule, a work permit is issued if there are no Polish (or EEA and Swiss citizens) candidates to be found on the domestic market (work permit type A).

In general the procedure for obtaining a work permit consists of two stages:

- Obtaining the work permit by the employer; and
- Obtaining a work visa/residency card by the non-EU national.

Commencing work in the Republic of Poland without a work permit (first step of the above procedure) is strictly prohibited and may result in criminal liability of the individual concerned and the hosting entity employing the individual. Illegal employment (without the work permit) or other breach of the employment regulations is also likely to cause a two-year ban on obtaining of work permits by the employer concerned, as well as by the foreign national who broke the law.

A work permit is applied for and issued to an employer as permission to employ a specific, named, non-EU citizen, for a specific job, for a specific period of time. Moreover, if a foreign national performs work in various positions at the same employer, a work permit for each position is needed.

In case of the work permit type A, first, the Polish legal entity or person who wants to employ the non-EU citizen (the "Employer") undertakes to attempt to fill the vacancy with a Polish national or another person who does not require a work permit (EEA and Swiss citizens in particular). In order to do so, all reasonable efforts should be made. The Employer is obliged to make an announcement of a free vacancy in the labor agency – District Labour Office competent for the place in which the work is to be performed.

If there are no Polish or EEA (or Swiss) national citizens available suitable for the post, the Labour Office issues an appropriate confirmation to the employer in writing.

Once the Employer obtains the confirmation from the District Labour Office, it submits an application for issuance of a work permit for a foreign national, together with a copy of the confirmation, to the local immigration authority (the immigration section of the Voivodeship Office).

The Employer is obliged to provide in the application the personal details of the foreign national, the details of the passport document, and, if any, information on the foreign national's qualifications and professional experience.

Furthermore, the Employer must specify in the application the proposed post in Poland, the intended period of employment, and the legal basis of employment (*e.g.*, employment agreement, service agreement). All documents submitted to Polish immigration authorities must be in Polish. Therefore, certain documents, such as the foreign national's certificates and diplomas, will have to be translated into Polish by a certified translator.

After submitting the application form, the Voivode examines the application taking into account the local labor market situation – taking into consideration the confirmation from the District Labour Office.

In case the confirmation from the District Labour Office shows that there are not any Polish (or EEA and Swiss) candidates on the local labor market fulfilling the Employer's criteria, the Voivode issues the work permit.

The work permit is granted for a period not exceeding three years.

After having obtained the work permit, the Employer must deliver this to the non-EU citizen to submit when applying for the work visa.

In case a non – EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of work, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for less than two years, no longer than the time the work permit is issued for. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreign national is in Poland, application for that permit is filed with the Department of Citizen's Affairs at the Voivodeship Office.

It should also be noted that, after arrival to Poland, the foreign national is obliged to legalize residence in Poland with the administrative local authority at their temporary registered address in Poland.

The work permit is issued for a period not longer than the period of stay specified in the work visa or in the employee's temporary residence permit in Poland for a specified period of time (see "Other Comments" below).

The work permit document is issued in three copies, one for the Employer, one for the employee and one for the Voivode Office.

After that the Employer signs an agreement with the non–EU citizen for the time specified in the work permit. The contract should strictly reflect conditions in the work permit – as regards time, place of work, position, *etc*.

Change of work place requires immediate notification to the Voivode.

A domestic visitor's visa for the purpose of performing work may be issued to a non–EU citizen who presents a permit to work in the Republic of Poland or a written declaration of the employer of the intention to entrust the foreign national with the performance of work if no work permit is required. This type of visa is issued by the consul competent with respect to the place of permanent residence of the foreign national.

That kind of visa can be issued for the period of stay corresponding to the period indicated in the work permit, but no longer than one year. A foreign national who intends to perform in the Republic of Poland seasonal work for a specified time must be issued a domestic visitor's visa for the purpose of performing work for a period of stay corresponding to the period indicated in the work permit or declaration, but not longer than six months in the period of 12 months from the date of first entrance to Poland.

Security Contributions

According to Polish Law, there are four kinds of social security contributions that an employer and employee are obliged to pay in connection with the employment agreement.

As regards payment of social contributions for non–EU citizens, Polish Law states that that duty arises in the country in which the person is employed and where the work is being performed – *"Lex loci laboris."*

That means that the Employer employing a foreign worker (as an employee or an independent service provider) in Poland is subject to Polish social security laws and not the social security laws of the country in which the Employer entity might be located or which the foreign worker is a citizen of. The effect of this is that the foreign Employer who does not have its place of business in Poland is in principle obliged to register with the Social Security Agency and pay all the required social security contributions for any worker employed in Poland. There are several exceptions from the above rule, such as employees who were posted by their Employers (provided they have permanent residence abroad) to perform work in Poland for a specified period of time or nationals of countries which are parties to international agreements, recommendations, conventions and provisions binding on the Republic of Poland in scope of social contributions regulations.

EU law also stipulates that the social security contributions are paid in principle in the country where the work is performed.

Other Comments

All applications for visas and residence or work permits must be written in Polish on the official forms. Documents drawn up in languages other than Polish, attached to the application (if necessary), must be submitted with their translations into the Polish language by a sworn translator.

All foreign nationals staying in the Republic of Poland register on their own with the administrative local authority at their temporary registered address in Poland, if they do not stay at a hotel or at the host party's premises during their stay in Poland. In such a case this registration should follow an uninterrupted stay of four days in Poland at the latest. In order to be registered, a foreign national will be required to present the relevant work visa/residence or work permit or - in case of EU Citizens - a passport.

The national visa of a foreign national staying in the Republic of Poland can be extended if all of the following conditions are met:

- There is an important professional or personal interest of the foreign national or humanitarian considerations in favor of it;
- The events which are the reason for applying for visa extension were beyond the foreign national's control and could not be foreseen at the time when the visa was issued;
- The circumstances of the case do not indicate that the purpose of the foreign national's stay in Poland will be different from the declared one; and
- The circumstances against issuing a foreign national a visa do not occur.

The period of stay in the Republic of Poland on the basis of an extended visa may not exceed the period of stay envisaged for the given type of a national visa.

If a foreign national intends to stay in the Republic of Poland longer than the period of stay envisaged by the visa instead of extending the visa, the foreign national can apply for a temporary residence permit in Poland for a specified period of time. That document is issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but not longer than two years, and is issued usually with the connection of a different basis, such as:

- Holding a work permit or a written employer's declaration of the intention to entrust the foreign national with the performance of work if no work permit is required;

- Carrying on economic activity pursuant to the provisions applicable in this field in Poland, which activity is beneficial to the national economy;

- Intending to continue artistic activity;

- Participating in professional training or internship conducted within the framework of EU programs;

- Marrying a Polish citizen; or

- Other reasons specified in the Aliens Act of 13 June 2003 (Journal of Laws of 2006, No. 234, item 1694 with further amendments).

The legal stay in the Republic of Poland is also guaranteed by obtaining a:

- A settlement permit.

  A permit to settle is issued to a foreign national who:

  - is an underage child of a foreign national holding a permit to settle, and was born in Poland,

  - has been married to a Polish citizen for at least three years before filing the application and, immediately before that had continuously stayed in Poland for at least two years on the basis of a permit to reside for a specified period of time,

  - immediately before filing the application had continuously stayed in Poland for a period not shorter than ten years on the basis of a consent of tolerated stay or for five years in connection with obtaining the refugee status,

  - is a child of a Polish citizen who exercises parental authority over him/her.

- A long-term EC resident stay permit is granted to a foreign national who has stayed in Poland immediately before filing the application, legally and continuously for at least five years and who has:

  - a stable and regular source of income sufficient to cover the costs of maintenance for himself/herself and dependent family members,

  - health insurance within the meaning of provisions on natural health insurance or insurer's confirmation of coverage of the costs of medical treatment in Poland.

- A long-term EC resident stay permit can not be obtained by foreign nationals who, inter alia,:

  - stayed in Poland in order to undergo studies or professional training,

  - had consent for tolerated stay, asylum, status of refugee granted in Poland or enjoyed temporary protection or applied for one of mentioned instruments,

  - is/was an "au pair" worker, seasonal worker, worker delegated by a service provider for the purpose of cross – border provision of services.

  - A long-term EC resident status in another EU country, with a temporary residence permit in Poland, issued on the base of employment.

Foreign nationals holding a refugee status and people granted temporary protection or the tolerated stay status are also in the Republic of Poland legally.

Citizenship of the Republic of Poland can be granted by the President of the Republic of Poland. A foreign national is eligible to apply for citizenship after residing in Poland for at least three years on the basis of a permit to settle, long-term EC resident status, or right of a permanent stay and who has a stable and regular source of income in Poland as well as the legal title to the occupied dwelling or in other cases specified by the provisions of law.

Russian Federation

Executive Summary

Under Russian law an employer planning to employ foreign nationals who need a visa to enter Russia is required to obtain permit to hire foreign nationals, work permits and work visas for such foreign nationals before they may start performing their job duties in Russia. Currently, citizens of the majority of countries, including the USA, Canada, China, India, Japan, Korea, as well as all Latin American and European Union countries are required to obtain a visa to enter Russia. A work visa is generally issued for a period of one year.

Those foreign nationals who do not need a visa to enter Russia must also obtain work permits before they start their employment in Russia.

Foreign nationals who enter Russia on business visas have the right to participate in negotiations, training, *etc*., but cannot be legally employed prior to obtaining both a work visa and work permit.

The procedures for obtaining permit to hire, a work permit and a work visa invitation involve several consecutive steps, and take about four to five months to complete (if the quota for work permits has already been obtained). Additionally, as a precondition for obtaining permit to hire and a work permit, a company is to annually file an application for a quota for work permits for the following year before May 1. Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time for such procedures.

Importantly, the Russian migration legislation is currently undergoing significant amendments and changes, so the procedures involved can be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

Currently, the procedures for obtaining permit to work in Russia for foreign national employees are comparable in their complexity and duration to those in the US or Western Europe.

Key Government Agencies

A Russian visa can be obtained at a Russian consulate abroad on the basis of an official visa invitation issued by the Federal Migration Service of the Russian Federation, applied for and obtained by the inviting party, which in case of a work visa is the employer. The foreign national should present the original invitation together with other required documents (passport, application form, *etc*.) to the relevant Russian consulate in order to apply for a visa.

Generally, an employer planning to hire a foreign national who enters Russia under a visa regime needs to obtain the documents:

- permit to hire and use foreign employees ("Permit to Hire");
- an individual work permit for each individual foreign national employee ("Work Permit"); and
- a work visa invitation.

All these documents can be obtained from the Federal Migration Service of the Russian Federation.

Current Trends

Recently the Russian law regulating employment of foreign nationals in Russia has been amended. Most of the amendments have been effective since July 1, 2010.

The amendments introduce a special category of foreign employee - a "highly qualified foreign specialist." The main criterion for recognizing a foreign employee as a highly qualified foreign specialist is a salary level of two million rubles per year (currently approximately USD64,500) or more. Highly qualified foreign specialists can take advantage of a new simplified procedure for obtaining Work Permits and Work Visas.

To receive Work Permits for highly qualified foreign specialists their employers are not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain permit to hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for a highly qualified foreign specialist may run for three years, with the possibility of repeatedly extending it as long as the specialist has a valid employment contract. The valid territory for the Work Permit may include more than one region of the Russian Federation.

Business Travel

Ordinary Business Visa ("Business Visa")

Foreign nationals coming to the Russian Federation on short-term business trips may use an ordinary Business Visa. As a general rule, visitors with Business Visas visit Russia for the purpose of participation in key negotiations on business and economic matters, for professional training at Russian joint ventures or accredited representative offices of foreign commercial entities, or to attend exhibitions or other events. In all of these cases such business-purpose visits are assumed to be short.

There are three types of Business Visa:

- Single entry;
- Double entry; and
- Multiple entry.

Single and double-entry Business Visas may be issued for up to three months. A multiple-entry Business Visa may be issued for up to one year, but it can be used for a limited period of time only, as set forth below.

Currently any foreign national can stay in Russia on the basis of a one-year multiple-entry business visa – without having to leave Russia – for up to 90 days in a period of 180 days. Thus, the maximum period of uninterrupted stay in Russia on the basis of such a business visa is currently 90 consecutive days, and the maximum period of stay in Russia is 180 days in total per year. Every 90 days foreign nationals on a one-year multiple-entry visa have to leave the country. Upon re-entry they can stay in Russia for no longer than another 90 days.

Importantly, pursuant to the migration legislation a foreign national is prohibited from being employed or from working under a civil law contract based on a Business Visa. Therefore, in order to legitimately enter Russia for the purpose of being employed or to provide services under a civil law contract, a foreign national should hold a work visa and a Work Permit. Additionally, it is impossible to change the type of visa, *e.g.*, from a business to a work visa. Entering Russia with a Business Visa for the purpose of employment is considered a misrepresentation in declaring the purpose of visiting Russia. It is considered an administrative violation and is severely prosecuted if disclosed.

Visa Waiver

There are several narrow exemptions when a visa is not required for entry into the Russian Federation. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of all CIS countries except for Georgia and Turkmenistan;

- Permanent residents of Russia holding a permanent residence permit; and

- Refugees.

Some citizens of Georgia and Turkmenistan enter Russia under the visa-free regime. However, the situation with issuance of visas to citizens of Georgia is currently unclear due to the suspension of diplomatic relations between Russia and Georgia.

Employers do not need to obtain Permit to Hire foreign nationals who do not need a visa to enter Russia. However, prior to commencing work in Russia such foreign nationals should obtain individual Work Permits. When hiring such foreign nationals employers must ensure that they have a valid Work Permit for holding the job position for which they are hired (Please also see our comments below in the Sanctions for Infringement of Migration and Visa Law Requirements section).

Training

Foreign nationals visiting Russia to participate in professional training can obtain an ordinary Business Visa. As mentioned above, foreign nationals entering Russia under a Business Visa are not allowed to be employed or to work in Russia. Therefore, in the event a foreign national participates in on-the-job training, the hosting party should prepare a training plan and other formal documents confirming the educational nature of such training program. Furthermore, foreign nationals participating in such training programs should not be paid salaries; if they are, their participation in such training programs could be considered to be employment.

Employment Assignments

Generally, all employers operating in Russia who plan to conclude a labor or civil law contract with foreign employees who enter Russia under a visa regime must obtain the following:

- Permit to Hire - for the employer;

- Work Permit - for each foreign employee; and

- Invitation for a work visa - for each foreign national employee.

The current standard procedure for obtaining the above documents involves several consecutive steps, and takes about four to five months to complete. Accordingly, employment of a foreign national in Russia requires advance planning to allow sufficient time for the procedure.

The simplified procedure of obtaining migration documents for highly qualified foreign specialists is outlined in a separate paragraph after the description of a standard procedure.

Ordinary Work Visa ("Work Visa")

The current procedure for obtaining a Work Visa for a foreign national is briefly outlined below. The procedure may be used by Russian legal entities, accredited representative offices or branch offices of foreign firms.

The procedure for obtaining a Work Visa consists of the following four steps:

- Step One: The employer registers with the Federal Migration Service as an inviting party for visa invitation purposes, and obtains a registration card confirming such registration. This step normally takes at least 2-three weeks to complete. Under the requirements of the Federal Migration Service imposed on all applicants, the set of documents required for registration of the employing company, accredited branch, and all further visa support applications, should be filed by an authorized representative of the company or branch. Such representative should hold a relevant power of attorney issued by the employer. In case of initial registration, the presence of the employer's CEO/Head of Branch is required.

- Step Two: The employer obtains an Invitation for a single-entry visa from the Federal Migration Service. This step usually takes at

least 2-three weeks to complete. The maximum validity of the invitation is three months.

- Step Three: The foreign national planning to work in Russia obtains a single-entry visa at the Russian consulate in the country of the foreign national's citizenship or country of residence, provided that the foreign national has a document certifying the ground for the stay in such country for a period exceeding 90 days (*e.g.*, a residence permit). The single-entry visa is obtained on the basis of the invitation provided by the employer. If the foreign national obtained the invitation while in Russia, then the procedure is to leave Russia and apply to the respective above-mentioned Russian consulate abroad to obtain the single-entry visa. The foreign national's current Russian visa (if any) is to be cancelled by the Russian consulate simultaneously with the issuance of the new single-entry visa.

- Step 4 - The foreign national exchanges the Single Entry Visa for a Multiple Entry Work Visa upon arrival to Russia. The set of documents required for the exchange is submitted to the Federal Migration Service upon the foreign national's arrival in Russia.

Accredited representative offices of foreign firms may apply for Work Visa support only to their accrediting body. Accredited branch offices may also use such procedure. In this case, such representative/branch office of a foreign firm must first obtain a personal accreditation card for the foreign employee from the accrediting body, and then apply to the accrediting body to obtain an invitation for a single-entry visa from the Federal Migration Service.

This procedure is less time consuming and does not require the employer's preliminary registration with the Federal Migration Service for work visa invitation purposes. However, the foreign national should then obtain a single-entry visa at a Russian consulate abroad and then exchange it for a multiple-entry work visa upon his/her arrival in Russia (please, refer to Steps 3 and 4 above of the procedure for obtaining a Work Visa.)

The maximum duration of a Work Visa is one year, but it can be limited by the expiry term of other documents (*e.g.*, passport, Work Permit or personal accreditation card). Renewal of a Work Visa involves a less complicated procedure than its obtaining.

Permit to Hire and Work Permit

An employer is not allowed to employ a foreign national who enters Russia under a visa regime without a relevant Permit to Hire, and the foreign national employee is not allowed to start working without obtaining – in addition to the above-mentioned Work Visa – a Work Permit.

The total number of foreign nationals that can be legally employed in Russia each year, *i.e.*, the quota of foreign employees, is established by the Russian Government on an annual basis. Employers planning to employ foreign nationals in the following year should file information on their need for foreign employees with the Public Employment Service before May 1.

The Russian Government each year approves a list of professions/positions for qualified foreign specialists, to whom the quota requirement will not apply. Traditionally, this list is approved in the beginning of the year and includes job titles of chief executive officers/directors of almost all types of Russian legal entities. In particular, the list contains the following positions: general director and director of a joint stock company, director of a representative office, director of a factory, chairman and deputy chairman of an executive committee, director for economics, department director, information security engineer, *etc.*

Currently, an employer that plans to hire a foreign national who requires a visa to enter Russia should apply to the Federal Migration Service for Permit to Hire and a Work Permit using the so-called "one-window" system, and submitting all the necessary documents. The documents that should be filed with the Federal Migration Service include the following: (i) a legalized/apostilled copy of the foreign national's university degree certificate; (ii) original medical

certificates; (iii) a copy of the foreign national's passport; and (iv) draft employment agreement, *etc*.

The original medical certificates to be submitted to the Federal Migration Service to obtain a Work Permit should confirm that the foreign national does not suffer from any of the following: (i) leprosy (Hansen's disease); (ii) tuberculosis (white plague); (iii) syphilis; (iv) chlamydial (venereal) lymphogranuloma; (v) chancroid; (vi) HIV; or (vii) drug addiction.

Such medical certificates should be obtained by the foreign national at local medical establishments holding the relevant licenses. The foreign national employee is required to personally show up at one such medical establishment for medical tests, an examination, and an interview. The medical certificates can not be obtained abroad.

Importantly, the medical certificates have an effective term of only three months; therefore, they should be issued no earlier than three months before the expected receipt of the Work Permit from the Federal Migration Service.

However, prior to applying to the Federal Migration Service the employer needs to file information with the Public Employment Service on its needs regarding employees, *i.e.*, inform of the open vacancies of the employer. In the event the Public Employment Service provides the employer with a local candidate for any such vacancy, the employer would have to hire such candidate or prepare a motivated rejection of such candidate in order to be able to justify its need for a specifically foreign employee.

A further application to the Federal Migration Service can be submitted no earlier than one calendar month after the above-mentioned information on the need for additional employees is filed with the Public Employment Service.

The procedures for obtaining the Permit to Hire and Work Permits can be modified by the Federal Migration Service at any time, so it is

highly recommended to verify the procedures and documentary requirements in advance on a case-by-case basis.

A Work Permit is normally issued for a term of up to one year from the date when the Permit to Hire was issued, but it can be renewed for a shorter term. Renewal of a Work Permit involves the same procedure and takes the same amount of time as obtaining the first Work Permit.

A Work Permit is valid only for a single employing entity, in a single constituent region of the Russian Federation (*e.g.*, Moscow), and for holding a single job (*e.g.*, general director). Thus, two Work Permits would be required for a foreign employee holding two jobs in Russia, and a third Work Permit would be required if the employee changes employers, or is transferred to another job (*e.g.*, promoted) or to a different region in Russia (not on a business trip).

However, there are certain exclusions from the rule. They are established by the decree of the Russian Government and fall into two main categories:

- sending the employee on a business trip; and
- if the work is of a traveling character, or work is done en route (which must be specified in the employment agreement).

After obtaining the Permit to Hire and Work Permit, the employer needs to document the commencement of employment of a foreign national in accordance with Russian labor law requirements. Thus the employer should execute a Russian law employment agreement (in Russian or accompanied by a Russian translation), issue an internal HR order on the employee's appointment to a particular job position, make an entry in the employee's labor book on his/her hiring, complete the employee's personal data card (Form T-2) and arrange for other HR paperwork. All these documents must be issued in the Russian language.

Procedure for Obtaining Work Permits and Work Visas for Highly Qualified Foreign Specialists

As mentioned above, the Russian legislation on foreign nationals has been amended to introduce a special category of foreign employee - the highly qualified foreign specialist ("HQFS"). An HQFS can enjoy a simplified procedure for obtaining of a Work Permit and a Work Visa.

The main criterion for recognizing a foreign employee as an HQFS is a salary level of two million rubles (currently approximately USD 64,500) per year or more. Defining the required qualification level and the assessment of the competence of foreign employees as HQFSs is left to the employers themselves.

To obtain a Work Permit and a Work Visa for the HQFS his/her employer is not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain Permit to Hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for the HQFS and a relevant multiple-entry Work Visa invitation are processed by the Federal Migration Service within 14 business days.

A Work Permit and a Work Visa for the HQFS may run for three years, with the possibility of repeatedly extending them as long as the HQFS have a valid employment contract. The valid territory for the Work Permit may include more than one region in the Russian Federation.

Certain employers, in particular, representative offices of foreign legal entities, non-profit and religious organizations, and those employers

who have been penalized for illegal employment of foreign nationals in Russia within the last two years, can not use the simplified procedure for obtaining Work Permits for HQFS.

Pursuant to the legislation, employers within 30 days of obtaining a Work Permit for an HQFS must provide the Federal Migration Service with confirmation that the HQFS has been registered with the tax authorities, and inform the Federal Migration Service on a quarterly basis on the fulfillment of the duty to disburse salary payments to such HQFS and, if applicable, on termination of the HQFS' employment or civil law contract or on the fact that he or she has been provided with long-term unpaid leave.

Work Permit Waiver

The current Russian legislation provides for several narrow exemptions when the employee is not required to obtain a Russian Work Permit. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of Belarus and Kazakhstan;
- Permanent residents of Russia holding a permanent resident permit;
- Employees of diplomatic and consular institutions of foreign countries in Russia, or employees of international governmental organizations enjoying diplomatic status, and their private domestic employees;
- Participants in the State Program for Assistance to the Voluntary Movement to the Russian Federation of Compatriots Residing Abroad and their family members;
- Employees of foreign legal entities (producers or suppliers), performing installation (contract supervision) works, servicing and/or repairs of technical equipment supplied to the Russian Federation by their employers;

- Journalists duly accredited in the Russian Federation;
- Students at Russian educational institutions working during vacations;
- Students at Russian educational institutions who work in their educational institutions in positions of auxiliary educational staff;
- Lecturers invited to Russia to give lectures in educational institutions, except for those persons who perform pedagogical activity in professional religious educational institutions (in ecclesiastical educational institutions); and
- Duly accredited employees of Russian representative offices of foreign legal entities on the basis of the principle of reciprocity under international treaties concluded by Russia with foreign states.

Other Comments

Migration Records

Under Russian law, the Russian migration authorities should be notified of the arrival of every foreign national entering Russia under any type of visa or enjoying a visa-free regime (*i.e.*, the migration notification requirement should be observed). Specifically, foreign national is to be registered for migration purposes either at the place of his/her residence (with the landlord acting as the hosting party) or at his/her workplaces (with the employer acting as the hosting party) by way of a filing formal written notice from the hosting party with the Federal Migration Service within seven business days from the arrival date (the day of arrival is included in this term, if a business day).

If a foreign national enters Russia for less than seven calendar days the registration is not required.

The registration of the HQFS or his/her family member is not required if the HQFS or his/her family member stays in Russia for less than 90

calendar days. Upon expiration of the 90-day period the hosting party should complete the registration of the HQFS and his/her family members within seven business days. After the HQFS and his/her family members are registered they may travel within the territory of the Russian Federation for a term of up to 30 days without necessity to obtain new registration. If they leave their registered address for a longer period they will need to be registered at their new temporary address.

If a HQFS owns residential property in Russia, he/she may be the hosting party for his/her family members (his/her spouse, children (including adopted children), children's spouses, parents (including foster parents) and their spouses, grandparents and grandchildren) and register them at the address of residential property that he/she owns.

Notification of a departure is not required. Deregistration is carried out by the Federal Migration Service automatically upon receipt of information from the border control authority that a foreign national has left Russia, or upon registration of a foreign national at a new address.

Other Types of Ordinary Visas to Enter Russia

Foreign nationals can obtain different types of visas depending on the purpose of their visit, but it is essential that the type of visa matches the actual purpose of the visit:

- an ordinary private visa, which can be obtained upon an invitation from a Russian citizen, a foreign national permanently residing in Russia, a Russian legal entity, *etc.*;
- an ordinary tourist visa, including a group tourist visa;
- an ordinary study visa, which can be obtained by students at Russian educational institutions;
- an ordinary humanitarian visa, which can be obtained by a foreign national entering Russia for the purpose of scientific, cultural,

sporting or religious contacts, charity activity, or delivery of humanitarian aid; or

- An ordinary refugee visa, which can be obtained by a person seeking refuge.

Sanctions for Infringement of Migration and Visa Law Requirements

Work Permit and work visa requirements are enforced by the Russian Federal Migration Service with increasing vigor. Non-compliance with these requirements may entail imposition of significant penalties envisaged by the Russian Administrative Offences Code. Moreover, administrative sanctions for violation of Russian migration rules may be imposed on the employer, its officers, and the foreign national employee, and include, *inter alia*, heavy fines, and, in the worst cases, deportation from Russia of foreign nationals who do not have the relevant work permits or have the wrong type of visa, and suspension of operations of the employer.

Set forth below are comments on the administrative sanctions that can be applied if immigration requirements are not complied with.

Provision of Services in Russia without the Required Permit to Hire and/or the Work Permit

The employer and/or its officers could become subject to the following administrative fines for violation of immigration requirements: A fine of up to RUB50,000 (currently approximately USD1,612) can be imposed on the employer's officers who are found to be responsible for use and employment of foreign nationals without the relevant permits; and a fine of up to RUB800,000 (currently approximately USD25,800) can be imposed on the employer for the same violation. Moreover, fines may be imposed for each violation separately, *e.g.*, one fine for the absence of a Permit to Hire, another fine for the absence of a Work Permit, *etc*. In a worst case scenario, violation of Russian migration laws could lead to the annulment of the employer's Permit to Hire, or even temporary suspension of the employer's activities for up to 90 days. At the same time, the foreign

national could become subject to an administrative fine of up to RUB5,000 (currently approximately USD 161), and even deportation from Russia. Deportation or imposition of administrative fines on foreign nationals may also cause them difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Comply with the Visa Regime Requirement

A foreign national entering Russia to provide services under a civil law contract or to be employed on the basis of a visa other than work visa (for example, a business visa) may be considered infringing the visa regime. The employer and/or its officers could become subject to the following administrative fines for this infringement:

- A fine of up to RUB50,000 (currently approximately USD1,612) can be imposed on the employer's officers responsible for either use of the above services or employment of the foreign national without having obtained the relevant visa therefore.

- A fine of up to RUB500,000 (currently approximately USD16,120) can be imposed on the employer.

- The foreign national could also become subject to an administrative fine of up to RUB5,000 (currently approximately USD161), and, in a worst case scenario, deportation from Russia.

- Deportation or imposition of administrative fines could also cause difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Notify the Migration, Employment, or Tax Authorities on Employment/Contracting of a Foreign national

Under Russian law the employer must notify certain local state authorities of the employment of a foreign national. Notification of an application having been made for a visa invitation or conclusion of an employment agreement with a foreign national should be filed by the employer with its local tax office within 10 calendar days of the date

of the application's filing or conclusion of the respective employment agreement.

Upon conclusion of an employment agreement with a foreign national who does not need a visa to enter Russia, the employer still needs to notify the local offices of both the Public Employment Service and the Federal Migration Service - within three business days of the employment agreement's conclusion, and also the local tax office - within 10 calendar days of its conclusion.

Failure to comply with the requirement to file the above notifications on employment of a foreign national can result in the imposition of additional administrative fines - in the amount of up to RUB50,000 (currently approximately USD1,612) on the employer's officers, and up to RUB800,000 (currently approximately USD25,800) on the employer or, in a worst case scenario, even administrative suspension of the employer's operations for up to 90 days.

Further Information

The procedure and the documentary requirements for the employment of foreign nationals in Russia are subject to constant change and should be verified in advance on a case-by-case basis.

Baker & McKenzie's Moscow office provides its clients with legal alerts on the latest amendments to the Russian migration and employment law on a regular basis.

The Kingdom of Saudi Arabia

Executive Summary

The process of employing a foreign national in the Kingdom of Saudi Arabia (the "Kingdom") is relatively complicated compared to other countries, but is expected to be simplified as a result of the Kingdom's accession to the World Trade Organization (the "WTO").

Citizens of member countries to the Gulf Cooperation Council ("GCC") - Saudi Arabia, Qatar, Oman, Yemen, United Arab Emirates and Kuwait - are allowed to enter into each member country's territory without the need to obtain an entry visa. In some cases, presenting a national identification card suffices.

Key Government Agencies

With respect to the employment of foreign nationals, the Ministry of Labor is responsible for work permits.

The Ministry of the Interior's Directorate General for Passports is responsible for issuing residence permits.

Once the required authorizations from the relevant agencies are obtained, the Ministry of Foreign Affairs through Saudi Arabian embassies and consulates will be the first contact point with the employee and will be responsible for the issuance of visas.

The process of employing a foreign national in the Kingdom is relatively complicated compared to other countries, but is expected to be simplified as a result of the Kingdom's accession to the WTO.

Business Travel

Business Visit Visa

A Business Visit Visa may be issued based upon a letter of invitation by a Saudi person for business reasons. The issuer of the invitation

letter ("Sponsor") would normally be required to sponsor the holder of the Business Visit Visa during the stay in the Kingdom.

The original purpose of Business Visit Visas is to allow foreign nationals to enter into the Kingdom for conducting limited business transactions with the Sponsor. By way of example, this would include negotiations of agreements, or holding business meetings generally. In practice, however, business visit visas are very commonly used to facilitate rendering short-term or intermittent contractual services (*e.g.*, managerial, professional, technical or consultancy services) and the practice has been historically tolerated by the Saudi authorities.

Beyond this limited scope, Business Visit Visas do not grant foreign nationals the right to work or reside in the Kingdom.

Visa Waiver

Citizens of Bahrain, Kuwait, Oman, Qatar and United Arab Emirates are not required to have visas to visit the Kingdom.

Training

There is no visa designed expressly for training, but the visas discussed for employment assignments might be appropriate in some circumstances.

Employment Assignments

As a general rule, foreign nationals may not come or be brought to the Kingdom to work unless the prior approval of the Ministry of Labor is obtained.

In order for the required permits to be issued, the following conditions must be met:

- The foreign national must have entered the country legally. For a non-resident, this would require obtaining the Work Visa;

- The foreign national must possess vocational skills or educational capabilities needed in the Kingdom that are either lacking or insufficiently available;

- The foreign national must have a contract with a Saudi employer or a non-Saudi employer authorized to do business in the Kingdom; and

- The foreign national must be under sponsorship of an employer.

In relation to this last requirement, a foreign employee may not leave the current position with his employer unless the approval of the current employer is obtained to transfer sponsorship to the prospective new employer. This rule governs all foreign nationals working in the country, regardless of their time in the Kingdom.

As a pre-requisite for obtaining the Work Visa, the employer should have an "immigration file" opened with the Ministry of Interior. The immigration file typically contains up-to-date information on the residency status of each of the employer's expatriate manpower. Once the immigration file is opened, an employer can thereafter obtain the Work Visa after obtaining the Ministry of Labor's approval, who will in turn instruct the Ministry of Foreign Affairs to have the relevant Saudi embassy issue the required visa.

At that point, the prospective employee will be required to present the following to the relevant Saudi embassy:

- A valid employment contract in Saudi Arabia (which has to be either with a Saudi citizen, company or a foreign entity licensed to conduct business in the Kingdom);

- Educational diplomas or certificates by the prospective employee;

- Medical reports; and

- Three recent passport photographs.

After the Work Visa is issued, the employee will be required to obtain a residency permit ("igama" or "iqama") and a work permit before commencing work in the Kingdom. The issuance of the aforementioned permits begins with filing an application with the Ministry of Labor. After its approval, the Ministry of Labor will forward the application to the Ministry of Interior for the issuance of the required residency permit.

Work Temporary Visa

Recently, Saudi Arabia introduced a new type of visa – the temporary visit work visa. The purpose of this visa is to allow the employee of a foreign entity, which has no presence in Saudi Arabia, to perform temporary work for its clients in Saudi Arabia.

Seasonal Employment Visa

This type of visa is available for those who wish to enter the Kingdom during the annual pilgrimage (*"hajj"*) season for the purpose of filling certain required positions.

The procedures for issuing a Seasonal Employment Visa starts with filing an application with the Ministry of Labor by the Saudi employer requesting permission to allow certain expatriate workers to enter the Kingdom during the pilgrimage season only for carrying out certain tasks. If the Ministry of Labor approves the application, the prospective employee will be required to present to the Saudi embassy in the relevant country a valid employment contract in applicant's country, in addition to an attestation by the worker that the purpose of coming to the Kingdom is solely for work and not the performance of pilgrimage.

Group Employment Visa

In order to facilitate bringing foreign workers to the Kingdom, it is currently possible for employers to apply for a Group Work Visa, also referred to as "block visa." The objective of the Group Employment Visa is to enable business owners to process multiple visas

simultaneously for certain positions without the need to initially identify the prospective employees by name.

The application is usually submitted on the basis of the number of workers required for each profession. Upon the approval of the application, the required number of visas will be issued and copies of which will be sent along with other documentary requirements to the relevant Saudi embassies. Thereafter, the prospective employee will submit the passport to the Saudi embassy in order to have the passport stamped with the required visa.

Other Comments

Foreign nationals who overstay their visit in the Kingdom are subject to monetary fine and incarceration pending deportation proceedings. It is important to clarify from authorities upon arrival as to the permitted lengthy of stay, which is not necessarily the same as the validity date of the visa itself.

Visitors to the Kingdom must abide by the country's Islamic laws and regulations, and respect its society's values and traditions.

A medical report showing that the foreign national is free of any contagious disease is generally required for work and residence permits.

Singapore

Executive Summary

Singapore's receptiveness to foreign talent is evident in its immigration laws, which offers many solutions to help employers of foreign nationals. Such solutions range from temporary, nonimmigrant visas to permanent, immigrant visas, although requirements, processing times, employment eligibility, and benefits for accompanying family members necessarily vary by visa classification.

Key Government Agencies

The Work Pass Division ("WPD") of the Ministry of Manpower ("MOM") facilitates and regulates the employment of foreign nationals in Singapore. This is achieved through the administering of three types of Work Passes, namely: Employment Passes, S Passes and Work Permits.

The Immigration & Checkpoints Authority ("ICA") is a government agency under the Ministry of Home Affairs. ICA has brought together the former Singapore Immigration & Registration ("SIR") and the enforcement work performed by the former Customs & Excise Department ("CED") at the various checkpoints. ICA is responsible for the security of Singapore's borders against the entry of undesirable persons and cargo through our land, air and sea checkpoints. ICA also performs other immigration and registration functions such as issuing travel documents and identity cards to Singapore citizens and various immigration passes and permits to foreign nationals. It also conducts operations against immigration offenders.

Other relevant agencies may include SPRING Singapore, a governmental board overseeing Singapore's productivity standards and quality ("SPRING"), the Economic Development Board ("EDB") and the Monetary Authority of Singapore ("MAS").

Current Trends

In the light of the West's current economic downturn, Asia, which has emerged relatively unscathed from the sub-prime debacle, is now an obvious destination for business professionals looking to relocate and participate in its booming economies.

Singapore, with its policy of welcoming foreign talent, is well placed to be the center of attraction. Besides offering ample financial opportunities, the city-state boasts of a high standard of living in the essential areas of health care, education, accommodation, order and security. As a further boost to Singapore's efforts to be an Asian hub, the authorities simplified its immigration laws to facilitate access by the globe-trotting talent.

Employers of foreign nationals are thus presented with the opportunity to grow and ride the Asian economic wave, with the possibility of reaping significant benefits. To do that, employers must first familiarize themselves with the immigration laws relevant for global mobility assignments. In this regard, this Singapore chapter offers an introductory insight.

Business Travel

Visit Pass

Foreign nationals visiting for short business negotiations and discussions may generally enter Singapore on a visit pass. Visit passes are issued on arrival in Singapore and the permitted period of stay is usually either 30 or 90 days. Extensions are considered on a case-by-case basis.

With the limited exception in some cases for Diplomatic and Official passport holders, foreign nationals holding travel documents issued by the following countries will require a valid Entry Visa prior to arrival in Singapore:

Level 1 countries

Armenia	Azerbaijan	Belarus
Georgia	India	Kazakhstan
Kyrgyzstan	Moldovo	Myanmar
Nigeria	Russia	People's Republic of China
Tajikistan	Turkmenistan	Ukraine
Uzbekistan	Holders of Hong Kong Document of Identity	Holders of Macao Special Administrative Region (MSAR) Travel Permit

Level 2 countries

Afghanistan	Algeria	Bangladesh
Egypt	Iran	Iraq
Jordan	Lebanon	Libya
Morocco	Pakistan	Saudi Arabia
Somalia	Sudan	Syria

Tunisia	Yemen	Holders of Palestinian Authority Passport, Temporary Passport issued by the United Arab Emirates and Refugee Travel Document issued by Middle-East countries

Miscellaneous Work Pass

- A foreign national who is involved in activities directly related to the organization or conduct of any seminar, conference, workshop, gathering or talk concerning any religion, race or community, cause, or political end;

- A foreign religious worker giving talks relating directly or indirectly to any religion; and

- A foreign journalist, reporter or an accompanying crew member not supported/sponsored by any Singapore Government agency to cover an event or write a story in Singapore.

Work Permit (Performing Artists)

This is applicable to foreign artistes performing at any Public Entertainment Licensed bar, discotheque, lounge, night club, pub, hotel, private club or restaurant for up to a maximum duration of six months only.

Work Pass Exempt Activities

Performances

- Performing as an actor, a singer, a dancer or a musician, or involvement as a key support staff, in an event supported by the Government or any statutory board.

- Performing as an actor, a singer, a dancer or a musician, or involved as a key support staff in an event. The performance venue can be any place where the public or any class of the public has access (gratuitously or otherwise). This includes any theatre or concert hall.

Note: Foreign artistes performing at entertainment outlets certified with a Public Entertainment License, *i.e.* bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants are required to hold Work Permits with six months' validity.

Journalism Activities

- Journalism activities (including media coverage for events or media tours) supported by the Government, or any statutory board constituted by or under any written law for a public purpose.

Sports

- Persons involved in a sports competition, event or training (*e.g.* sportsman, a coach, an umpire, a referee or a key support staff) supported by the Government or any statutory board constituted by or under any written law for a public purpose, other than being engaged as a sportsman of any Singapore sports organization pursuant to a contract of services.

Location Filming & Fashion Shows

- Activities relating to any location filming or fashion show (including involvement as an actor, a model, a director, a member of the film crew or technical crew, or a photographer).

Note: Foreign artistes performing at entertainment outlets certified with a Public Entertainment License *i.e.* bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants are required to hold Work Permits with six months' validity.

Seminars & Conferences

- Activities relating directly to the organization or conduct of any seminar, conference, workshop, gathering or talk, which:

    a. does not relate directly or indirectly to any religious belief or to religion generally;

    b. does not relate directly or indirectly to any race or community generally;

    c. is not cause-related or directed towards a political end, including involvement as a speaker, moderator, facilitator or trainer.

Provision of Specialized Skills

- Providing expertise or specialized skills:

    a. The commissioning or audits of new plant and equipment (including any audit to ensure regulatory compliance or compliance with one or more standards).

    b. In the installation, dismantling, transfer, repair, or maintenance of any equipment, processes or machine, whether in relation to a scale up of operations or otherwise.

Note: The expertise or specialized skills shall be of a kind that is not available in Singapore or is to be provided by the authorized service personnel of the manufacturer or supplier of the equipment.

Exhibitions

- Participation in any exhibition or trade fair as an exhibitor or a trader.

Note: This does not include trade fairs which require a Trade Fair Permit issued under *Section 35 of the Environmental Public Health Act, Cap 95*, or the activities at any makeshift stalls therein (such as Pasar Malams).

Arbitration or Mediation Services

- Providing arbitration or mediation services (*e.g.* as an arbitrator or a mediator) in relation to any case or matter which:

    a. does not relate directly or indirectly to any religious belief or to religion generally;

    b. does not relate directly or indirectly to any race or community generally;

    c. is not cause-related or directed towards a political end.

Junket Activities

- Activities relating directly to the organization, promotion or conduct of a junket in a casino and performed by:

    a. junket representatives employed by a junket promoter whose principal place of business is situated outside Singapore, or whose principal business activity is conducted outside Singapore. Junket representatives are required to hold a valid junket representative license issued by the Casino Regulatory Authority (CRA);

b. self-employed junket promoters whose principal place of business is situated outside Singapore, or whose principal business activity is conducted outside Singapore. Junket promoters are required to hold a valid junket promoter license issued by the Casino Regulatory Authority (CRA).

Tour Facilitation

- Activities relating directly to the facilitation of a tour and performed by tour leaders/tour facilitators employed by a foreign company *i.e.* a company whose principal place of business is situated outside Singapore or whose principal business activity is conducted outside Singapore.

Note: Tour facilitation refers to the provision of logistical support to the visiting tour group and ensuring that the activities in the tour itinerary are carried out according to plan, but does not include guiding tourists for remuneration.

Foreign nationals performing Work Pass Exempt Activities are required to submit an e-Notification to the MOM before engaging in these activities. They can perform these activities for the duration of their short-term visit passes subject to a maximum of 60 days. Beyond that, they will need to obtain a Work Pass. Those carrying out Work Pass Exempt Activities without notifying the Ministry of Manpower (MOM) can be prosecuted under the Employment of Foreign Manpower Act.

In addition, the waiver of Work Pass requirement does not exempt foreign nationals from having to comply with other specific legal requirements in Singapore.

Training Employment Pass

The Training Employment Pass is intended to cater to corporate trainees from overseas undergoing practical training in Singapore for professional, managerial, executive or specialist jobs for their eventual work back in their own country. The TEP is also applicable to foreign

undergraduates or graduates who wish to gain internship experience for professional or specialist jobs.

This pass is eligible to trainees from foreign offices or subsidiaries who earn a fixed monthly salary of at least SGD3,000 and undergraduates whose training attachment is part of their degree program and the undergraduate must be from an acceptable university. If the training is not part of the degree program, the undergraduate must earn a fixed monthly salary of at least SGD3,000.

Training Work Permit

The Training Work Permit is for unskilled/semi-skilled foreign trainee undergoing training in Singapore and also for foreign students studying in Singapore. The TWP is valid for up to six months.

Employment Assignments

In General

All matters pertaining to the employment of foreign nationals in Singapore come under the review of the MOM.

The MOM adopts a graduated approach towards foreign talent, offering the most attractive terms to those who can contribute most to the economy, to help draw them to Singapore.

Top talent including professionals, entrepreneurs, investors and talented specialists, such as world-class artists and musicians, are allowed to come to Singapore with their spouses, children and parents. This privilege, however, is not extended to all workers.

The Employment Pass

Both the "P" and "Q" Passes are categories of the Employment Pass.

The "P" Pass

"P" passes are issued to foreign nationals 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 whose fixed monthly salary is in excess of SGD8,000 and "P2" pass for those who earn more than SGD4,500 but less than SGD8,000 per month.

The spouse and children under 21 years of age of "P" pass holders (both "P1" and "P2") are eligible for Dependent's Passes (DP) to stay in Singapore. "P1" pass holders are eligible to bring their parents on the Long-term Visit Pass (LTVP).

The "Q1" Pass

"Q1" passes are meant for foreign nationals who earn a fixed monthly salary of at least SGD3,000 but less than SGD4,500 and possess acceptable degrees, professional qualifications or specialist skills.

"Q1" pass holders must earn a fixed monthly salary of at least SGD4,000 in order to qualify to bring in their spouse and children under 21 years of age under the DP.

The S Pass

The S Pass is meant for mid-level skilled workers who earn a fixed monthly salary of at least SGD2,000. Applicants are assessed on a points system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. Employers need to pay a monthly levy and also purchase medical insurance coverage of at least SGD15,000 per year for each S Pass worker. The MOM places a 20 percent quota on the number of S Pass workers a company may employ.

Similar to "Q1" EP holders, S Pass holders must earn a fixed monthly salary of at least SGD4,000 in order to qualify to bring in their spouse and children under 21 years of age under the DP.

Additional Information

The “P,” “Q1,” and “S” passes may be applied for a duration of up to five years however the MOM generally grants first-time applicants about two years. These work passes can be renewed six months before the expiry date. The duration granted in the first instance and for renewals is up to the discretion of the MOM.

EP Online

This is a one-stop portal for companies and organizations to perform transactions such as:

- New application for Employment Pass (excluding Sponsorship scheme), S Pass, Dependent's Pass, Long-term Visit Pass), Letter of Consent and Training Employment Pass (not applicable to employment agencies)
- Renewal application for Employment Pass (excluding Sponsorship scheme), S Pass, Dependent's Pass, Long-term Visit Pass, and Letter of Consent
- Upload relevant supporting documents for a work pass/related pass application
- Appeal for rejected applications
- Check application and renewal status
- Issuance of Employment Pass, S Pass and related passes
- Cancellation of Employment Pass, S Pass and related passes
- View rejection reasons for most of the unsuccessful applications
- Printing of application outcome letter and Issuance of Notification Letter

- Check organization's S Pass quota and tier information

Business employers who have not applied for S Passes before are required to set up a CPF account for the business and declare their business activity for the account (formerly known as Industrial Classification).

Work Pass Account Registration

Work Pass Account Registration is a portal for business employers to register for various Work Pass online accounts including EP Online, WP Online and also to Declare Business Activity.

An Administrative User must be appointed and this person should be either a Singapore Citizen, Singapore Permanent Resident or Work Pass holder. This is because a SingPass is required to login and only these groups of people are eligible to apply. For your convenience, the law firm will be happy to take on the role of Administrative User.

It will take about seven working days for the online account(s) selected to be set up and another seven working days for a one-time PIN to be delivered to the company's registered office address. Once the online account has been activated with the PIN, the Administrative User will be able to perform the various transactions immediately.

Applications submitted via EP Online takes approximately seven working days to be processed. The main benefit of EP Online is the processing time - it typically takes an average of seven working days from the day of submission before an outcome is known. Comparatively, manual applications can take up to five weeks. If a pass application is approved, the MOM will issue an In-Principal Approval (“IPA”) letter.

EntrePass

The EntrePass is an Employment Pass for foreign entrepreneurs who would like to start a new business in Singapore. It is jointly determined by the MOM and SPRING. Applicants are to submit their

applications to the MOM which will take about six weeks to be processed. The MOM will issue Employment Passes for successful applicants. All public queries and appeals can be directed to both the MOM and SPRING.

The EntrePass holder must be actively involved in the operations of the Singapore company/business. At the point of submission for the EntrePass application, the applicant must not have registered the business with the Accounting and Corporate Regulatory Authority ("ACRA") for longer than six months.

Renewal of the EntrePass is something which should be taken into consideration on the outset depending on the category of the EntrePass (P1, P2 or Q1). The lowest category Q1 for example requires the company to employ at least two full-time local employees and also demonstrate Total Business Spending of at least SGD100,000 in the last 12 months. This criteria increases the higher the category.

The proposed business venture must not be engaged in illegal activities. In addition, businesses not of an entrepreneurial nature (*e.g.*, coffeeshops, hawker centers, food courts, foot reflexology, massage parlors, karaoke lounges, money changing/remitting, newspaper vending, geomancy, tuition services) will not be considered for an EntrePass.

The Personalized Employment Pass

The PEP is a premium work pass for top-tier foreign talents. The difference between the PEP and the EP is that the latter 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 visit pass. In contrast, the PEP is linked to the individual and will be granted on the strength of an individual's merits. The PEP will allow holders to remain unemployed in Singapore for up to six continuous months to search for employment opportunities. PEP holders can

generally take on employment in any sector, except that some jobs may require prior permission.

The following groups of foreign nationals are eligible for the PEP:

- P1 pass holders whose fixed monthly salary is at least SGD12,000;

- Overseas-based foreign professionals whose last drawn fixed monthly salary was at least SGD18,000. They must not have been unemployed for longer than a continuous period of six months at the point of application.

If approved, the PEP will be valid for three years and it is non-renewable. PEP holders must earn a minimum annual salary of at least SGD144,000. A PEP applicant may bring his or her spouse, children under 21 years of age and parents.

PEP holders and their employers will need to keep the MOM informed of any changes in the PEP holders' employment status and contact particulars and will have to agree to reveal their annual basic salary to the MOM. The processing time for a PEP application is estimated to be about two weeks for online applications and five weeks for manual submissions.

PEP Online

Existing EP holders may apply for the PEP via PEP Online using their SingPass. Once submission has been made, it will take about two weeks for the application to be processed. The outcome will be posted to the applicant's residential address.

Work Permit or R Pass

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.*). 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 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 MOM and takes approximately one to seven days to process.

Other Comments

Global mobility today has wider connotations than merely working abroad. The phrase also encapsulates the idea of taking up permanent residence in another country and, ultimately, citizenship.

Non-Singaporeans who are below fifty years of age can become Singapore permanent residents ("PRs") by obtaining an Entry Permit (an application for an Entry Permit is an application for PR). Applications by foreign nationals who are fifty 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.

Eligibility is generally based on family relationships, employment or investment. Singapore uses a points system that considers the following factors:

- Type of work pass;
- Duration of stay in Singapore;
- Academic qualifications;
- Basic monthly salary;
- Age; and
- Kinship ties in Singapore.

To maintain permanent resident status, all permanent residents who intend to travel out of Singapore must first obtain Re-Entry Permits (REP) and must return to Singapore within the validity period of the permit. A Singapore PR will risk losing his or her PR status if he/she remains outside of Singapore without a valid REP.

A REP is usually valid for multiple journeys for a period of five years. A REP may not be issued or renewed if the permanent resident does not continue to be gainfully employed in Singapore or does not maintain sufficient connections with Singapore.

Singapore citizenship may be acquired by birth, descent, registration or naturalization. The waiting period for permanent residents to qualify for Singapore citizenship is currently two to six years. Applicants must be of good character, financially able to support themselves and their dependents, and intend to reside permanently in Singapore. The evaluation criteria takes into consideration how the rest of the applicant's family, 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. Dual citizenship is not permitted, so applicants must be prepared to renounce citizenship for all other countries.

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. 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 (NS).

A first generation permanent resident is automatically exempted from NS. 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 NS.

Slovakia Republic

Executive Summary

The Slovak Republic provides many solutions to assist employers of foreign nationals. These range from short-term Schengen visas to country-specific long-term visas. Often, more than one solution is worth considering. Requirements, processing time periods, employment eligibility and benefits for accompanying family members vary by visa classification and purpose of stay. The immigration process may be lengthy in some cases. Therefore, the application should be filed sufficiently well in advance.

Key Government Agencies

The relevant Slovak Office of Labor, Social and Family Affairs with respect to the placement of a job is responsible for the processing of a work permit. Slovak consular posts abroad are responsible for the granting of visas. Most non-EU country citizens' visas require that the foreign national obtains a work permit for his/her employment in a specific job, time, place and for a specific employer, *i.e.* before applying for a Slovak employment visa (temporary residence permit for employment purposes). Visas are issued by Slovak embassies and consulates abroad or, under extraordinary circumstances (*e.g.* humanitarian reasons), by the Slovak police at a border crossing point. The visa entitles the foreign national to travel through or to stay in the Slovak Republic and/or Schengen area for the period of validity of the respective visa. The length of stay and expiration date of the visa is specified on the visa sticker.

Current Trends

On 1 January 2012, new Act No. 404/2011 Coll., on Residency of Foreign Nationals, came into effect. It comprehensively regulates the residency and the placement of foreign nationals in the territory of the Slovak Republic. The Act on Residency of Foreign Nationals, for example, modifies the conditions and the processes regarding the application for individual residence permits, the obligations of citizens

of EU Member States and the obligations of holders of temporary, permanent and tolerated residence permits. Further, the Act introduces new types of temporary residence permits and increases their validity periods in some cases.

Border protection activities and enforcement of immigration-related laws that impact employers and foreign nationals increased once the Slovak Republic joined the EU in 2004. The issuance of visas has been recently harmonized by the EU Regulation called Community Code on Visas (Visa Code). Employers of foreign nationals unauthorized for such employment are now subject to civil penalties and the same with respect to such foreign nationals. In addition, it is more difficult to obtain a work permit and it must also be proved that it is impossible to employ a Slovak or other EU citizen for a respective job prior to such job being offered to a non-EU country citizen.

The regulations concerning the Blue Cards were implemented in July 2011. A "Blue Card" means a residence permit in the Slovak Republic for a period of up to three years for employment purposes in special cases, *i.e.* when a foreign national will be employed for a job position requiring higher qualifications (*i.e.* university education) and such position may be occupied by a foreign national who is not a citizen of the European Union. Applications for the issuance of a Blue Card should be filed at the respective consulate. If a member of a third country legally resides in the territory of the Slovak Republic, an application may then be filed at the police.

Some Obligations of Foreign Nationals

Slovak authorities require that non-EU country citizens possess a passport that is valid for three months beyond the intended stay in the Slovak Republic (*i.e.* beyond the applied visa/residency permit period). Additionally, proof of finances to bear the costs of stay and sufficient health insurance are required.

Foreign nationals are obligated to obtain health insurance within three days after receipt of their residency document and, if requested, they

have to prove that they are insured in the territory of the Slovak Republic. We recommend to thoroughly checking a list of accepted health insurance companies prior to arrival.

Also, the border police has a right to request evidence of funds available to pay for a stay in the Slovak Republic. Foreign nationals can demonstrate sufficient funds, for example, by means of cash or a bank account statement from the Slovak branch/subsidiary of a bank.

Generally, foreign nationals are obligated to inform, within three working days after their arrival, a competent police department of the commencement, place, and anticipated length of their stay (visitors staying in hotels are registered automatically).

Foreign nationals are obligated to report all changes to the local competent Foreigner's Police without undue delay. Changes that trigger reporting requirements include, for example,:

- Change of passport;
- Change of marital status;
- Change of nationality;
- Change of name;

Foreign nationals are also obligated to, upon prior request of the Police for example:

- Prove their identity with a valid passport or a residence permit, if requested by the Police, and prove that their stay in the territory is legitimate, prove sufficient financial means, and prove their purpose of stay and health insurance;
- Submit to such actions as taking fingerprints, video recording, medical examinations, *etc.* as provided by law, if requested by the Police.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Border protection activity and enforcement of immigration-related obligations have recently increased due to high unemployment rates. Employers of foreign nationals unauthorized for such employment are increasingly subjected to civil penalties.

Please note that there is no legal entitlement for the issuance of a work permit, Slovak visa or residency permit - it is solely at the discretion of the local authorities.

Schengen Visa: Airport Transit Visa

Generally, a person is able to stay in the international transit area at the Slovak airport without a Slovak visa while waiting for a connecting flight. However, some nationalities are required to have a valid visa, even if they do not leave the international transit area. The Airport Transit Visa only authorizes the holder to transit through the airport's international transit area.

Schengen Visa: Uniform Visa

A single-entry visa allows foreign nationals to enter, stay and leave only once. This visa may be used at any time as stipulated in the visa. A multiple entry visa allows foreign nationals to enter, stay and leave the country several times. This visa may be used at any time as stipulated in the visa until the permitted number of entries is reached. The period of validity should not exceed five years however.

Allowed purposes are tourism, visit of a person (invitation necessary), cultural purposes, sports purposes, study purposes, business trips, official (political) reasons and other purposes. The visa does not serve for employment- or business activity-related purposes.

The total duration of the stay of a foreign national in the territory of the Schengen Member States in such cases may not exceed 90 days

during a six-month period from the first date of entry into one of the Member States.

Schengen Visa: Visa with Limited Territorial Validity

This is valid only in the territory of the Member State which has issued the visa. Exceptionally, it may also be valid for the territory of more than one Member State, subject to the consent of each such Member State and, again exceptionally, this visa is generally granted on humanitarian grounds, on grounds of national interest or because of international obligations. The visa may also be issued when, for reasons deemed justified by the consulate, a new visa will be issued for a stay during the same six-month period to an applicant who, over this six-month period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of three months.

National Visa Type

A national (long-term) visa may be issued for a period longer than three months up to one year in relation to a granted residence permit - or in connection with the Slovak Republic's commitments under international treaties, or for the benefit of the Slovak Republic.

Temporary Residency Permit

For stays longer than 90 days during a six-month period, a foreign national must apply for a temporary residency permit at a Slovak Embassy or Consulate General prior to entering the Slovak Republic. A temporary residency permit is differentiated by purpose of stay, *e.g.* employment, business activities, joining a family member, study.

A special type of temporary residency permit is residency based on a "Blue Card" of the European Union.

The temporary residency permit is always issued for one purpose only and for the period of duration of such purpose. For example: if granted for employment purposes - for a maximum of two years, if granted for business activities purposes - for a maximum of three years, if granted

for the purpose of studies - for a maximum of six years. It may also be repeatedly renewed.

The reason for the stay must be proved when applying for this temporary residence permit.

Permanent Residence Permit

A permanent residence permit entitles foreign nationals, who have been granted the permit, to stay within the territory of the Slovak Republic and to travel abroad and back within the time period for which the permit has been granted by a competent Slovak police department. Holders of permanent residence permits are not obligated to obtain a work permit for the purposes of their work in the Slovak Republic.

Permanent residence is 1) permanent residence for five years, 2) permanent residence for an unlimited period of time or 3) residence of a member of a third state with a granted long-term residence of the European Union.

A permanent residence permit is granted upon request.

This is typically granted for foreign nationals who are family members of Slovak citizens, or to children of foreign nationals having a Slovak permanent residency permit.

Tolerated Residence

A tolerated residence permit is typically granted by a competent police department based on an application by a foreign national if he/she is prevented, by a reasonable and unforeseeable obstacle, from leaving the Slovak Republic at the time of expiration of his/her visa or residence permit, if there is an obstacle of his/her administrative expulsion (for example, if his/her life is endangered on the grounds of his/her race, nationality, religion and social group) and in a few other cases. Tolerated residence is awarded for not more than 180 days (and

for the necessary extent only); it may be repeatedly extended, if the reasons decisive for its award continue to exist.

Visa Waiver

EU citizens do not need a work permit or visa to stay or work in the Slovak Republic. They are only subject to the registration requirement. Some non-EU country citizens traveling to the Slovak Republic as tourists only are not required to obtain a Slovak visa, provided that their stay does not exceed the stipulated number of days. These individuals are only subject to the registration requirement.

Citizens of the following countries are allowed to arrive in the Slovak Republic for tourist purposes without a visa (*i.e.* if their stay is not for gainful/employment purposes and limited to a definite period of time, maximum of 90 days):

Albania, Andorra, Australia, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Bolivia, Bosnia and Herzegovina, Brazil, Brunei, Canada, Costa Rica, Croatia, Guatemala, Honduras, Hong Kong, Chile, Israel, Japan, Macao, Macedonia, Malaysia, Mauritius, Mexico, Monaco, Montenegro, Netherlands Antilles, Nicaragua, New Zealand, Panama, Paraguay, Salvador, San Marino, Seychelles, Singapore, Serbia, Saint Christopher and Nevis, South Korea, Switzerland, Taiwan, Uruguay, USA, Vatican and Venezuela.

For example, according to Slovak law, an US citizen entering the Slovak Republic for tourist purposes may only stay in the territory of the Slovak Republic and in the Schengen Member States for a period of up to 90 days within an six-month period. If he/she interrupts his/her stay in the Schengen territory (including the Slovak Republic) within these six months, the period of the stay in the Schengen territory (all countries together) is counted together with any days stayed in the Schengen territory within such six-month period (*i.e.* exempting only those days when he/she is out of the Schengen territory). However, any US citizen is prohibited from working within the Schengen territory without a “working” visa.

Work Permit

EU country citizens do not need a work permit or visa to stay or work in the Slovak Republic. They are only subject to the registration requirement.

Other foreign nationals may be employed, provided that they have been granted a Slovak work permit and a residence permit (for employment purposes). Certain exemptions apply.

The employer (recipient employer) may be a legal entity registered in the Slovak Republic, a foreign company's Slovak branch office, or a foreign company authorized to perform the respective business activities in the Slovak Republic. The employer must also prove that the job cannot be filled by Slovak workers or other EU nationals.

An application for a work permit for a foreign national is filed at the local Office of Labor, Social and Family Affairs. A foreign national, who is subject to the work permit obligation, initially applies for a work permit himself/herself or through his/her future employer using a work permit application form. Thereafter, the foreign national may use the approved work permit to apply for a visa at a Slovak Embassy or consular post abroad.

Work permits are valid only for employment, the specific job, site and the employer listed on the permit. A change in any of these will require a new work permit. The period of validity corresponds with the period of employment, but will be issued for a maximum of two years. Work may be commenced once the work permit as well as the residency permit become valid and effective.

There are some typical work permit exemptions. A work permit to employ a non-EU country citizen in the Slovak Republic is not required, for example, if the employee has:

- A Slovak permanent residency permit;
- A Slovak temporary residency permit for employment purposes;

- A Slovak temporary residency permit for study purposes and his/her work does not exceed 10 hours per week or its equivalent number of days or months per year;

- A Slovak temporary residency permit for research and development and his/her teaching activities do not exceed 50 calendar days per calendar year;

- An employment relationship in the territory of the Slovak Republic that does not exceed seven consecutive calendar days or in total 30 calendar days per calendar year based on the assumption that he/she is: 1) a pedagogical employee, academic employee of an university, scientific, research or development employee participating in a professional scientific event; or 2) performance artist participating in a performance event; or 3) a person ensuring supply of goods or provision of services or supplies goods or assembles in the Slovak Republic based on a commercial contract or provides guarantee or reparatory works;

- Been exempted from a work permit requirement based on an international treaty legally binding in the Slovak Republic;

- Been seconded to the Slovak Republic by an employer residing in another EU Member State within the services provided by this employer.

However, a visa is, in most cases, required no matter that the exemption from a work permit applies.

Other Comments

It is recommended to insist on a passport being stamped with an entry stamp at the Slovak border whenever a foreign national crosses the border, when possible.

All Slovak immigration procedures are time-consuming and administratively demanding; therefore, advanced planning is crucial.

Spain

Executive Summary

Although new regulations came into force on July 1, 2011, Spanish immigration regulations are not yet fully adapted to the great immigration increase that has taken place in the country; it offers several alternatives to the different situations an employer of a foreign (non-EU) national may encounter. These range from temporary, nonimmigrant visas to temporary work and residence authorizations and long-term residence authorizations. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and procedures for accompanying family members vary depending on the situation.

Key Government Agencies

There are several public institutions involved in the processing of visas and/or work and residence authorizations. The Ministry of External Affairs, Directorate of Consular Affairs (the "Ministry") is responsible for visa processing at Spanish consular posts abroad. Spanish Consulates abroad have the capacity of directly granting temporary visas for business visitors, students (if certain timeframes are not met by the immigration office in Spain) and tourists. Such types of visas would not entail residence status for the foreign national.

All residence visas or labor-related visas first require the approval of the Government Delegations, Sub-delegations or Autonomous Community Authority located at the province where the foreign national will live in Spain. Regarding non-lucrative or non-labor (*i.e.*, that do not authorize to work) residence visas, the applicant must file the petition at the Spanish Consulate abroad that will forward it for approval to Spain to the relevant Government Delegation/Sub-delegation/Autonomous Community Authority with jurisdiction over the applicant's future domicile in Spain. With respect to work related visas, they require first the approval of a work and residence authorization petition filed by the prospective employer in Spain.

Depending on the characteristics of the Spanish company employing the foreign national, the petition must be filed either at the "large companies unit" of the State Secretariat of Immigration of the Labor Ministry or filed with the Government Delegation/Sub-delegation/Autonomous Community Authority. Processing of work permits at the "large company's unit" (LCU) aside from faster processing of work permits, implies that the approval of the work permit will not be conditioned to the unemployment rate in Spain, nor to passing a labor market test. Companies may process the work permits of their top management foreign personnel or highly-qualified professionals if they meet the following conditions:

- This unit processes work and residence authorizations for companies that have either: (i) more than 500 employees in Spain; (ii) net turnover in Spain exceeds EUR200 million; or its equity in Spain is greater than EUR100 million or, (iii) the company's average gross foreign investment in Spain during the three years prior to the relevant application is not less than EUR1 million, or, (iv) the company is engaged in one of the following strategic industries: information and communications technology, renewable energy, the environment, water and water treatment, health science, biopharmaceuticals and biotechnology and aeronautics and airspace. The list may be extended in the future (the "old" regulations did not establish any strategic industries) or,

Furthermore, the work and residency permits of the following groups of individuals may be processed through the LCU:

- Highly-qualified foreign engineers and scientists hired by the National Government, Regional Governments, Local Authorities or entities engaged in the sponsoring and performing of research activities in which the above hold a majority interest;

- Foreign teachers hired by Spanish universities;

- Highly-qualified engineers or scientists hired to carry out research work or engage in development activities at reputable universities

and R&D centers or at R&D units belonging to companies established in Spain

- Internationally renowned artists or groups of artists participating in an international artistic project that makes a significant cultural or social contribution, as well as the employees required to carry out the project who travel to Spain to take part in performances deemed to be of cultural value.

The processing of work and residency permits by the LCU is now also open to executive or highly-qualified personnel hired to work on specific projects that meet certain conditions in terms of creation of employment; extraordinary investment or scientific and/or technological innovation considered and proven to be of public interest. A specific prior petition must be filed in these cases so that the LCU deems the given case eligible for processing there.

Inspection and admission of travelers is conducted by the Customs and Border Protection agency at Spanish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals is the focus of both the Labor Ministry Inspectorate and the Foreigner's Brigade dependent of the National Police department.

Current Trends

Border protection activity and enforcement of immigration-related laws that impact employers and foreign nationals have increased in Spain and in Europe. The Government is making bigger efforts in avoiding illegal immigration such as the significant increase in the amount of the fines for immigration sanctions. The new regulations foresee the implementation of computer systems at ports of entry to better control entries and departures of foreign nationals. Employers of foreign nationals unauthorized for employment are increasingly subjected to administrative and criminal penalties. Concerns about the impact of foreign workers on the Spanish labor market given the very high current unemployment rate in Spain and the lack of personnel to

handle the procedures are frequently the reasons to justify longer processing times and an increase in refusals of petitions. Employers should evaluate alternatives prior to hiring foreign nationals as they should not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, *etc.*, must also bear in mind the status of foreign employees and the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

The Spanish Law for Foreigners was modified early in 2010, and the new rules of implementation entered into force in early July of 2011. With the new rules of implementation, new criteria, policies and interpretation of the Law for Foreigners are being implemented by immigration offices. The general policy is the protection of local workforce and refusal of work permits for non-EU nationals that do not meet personal conditions in terms of family relation with Spanish nationals or foreign nationals who are legal residents in Spain, for instance, or who will not hold very senior positions in Spain. Also there is greater scrutiny on the sponsoring company's ability to offer a stable position to the foreign national in terms of its financial statements.

Business Travel

Foreign nationals coming to Spain on short-term business trips may use short-term or multiple short-term stay visas. In both cases, the purpose of the foreign national's stay in Spain must be either business our tourism but under no circumstance should it be work.

Unfortunately, the new regulations have again failed to clearly establish what activities are included in the term "business" as opposed to "work" although the line between one and another may be determined based on the duration of the foreign national's stay in the country. A business visitor may very well carry out a commercial and professional activity in Spain such as business meetings, conferences,

negotiations and general administration activities. Employment in Spain or work related activity is prohibited.

- Short-term stay visas. Valid for a maximum three month stay within a six-month period in Spain. It may be issued for single, double or multiple entries.

- Multiple, short-term stay visas. They authorize the foreign national to multiple stays in Spain but such stays may not exceed 90 days (continuous or cumulative) within a six month period. The visa is normally valid for a year but may exceptionally be issued to be valid for several years.

Visas may be extended in Spain but only if the visa authorizes a stay that does not exceed 90 days, for instance, when the visa granted to the individual is valid for one month only, the foreign national may try to obtain an extension prior to the visa's expiry but may only be granted an additional 60 days.

Unless the foreign national qualifies as a student, for stays over 90 days within a six-month period, the foreign national must obtain a residence visa.

To extend the visa, the foreign national must prove sufficient funds to cover expenses during the stay; medical insurance; accommodation; proof of intent to depart Spain (*e.g.*, a departure ticket) and, finally, proof of the business purpose of the stay in Spain.

Visa Waiver

The normal requirement of first applying to a Spanish consular post for the short-term stay visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as short-term stay or multiple short-term stay visas. The length of stay is up to 90 days within a six-month period only, without the possibility of a stay extension or status change. A departure ticket is required together with proof of financial means during stay in Spain, medical insurance and accommodation.

All EU and EEE countries together with the following non-EU/EEE countries are presently qualified under this program: Andorra, Argentina, Australia, Brazil, Brunei, Da Russa Lam, Canada, Chile, Costa Rica, Croacia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, Nicaragua, New Zealand, Panama, San Marino, Singapore, South Korea; Switzerland, United States of America; Uruguay Venezuela; special administrative region of Hong Kong (People's Republic of China) and special administrative region of Macao (People's Republic of China).

Training

If the purpose of the foreign national's stay in Spain is studying, or carrying out scientific or medical investigation or training related activities that are not professionally remunerated, it is appropriate to obtain a student visa at the Spanish Consulate in the country of origin or country of legal residence abroad.

The student visa applicant must provide proof of enrollment in official studies or investigation centers, private or public, with an approved attendance schedule and studies/training or investigation plan. The foreign national qualifying as a student must show sufficient funds to for support during studies or investigation (scholarships or personal funds). Once the student is in Spain, if the duration of his/her studies is over six months, an application for a student card must be submitted. The card will be valid for the duration of the studies/training program, up to a maximum one year. The student card may be extended if the studies/training or investigation continue. The student's spouse and minor children may also obtain a student visa and a student card.

Holders of student cards may work in Spain under certain conditions:

- Medicine and Surgery students; Psychology students; Pharmacy; Chemistry or Biology students holding a degree officially authorized by the Ministry of Culture and Education in Spain and that are enrolled to study specialization studies in Spain may carry

out remunerated work as required by such specialization studies. Such activity must be notified to labor authorities in Spain; and

- Holders of student cards may obtain a work authorization conditioned to the validity of the student card to work on a part-time basis or full-time but in this later case, the work authorization will be valid for a maximum three months, as long as the student card is valid for such time period.

Holders of student cards for, at least, three years may convert the student card into a work and residence authorization if the following conditions are met:

- The student must have finished his/her studies/investigation activities satisfactorily.

- The student mustn't have been granted a scholarship inherent to cooperation or country development programs (private or public).

- The conversion petition must be filed while the student card is still valid or during the processing of the extension to the student card.

Family members of students who meet the above requirements to convert their student cards into a work and residence permit may also convert their student cards into non-lucrative residence permits.

Employment Assignments

The options regarding the type of work permit to be obtained are the following:

Transnational Work and Residence Permits (formerly type "G" permits)

Applicable to inter-company transfers, when a multinational decides to assign an employee temporarily from one of its work centers located outside of the European Union (EU) to Spain (excluding transfers for training purposes); or for temporary assignments from a

company located out of the EU to a company in Spain pursuant to service agreements entered into by both companies.

This type of permit has maximum one year duration and may be extended for an additional year. However, in practice, if Social Security treaties between Spain and other countries enable maintenance of social security contributions for longer than two years, the transnational work permit may be extended in accordance to such social security treaty.

Certain conditions must be met as follows:

- The employee's length of services in the company must be of at least nine months, and of at least one year within the same field of activity;

- During the employee's temporary transfer, his/her employment relationship (payroll and social security payments) must be maintained in the transferring entity; and

- The employee who is being transferred should hold legal and stable residence in the country from which the employee is transferred prior to the initiation of the Spanish assignment.

Transnational work and residence authorizations are the only authorizations that allow maintenance of employment abroad, that is, the foreign national should not be hired locally in Spain and does not have to contribute to Spanish social security locally unless there is no Treaty between Spain and the country assigning the employee to Spain. In this later case, social security contributions must be paid locally either by the Spanish subsidiary or by the company abroad that will have to register as an employer in Spain for social security purposes.

With the new regulations, transnational work permits based on a service agreement with a Spanish company are subject to passing a labor market test.

Fixed-Term Duration Work and Residence Permits

These permits authorize the performance of activities which by their nature are limited in time. Certain situations may fit into such type of permits:

- Seasonal activities, with a maximum duration of nine months within a period of 12 months;
- Installation of industrial or electric plants, maintenance of productive equipment, start up procedures, *etc.*;
- Fixed-term activities performed by the top managers, professional athletes, performance artists, *etc.*; and
- Occupational training and professional practice.

With the exception of the permit for seasonal activities, which is limited to nine months as mentioned above, the general maximum initial duration of this permit is one year, although it may be extended for as long as the employee's fixed-term employment contract is also extended.

Fixed-term duration work and residence permits imply hiring the foreign employee locally by a company duly registered for employment and tax purposes in Spain.

Temporary Work and Residence Permit (formerly type B-initial permit)

Such permit has an initial one year duration and may be extended annually until the employee obtains a permanent residence permit in Spain (after five years of legal residence). At present, the alternatives for obtaining this type of permit are quite restrictive because the approval of these work permits is subject to a labor market test unless the employee or position offered meet certain conditions as follows:

- Personal conditions: The individual must be an ascendant or descendant of a Spanish national or the spouse of a foreign

national that holds a renewed residence permit in Spain or a national of Peru or Chile, or meet other specific personal requirements; and

- Special conditions related to the position in the Spanish company: The employee must be, for instance, a top management employee with ample power of attorney granted in the employee's favor to represent the Spanish company, or the employee must be a highly qualified employee whose position is directly related to the Spanish company's management or administration, or the employee must be a highly skilled specialist necessary to install or repair imported productive equipment, *etc.*

If none of these conditions are met, the approval of the work permit will depend on the unemployment rate in Spain, in which case the approval would only be issued if: the position offered in Spain is included in the "Difficult Coverage Job Position Catalog" (*"Cátalogo de Ocupaciones de Difícil Cobertura"*); or the Spanish company obtains a labor market test certificate issued by the Employment Office indicating that there are no unemployed people registered that meet the conditions required for the position.

Processing Stages

Stage 1. Submitting work and residence authorization at the Government Delegation/Sub-delegation/ Autonomous Community Authority or Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry.

Stage 2. Approving work and residence authorization. The immigration authorities may take from one - three months to adjudicate the work and residence authorization application. A notification of approval will be issued and, normally, sent by mail to the Spanish company sponsoring the work permit application. Such notification must be given to the employee.

Stage 3. Applying for work/residence visa. The employee will have 30 days as from the notification of approval is received to apply for and

obtain the work and residence visa at the Spanish Consulate in the country of origin or country of legal residence with jurisdiction over the employee's residence.

Stage 4. Issuing visa. Once the application for the visa has been filed, the Consulate may take from 48 hours to 30 days to approve and issue it. Once the visa approval has been notified to the employee, he or she will have 30 days to retrieve it at the Spanish Consulate's premises. Regulations establish that the employee should personally retrieve the passport with the visa. The ordinary work/residence visa is valid for 90 days and authorizes one entry into Spain/Schengen territory. The employee must enter Spain within the visa's validity.

Stage 5. Working in Spain and obtaining Foreigner's ID Card. Once the foreign employee enters Spain with the visa, employment is authorized. Registration with Spanish social security must coincide with the employee's start date with the company in Spain. If hiring will not be immediate upon the employee entering Spain, social security registration may take place within the three months following entry into Spain with the visa. The foreign employee will have 30 days as from registration with social security or entry into Spain (in the case of transnational work permits) to attend the relevant immigration office (*e.g.*, police station for foreigners) with jurisdiction over his/her residence in Spain to apply for the foreigner's ID card that is the final document that will serve for purposes of identification in Spain together with the individual's passport.

Family Members

Family members (spouse, children under 18 years of age or dependent ascendants when there are justified reasons to approve their residence in Spain) may obtain a residence permit that, in principle, does not authorize to work in Spain following the below procedures:

- Via the Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry (*"Unidad de Grandes Empresas")*.

- Via family reunion. The foreign employee who has applied for the renewal of the residence permit may apply for the family's residence authorizations at the Government Delegation/Sub-delegation with jurisdiction over the residence in Spain. If the residence authorizations are approved, family members will have 30 days to submit their residence visa applications at the Spanish Consulate located in their country of origin or country of legal residence. Once the visas have been issued on the applicants' passports they may travel to Spain and apply for their foreigner's ID cards.

- Via ordinary non-lucrative residence authorizations. Family members of top management employees may submit their visa applications at the same time the employee does (please see Stage 3 of the procedure to obtain a work and residence authorization in Spain). However, their residence visas will be approved three-four months after filing the applications. The reason for the delay is that their applications are forwarded to Spain so that the Government Delegation/Sub-delegation/Autonomous Community Authority approves the applications. The process of transmitting the documentation from the Spanish Consulate to the relevant authority in Spain is extremely delayed and currently takes about two months. In the future, applications will be transmitted electronically and, hopefully, delays will decrease significantly.

Of all three cases, only if the family members obtain their residence permits via family reunion would they be able to work in Spain directly without having to previously obtain a work permit. With respect to the other two procedures to obtain a family residence permit, they do not authorize to work but family members (in the case of children, they must be of legal age, which is 16, to do so) may obtain work and residence authorizations if they are offered a position by a company established in Spain. The new rules of implementation may change this aspect of Spanish regulations and establish that the residence permit of family dependents authorizes to work in Spain regardless the procedure followed to obtain it.

Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exceptions and residence authorizations that apply to Directors or professors of foreign or local Universities. Also, Spanish immigration regulations establish a way to obtain a work and residence authorization based on the years a foreign national has remained in Spain and on his/her insertion in Spanish society. In effect, work and residence authorizations based on exceptional circumstances, *"arraigo social,"* may be obtained if a foreign national has remained in Spain for more than three years and has been offered employment for more than a year.

Immigrants to Spain are often interested to later become Spanish citizens. Naturalization to citizenship requires as a general rule ten years of continuous residence after immigrating, however, this general period is shorter for nationals of countries such as: Morocco or Philippines (to five years); nationals of all South and Central American countries (to two years); and for the spouse of a Spanish national or the son or grandchild of a Spanish national (to one year). The processing of a Spanish citizenship petition via previous years of residence in the country may take more than three years.

Republic of Korea

Executive Summary

In general, whether or not a foreign national is required to obtain a visa to visit Korea depends on a variety of factors including nationality, the purpose and expected duration of stay, occupation and family relations.

Many nationalities are permitted to visit Korea without a visa. However, certain foreign nationals and usually everyone who wants to stay longer than 90 days (depending on your nationality) plus those planning to work must apply for a visa.

In general, applications for visas need to take place outside of Korea at a Korean consulate or at the consular section of the Korean embassy in the foreign national's country of residence.

"Visa" is a kind of endorsement or acknowledgment. The specific meaning of the term "visa" differs from country to country, although it is often used to mean either the 'permission to enter' a given country or the 'consul's recommendation for a foreign national national's entry request.' The latter definition is used in Korea, which means that even if a foreign national has received a Korean visa, such person can still be denied entry into Korea if an immigration officer finds any requirements unsatisfactory after inspection.

Key Government Agencies

Immigration policy is overseen by the Ministry of Justice through the Korea Immigration Service. The Korea Immigration Service has jurisdiction over immigration and residence matters in Korea and primary functions include supervision of visa affairs at Korean consulates abroad, entry and exit clearance service, management of foreign nationals' residence status and registration, determination of refugee status and investigation of unlawful foreign nationals.

The Korea Immigration Service consists of eight divisions, including Immigration Planning Division, Border Control Division, Visa & Residence Division and Investigation & Enforcement Division under the Director General of Immigration Policy, Immigration Policy Division, Nationality & Refugee Division, Social Integration Division, and Information & Statistics Team under the Director General of Nationality & Integration Policy.

Related ministries include Ministry of Employment and Labor, Ministry of Health and Welfare, and Ministry of Foreign Affairs and Trade. The Nationality Act, Act on the Employment, *etc.* of Foreign Workers, Immigration Control Act, Multicultural Families Support Act, and Framework Act on Treatment of Foreigners are the foundation of immigration policy in Korea.

Current Trends

After the 1988 Seoul Olympics, Korea opened its borders to the general public, which resulted in increased exchanges with foreign countries. The UN declared Korea as an official receiving country in 2007 and the number of foreign residents in Korea grew from 0.39 million in 1997 to 1.41 million as of September 2011 according to the statistics compiled by the Justice Ministry. The majority of foreign residents in Korea are temporarily visiting migrants or students and accounts for three percent of the country's total population.

As Koreans shun the so-called "3D" workplaces — those that are difficult, dirty and dangerous — small- and medium-sized enterprises (SMEs) in Korea need low-cost labor. Despite the increasing demand for and supply of migrant workers, the only system for supplying low-skilled migrant workers was the industrial training system. It was introduced in 1993 to enable SMEs to employ a total of 80,000 foreign nationals in the form of industrial trainees. The industrial training system has been criticized by the international community, since it is designed to channel migrant workers into labor-intensive jobs rather than train them and causes problems such as human rights violations and illegal employment. To solve these problems, the

employment permit system has been enforced since 2004 and the industrial training system was abolished from 2007.

As described in the new national plan for Immigration Policy, the Korean government claims that the policy line on foreign nationals needs to be changed into a strategic opening to tap into the talent and capital of the rest of the world and states that access to Korea will be improved for professionals, foreign investors, international students, and other highly-skilled people. Furthermore, Korean diaspora will receive preferred treatment over other foreign nationals when all the other conditions are the same and Korean diaspora will get more convenient entry/exit clearance services and employment permits.

Business Travel

Business Visitor Visa

Unless by terms of a treaty between Korea and the foreign national's country of nationality, the business visitor is required to obtain a short-term business visitor visa (C-2) prior to entry.

Nationals of those countries listed below with which Korea has signed a visa waiver agreement can enter without visas. However, such nationals can enter without visas on the condition that they will not engage in remunerative activities during their stay in Korea.

Countries under Visa Exemption Agreements (as of August 2011)

	Countries	
90 days (59 countries)	Asia (4 countries)	Thailand, Singapore, New Zealand, Malaysia
	America (24 countries)	Barbados, Bahamas, Costa Rica, Colombia, Panama, Dominican Republic, Commonwealth of Dominica, Grenada, Jamaica, Peru, Haiti, Saint Lucia, Saint Kitts and Nevis, Brazil, Saint Vincent and

	Countries	
		the Grenadines, Trinidad and Tobago, Suriname, Antigua and Barbuda, Nicaragua, El Salvador, Mexico, Chile, Guatemala, Venezuela
	Europe (28 countries)	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom.
	Africa & Middle East (3 countries)	Morocco, Liberia, Israel
60 days (2 countries)		Portugal, Lesotho
30 days (1 country)		Tunisia

Countries & Regions Granted Visa–Free Entry under Principles of Reciprocity and National Interest

		Countries
6 months (1 country)	America (1 country)	Canada
90 days (7 countries)	Asia (3 countries)	Hong Kong, Japan, Macao

		Countries
	America (1 country)	United States of America
	Europe (2 countries)	Slovenia, Italy
	Others (1 country)	Australia
30 days (43 countries)	Asia (2 countries)	Brunei, Taiwan
	America (6 countries)	Argentina, Honduras, Uruguay, Paraguay, Guyana, Ecuador
	Europe (10 countries)	Monaco,Vatican, Croatia, Albania, Cyprus, San Marino, Andorra, Bosnia Herzegovina, Serbia, Montenegro
	Others (25 countries)	Guam, Nauru, New Caledonia, Micronesia, Solomon Islands, Kiribati, Fiji, Marshall Islands, Palau, Samoa, Tuvalu, Tonga, Republic of South Africa, Mauritius, Bahrain, Saudi Arabia, Seychelles, Swaziland, United Arab Emirates, Yemen, Oman, Egypt, Qatar, Kuwait

Visa exemption has been suspended for ordinary passport holders from Pakistan and Bangladesh.

Individuals may enter Korea as a business visitor for a limited, defined duration provided that their purpose of visit is to conduct allowable business visitor activities. The visa is to be obtained from a Korean consulate with jurisdiction over the applicant's legal place of residence. The requirements to obtain a business visitor visa include having a residence and an employer outside of Korea, the duration of stay in Korea must not be longer than 90 days, not receiving remuneration (except incidental expenses such as accommodation

travel and meals may be paid by the host), having specific, realistic and pre-determined plans for the stay in Korea, and the period of the intended stay must be consistent with the intended purpose of the trip. The permitted activities as a business visitor include the following:

- attend business meetings or discussions;
- attend sales calls to potential Korean clients; and
- attend seminars or "fact-finding" meetings.

It is possible to extend a business visa while in Korea. The extension should be obtained from the Korean immigration authorities prior to the expiration of the initial visa. An extension is very discretionary and valid business reasons must be shown in order to extend a stay.

Work Visas

All foreign nationals who enter Korea must obtain an appropriate visa from the Korean embassy or consulate in their home country prior to entering Korea. A foreign national entering Korea for the purpose of employment must possess a valid employment visa. An employment visa is given only for jobs that require high-level skills and expertise.

In Korea, there are no legislative restrictions on the type of skills that may be brought in nor on the numbers of staff. However, under government policy, employment visas to foreign nationals are issued only for those jobs which require high skills and expertise, or for positions which could otherwise not be filled by Koreans. In practice, immigration officials sometimes — although increasingly less these days — declare that a given company has "too many" foreign employees for its stated business purpose.

Laws applicable to foreign employees are the same laws which apply to local employees. Principally, this would be the Labor Standards Act and related statutes. Expatriate employees are required to register with the immigration authorities within 90 days of entry into Korea on any long-term visa. No government approval or registration is necessary

with reference to the pay and benefits of expatriate employees. Several types of visas are of most common interest to foreign businesses with commercial presence or interests in Korea as briefly described below.

As for the general process for issuance of Korean Visa, the Head of Embassy/Consulate may issue visa at their discretion for the issuance-approved visa only. For visas that the Head of Embassy/Consulate is not cleared to issue on discretion, applicants must request for the approval to Minster of Justice. Korean visa, which lists applicants' status of stay and its expiration date, is attached to the passport and returned to the applicant.

General Work Visas

For business-related visits, both long-term and short-term work visas are available. In general, there are three long-term work visas: D-8, D-7 and E-7. Depending on the nature of the assignment/ employment, type of entity located in Korea, *etc.*, an appropriate visa type may be determined for each foreign national. Even if the duration of the stay in Korea is for a short-term or if the nature of the visit is for business purposes, a short-term business visitor visa (C-2) should be considered.

D-8 Visa

In general, D-8 long-term visa applies to executive, senior manager, specialist of a Korean subsidiary or joint venture who are being assigned from the foreign affiliate. In applying for a D-8 visa, for most nationalities (with exceptions), upon entering Korea with either no visa, tourist visa or a short-term work visa, a request for a visa status change from the entry visa to long-term work visa can be made.

D-7 Visa

In general, D-7 long-term visa applies to executive, senior manager, specialist of a branch or liaison office of foreign national enterprises in Korea who have been assigned from and worked with the head

office, branch or other affiliates for at least one year prior to the Korea assignment.

Special Work Visas

There are a few commonly applied special work visas in relation to the highly specialized areas of expertise. They include E-4, D-5 and D-9 visas.

E-4 Visa

Technological Supervision visa is granted to a foreign national who enters Korea with a view to providing expertise in the industrial technologies with an invitation from a Korean company.

D-5 Visa

This visa applies to a special correspondent from a foreign media or broadcasting companies on a mission to Korea.

D-9 Visa

This visa is known as treaty trade visa and generally applies to foreign technicians dispatched to Korea for supervision of shipbuilding and manufacture of industrial equipment. The technicians are generally dispatched from the foreign entity importing the ships or industrial equipment.

Family Associated Visas

In addition to applying for an appropriate work visas for foreign nationals who will be performing service in Korea, it is essential to have the visa processing done for their family members simultaneously if they will join them throughout their assignment in Korea. Family related visas include F-1, F-2, and F-3.

F-1 Visa

This is a long-term visiting visa provided for the visiting relatives, living with family (with special background), invited foreign

household servants, *etc.* F-1 visa is often requested by diplomatic personnel and D-8 visa holders (as there are restrictions) for inviting the household maids from foreign countries for taking care of their household affairs.

F-2 Visa

This resident visa is permitted to selective applicants.

F-3 Visa

This is the most common dependent visa allowed for family members of foreign nationals working in Korea. Generally, the period of this dependent visa runs the same as that of the work visa of the foreign national.

Special Resident Visas

There are two special resident visas which allow foreign nationals to live and work in Korea without a separate work permit. They are F-4 and F-5 visas.

F-4 Visa

This visa is given exclusively to a foreign national with Korean national background. With this resident visa, no employer sponsorship is required and working in Korea without obtaining other work visas is possible.

F-5 Visa

This is a long-term resident visa given to the foreign nationals meeting the list of qualifications, including making investment into Korea, holding long-term work visa for at least five years, *etc.*

F-6 Visa

This visa will be given to spouses of Korean nationals or spouses of permanent residents and is changed its name from F-2 to F-6 by new policy effective from December 15, 2011.

Training

D-3 Industrial Training Visa

The D-3 industrial training visa is generally used to allow foreign nationals to come to Korea to acquire skills or knowledge by training at public organizations or private companies.

The applicant must be a trainee from one of the following types of firms: (i) an enterprise with outward foreign direct investment under the foreign Exchange Law; (ii) an enterprise which exports technology abroad with the Minister of Justice's confirmation for the industrial training; or (iii) an enterprise which exports industrial equipment abroad under the Overseas Trade Law.

D-4 General Training Visa

The D-4 general training visa is for those that study Korean at university language institutes, those that are educated at the educational facilities other than academic research organization or educational organization under a D-2 visa and those that learn technology or skills at a national or public research organization.

This visa is generally for educational and research purposes and is effective for up to two years.

Other Comments

Scope of Activities and Employment for Foreigners Nationals Staying in Korea

Foreign nationals are granted rights to any activities granted by their visa, and may stay as long as their given period of stay. They are not, however, allowed to participate in any political activities except when specifically allowed by law. Foreign nationals seeking employment during their stay in Korea must have a visa that allows it, and may only work in workplaces designated by local or district Immigration Office. If they wish to change their workplace, permission must be received from the local Immigration Office prior to the change.

It is unlawful to hire, recommend, or arrange for hiring of foreign nationals who do not have appropriate visa status, and doing so is punishable offence under the Immigration Act. Therefore, one must check for the following before hiring any foreign national in Korea: (i) valid foreign national registration card; and (ii) appropriate visa status (since employment may be restricted depending on visa status).

Foreigner Registration

Foreign nationals intending to stay in Korea for more than 90 days after entry are required to submit an application to register as a foreign national with the Immigration Office within 90 days from the arrival date. Upon acceptance of such application, the foreign national will be issued an Alien Registration ID Card and registration as a foreign national will be affixed in their respective passports.

The following are exempt from registering as foreign nationals: (i) those carrying out diplomacy (A-1), official business (A-2), or conventions/agreements (A-3) and their family members; (ii) those undertaking diplomatic, industrial, or other important duties for the national security and their family members; (iii) those found to be unnecessary to register as foreign nationals by the Minister of Justice; and (iv) Canadians intending to stay for less than six months who have a cultural arts (D-1), religious affairs (D-6), family visitation (F-1), dependent family (F-3) or miscellaneous (G-1) visa.

If those who have D-4, D-5, D-6, D-7, D-8 or D-9 visa are transferred to another intra-company, they shall apply for changing foreign registration at the Immigration Office.

Fingerprinting for Long-term Foreign Residents

As part of strengthened immigration control efforts, Korea has started fingerprinting for long-time foreign residents in the country. As of July 1, 2011, all foreign nationals who are 17 years of age and over and desire to stay in Korea for 91 consecutive days or longer must register all 10 of their fingerprints at immigration counters under a revised immigration control law. Alien Residence Card is given to

foreign nationals who are going to stay in Korea longer than 90 days. When the Alien Residence Card is applied for at the immigration office, the applicant will be required to have their fingerprints scanned. The fingerprinting requirement for long-term foreign-residents who currently reside in Korea takes effect from January of 2012. This date does not mean that foreign nationals who currently reside in Korea are required to have their fingerprints scanned by January of 2012, rather it means that when such foreign nationals go to renew or extend their long-term visas after January of 2012, they will be required to have their fingerprints scanned at such time.

Change Status of Stay

Foreign nationals must receive permission to change the status of their stay if they want to participate in new activities which is not relevant or permitted for their current status. As a general rule, foreign nationals seeking to participate in activities not permitted under their current status must first depart from Korea, obtain a new status that corresponds with the desired status, then re-enter Korea with the newly obtained status. However, if it is possible to meet the requirements for the new status without having to depart from Korea, limited change of status can be made upon passing an examination.

In order to engage in activities not permitted by the current status of stay, a permission to change the status must be obtained from the local Immigration Office prior to engaging in the said new activities. Some examples of when one would need to apply for change of status of stay include, among others, the following: (i) a short-term (C-2) status foreign national wants to invest (D-8) in Korea; (ii) a D-3 status foreign national wants to get a job (D-7) after one year training; (iii) a D-4 status foreign national wants to study in Korea(D-2); and (iv) foreign nationals who married Korean wants to change residence status of stay (F-2) (applicable regardless of residence status of stay).

Re-entry Permit

All long-term (more than 90 days) visas are for a single visit. Therefore, all registered foreign nationals and foreign nationals who

were exempted from foreigner registration who intend to depart and re-enter Korean within the permitted period of stay should obtain a re-entry permit from the Immigration Office. A single reentry permit can be applied for at the airport immigration office on the departure date.

For those departing on that day, a single re-entry visa may be issued at the departure gate, regardless to the current status.

Dual Citizenship

Korea previously had a formal policy of not permitting dual citizenship. However, a revised nationality law passed on April 21, 2010 by the National Assembly, which came into effect on January 1, 2011, legalized dual citizenship for certain persons. Those persons include:

- A person who acquired Korean nationality by birth from either Korean parent;
- A person who acquired Korean nationality while under the age of 20 by acknowledgement, concomitant acquisition, reinstatement of nationality, naturalization, or under Article 7 of the Addenda (Special Cases of Acquisition of Nationality for Persons of Maternal Line By Adoption of Jus Sanguinis to Both Lines of Parents);
- Koreans who were adopted overseas and automatically lost Korean nationality as a result;
- Overseas Koreans 65 years of age or older;
- Foreign nationals who are married to Koreans and acquired Korean nationality from July 2, 2010, or later; and
- Foreign nationals who have exceptional talents or have made an outstanding contribution to Korea, as judged by a state committee governing nationality affair.

There are transitional provisions for those who fit under the first category but had already forfeited one nationality.

- Those who failed to make a choice and automatically lost Korean nationality can apply to have it restored before May 4, 2012.

- Those who choose Korean nationality have until 2016 to reacquire their foreign nationality.

Note that as of December of 2010, an application for dual citizenship can only be made inside Korea and requires the applicant to currently hold an F-series visa. This would normally be an F-5 visa (Permanent Residency) or an F-4 visa (for former Korean nationals and their descendants, including Korean adoptees) or F-2 or F-3 visa (for spouses of Korean nationals).

Online Information

The Korea Immigration Service runs the website www.hikorea.go.kr where foreign nationals can obtain relevant information and file e-applications. The website has information about living in Korea and administrative processes regarding entry, exit, sojourn, investment and employment. Non-Korean residents can electronically make an appointment with the Korea Immigration Service and apply for extension of stay and re-entry permission. They can also report changes in their employment status through the website's e-application channel. The Immigration Contact Center provides counseling services in 18 languages.

Sweden

Executive Summary

Foreign nationals must acquire the proper authorization in order to enter and/or remain in Sweden. These authorizations differ depending on the foreign national's country of origin and activity that will be performed while in Sweden. The Swedish government has created simpler rules in order to use the knowledge and experience that immigrants bring to the Swedish labor market.

Key Government Agencies

The Swedish State Department is responsible for receiving visa applications at Swedish embassies or consulates abroad. The visa applications are either processed by the Swedish embassy or consulate abroad or, in certain cases, by the Swedish Migration Board. The Swedish Migration Board is responsible for the processing of applications for work and residence permits in Sweden. Applications for work permits normally require that a certain form, an offer of employment, has been filled in by the Swedish employer before an application is handed in. In the offer of employment, the relevant union(s) shall state their opinion regarding the proposed salary, insurance cover and other terms of employment that will be offered.

A decision rendered by the Swedish Migration Board may, in certain cases, be appealed to the Migration Court. A decision rendered by the Migration Court may under certain circumstances, be appealed to the Migration Court of Appeal.

Inspection and admission of travelers is conducted by the Customs and Border Police at Swedish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals are handled by the Swedish Police.

The Swedish regulation concerning immigration and foreign nationals in Sweden is principally found in the Aliens Act (2005:716) and the Aliens Ordinance (2006:97).

Current Trends

According to Swedish regulations, non-Nordic and non-EU/EEA citizens are in most cases required to have a work permit to be allowed to work in Sweden. In order for the Swedish Migration Board to grant a work permit, an employer is obliged to comply with some requirements. As of January 2012 additional requirements apply to companies within certain industries, namely cleaning, hotel and restaurants, construction, trade, agriculture and forestry, automobile repair, service and staffing. The goal is to prevent people from being exploited on the Swedish labor market as much as possible within current legislation.

According to the Migration Board, the initiative to prevent foreign workers from being exploited by the Swedish labor market has proved to be successful. There has been a reduction in the number of work permits granted within trades where there has been an overrepresentation with regard to circumventing the system. In addition, it has become easier for serious businesses to recruit foreign workers through the possibility of becoming certified by the Migration Board.

Business Travel

Visa

A visa is a permit which is required to enter and/or remain in Sweden and the other Schengen countries for a limited period of time. A visa granted by any of the Schengen countries is valid throughout the Schengen area. However, in exceptional cases the visa may be limited for entry merely to the issuing country or certain countries and this applies primarily if the holder's passport is not approved by all Schengen countries.

A visa is usually granted for a stay in the Schengen states for a maximum period of three months during a six months' period. This entails that a person who has stayed in any of the Schengen states during three months cannot be granted a new visa until the six

months' period has elapsed. Nor is it possible to extend a visa permit. However, provided that special circumstances are at hand, a visa may be granted for up to one year.

Special circumstances may, *inter alia*, be at hand if a person needs to travel to Sweden several times during a year for business purposes or needs to visit children in Sweden. If special circumstances are at hand, it is possible to extend a visa. Such reasons are force majeure, humanitarian grounds or personal reasons, such as medical treatment and business visits. A visa may be granted for a number of reasons, *e.g.*, visiting friends and/or relatives, business or conference visits and visits for medical treatment.

The requirements for a visa may vary from time to time and between the different Schengen states. Up-to date information regarding the requirements may be found at the website of the Swedish embassies and consulates: www.swedenabroad.com.

The principle prerequisite is that the person applying for a visa has the intention to leave Sweden after the visit and that the purpose of the visit is the one specified in the application. Moreover, the person must have a passport that is valid for at least three months after the expiry of the visa. Another condition is that the person applying for a visa must have the monetary means to support him or herself during the stay and the journey back to the home country. The Swedish authorities have established that a person should have SEK450 (approximately EUR55) (2012) for each day during the stay. A person must also present proof that they have a medical travel insurance which covers any cost that may arise in conjunction with emergency medical assistance, emergency hospital care and transport to the home country due to medical circumstances. The insurance should cover costs of at least EUR30,000 (2012) and be valid in all of the Schengen countries.

In case a person applies for a visa for business or conference purposes, the applicant shall submit an invitation letter from the company or the person arranging the stay in Sweden. The invitation letter should, *inter*

alia, contain the following information: the invitee's personal details; the reason for the visit to Sweden; the duration of the stay in Sweden, and the person responsible for the invitee's support during the duration of the stay in Sweden.

Visa Waiver

Most non EU/EEA citizens are required to hold a visa before entering into Sweden. However, citizens of the following countries are currently (2012) exempted from the visa requirement: Andorra, Argentina, Australia, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, El Salvador, San Marino, Singapore, South Korea, Switzerland, Taiwan, the United States, Uruguay, and Venezuela.

Since the introduction of biometric passports, the exemption from the visa requirement has been extended to cover citizens from Albania, Bosnia, Macedonia, Montenegro, and Serbia if they are holders of biometric passports.

Employment Assignments

EU/EEA Nationals

An EU/EEA national who is, *inter alia*, an employee; a self-employed person; a provider or recipient of services; a student, or a person who has sufficient funds to support him or herself is entitled to reside in Sweden. This entails that such persons and their family members have a right to stay, live and work in Sweden for more than three months without a residence or work permit. However, should the stay in Sweden exceed three months, the EU/EEA national shall normally register with the Swedish Migration Board no later than three months after entering into Sweden. Citizens of Switzerland and their family members are not required to apply for a work permit but must apply for a residence permit. Nordic citizens do not need to register or hold a residence permit.

To register with the Swedish Migration Board, the EU/EEA national must file a special application form and enclose certified copies of a valid passport or a valid national identity card where the holder's nationally is stated. Furthermore, certain documents indicating that the person has a right to reside in Sweden shall be enclosed to the application. The documents required are dependent upon which ground the person is claiming as a right to reside under. The following applies for employees and self-employed persons.

Employees

EU/EEA nationals employed in Sweden must, *inter alia*, present a certificate of employment stating the period of employment and the form of employment. The certificate must be written and signed by the employer. It is recommended that a special form provided by the Swedish Migration Board is used for this purpose.

Self-employed Persons

As to self-employed persons, the following documents shall be affixed to the application: a registration certificate for the company and/or a notice of tax assessment for self-employed persons, so called F-tax certificate (Sw. *F-skattsedel*). Usually, further documentations are required and such documents may, *inter alia*, be: marketing plan for the company; lease agreement for the premises necessary; proof of previous experience and/or expertise within company's field of business; invoice from the company; receipts and/or invoices for materials purchased for the business; VAT accounts and transfer documents if the person has acquired an already established business.

Registration Procedure

The application may be sent by mail to the Swedish Migration Board or handed in by the person applying to one of the permit units of the Swedish Migration Board. Furthermore, employees may register directly on the Swedish Migration Board's website: www.migrationsverket.se.

Non-EU/EEA Nationals

Non-EU/EEA nationals and non-Swiss nationals who want to live and work in Sweden need to be granted a work permit. Provided that the duration of their stay in Sweden exceeds three months, a residence permit is also required. Furthermore, some foreign nationals must also hold a visa to enter into Sweden. The requirement to obtain a work and residence permit and a visa applies irrespectively of if the employee is employed by a Swedish company or not.

Exemption from the Work Permit Requirement

There are a number of exemptions from the requirement to hold a work permit. This applies to certain large categories of people, such as EU/EEA citizens. In these cases, the exemptions apply to all types of work. There are also exemptions for certain professional categories that only plan to work for a short period of time in Sweden. Specialists in an international group who are working temporarily in Sweden for the group (in total less than one year) and employees employed by an international group that will undergo practical training, on-the-job training or other in-service training at a company in Sweden which is part of the group (in total a maximum of three months during a 12-month period) are examples of certain professional categories who are exempted from the work permit requirement.

Advertisement of the Employment

Swedish, Swiss and EU/EEA nationals have preference over other nationals to obtain work in Sweden. For new recruitments, an employer shall make it possible for residents of the above mentioned nationals to apply for the vacant employment. The easiest way for an employer to do so is to advertise the employment with the Public Employment Service (Sw. *Arbetsförmedlingen*). The vacant employment will then also be accessible in EURES (The European Job Mobility Portal).

Requirements for Work Permit

In order to be granted a work permit, the following requirements applies: there must be an offer of employment from an employer in Sweden; the employee must have a valid passport; the employee must earn enough from the employment to support him or herself; the terms of employment have to be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry; the relevant union has to be given the opportunity to state an opinion on the terms and conditions of employment and the vacant position must, in case of new recruitment, have been advertised in Sweden and the EU. Family members may be granted a residence permit for the same duration as the term that the residence and work permits is granted.

Application Procedure

As a main rule, a person shall apply for a work permit from the country where he or she resides. However, in certain cases, an individual may apply for a work permit in Sweden. This applies, *inter alia*, if the individual would like to extend a current permit, the individual needs a new permit because he/she is switching employers or occupations, the individual has a residence permit to attend a college or university or if the individual is visiting an employer (only if there is a great demand for workers in the occupation).

If application is made from outside of Sweden, it can either be done electronically on the Migration Board's website www.migrationsverket.se or at a Swedish mission abroad (embassy or consulate) in the country of residence. An application made from Sweden can be filed electronically on the Migration Board's website, by mail to the Migration Board or at any Migration Board Permit Unit. A copy of the passport, offer of employment and receipt showing that the application fee is paid must be attached to the application.

Validity of a Work Permit

If the employment is temporary, the employee may be granted a residence and work permit valid for the period of employment and for a maximum period of two years at the time. The initial work permit may be extended one or numerous times. However, the period of validity for the work permit may not exceed four years in aggregate. After 48 months, the employee will be eligible for a permanent residence permit. The Migration Board may withdraw the work and residence permit if a person loses his or her employment and provided that the person has not found a new employment within three months after the expiration of the previous employment.

In certain cases, a new application for a work permit must be submitted. The first two years, the residence and work permit is restricted to a specific employer and a specific occupation. If a change of employer is made during the first two years, a new work permit is required. If a residence and work permit is extended after two years, the permits will be restricted only to a specific occupation.

Self-employed Persons

In order to stay in Sweden for more than three months, to start a company or enter into a company partnership, a residence permit is required. A self-employed do however not need a work permit. However, citizens in certain countries are required to hold a visa before entering into Sweden.

To obtain a residence permit for a self-employed person in Sweden, the person is required to present, *inter alia*; proof that the ownership is at least fifty percent of a company; provide a commercial evaluation in order to establish that the business plans are realistic and that the business can be expected to achieve satisfactory profitability; provide documentary evidence of necessary capital to establish or purchase a company; proof of ability to support him or herself and his or her family during the first two years; supply detailed documentation of the business plans as well as a market forecast, a profit and liquidity budget and a balance sheet and provide details of customer references,

banking connections, as well as former experience in the business. Moreover, a contract for business premises and a contract with customers or suppliers must be enclosed to the application.

Switzerland

Executive Summary

Switzerland has one of the highest rates of immigration in Europe. With a fifth of the total population consisting of non-citizens, Switzerland is one of the nations with the largest resident foreign populations.

The federal government has been gradually adapting its policy on foreign nationals and migration to more modern standards taking into account international developments. Its policy is embodied in the Foreign Nationals Act, in force since January 2008.

Key Government Agencies

The Federal Office for Migration (*"Bundesamt für Migration" / "Office fédéral des migrations" / "Ufficio federale della migrazione"*) is responsible for all concerns related to aliens and asylum in Switzerland.

The Cantonal Migration Authorities are responsible for the extension of visas or the granting of residence permits, among others.

Swiss foreign consulates abroad issue different immigration visas, including entry permits for restricted nationalities.

Current Trends

The Federal Law on Foreigners took effect on January 1, 2008. This law replaced the Federal Law on the Right of Temporary and Permanent Residence for Foreigners and applies to individuals who are not nationals of European Union or European Free Trade Association.

Under the new law, there remain large restrictions on the employment of foreign nationals from non-EU/EFTA countries for activities other than those pertaining to specialists, management and qualified

personnel. Regulations on salaries, working conditions and limits on visas for third state citizens have to be observed.

Business Travel

Foreign nationals not taking up any form of employment in Switzerland may remain in the country without a residence or work permit for as long as three months. After three months, foreign nationals are required to leave the country for at least one month. Foreign nationals are not authorized to stay in Switzerland more than six months in a period of 12 months. Individuals who require a visa can stay for the duration specified on their visa.

Visa Waiver

Depending on the foreign national's citizenship, the normal requirement of an entry visa may be waived. The countries qualifying for such benefits is subject to change. For current information, please visit www.bfm.admin.ch.

Training

Trainees are eligible for a short-term residence permit. These permits are granted for a maximum period of 18 months.

Trainees are persons aged 18-35 who have completed their occupational training, and want to undergo some advanced occupational or linguistic training in the context of gainful employment in Switzerland. Trainees are subject to rules, which have been laid down in special treaties. Thus, they are subject to special quotas. The legal provisions concerning national priority are not applicable to them.

Trainee permits are granted on the basis of a written employment agreement with an integrated training program.

Trainees should receive salaries comparable to those of host country nationals in the same job and with similar qualifications, and should in any case be able to cover their living expenses.

Employers are free to look for candidates in their own subsidiary companies abroad or through business connections. If they prefer, however, they may ask the government officials responsible for the scheme to help them find suitable trainees for any positions available.

Employment Assignments

Switzerland introduced a dual system of recruiting foreign labor in 2002. Under this system, nationals from European Union (EU) or European Free Trade Agreement (EFTA) member states, regardless of their qualifications, are granted easy access to the Swiss labor market. Nationals from all other states are admitted in limited numbers, provided that they are well qualified.

Priority

Third state nationals may only be admitted if a candidate cannot be recruited from the labor market of Switzerland or another EU/EFTA member state. Swiss citizens, foreign nationals with a long-term residence permit or a residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded the Agreement on the Free Movement of Persons (*i.e.*, the EU and EFTA states) are granted priority. Employers must prove that they have not been able to recruit a suitable employee from these priority countries despite intensive efforts.

Vacant positions must be registered with the Regional Employment Offices together with a request to register the vacancy in the European Employment System ("EURES"). Once a potential employee has been put in contact with the employer and subsequently turned down, the employers generally receive a questionnaire in which they can state the reasons the potential employee was not hired.

In addition, the employer must explain to the authorities why the search for a suitable candidate by means of the recruitment channels used in the specific industry (*e.g.*, specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers, written

confirmation from employment agencies, or other kinds of documentation. Often it is helpful for authorities if the employer submits a brief overview of all candidates with a short explanation of which qualifications for a particular job were lacking. In special cases, the authorities can request an employer to intensify his recruitment efforts.

Salary/Terms and Conditions of Employment Customary in the Region and in the Business

The salary, social benefits and the terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular sector. Some sectors and businesses lay down these conditions in a collective labor agreement which is legally binding either on a national or, at least, cantonal level. When applications are submitted from businesses that do not have a collective labor agreement, the Swiss authorities usually request information directly from the employers' and employees' associations on the terms customary in a particular sector. By examining the salary rates and terms of employment beforehand, the authorities can ensure that foreign workers are not exploited and that Swiss workers are protected against social dumping.

When submitting an application, the employer must enclose an employment agreement that has been signed both by the employer and the employee and that contains a note reading "contract only valid on condition that the authorities grant a work permit." This provides both contracting parties with legal certainty. It is helpful for the Swiss authorities if the employing business enterprise uses a contract of employment that is customary to the particular sector of industry.

With the exception of seconded employees who remain employed by their foreign employers, Swiss employers are obliged to register all employees with the various social security institutions.

Foreign employees that do not have a long-term residence permit are subject to tax at source and therefore must be registered with the tax authorities. It is then the responsibility of the employer to deduct the

amount of tax each month from the employee's wage and pay the sum to the tax authorities.

The new Federal Act on Illegal Employment ("LTN") facilitates, on the one hand, the payment of social security contributions for smaller, employed jobs. On the other hand, it contains new measures and more severe penalties to prevent and combat illegal employment. One provision that remains unchanged for both employer and foreign employee is that everyone - whether in paid or unpaid employment - requires a permit.

Non-compliance with the salaries and terms of employment customary to a particular region or sector of industry, as well as black labor are investigated first and foremost by the cantonal immigration authorities or, in some sectors, by offices established mainly for this purpose. Employers found not to comply with the legal requirements may be blacklisted and may not receive any further work permits for foreign workers for a period of up to five years.

Personal Qualifications

Executives, specialists and other qualified employees will be admitted. "Qualified employee" means, first and foremost, people with a degree from a university or institution of higher education, as well as several years of professional experience. Depending on the profession or field of specialization, other people with special training and several years of professional work experience may also be admitted if this is in the economic interest of the region.

Besides professional qualifications, the applicant is also required to fulfill certain other criteria, which would facilitate his or her long-term professional and social integration. These include professional and social adaptability, knowledge of a language, and age.

The Swiss authorities examine the applicant's qualifications on the basis of the curriculum vitae, education certificates, and references. Applicants must submit copies of the original documents, including a

translation, if the original documents are not in German, French, Italian, English, or Spanish.

If an applicant comes from a nation whose education system or system of professional training greatly differs from that of Switzerland, it is helpful for the immigration authorities if documents are submitted containing additional information on the institution, the length and the content of the education or training course. Documents that may be helpful include the curriculum vitae and education certificates showing what exams were taken and what the results were.

Exceptions to the Admittance Requirements

Exceptions to the admittance requirements may be granted in specific situations. These are listed below. They are not comprehensive but represent the most frequent exceptions.

Cooperation agreements/projects:

- Joint Ventures
- Service and guarantee work for products from the country of origin
- Temporary duties as part of large projects for companies with headquarters in Switzerland (international assignments)
- Execution of a special mandate

Practical training and further education:

- With professional associations
- With international business enterprises
- In specially defined fields with training programs for small and medium-sized companies

- To take up a temporary teaching position at a university or research institute

- To take up a temporary teaching position at a recognized foreign educational establishment

Transfer of executives or specialists

- within multinationals

- under reciprocity agreements

Difficult recruitment situation in the labor market

- Branches or groups of persons of economic significance who are urgently needed and who are determined by the Federal Office for Migration in consultation with the competent cantonal authorities and the trade associations involved.

Employment following conclusion of a person's studies

- Highly qualified scientists with a degree obtained in Switzerland in areas or sectors in which there is a lack of potential labor.

Economic and other reasons with lasting effect or influence on the Swiss labor market:

- To open up new markets

- To ensure important economic contacts abroad

- To guarantee export volume

- Formation of an enterprise or expansion of a company that creates long-term jobs for Swiss employees

Family members of Swiss nationals and persons with a long-term residence permit do not require authorization for self-employment.

Family members of other foreign nationals staying in Switzerland do require a permit, however.

Accommodation

Foreign nationals may only be admitted for employment if they have suitable accommodation and if they have concluded a health insurance covering them in accordance with statutory requirements.

EU/EFTA Nationals in Switzerland

EU/EFTA nationals have the right to reside and work in Switzerland.

For the pre-2004 EU member states (EU 15), Malta, Cyprus and EFTA (Norway, Iceland, Liechtenstein), there were transitional restrictions regarding access to the labor market that have been removed on June 1, 2007.

For the eight Central and Eastern European Member states that joined the EU in 2004, these restrictions will continue to apply until 2011 at the latest. Note, however, that on April 18, 2012, the Swiss Government decided to invoke the safeguard clause provided for in the Agreement between Switzerland and the EU on the free movement of persons and reintroduced quotas for the residence permits granted to the nationals of the eight states. This measure will apply during one year.

Protocol II extending the free movement agreement to Romania and Bulgaria came into force on June 1, 2009. According to this Protocol, Switzerland will maintain restrictions on immigration from Bulgarian and Romanian nationals until 2016 at the latest. Thus, nationals from these two states continue to face restricted access to the Swiss labor market.

Nationals of the EU 15, Malta, Cyprus and EFTA with Employment in Switzerland

A Work and Residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid

throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; there is only an obligation to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Employment of Less Than Three Months per Calendar Year

No permit is required. The employer can simply announce the presence of the new employee using the online procedure of the Federal Office for Migration.

Employment Contracts Between Three Months and 364 Days

A short-term permit L EC/EFTA will be issued for the duration of the contract. Upon presentation of a new contract it can be prolonged to a maximum duration of 364 days or renewed.

Employment Contracts of One Year or More (including open ended contracts)

A residence permit B EC/EFTA is issued with an initial validity of five years.

Cross-Border Workers

Workers living in the EU/EFTA and employed in Switzerland can receive a G EU/EFTA frontier worker permit provided that they return home at least once a week. Due to the fact that they stay in Switzerland during the week, they must register with the communal authorities where they are staying.

Settlement Permit (C-EU/EFTA)

The settlement permit is not regulated by the Agreement on free movement of people. It is currently granted to the pre-2004 EU and EFTA nationals after five years of residence in Switzerland, on the basis of settlement agreements or considerations of reciprocity. As currently no such agreements exist for the new EU member states,

their citizens receive the C permit after the regular residence period of 10 years. The C permit has to be renewed every five years. It is not subject to restrictions with regard to the labor market, and its holders are practically placed on the same level as Swiss nationals (holders can invoke the freedom of trade and industry), with the exception of the right to vote and elect.

Nationals of Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Lithuania and Latvia (EU 8) with Employment in Switzerland

Since May 1, 2012 and for a period of one year, nationals from these countries are subject to transitional restrictions regarding access to the labor market. Work permits are subject to:

- Economic needs test - A permit is only granted if no equivalent person is already avail-able on the Swiss labor market;
- Control of wage and working conditions - a permit is only granted if local wage levels and working conditions are respected;
- Quota - a permit is only granted if the respective quota for the L or B permit has not yet been used up. Frontier worker permits and permits with a validity of less that four months are not subject to a quota.

These restrictions only apply to first time admissions. Once admitted to the labor market, EU 8 nationals can also benefit from full professional and geographical mobility. Apart from the specific restrictions above, EU 8 nationals have the same rights and obligations as all other EU/EFTA nationals.

Nationals of all EU/EFTA Countries Planning to Start a Business in Switzerland

The rules for independent entrepreneurs are the same for nationals of all EU and EFTA member states.

EU/EFTA nationals wishing to start a business in Switzerland can apply for a five-year B EU/EFTA permit with the respective cantonal authorities. This permit will be granted if there is proof of an effective independent activity. The cantonal authorities determine what documents must be presented. As a general rule, these include some or all of the following: business plan, proof of capital for starting the business, proof of specific preparations for launching the business like rental agreements for real estate, a registration with the register of commerce.

Nationals of Third States in Switzerland

Permit B: Residence Permit

Resident foreign nationals are foreign nationals who are resident in Switzerland for a longer period of time for a certain purpose with or without gainful employment.

As a rule, the period of validity of residence permits for third-country nationals is limited to one year when the permit is granted for the first time. First-time permits for gainful employment may only be issued within the limits of the ceilings and in compliance with the Federal Act on Foreign Nationals ("LEtr"). Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offences, dependence on social security or the labor market. A legal entitlement to the renewal of an annual permit only exists in certain cases. In practice, an annual permit is normally renewed as long as its holder is able to draw a daily allowance from the unemployment insurance. In such cases, however, the holder is not actually entitled to a renewal of the permit.

Permit C: Settlement Permit

Settled foreign nationals are foreign nationals who have been granted a settlement permit after five or ten years' residence in Switzerland. The right to settle in Switzerland is not subject to any restrictions and must not be tied to any conditions. The Federal Office of Migration

fixes the earliest date from which the competent national authorities may grant settlement permits.

As a rule, third-country nationals are in a position to be granted a settlement permit after ten years' regular and uninterrupted residence in Switzerland. US nationals are subject to a special regulation. However, third-country nationals have no legal entitlement to settlement permits. Apart from the provisions of settlement treaties, such a claim can only be derived from the LEtr. Persons who hold a settlement permit are no longer subject to the Limitation Regulation, are free to choose their employers, and are no longer taxed at source.

Permit Ci: Residence Permit with Gainful Employment

The residence permit with gainful employment is intended for members of the families of intergovernmental organizations and for members of foreign representations. This concerns the spouses and children up to 25 years of age. The validity of the permit is limited to the duration of the main holder's function.

Permit G: Cross-Border Commuter Permit

Cross-border commuters are foreign nationals who are resident in a foreign border zone and are gainfully employed within the neighboring border zone of Switzerland. The term "border zone" describes the regions which have been fixed in cross-border commuter treaties concluded between Switzerland and its neighboring countries. Cross-border commuters must return to their main place of residence abroad every evening.

Permit L: Short-Term Residence Permit

Short-term residents are foreign nationals who are resident in Switzerland for a limited period of time - usually less than a year - for a certain purpose with or without gainful employment.

Third-country nationals can be granted a short-term residence permit for a stay of up to one year, provided the quota of the number of third-country nationals staying in Switzerland has not been met. This is

fixed annually by the Federal Council. The period of validity of the permit is identical with the term of the employment contract. In exceptional cases, this permit can be extended to an overall duration of no more than 24 months if the holder works for the same employer throughout this time. Time spent in Switzerland for a basic or advanced traineeship is also considered short-term residence. Permits issued to foreign nationals who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation.

Permit F: Provisionally Admitted Foreigners

Provisionally admitted foreign nationals are persons who have been ordered to return from Switzerland to their native countries, but in whose cases the enforcement of this order has proved inadmissible (*e.g.*, violation of international law), unreasonable (*e.g.*, concrete endangerment of the foreign national), or impossible for technical reasons of enforcement. Thus, their provisional admission constitutes a substitute measure. Provisional admission may be ordered for a duration of 12 months and be extended by the canton of residence for another 12 months at a time. The cantonal authorities may grant provisionally admitted foreign nationals work permits for gainful employment irrespective of the situation on the labor market and in the economy in general. A residence permit granted at a later date is subject to the provisions of the LEtr.

Other Comments

Holders of an EU/EFTA permit are entitled to family reunion, regardless of the nationality of their family members. Qualifying family members may include the spouse, registered partner in homosexual couples, and children under 21. The parents and children over 21 also qualify, if financially dependent on the main permit holder. If family members of EU/EFTA nationals do not have EU/EFTA nationality, they may be subject to visa requirements when entering Switzerland before having received their family reunion permits.

Taiwan, Republic of China

Executive Summary

Taiwan has a three-tier immigration protocol that differentiates foreign nationals in general, PRC nationals and citizens of Hong Kong SAR and Macau SAR. To better reflect the evolving needs of its globalized economy, the government of Taiwan has taken steps to streamline many of its entry and immigration requirements, such as simplifying the qualifications that non-Taiwan citizens must meet in order to obtain a work permit and relaxing the entry rules for PRC nationals and citizens of Hong Kong SAR and Macau SAR. In this brief, the term "foreign nationals" means non-Taiwan nationals other than nationals of the Peoples Republic of China, Hong Kong SAR or Macau SAR.

Most foreign national business travelers may obtain short-term visitor visas through a Taipei Economic and Cultural Office or ROC (Taiwan) Embassy or Consulate, unless they are from countries that participate in Taiwan's visa-exempt program. Foreign nationals who intend to work in Taiwan must meet certain requirements in order to obtain a work permit. Nationals of the PRC and citizens of Hong Kong SAR and Macau SAR may travel to and work in Taiwan, provided that they meet the special immigration and entry requirements and policies.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for ROC visas, whether processed through ROC Embassies and Consulates, Taipei Economic and Cultural Offices or overseas Representative Offices.

The National Immigration Agency of the Ministry of the Interior is responsible for immigration and naturalization services for foreign nationals, PRC nationals, and citizens of Hong Kong SAR and Macau SAR.

The Bureau of Employment and Vocational Training of the Council of Labor Affairs of the Executive Yuan is responsible for processing and issuing work permits.

Current Trends

The governments of Taiwan and the Peoples' Republic of China have executed the Economic Cooperation Framework Agreement ("ECFA") on June 29, 2010. Therefore, the exchanges between the Taiwan Strait in many fields will increase in a speedy manner. As such, the Taiwan government continues to relax its restrictions on the immigration and short-term visit and relevant procedures applicable to PRC nationals.

Business Travel

Visitor Visas

Foreign nationals who intend to travel to Taiwan for business visits should apply for a Visitor Visa at an overseas ROC Embassy, Consulate or trade office unless they are from countries that participate in Taiwan's visa exempt program.

Passport holders from certain countries are eligible for a visa waiver for their visits not exceeding 30 days. The visa-exempt program currently includes Australia, Malaysia and Singapore.

In addition, passport holders from certain countries are eligible for a visa waiver for their visits not exceeding 90 days. The visa-exempt program currently includes Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK, US, and Vatican City State ("Visa-Exempt Countries").

Travelers entering into Taiwan on a Visitor Visa must hold return or onward air tickets. Emergency or temporary passport holders of Visa-

Exempt Countries who wish to stay up to 30 days and their emergency or temporary passport is valid for at least six months (or for US citizens who hold an ordinary passport that is valid for less than six months), they may apply for landing visas upon arrival.

Employment Assignments

Both foreign nationals who wish to work in Taiwan and their employers in Taiwan must meet the qualifications criteria before the foreign nationals will be granted work permits. The Bureau of Employment and Vocational Training ("BEVT") serves as the country's one-stop-shop for work permits for foreign professionals. The BEVT aims to reduce the confusion that existed when different governmental organizations were separately responsible for processing and issuing foreign work permits for professionals in industries under their purview. The BEVT processes work permits in the following areas:

- Architecture and civil engineering;
- Transportation;
- Taxation and financial services;
- Real estate agencies;
- Immigration services;
- Attorneys-at-law (legal services);
- Technicians;
- Medical and/or health care;
- Environmental protection;
- Cultural, sports and recreation services;

- Academic research;
- Veterinarians;
- Manufacturing;
- Wholesaling; and
- Other jobs designated by the Central Competent Authority and competent authorities.

Employer Qualifications

Employers seeking to engage foreign technical and professional personnel to work in Taiwan must satisfy one of the following criteria:

- Local companies established for less than one year must have operating capital of at least TWD5 million; or companies established for more than one year must have annual revenue of TWD10 million for the most recent year or average annual revenue of TWD10 million for the past three years; or with average import/export transactions of at least USD1 million or average agent commissions of at least USD400,000.
- Foreign branch offices established in Taiwan for less than one year must have operating capital of more than TWD5 million; or foreign branch offices established for more than one year must have annual revenue of at least TWD10 million for the most recent year or average revenue of TWD10 million for the past three years; or with average import/export transactions of at least USD1 million or average agent commissions of at least USD400,000.
- Representative offices of foreign companies that have been approved by the competent authorities at the central government level and has actual performance record in Taiwan.

- Research and development centers and business operations headquarters that have applied to establish their business and have been approved by the relevant competent authorities concerned at the central government level.

- The employer has made substantial contribution to the domestic economic development. Alternatively, he, she, or it has a special circumstance that is treated as a special case by the central governing authorities and central competent authorities. After the joint consultation between the authorities, the authorities have approved the circumstance.

Employment Quotas

There are no established quotas for foreign workers in Taiwan. The Council of Labor Affairs will, along with specific industry authorities, decide the number of work permits it will grant each year based on an evaluation of the employment market, the employers' industries and social economic development of the country.

Foreign National Employee Qualifications

Foreign nationals other than a company's managerial representative must, as applicable, meet the education and experience requirements listed below before being granted a permit to work in Taiwan:

- Acquire certificate, license or operational qualifications through the procedures specified in the examinations required for specific professionals and technical specialties;

- Earn a master's degree or above in a relevant field;

- Earn a bachelor's degree in a relevant field and with more than two years' working experience in a specific field;

- Have been employed with a multinational company for more than one year and assigned by that company to work in Taiwan; or

- Professionally trained or self-taught specialists who have more than five years work experience in their specialization and have demonstrated creative and outstanding performance.

The above-mentioned qualifications are not required for a foreign national employed as an executive or managerial officer (*e.g.*, General Manager or Branch Manager) of a foreign company in Taiwan.

Resident Visa and Alien Resident Certificate ("ARC")

Resident visas may be granted to foreign nationals who intend to stay in Taiwan for more than six months for the purposes of joining family, pursuing studies, accepting employment, making investments, doing missionary works, 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 coming to Taiwan for employment or investment purposes are required to submit relevant documents to the competent authorities of the central or municipal/county government for approval. Resident visa holders for various purposes must apply for an ARC within 15 days of their arrival in Taiwan. A multiple re-entry permit will be automatically included in the ARC so that ARC holders may leave and re-enter into the country as many times as they require. The length of residence will depend on the validity date of the ARC.

A foreign national who holds a Visitor Visa that allows him or her to stay in Taiwan for more than 60 days (which is not otherwise annotated by the issuing authority to prohibit extensions) can directly apply to the National Immigration Agency for an ARC, provided that at least one of the following requirements is satisfied:

- Is married to a ROC citizen who resides in Taiwan and has a valid household registration or is allowed to reside in Taiwan;

- Is younger than 20 years of age and his or her immediate relatives are ROC citizens who have valid household registrations or are allowed to reside in Taiwan;

- Has obtained employment approvals issued by the Bureau of Employment and Vocational Training or other relevant competent authorities;

- Are permitted by the Ministry of Foreign Affairs for diplomatic reasons.

Other Comments

Foreign nationals may apply for an Alien Permanent Resident Certificate ("APRC") after a period of legal and continuous residence. A waiver of many of the requirements of the APRC may be granted to foreign nationals who have made special contributions to Taiwan or have acquired high technology knowledge, as well as to qualified investors. Citizenship through Naturalization is possible.

Hong Kong SAR and Macau Citizens

The Taiwan government does not treat Hong Kong SAR and Macau SAR citizens as PRC nationals or foreign nationals. This special category includes persons who hold permanent Certificates of Identity and passports issued by the governments of Hong Kong SAR or Macau SAR, BNO, or Portuguese passports. Citizens of Hong Kong SAR or Macau SAR who visit Taiwan or seek to become residents of Taiwan must apply for Entry and Exit Permits. In Hong Kong SAR, applications can be made at the Taipei Economic and Cultural Office (Hong Kong). In Macau SAR, applications can be made at the Taipei Economic and Cultural Office (Macau).

Citizens of Hong Kong SAR or Macau SAR, who were born locally, hold valid Entry and Exit Permits, or have previously been admitted to Taiwan, may apply for a 30-day Temporary Entry and Stay Certificate upon arrival. This Certificate may be extended under certain circumstances.

Since 2005, expedited 30-day Temporary Entry and Stay Certificates have been available online through the website of the National Immigration Agency. Approved applications will automatically

generate reference numbers that enable the applicants to pick up their Temporary Entry and Stay Certificates from the Taipei Economic and Cultural Office (Hong Kong) in person. The Certificate is good for single entry within three months from the date of issue.

Entry and Exit Permit

To qualify for an Entry and Exit Permit, an applicant must:

- Have been to Taiwan before;
- Be a Hong Kong SAR or Macau SAR permanent resident who holds a passport that is valid for more than six months; and
- Submit one passport-sized photo, a self-addressed return envelope, original and photocopy of the Hong Kong SAR or Macau SAR permanent identity card.

The processing time at Taipei Economic and Cultural Office (Hong Kong) 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 various periods.

Thailand

Executive Summary

The Thai work permit requirements and immigration law are based primarily with a view towards maintaining national security, and fundamentally serve to control foreign nationals staying and working in the country. However, there are some provisions that facilitate foreign investors. A foreign national therefore needs to plan carefully in order to utilize or legally enjoy the privileges afforded under the law. Otherwise, the foreign national may find him or herself at risk of constituting a criminal offence, which carries a severe penalty of imprisonment of up to five years.

Key Government Agencies

The Police Immigration Bureau is responsible for screening all foreign nationals arriving at port of entries nationwide. Foreign nationals may enter the country with an appropriate visa issued by a Thai Embassy outside of Thailand. Upon the supervision of the Ministry of Foreign Affairs, a Thai Embassy may grant a visa based on the relevant regulations and Ministerial Policy. A foreign national who wants to work in Thailand must separately apply for a work permit through the Employment Department, the Ministry of Labor.

Current Trends

Strict enforcement of the Immigration and work permit laws are emphasized, to counter the illegal entry of neighbor country nationals. The rigid rules apply to all foreign nationals without discrimination based on race or nationality. Some of the current rules are impractical for foreign investors to legally work in Thailand. A large number of foreign nationals come to illegally work without an appropriate visa, *e.g.* a tourist visa, since they do not have an employer in Thailand to sponsor their applications. A new, revised Work Permit Act has been enacted since the beginning of 2008. However, the main concepts of the old criteria are still applicable to current cases. The criteria for the

granting of a work permit take into account demand for specific expertise of certain categories of foreign workers.

Business Travel

Non Immigrant Business Visa (Business Visa)

Foreign nationals who wish to work in Thailand are required to apply for a Non-Immigrant Business Visa from a Thai Embassy outside Thailand. A business visa is one of the requirements of the work permit application. If a foreign national does not have a non-immigrant visa, he is not eligible to locally apply for a work permit in the country. The business visa allows a holder to enter and stay in Thailand for 90 days. Legally speaking, he is not automatically allowed to work. He must separately apply for a work permit sponsored by a qualified employer in Thailand. Many foreign nationals frequently misunderstand that this business visa granted by a Thai Embassy allows them to work when entering the country.

After the expiry of 90 days, they may locally apply for a visa extension with the Immigration Police Bureau. The maximum period of the extension is one year. The current criteria set by the Immigration Police impose very strict rules on an employer in Thailand who sponsors a foreign national. An employer, in its capacity as a sponsor, must be qualified in terms of their employment ratio between Thai national and foreign workers. The corporate structure and the tax payment of the local sponsor must also meet the criteria as well. Otherwise, a foreign national may be not eligible to extend his visa, even though he himself may be a qualified person in terms of his expertise.

Visa Waiver

There are no visa waivers for any foreign business persons to work in Thailand. All foreign nationals need to apply for a non-immigrant business visa from a Thai Embassy. Otherwise, a foreign national will not be eligible to apply for a work permit in the country. Consequently, he cannot legally work in Thailand, although he can

easily enter Thailand with a visa exemption for the purpose of tourism, which is permitted to some specific foreign nationals. The length of such a stay is 30 days. At present, the following countries are presently qualified under the visa exemption scheme: Australia, Austria, Bahrain, Brunei, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Kuwait, Luxembourg, Malaysia, The Netherlands, Norway, New Zealand, Oman, the Philippines, Portugal, Qatar, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the UAE, the USA, and the UK. The list of qualified countries changes regularly, and unfortunately, there are no official websites promptly updating these changes. The Ministry of Foreign Affairs may be an initial source to start exploring for searches, at http://www.mfa.go.th.

Training

Training is considered as a form of work. A foreign national who is to be engaged in on-the-job training in Thailand must apply for a non-immigrant business visa to enter the country, and then apply for a work permit from the Employment Department, sponsored by an employer in Thailand. The length of stay permitted under the non-immigrant visa is 90 days. If the foreign national wants to extend his stay, his employer in Thailand must be qualified in accordance with the criteria set by the Immigration Bureau. Compensation is compulsory and must be declared in the application. If it is less than the minimum amount set by the authorities, the application may be rejected. It is currently quite difficult for a foreign national to work as a trainee in Thailand. An application is most likely to be denied by the authorities. The authorities always impose a condition on any foreign national granted a permit for training to transfer his knowledge to Thai employees. If he fails to demonstrate that he has done so, his permit may not be renewed after it expires.

Employment Assignments

Intracompany Transfer Assignment: Non-Immigrant B Visa

Foreign employees who are transferred to work in Thailand are required to apply for a non-immigrant B visa from a Thai Embassy prior to entering the country, which allows them to stay for 90 days. They must also separately apply for a work permit sponsored by a Thai subsidiary of the multinational company as a responsible employer in Thailand. There are no special visas to be issued for a foreign national who is posted to work in Thailand. The non-immigrant B visa is required for all foreign nationals who intend to work in Thailand. The visa allows a foreign national to initially stay for 90 days. Within this period, they must have their subsidiaries or employers in Thailand obtain a work permit before commencing work. Otherwise, they cannot legally work in Thailand, even though they can enter the country with a non-immigrant visa.

The family member of an applicant may obtain a non-immigrant "O" (Others) visa, which also allows them to stay 90 days. The length of stay can be extended if the applicant can extend his visa when in the country. Genuine family status is always verified by the authorities. A marriage certificate and birth certificates if they have children are required to be presented for verification. Currently, a de facto status is not acceptable to the authorities.

Other Comments

According to the current rules and practice of the authorities, only non-immigrant business visas are issued to businessmen traveling to Thailand. The non-immigrant business visa covers all types of business purposes, *e.g*. training, employment assignment, doing business, company management, *etc.* The non-immigrant visa is a pre-requisite requirement for a foreign national who wants to work in Thailand.

The process of applying for a non-immigrant business visa is quite simple and takes around two working days at any Thai Embassy.

Upon the discretion of the Embassy, some nationals (*e.g*. Indians, Pakistanis) may have to apply for a non-immigrant visa in their home countries. Unlike the work permit-combined immigration system (*e.g.* as in the USA, Australia, or Canada), the foreign work permit law is independent and separate from the Immigration law. The Employment Department, the Ministry of Labor, is in charge of locally granting and controlling work permit matters. The Immigration Police Bureau governs the immigration law to control foreign nationals who enter or leave the country and have the authority to determine whether or not to extend foreign nationals' visas.

Some foreign nationals may obtain a non-business visa from a Thai Embassy, but they may be unable to locally receive a work permit due to unqualified employer sponsoring. They could possibly obtain a work permit from the Employment Department, but would not be able to extend their visa, because of the disqualifying characteristics of the employer.

The current rules for granting a work permit are based on proof of investment, as set out by the Employment Department. A sponsor, as an employer in Thailand, must have paid-up capital of THB2 million baht per each individual work permit. An applicant must have sufficient experience and a suitable educational background pertinent to the position applying for a work permit.

A foreign national required to engage in work which is of a necessary and urgent nature for a period of less than 15 days may currently enter Thailand without a non-immigrant B visa. However, the foreign national must submit a work notification to the Employment Department before commencing work. Machinery repairs by foreign technicians are an example of work of a necessary and urgent nature.

Some professions (*e.g*. lawyers, architects) are prohibited to foreign nationals for applying for a work permit.

A foreign national who has received a work permit may be eligible to extend his visa (a 90-day non-B visa) in Thailand. A sponsor that is a

company employer in Thailand must have shareholders' equity of not less than THB1 million. In addition, the ratio of employment between Thais and foreign nationals must not be less than four to one. If a company employs one foreign national, at least four Thai staff (full-time) must be hired. Otherwise, the foreign employee may not be able to extend his visa, even if he has a work permit.

A foreign national who has been staying in Thailand for up to 90 consecutive days must notify the Immigration Police Bureau for every 90 days of stay. Failure to comply with this requirement will be subject to a fine.

Work permit and immigration planning is becoming increasingly significant, as enforcement by the authorities gets tougher. Employers involved in transactions such as mergers, acquisitions, reorganizations, and financial restructuring must evaluate the impact on the employment eligibility of foreign nationals when structuring such transactions.

A company with paid-up capital of at least THB30 million is entitled to use the One Stop Service Center for submission of work permit and visa extension applications. The One Stop Service Center is designed to facilitate the granting of work permits and visa extensions to executive level foreign employees within one day. The One Stop Service Center process reduces the time for considering applications, compared with the normal channel which may take up to one month.

Foreign nationals who have been staying and working in Thailand for three consecutive years are eligible to apply for permanent residency. The process normally takes at least one year. Criminal or character checks of an applicant in his home country must be made before lodging an application through the Immigration Police Bureau. The final decision for approval rests with the Minister of Interior's discretion. The authorities always consider an applicant's work qualifications and tax payment record paid to the Thai Government and compelling reasons tight to Thailand.

According to the general practice of the authorities, foreign nationals who have been granted permanent residency may be eligible for naturalization of citizenship after holding permanent resident status for at least 10 years. An applicant must clearly present his background and qualifications which benefits Thailand. Normally, the process may take up to two years after an application is submitted. The Minister of Interior is the person who gives the final approval.

Republic of Turkey

Executive Summary

Foreign nationals entering the Republic of Turkey ("Turkey") for the purposes of employment, regardless of the length of stay, are required to obtain a Work Permit. Work Permits are granted by the Turkish Ministry of Labor and Social Security. The Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents. An employee who holds a Residence Permit with a validity period of at least six months in Turkey may make a direct application to the Ministry for a Work Permit.

The Republic of Turkey permits citizens of certain countries to make a direct application in Turkey for a Residence Permit. Therefore, those who have accordingly been granted a Residence Permit with a validity period of at least six months (for any reason, except education and training) can directly apply to the Ministry of Labor and Social Security for a Work Permit within this validity period.

Key Government Agencies

Turkish Consulates/Embassies are responsible for processing visa and Work Permit applications abroad.

The Ministry of Labor and Social Security is responsible for granting Work Permits.

The Foreigners' Branches of Local Police Departments are responsible for granting Residence Permits.

The Local Border Police Authorities are responsible for processing visas for the citizens of certain countries.

Current Trends

According to the Law on Work Permits for Foreigners ("Law") and the Regulation on the Implementation of the Law on Work Permits for

Foreigners ("Regulation"), business inspectors from the Ministry of Labor and Social Security and the insurance inspectors from the Social Security Institution conduct audits in accordance with the provisions of the Labor Law in order to determine whether or not foreign nationals and their employers have fulfilled their respective obligations under the Law and the Regulation.

Department officials authorized by the general budget and officials from administrations with added budget also carry out inspections to determine whether or not the employers that employ foreign nationals and the foreign nationals fulfill their obligations arising from the Law, during any kind of audit and inspections performed by such inspection and audit members in the workplaces. Findings from the inspections are also notified to the Ministry of Labor and Social Security.

If a foreign national engages in work while unregistered and without a Work Permit, the circumstances are determined by an official report. In order to implement the administrative penalty in the Law applicable to the foreign national and the employer or the employer's representative, the official report is sent to the District Offices of the Ministry of Labor and Social Security. Since the foreign national may also be notified about the penalty abroad, within the framework of the Law of Notice, the foreign national's address abroad is also mentioned in the official report. During the course of investigation, matters concerning the unregistered foreign national's entry to Turkey, visa, passport and residence permit are investigated and the illegal foreign national's deportation procedure is initiated.

When the Law is implemented, the above stated administrative fines will be applied tithe foreign nationals who work without a Work Permit and for their employers. If the said action is repeated, the administrative fines are doubled.

According to the Law, the employer must not only pay the fines imposed against the employer and the foreign national, but also the accommodation costs, travel costs for returning to their countries and

the cost of treatment, if necessary, for the foreign national and foreign national's spouses and children (if any).

If the deported foreign nationals fail to pay the administrative fines, the foreign nationals are subject to a program titled "Ç," which provides for collection of the fines at any future time of entry into Turkey and foreign nationals will not be accepted without payment.

Business Travel

A foreign national can enter Turkey for business travel with a Tourist Visa and attend meetings, participate in negotiations, *etc.*, provided that the foreign national does not undertake any business in Turkey (*i.e*. the foreign national does not engage in commercial activity) and that the foreign national does not engage in any work in Turkey.

As a general rule, foreign nationals seeking to travel to Turkey for tourist purposes should apply to his/her nearest Turkish Consulate/Embassy for a Tourist Visa in person with supportive documents, particularly where a first-time visa application is lodged. Visa applications may also be received by mail in exceptional cases, especially in geographically large countries and when the applicant is well-known by the Turkish Embassy/Consulate where the application is lodged.

The citizens of certain countries are afforded the opportunity to obtain their visas at the Turkish border gates (sticker visa) upon submission of (i) a valid travel document (passport, which should be valid for at least three months in excess of the expiry date of the visa requested.), and (ii) a non-refundable visa processing fee (the amount differs depending on the nationality and visa type). Any other documents relevant to the applicant's visit/stay in Turkey can be requested by the Turkish border officials and it should also be noted that only tourist visas may be issued at the Turkish border gates.

Although it may vary, a single entry Tourist Visa is valid for a period of one year and allows its holder, depending on the nationality and

passport type, to stay in Turkey up to three months and to visit the country only once.

Although it may vary, a multiple entry Tourist Visa is valid for a period of up to five years and allows its holder to make multiple visits and, depending on the nationality and passport type, he/she can stay one to three months each time he/she enters into Turkey.

Residence Permits

An entry visa enables the holder to stay in Turkey for the duration stated on the visa sticker. If the person intends or is obligated to stay in Turkey longer than the permitted duration, however, this extension is subject to approval by the Ministry of the Interior. In this case, the person must obtain a Residence Permit.

Applications for Residence Permits should be made to the Foreigners' Branch of Local Police Departments within 30 days upon arrival at Turkey. Applicants are generally required to submit any Work Permit, Work Visa, Education Visa or Research Visa and a letter describing his/her circumstances (*i.e.* employment, education, marriage to a Turkish citizen).

Once a person is granted the Residence Permit, he/she can enter Turkey multiple times as long as his/her Residence Permit is valid and thus he/she does not need a visa for entry into Turkey. If extension of the Residence Permit is required, the extension or renewal should be made in due time before the expiry date. It is recommended to have the validity of the Residence Permit extended before leaving Turkey, if the validity of the Residence Permit is due to expire or has already expired.

Training

There is no specific type of visa in Turkey designed exclusively for training. For classroom-type training, a foreign national can enter Turkey with a Tourist Visa. For on-the-job training, the same

procedure for employment assignments which are subject to the Work Permit procedure applies.

Employment Assignments

Conducting business in Turkey requires the establishment of a Turkish entity and a foreign employee requires a Work Permit to work for a Turkish entity. During the establishment period it may be argued that such foreign national is traveling back and forth from his/her country to Turkey (with a Tourist Visa) to assist the formation of the Turkish entity. If, the intention is for a foreign company to do business in Turkey prior to the establishment of its Turkish entity, however, such company may consider entering into Technical Service Agreement or Consultancy Agreement whereby the foreign national provides services to a third party Turkish entity.

Foreign nationals who have already been granted Residence Permits, which are valid for at least six months (for any reason, except education and training) in Turkey, may directly apply for Work Permits to the Ministry of Labor and Social Security with the supportive documents. Otherwise, the Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents.

Application for a Work Permit made outside Turkey through the Turkish Consulate may entitle the grant of a Work Permit for a Definite Period of Time detailed below.

Work Permit for a Definite Period of Time

Unless otherwise provided in bilateral or multi-lateral agreements to which Turkey is a party, a Work Permit for a Definite Period of Time is granted for a period of at most one year in order for the foreign national to work in a certain workplace or enterprise and in a certain job. In determining the duration of validity of the Work Permit for a Definite Period of time, the Ministry takes into consideration the situation of the business market, the term of the Residence Permit of

the foreign national and the term of the employment agreement or the work.

The Ministry of Labor and Social Security may extend or restrict the geographical area of validity of the Work Permit for a Definite Period of Time by taking the city, administrative border or geographical area as the basis. In this case, the Ministry of Labor and Social Security shall communicate this decision to the relevant authorities to whom the former advises the Work Permits.

Following expiry of the legally valid working period of one year, the Work Permit may be extended up to three years, provided that the foreign national works in the same workplace or enterprise and in the same job.

At the end of the working period of three years, the term of the Work Permit may be extended further for a maximum period of three years in order for the foreign national to work in the same job and with any employer of his/her discretion.

A Work Permit for a Definite Period of Time may also be granted to the spouse of the foreign national, having come to Turkey to work, as well as the children under the foreign national's care, provided that they have legally resided with the foreign national for a period of at least five years without interruption in Turkey. In accordance with the Regulation, all the required documents must be submitted by the employer to the Ministry of Labor and Social Security within 10 business days following the date of application for the work permit application to the Turkish Consulate. If the foreign national has a right to make a direct application to the Ministry for a Work Permit, an online application should be made by the employer or a Turkish national acting as a proxy on the Turkish Government website, www.turkiye.gov.tr. All the required documents need to be submitted to the Ministry of Labor and Social Security within six business days following the online application.

The consulate office then submits the visa application to the Ministry of Labor and Social Security in order to facilitate their decision to approve or deny. It takes approximately 30 days for the Work Permit to be issued by the Ministry of Labor and Social Security provided all the required documents are submitted and fully completed. The employee will be informed either by phone or e-mail once his or her application has been approved.

When the Work Permit is approved and issued by the Ministry of Labor and Social Security, the next step in the process is that the employee takes his or her passport along with the applicable visa fees to the Turkish Consulate where he or she initiated the Work Permit request in order to obtain a Work Visa (which is given to the Work Permit holders and is issued for a single entry) to facilitate entry into Turkey.

A person can only apply for a Work Visa after he/she has signed an employment agreement with a Turkish employer and has applied for a work permit to the Ministry of Labor and Social Security. Finally, when the work permit holder arrives in Turkey, in order to obtain a Residence Permit, Work Permit holders must apply to the Foreigner's Branch of the Local Police Department before commencing employment and, at the latest, within 30 days after entering Turkey.

The Ministry may require additional documents. All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish Notary Public prior to their submission to the Ministry of Labor and Social Security.

The Ministry of Labor and Social Security takes into consideration the following criteria during the assessment of the Work Permit application:

- It is obligatory to employ a minimum of five Turkish nationals at the workplace for each foreign national requesting a Work Permit. If the foreign national requesting a Work Permit is a shareholder in the company, the condition of employing five persons is

applicable for the last six months of the one-year work permit to be given by the Ministry.

- Concerning the workplace, the paid-up capital should be at least TRY100,000 or its gross sales should be at least TRY800,000 or the amount of exports in the previous year should total at least USD250,000.

- Article 2 above shall not apply where Work Permits are requested in respect to foreign nationals to be employed at the associations and foundations; Articles 1 and 2 shall not apply for the assessment of the Work Permit applications made by the foreign nationals who will work at Turkey's representative offices of airlines owned by foreign states, in the education sector and in home-related services.

- Any shareholder of a Turkish company who applies for Work Permit should hold at least 20 percent of the relevant company's share capital, which should not be valued at less than TRY40,000.

- The declared monthly wage amount to be paid by the employer to the foreign national should be at such a level in order to comply with the duties and capabilities of the foreign national. Accordingly, by taking into consideration the minimum wage applicable as of the date of application, the wage to be paid to the foreign national should be at least:

    - 6.5 times the minimum wage for top level executives, pilots and engineers and architects requesting preliminary Work Permits;

    - 4 times the minimum wage for unit or branch managers, engineers and architects;

    - 3 times the minimum wage for employees who will work in positions which require specialization and mastery e.g. teachers, psychologists, physiotherapists, musicians, *etc.*;

  - 1.5 times the minimum wage for the foreign nationals who will work at home-related services and other professions.

- With respect to tourism organizations holding a minimum of four stars and proving that they have a massage saloon within their organization, their requests which require specialization such as masseur, masseuse and SPA therapist shall be considered.

- With respect to employment which requires specialization and mastery, if a minimum of 10 citizens of the Republic of Turkey are employed, in order for the foreign nationals to be employed in the tourism-promotion organization companies, no further quota shall be applied.

- Article 1 and 2 shall not apply in the assessment of Work Permit applications where there is a provision in bilateral or multilateral treaties to which Turkey is a party, and where foreign nationals will be employed for the purchase of goods and services through contract or tender by public bodies and institutions of Turkey.

- Article 1 and 2 shall not apply for employment which requires advanced technology or upon approval by the Ministry where there is no Turkish expert with the same qualifications.

- Concerning foreign nationals to be employed in roles other than as the key employee in enterprises which meet the conditions of a Direct Foreign Investment with Specialty, the criteria in Article 1 shall apply and the number of Turkish nationals working in all workplaces of the enterprise in Turkey shall be taken into consideration.

Further to final assessment of work permit and residence permit issues, the scope and objective of the Turkish entity and the details of the education and profession of each and every employee to be employed by the Turkish entity must be determined by the Ministry. This is because diploma equivalency will also be required for Work Permit applications within the scope of professional services (such as

engineering), and where the education of the foreign national falls within the scope and objective of the Turkish entity. According to the Law, the Ministry may grant a Preliminary Work Permit for up to one year to foreign nationals who will work within the scope of professional services, pending completion of proceedings with regard to the determination of their professional and academic sufficiency.

The payroll and social security obligations of the employer begin on the commencement date of the Work Permit holder's employment.

The foreign national's obligation to enter into the Turkish social security system varies depending on his/her nationality.

The concept of secondment does not exist in Turkey, and there is a requirement for employees to be fully employed/paid by the Turkish entity to enable such Turkish entity to make the requisite payments to the authorities. It should be noted that no concept of a "payroll agent" exists in the Turkish legal system.

Following receipt of the Work Permit, and within 30 days, the employee is under the obligation to make an application to the Foreigner's Branch of the Local Police Department in order for the annotation of his Work Permit on his Residence Permit. Once this procedure is completed, the family members of the employee will be eligible to apply to the Foreigner's Branch of the Local Police Department for the issuance of a Residence Permit on their own behalf based on the Work and Residence Permit issued in the name of the employee.

Work Permit for an Indefinite Period of Time

Unless otherwise provided for in bilateral or multilateral agreements to which Turkey is a party, foreign nationals residing in Turkey legally and without interruption for at least eight years or having undergone a total working period of six years in Turkey, may be granted a work permit for an indefinite period of time without taking into consideration the situation in the business market, developments

in working life; and without restriction as to any particular operation, profession, civil or geographical area.

Independent Work Permit

An Independent Work Permit may be granted on the condition that the applicant foreign nationals have resided in Turkey legally and without interruption for a period of at least five years, that their activities create an added value in terms of economic growth and have a positive influence on employment. While evaluating the independent work permit application, the documents evidencing the contribution of the foreign national's activities to the national economy and that the foreign national has sufficient income for the activity to be performed, may be requested by the Ministry of Labor and Social Security along with other relevant documents.

Other Comments

Exceptional Cases and Exemptions from Work Permit

The Law provides for certain exceptional cases for granting Work Permits to foreign nationals without being subject to the periods stated in the Law. For temporary employment assignments, in exceptional cases, the following may be of interest:

Foreign nationals holding the Status of Key Personnel. Work Permits may be exceptionally granted for a period stated in a contract or a tender, where applications for Work Permits are received from foreign nationals holding the status of key personnel, who intend to be employed in the acquisition of goods and services, the performance of a task or the operation of a plant, in construction and all kind of building works, or by means of contracts or tenders by legally authorized ministries as well as public institutions and establishments. Depending on the surrounding circumstances, the Law also provides for circumstances where foreign nationals shall not be required to obtain Work Permits for a definite period of time stipulated in the Law. Upon request, a "Work Permit Exemption Certificate" may be granted to a foreign national under exemption.

The following foreign nationals are not required to obtain any work permit:

a) Foreign nationals who are exempt from a work permit by means of bilateral or multilateral treaties to which Turkey is a party,

b) Foreign nationals coming to Turkey for a period of less than one month for scientific, cultural and artistic activities, and for a period of less than four months for the purpose of sporting activities,

c) Those coming to Turkey for the assembly, maintenance and repair works of any machinery and equipment imported to Turkey, to give the training about their usage, to take delivery of the equipment, or to repair the equipment broken down in Turkey for a period not exceeding three months and on the condition that this incident is evidenced in documentation to be provided by the applicant.

d) Those coming to Turkey for training related to the usage of goods and services exported from Turkey or imported to Turkey, for a period not exceeding three months and on the condition this incident is evidenced in documentation to be provided by the applicant.

e) Those coming to Turkey for performance shows and similar duties at fairs and circuses, for a period not exceeding six months and on the condition that this incident is evidenced in documentation to be provided by the applicant.

f) Those coming in order to obtain information and experience at universities as well as public institutions and establishments, for a period not exceeding two years

g) Those, who come to Turkey for educating persons in social, cultural and technological fields for less than six months and who

are reported to the relevant authorities as considerably contributing to Turkey,

h) Those foreign nationals who are representatives of foreign tour operators and who come to Turkey for a duration of less than eight months.

i) Those coming to Turkey within the scope of the programs conducted by the Center for European Union Education and Youth Programs (Turkish National Agency) throughout the schedule of the program.

j) Those coming to Turkey for training within the scope of student internship programs.

k) Football players and football coaches admitted by the Turkish Football Federation, throughout the duration of their agreements.

l) Seafarers working in ships registered with the Turkish International Ship Registry and with the conformity approval certificate provided by the relevant public authority, pursuant to the bilateral protocols made with other states in accordance with Article I/10 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

m) Experts assigned in the financial cooperation programs between Turkey and the European Union

Foreign nationals mentioned in sub-paragraphs b, c, d, e, g, and h above may benefit from the provisions of exemption only once within a calendar year.

If the service periods of foreign architects, engineers and town-planners subject to exemption provisions included in the framework of professional services exceed one month, they must obtain a work permit from the Ministry of Labor and Social Security, become a temporary member of the relevant professional chamber and comply with the practices of national institutions and establishments.

Exemption terms may not be extended.

Foreign nationals exempted from obtaining a work permit must notify the police authorities as to their purpose of coming and provide information, such as how long and where they intend to stay within one month following their entry date to Turkey.

Finally, please note that the Ministry of Labor and Social Security requests employers wishing to employ a foreign expert in relation to engineering, architecture and consultancy services, to present a detailed pay-roll evidencing that Turkish citizens are employed in the same occupation as engineers/architects/urban planners in their firm.

Ukraine

Executive summary

Ukrainian migration law requirements applicable to foreign nationals entering Ukraine on business, including for employment, are quite non-restrictive, compared to many other developed or post-Soviet countries. However, registration requirements applicable to all foreign nationals in Ukraine, regardless of the purpose of their visit, allow rather short time (10 days in certain cases) for compliance.

Applicable regulations have been significantly amended recently, which triggered rather zealous enforcement by Ukrainian authorities. In view of the harsh possible consequences of any migration law violations, up to and including deportation of the foreign national and heavy fines for the inviting party, business travelers and their corporate hosts should not rely on past lenient attitudes and enforcement practices of Ukrainian authorities.

Key Government Agencies

The State Migration Service, which was created in April of 2011, as a standalone state agency is subordinated to the Cabinet of Ministers through the Minister of Interior. In addition to the central headquarters, it also has local offices (the "Migration Local Office") in major cities, regions and administrative districts and is the key authority with respect to visa sponsorship, registration of foreign nationals and residency permits.

The Ministry of Labor and Social Policy, through its Employment Centers in cities and administrative districts, is the authority issuing work permits and monitoring compliance with Ukrainian Labor laws.

The consular services of the Ministry of Foreign Affairs are responsible for issuance of visas outside Ukraine.

The State Borderguards Service is the authority deciding on admittance of foreign nationals into Ukraine at the point of entry.

Certain registration functions are performed by local utility management entities (known by their Ukrainian acronym "ZHEK").

Current Trends

From 2005, Ukraine has both liberalized its rules of entry for foreign nationals (cancelling visa requirement for certain travelers entering for less than 90 days) and moved towards stricter enforcement of its existing rules (*e.g.*, the requirement to register at the place of residence, the limitation of the allowed length of stay).

Due to certain amendments to the rules for entry and stay of foreign nationals introduced in 2011, foreign nationals employed in Ukrainian branches of foreign companies (rather than in subsidiaries) are not eligible for obtaining Ukrainian work permits. However, this does not affect their ability to work, reside and travel in and outside Ukraine, as they are eligible for Ukrainian Temporary Residence Permits. An extremely important development is that family members of all foreign nationals who have Ukrainian Temporary Residence Permits can now also obtain such (derivative) permits. Children under 18 years may not have a separate permit, but are inscribed in the permit of one of the parents.

Since 2009, the legislation allows for obtaining a work permit for a longer period of time (three years, with an option to obtain an extension for up to two years). However, this benefit is available only for intra-company transferees and the issue of such work permits have not been widespread. Therefore, the vast majority of work permits are issued for one year only, with the option to renew for the subsequent one-year periods.

Business Travel

Unless a visa waiver is available, foreign business travelers require a visa to enter Ukraine. From 2011, only three types of visa are available: a transit visa (for stay of up to five days), a short-term stay "C" visa (for stay of up to three months) and a long-term stay "D" visa. The "D" visa is issued to those foreign nationals who are eligible

to apply for a Ukrainian Temporary Residence Permit (*e.g.*, students, holders of Ukrainian Work Permits, their spouses, *etc.*) and is valid only for stays of up to 45 days (counted from the date of entry), within which the Temporary Residence Permit must be applied for and received. Such visas are easily available from any consulate of Ukraine abroad. However, an invitation letter from the Ukrainian corporate host is necessary as part of the visa application package.

All foreign nationals, including citizens of the countries with which Ukraine has an agreement on visa-free travel, may enter and stay for up to 90 days in total during 180 days from the date of their first entry. This limitation does not apply only to holders of Temporary Residency Permits (or Permanent Residency Permits). A Temporary Residency Permit enables the holder to enter and leave Ukraine as desired and to stay in Ukraine for the entire term of validity of the Temporary Residency Permit (subject to completion of certain required registrations).

If a traveler needs to remain in Ukraine beyond 90 days in total within the 180 days from the date of the first entry, they need to file an application for the extension of stay with a relevant local branch of the Migration Service. The filing must be made at the Migration Local Office at least three work days before the expiration of the allowed term of stay and, but not earlier than on the eightieth day of stay (because the application will be considered premature). Extensions are normally granted, however, only in exceptional cases (illness precluding travel, very important family events, or unexpected business needs, *etc*.). The extensions are now granted only to foreign nationals who arrived on the basis of a visa (or from a country with which Ukraine has an agreement on visa-free travel) and if the local host supports the application.

It is important to remember that the extension is solely the permission to remain in Ukraine. Therefore, even if granted for the next several months, it will expire at the moment when the foreign national leaves Ukraine. As a result, the foreign national will be unable to return to Ukraine before the expiration of 180 days' period (from the moment

of the foreign national's entry) within which the extension was requested.

Under the applicable Ukrainian legislation, a foreign national must apply for the registration of his/her place of residence in Ukraine with the local utility management entity within 10 days after moving into a particular residence. If foreign national is staying in a hotel, the registration is done by the hotel and the foreign national's personal involvement is not necessary.

Visa Waiver

Citizens of the countries which are members of the European Union, the Swiss Confederation and the Principality of Liechtenstein, the USA, Britain, Canada and Japan (but not Australia) may enter Ukraine without a visa or any invitation letter for business for a term of up to 90 days in total within 180 days. Visa-free entry for private purposes or tourism is also allowed to citizens of the abovementioned developed countries, which makes it possible for business travelers to take their spouses, children and other family members along. However, this waiver of visa requirement is not intended for foreign nationals coming for employment purposes into Ukraine.

In addition, citizens of certain countries (including certain countries of the former Soviet Union) need to present evidence that they have sufficient means to sustain them for the entire period of their visit to Ukraine. If such evidence is not provided, the person will be denied entry into Ukraine and the person's visa may be cancelled.

Training

Any non-paid trainees can come either without a visa or on the basis of a visa (as may be applicable and described in further detail in the Business Travel section).

Any trainee who will receive any remuneration from the Ukrainian corporate host and whose functions are akin to those of an employee or of a service provider to the Ukrainian host require a Work Permit

and a "D" visa (and a Temporary Residency Permit), regardless of the duration of the training. All other requirements applicable to foreign employees of Ukrainian entities (university diploma, clean criminal record certificate, *etc*.) will also apply.

Therefore, any short-term trainees (arriving for less than three months) or candidates for urgent trainings should be brought into Ukraine on non-paid basis. Otherwise, the management effort required to arrange for filing of the Work Permit, the "D" visa, the Temporary Residence Permit and all registrations and other procedures applicable to foreign employees of Ukrainian entities and the waiting period (about two months for a Work Permit) seems hardly justified.

Employment Assignments

Ukrainian legislation has established a number of requirements applicable to all foreign employees of the Ukrainian corporate host. The Ukrainian company itself must be registered with the Migration Local Office to be able to act as corporate host and to issue relevant visa invitations to business travelers and foreign employees or to apply for the extension of their stay. The registration of the company with the Migration Local Office is also required in order to have a foreign employee registered in Ukraine and to obtain a Temporary Residence Permit for such employee.

All foreign nationals working for a Ukrainian legal entity (including subsidiaries of foreign companies) must have Work Permits. Applicable Ukrainian legislation expressly prohibits that:

- the company enter into employment relations or a service agreement with a foreign national; and/or

- a foreign national perform any functions on behalf of the company, including negotiation or signing of contracts, making filings with the authorities, opening or operating bank accounts, *etc*., prior to the obtaining by the company of a Work Permit for such foreign national.

The documents that comprise the application for a work permit, which must be submitted by the company to a relevant Employment Center, are numerous and require a visit to the company's tax office to obtain a certificate of good taxpayer status, as well as an advance filing informing the Employment Center about the vacancy.

Unlike many other countries, Ukraine has not introduced any quotas for foreign labor, either by type or worker categories or by country of citizenship. Also, Ukraine allows to hire a foreign national even if equivalent Ukrainian specialists are available in the locality, provided, however, that the employer is able to demonstrate superior education and skill of the foreign national. However, such superiority must be well described and the proof of the foreign employee's education, skills and experience is necessary (in the form of the university diploma, certificates, and resume). The processing of the application depends on the workload of the relevant Employment Center, but in Kyiv, the capital city of Ukraine, it currently does not exceed one month.

Work permits are issued for the period of one year (three years – for intra-company transferees). This term may be prolonged for the next year by filing an application, together with all the above mentioned documents, with the relevant Employment Center at least one month prior to the expiration of the term of the current work permit. Such extensions may be granted for a total of no more than five years (an extension for two years is available for intra-company transferee).

A foreign employee must also obtain a Ukrainian Tax ID before the Company can make salary (or any other) payments to the foreign employee. The Company acts as the tax withholding agent with regard to the withholding and remittance of the foreign employee's taxes and social contributions related to the salary into Ukrainian. The employee, if tax resident in Ukraine, is responsible for filing annual tax returns on the employee's worldwide income to the Ukrainian authorities.

After the work permit has been obtained by the Company, the foreign employee of the Company is eligible for a "D"-type. The visa must be obtained from a diplomatic representation with a consular service of Ukraine abroad. The "D" visa is normally issued for a period of 45 days. Upon receipt of a renewed Work Permit, the foreign national must again travel outside Ukraine to apply to a Ukrainian consulate for a new "D" visa and upon entry into Ukraine - for extension of the Temporary Residence Permit. As noted above, the foreign employee can extend the employee's allowed term of stay in Ukraine without leaving Ukraine by applying to and submitting his/her passport to the relevant Migration Local Office. However, such extension is not an extension of the visa and, in addition, it will expire immediately upon the foreign national's exit from Ukraine for any reason.

Upon foreign national's entry into Ukraine on the basis of the "D" visa, the foreign employee's passport must be submitted for registration with the relevant local utility company and, within 10 days upon receipt of the Temporary Residence Permit – to the Migration Local Office. The applicable Ukrainian legislation permits the Migration Local Office to request any additional documents, which they may deem necessary for the registration of the foreign nationals' passports.

The "D" is issued as a single-entry visa only. Therefore, no business trips outside Ukraine should be planned for the period until the foreign employee receives a Temporary Residence Permit; (ii) has his/her passport marked with a stamp "WORK PERMIT HAS BEEN GRANTED" by the Migration Local Office; and (iii) the foreign employee has registered at the place of his/her residence (received a relevant stamp in the Temporary Residence Permit). The total length of such period is about 21-25 days. After these steps are complete, the foreign national may travel in and outside Ukraine on the basis of the Temporary Residence Permit at any time and as many times as necessary during the term of validity of the work permit (and of the Temporary Residence Permit).

Since Ukrainian rules used to contain gaps or be unclear with respect to the procedures and documents necessary to receive certain permits or registrations, some foreign nationals had ignored the legislation and entered Ukraine for the purpose of work either on the basis of "C"-type entry visa (which is relatively easy to obtain), or on the basis of "no-visa" entry regime (available for business travelers from certain countries). However, the loopholes that have made such approach possible in practice (but in no way compliant with the existing law) have been eliminated by now.

Other Comments

Specific considerations apply to appointment of a foreign national to the position of CEO (Director) of a newly established Ukrainian company (subsidiary).

Although there is no express prohibition established in law, as a matter of practice, a foreign national may not be the first Director of a newly created Ukrainian legal entity. This is due to the fact that a foreign national may not sign any documents on behalf of the newly created company until the foreign national has obtained a Ukrainian Work Permit. At the same time, a number of papers must be signed by the Director in the process of establishing a new company, including the application(s) for the work permit(s) for foreign employee(s). Therefore, a Ukrainian citizen has to be appointed to temporarily act as the Director of the subsidiary until a work permit is obtained for the foreign national appointed to the position of the Director.

Also, as a prerequisite for registering the Director as an authorized signatory to operate the bank accounts of a company, some Ukrainian banks require a copy of the Work Permit and of the Temporary Residence Permit of the Director evidencing the registration of the Director at the place of his/her residence in Ukraine. The absence of such registration, however, normally occurs only if the Director does not physically reside in Ukraine (but manages the company remotely or through short-time visits) and, as a consequence, does not have any accommodation (and registered address) in Ukraine. For that reason, it

is best not to appoint a foreign national to the position of the Director, if it is clear that this person will not actually reside in Ukraine.

United Kingdom

Executive Summary

The United Kingdom completely overhauled its immigration system for employment related applications in 2008. The introduction of a points-based system, sponsorship licenses, and compulsory identification cards for foreign nationals are all part of the biggest shake up to immigration and border security in 45 years.

The UK government also announced that there would be a cap on the number of non-EU migrants coming to the UK. Since April 2011, there has been a full annual limit on the number of non-EU migrants coming to the UK.

Key Government Agencies

The UK Border Agency was formed in 2008 and is responsible for work formerly carried out by the Border and Immigration Agency, as well as the Foreign and Commonwealth Office's Visa Services and other agencies.

The UK Border Agency is responsible for processing applications for permission to enter and stay in the country, securing borders and controlling immigration. Officials are also posted at British embassies and consular posts abroad to process visa applications.

Current Trends

The Points-Based System has now replaced almost all of the employment and study related categories, reducing the previous 83 entry routes to five broad categories or tiers. The categories are now: Tier 1 (General) (now closed), Tier 1 (Post Study Work) (closed in April of 2012), Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 1 (Graduate) Entrepreneur, Tier 1 (Exceptional) Talent, Tier 2 (General) and Tier 2 (Intra Company Transfer)("ICT"), Tier 4 (Students), and Tier 5 (Temporary workers).

Tier 1 (General) replaced the old Highly Skilled Migrant Category but is now only available to those already in the UK as Highly Skilled/ Tier 1 (General) migrants who wish to extend their permission within this category. Whilst Tier 1 (Post Study Work) replaced the categories allowing employment upon completion of a degree course in the UK, Tier 2 (General) and (ICT) replaced the old work permit scheme. However the Tier 1 (Post Study Work) has now been deleted for new applicants. Tier 5 is divided into five subcategories covering various categories of temporary work. The Tier 5 (Youth Mobility Scheme) replaced the old Working Holidaymaker Scheme.

Background

British citizens, Commonwealth citizens with the right of abode in the UK, and Irish citizens are not subject to immigration control and do not require permission to enter or remain in the UK. Their passports will not be stamped on entry and they are free to return to the UK however long they stay outside.

Nationals of the European Economic Area ("EEA") countries, *i.e.*, nationals of the European Union countries - Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden - and the 10 accession countries who joined on May 1, 2004, plus nationals of Iceland, Liechtenstein and Norway are, in general, free to come to the UK with their dependents to reside and work in the UK without any prior formalities. Since May 1, 2011 nationals of the "A8" Accession states which joined the EU in 2004 - the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia - now also have full rights of residence and workers no longer need to register on the Worker Registration Scheme. Croatia is due to join the EU on July 1, 2013.

Certain formalities apply with respect to nationals of Romania and Bulgaria, which acceded to the EU on January 1, 2007. Romanian and Bulgarian nationals, although free to enter and remain in the UK, are required to obtain authorization from UK Border Agency before

commencing work, unless the particular job is exempt from this requirement or unless they had leave to remain granted before December 21, 2006. Swiss nationals also benefit from the same rights as most EEA nationals, 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.

Aliens, Commonwealth citizens without the right of abode, and UK passport holders who are not British citizens (*i.e.*, British Overseas Citizens) are subject to immigration control and must obtain permission to enter or remain in the country. Their passports will normally be stamped to indicate how long they can remain and what conditions are attached to such permission.

Citizens of certain countries are termed "visa nationals" and require mandatory entry clearance before traveling to the United Kingdom for any purpose, even as visitors. Other nationals only require an entry clearance if they wish to travel to the UK 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.

Business Travel

Business Visitor Category

Under revised visitor rules, there has been a separate category for Business visitors since 2008. Foreign nationals coming under the business visitor category can stay for a maximum of six months in any 12-month period. Nationals from certain designated "visa national" countries must apply for a visa before traveling to the UK.

Persons entering under this category must be based abroad and must not be receiving a salary from a UK source. Foreign nationals will only be allowed to undertake certain permissible activities under this category for example, transacting business (*e.g.*, attending meetings

and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). Applicants must not "intend to produce goods or provide services within the UK, including the selling of goods or services direct to members of the public."

In 2012 UKBA introduced a list of permitted paid engagements which could be undertaken as visitors, including examiners, lecturers, lawyers, arts entertainers and sporting professionals.

Please note that those entering under the visitor category are not otherwise authorized to work in the UK, regardless of whether paid or unpaid.

Training

The visitor category permits foreign nationals to undertake some limited training in techniques and work practices used in the UK. There are strict limits on the scope of training that can be provided under this category, which must be restricted to watching demonstrations and classroom instruction only. On-the-job training in a productive work environment is not permitted and visitor visa holders cannot be paid from any UK source, although they can receive reimbursement for certain expenses.

Employment Assignments

The general rule is that any person who is subject to immigration control cannot take up employment in the UK without a valid work permit or other form of work authorization. The main exceptions to this general rule concern EEA nationals (except Bulgarians & Romanians),Swiss nationals, and Gibraltarians.

Commonwealth Citizens with United Kingdom Ancestry

Upon proof that one grandparent - paternal or maternal - was born in the UK or Channel Islands, a Commonwealth citizen who wishes to take or seek employment will be granted an entry clearance for that purpose and does not require a work permit. Persons entering under this category will be admitted for an initial period of five years.

Representatives of Overseas Businesses

This category, previously named the sole representative category, allows companies without an existing UK operation to send a senior employee to the UK to establish a presence. This category now includes employees of an overseas newspaper, news agency or broadcasting organization. Intending entrants under this category must meet the following requirements:

- Seek entry as a senior employee with full authority to take operational decisions;

- 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) in the same type of business activity as the overseas business;

- Meet the English language requirement or have an academic qualification which is deemed by UK NARIC to be equivalent to a UK Master's or Bachelor's degree; and

- Obtain entry clearance prior to entering the UK.

Entrants under this category are admitted for an initial period of three years.

Tier 5 (Youth Mobility Scheme) (Temporary Workers) Creative and Sporting; Government Authorised Exchange and International Agreement

Tier 5 (Youth Mobility Scheme)

This has replaced the previous Working Holidaymaker Scheme. The Youth Mobility Scheme allows young people from participating countries to experience life in the UK. Currently only the following countries are participating in the Scheme: Australia, Canada, Japan, New Zealand, Monaco, South Korea, and Taiwan. British Overseas Citizens, British Overseas Territories Citizens, and British National Overseas passport holders are also allowed to apply.

The Tier 5 -Youth Mobility category is quota based. Visa applications from the above listed countries will be accepted until their country's annual allocation has been reached. However, there is no quota for applications from British Overseas Citizens, British Overseas Territories Citizens, and British National Overseas. Foreign nationals will be able to take up any work in the UK except self-employment (subject to certain exceptions), working as a professional sportsperson, or working as a doctor in training. Self-employment will only be permitted if the foreign national does not own the permanent premises from which he does business, the total value of the equipment he or she uses does not exceed GBP5000 and there are no employees.

Tier 5 (Temporary Workers) Creative and Sporting

For creative artists, sports persons and entertainers coming to fulfill short-term contracts/engagements in the UK

Tier 5 (Temporary Workers) Government Authorised Exchange

Offers migrants a route to enable a short-term exchange of knowledge and best practice through employment whilst experiencing the wider social and cultural setting of the UK

Tier 5 (Temporary Workers) International Agreement

For migrants who are legally entitled under international law, to come to work in the UK for a limited period of time

Tier 1 (Post Study Work)

This allows international students who have studied in the UK to remain in the UK after the completion of their UK degree to look for work or to work without having a sponsor. Employment as a Doctor or Dentist in Training is not permitted unless the graduate has obtained a degree in medicine or dentistry at Bachelor's level from a recognized UK institution that holds a Tier 4 license. This category has now been deleted for new applicants.

Tier 1 (General)

This category replaced the Highly Skilled Migrant category and allowed highly skilled people to come to the UK to work or take self-employment.

This category is now closed to new applicants although extensions are permitted.

Tier 1 (Investors)

The old Investor category was replaced with a new Tier (Investor) category under the Points-Based System, but the requirements remain broadly the same. The Investor category is designed for high net worth individuals who are able to make a substantial financial investment in the UK. Under revised rules, effective from April 6, 2011, the base entry level requirements under the Investor category are that applicants will still have to provide evidence that they have capital of GBP1m in their own name which can be transferred to the UK. However if they wish to gain a faster track towards permanent residency by investing at a higher level new investment bands of GBP10m and GBP5m have been introduced. In each case, the applicant is expected to invest 75 percent of the capital in the prescribed qualifying investments within three months of entering the UK. The qualifying investments continue to be UK Government bonds and share capital or loan capital in active and trading UK registered companies (with certain restrictions).

For applicants whose wealth is tied up in long-term investments, where they don't have sufficient liquid assets available, there is the option of using borrowed funds to meet the investment requirement. Applicants wishing to use borrowed funds will need to show that they have a "personal net worth" which is at least double the level of investment they plan to make. For example, an applicant planning to invest GBP10m using borrowed funds would have to show that he or she has a personal net worth of GBP20m.

The benefit of investing at one of the higher bands will be a faster track to permanent residency. Whereas the amount of time that must be spent in the UK was previously five years, applicants investing GBP10m will qualify in just two years. Similarly, those prepared to invest GBP5m will qualify after three years. It will still be possible to invest at the lower GBP1m level, but the track to permanent residency will then remain at five years. However all applicants, regardless as to the level of investment are required to spend just over 50 percent of their time in the UK over the qualifying period. Investors will be able to spend up to 180 days outside of the UK each year as opposed to previously having to spend 75 percent of their time here.

Investors are admitted for an initial period of 36 months (it was previously 24 months).

Tier 1 (Entrepreneur)

The Entrepreneur category is designed for those investing in the UK by setting up or taking over, and being actively involved in the running of, a business in the United Kingdom.

Under the current rules Entrepreneurs are required to show that they have access to GBP200,000 in capital to invest in a new or existing business. In order to make this category more enticing, the Government has reduced the level of investment required to GBP50,000 if the applicant can show that he or she has been promised this level of funds in cash from either:

- A venture capitalist firm regulated by the Financial Services Authority
- A UK entrepreneurial seeding fund competition (which has been endorsed by UK Trade & Investment)
- A UK Government Department for the specific purpose of establishing and expanding a UK business

In addition to creating this new investment limb, a faster track towards permanent residency has also been offered. Previously applicants could only apply for permanent residency after five years. However, under the revised rules a reduced three year track will apply, if the applicant can show that the business has created at least 10 new jobs during the same period. Alternatively, if the applicant can show that the new business had a turnover of at least GBP5m during the three year period of his or her visa, or if an existing business saw an increase in income of GBP5m during the same period, then he or she will qualify for permanent residency at the three year point. In all other cases the applicant will continue to qualify after five years. Like the Investor category, Entrepreneurs will be permitted to spend up to 10 days outside of the UK each year.

Tier 1 (Exceptional Talent)

The Tier one (Exceptional Talent) category opened on 9 August 2011. This category is intended to encourage exceptionally talented leaders in the fields of science, humanities, engineering and the arts to come to the UK. This new category is not only available to those who have already been recognized in their fields but also to those with the potential to become recognized leaders in their respective fields.

Those wishing to apply under Tier 1 (Exceptional talent) will not need to be sponsored by an employer, but will need to be recommended by one of four competent bodies appointed by the Government. Each competent body will select those who will qualify for recommendation and although the government has allotted a number of places to each body, the competent bodies will be able to transfer additional places to those with more demand if this becomes necessary.

Tier 2 (General) & Tier 2 (ICT)

Tier 2 replaced the old work permit scheme, which came into force on November 27, 2008. Employers now need to have a license in order to employ nationals from outside of the EEA. Any existing work permit holders can continue working until the expiry of their current permits.

They will then have to apply for an extension and switch into either Tier 2 (General) or Tier (ICT) depending on what type of work permit application they initially entered under.

The Licensed Sponsor is authorized to use the new Sponsor Management System. This is an on-line platform that allows companies to sponsor non-EEA nationals to come and work in the UK. Therefore, once an employer is registered as a Licensed Sponsor the company will then be ready to sponsor employees from overseas to work in the UK under the Tier 2 categories of the Points Based System. Under this system it is up to the employer to make an assessment as to whether or not an individual meets the published criteria for a certificate of sponsorship (the term for a work permit) to be issued. The company will then be able to issue a certificate and send it to the employee to apply for a visa.

In order to apply for a license, each employer will need to decide who to appoint to the following prescribed roles: (i) Authorizing Officer ("AO"); (ii) Key Contact; (iii) Level 1 User; and (iv) Level 2 User. All four roles can be filled by the same person, by four different people or by a combination of the two. The AO role must be undertaken by a permanent member of staff who is based in the UK. All of the other roles must either be undertaken by a permanent UK-based member of staff or a UK-based legal representative. Background checks and checks on the Police National Computer will be undertaken on all of these key personnel. Each of these roles carries some degree of responsibility for the functioning of the new system.

The "Authorizing Officer" is the most senior role within the new sponsorship system. The Authorizing Officer is responsible for assigning other key personnel and for their conduct. This individual is responsible for the activities of all users under the Sponsorship Management System (including employees and any appointed representatives). However, the Authorizing Officer does not have to be involved in the day to day operation of the Sponsor Management System and does not have automatic access to this system, but could also be a Level 1 or Level 2 User, which would give him/her access.

The "Key Contact" acts as the main point of contact with the UK Border Agency. This individual may be contacted by UK Border Agency for any queries with applications (*e.g.*, requests for documents or payment enquiries). The Key Contact does not have automatic access to Sponsorship Management System, but can be a Level 1 or Level 2 user as well, which would give access.

The "Level 1 User" deals with the day-to-day administrative activities of the Sponsor Management System (*e.g.*, assigning Certificates of Sponsorship to employees/prospective employees, completing change of circumstances forms, adding/removing sponsors from the system). The Level 1 User can also create and remove users from the Sponsor Management System.

"Level 2 Users" undertake the same type of administrative tasks as the Level 1 User, but cannot create and remove users. Any number of Level 2 Users can be appointed. However, as the Authorizing Officer is responsible for all activity by Level 2 Users, it would be advisable to keep the number of users at a manageable level.

In return for being granted a license and the ability to issue certificates of sponsorship, the employer must agree to undertake a number of duties (*e.g.*, recording certain specified information, reporting certain facts to the UK Border Agency, complying with relevant legislation and co-operating with the UK Border Agency).

As part of the licensing process, the UK Border Agency will make an on-site visit to the employer's business premises to check that it has the systems in place to meet the new obligations that arise from being granted a license. We would therefore recommend that any employer considering applying for a license should undertake a compliance audit before filing their license application.

Licensed employers are required to assess whether an employee meets the minimum points threshold for a certificate to be obtained. In this respect, points are allocated for three criteria including, personal attributes, English language skills and maintenance. The attributes

include sponsorship, qualifications and prospective earnings. The individual must score a minimum of fifty points under the attributes section and 10 points each for English language skills and maintenance.

It is worth noting that, although the company is responsible for issuing certificates of sponsorship under the system, the UK Border Agency will undertake a review of any decisions made after a certain number of certificates have been issued. If the company is found to have incorrectly issued the certificates or to have been non-compliant with any of the new obligations it could have its license downgraded or even withdrawn. If its license is withdrawn, any existing employees working under a certificate would be required to leave the UK within 28 days. Therefore, it is important for any company using the system to ensure that it is fully compliant with the requirements.

A foreign national who takes up employment in the UK without authorization, in breach of the Immigration Rules is liable to removal and under provisions introduced on February 29, 2008, could be barred from re-entering the UK for a period up to 10 years.

Since January 1997, UK employers faced sanctions under the Asylum and Immigration Act 1996 ("the 1996 Act") for employing people who did not have the right to work. The 1996 Act provided a defense for UK employers who made an offer of employment conditional upon the production of one of a list of specified documents. The list included an EEA passport or other passport containing an appropriate endorsement that evidenced the foreign national's right to work in the UK. Provided that such a document was produced, and appeared to be genuine, the UK employer would be protected from prosecution if a copy of that document was made and retained on the foreign national's personnel file.

That law was replaced by Section 15 of the Immigration, Asylum & Nationality Act 2006, which maintains similar documentary requirements, but requires the checks to be undertaken every 12 months. In addition, the main sanctions for non-compliance have been

moved from the criminal to the civil arena. Section fifteen allows for the imposition of a civil penalty of up to GBP10,000 per offence that may be imposed on the company and criminal penalties of knowingly employing an illegal immigrant including unlimited fines and/or imprisonment of up to two years.

In order to qualify, applicants must score a minimum of 50 points for attributes which includes qualifications, expected earnings and sponsorship. In addition, applicants must score 10 points for maintenance and 10 points for English language ability.

Tier 2 (General)

Under Tier 2 (General), sponsors must carry out a resident labor market test (unless the job is a shortage occupation or the job is in the creative sector). In general the post must be advertised on JobCentre Plus and one other specified medium as listed in the UKBA's Codes of Practice for a four week period, unless the role is above GBP70,000. The salary paid must also match the appropriate rate in the Codes of Practice. The advertising requirement can be waived where the salary is over GBP150,000 per annum.

For the entry clearance application, applicants must provide evidence that they meet the English Language requirement either by passing an approved English test, being a national of a majority English speaking country or holding a degree that was taught in English and is equivalent to a UK Bachelor's degree or above. The maintenance requirement is met by an A rated sponsor certifying on the Certificate of Sponsorship that it will meet the maintenance requirement for the main applicant and his dependents so no further evidence is required. Please note that the UK government introduced an annual migration limit, effective from April 6, 2011 on Tier 2 (General) applications. This means that an employer must file a request for a restricted Certificate of Sponsorship for each migrant from outside the UK under this category. Only if the Certificate is granted by UKBA can the visa application be filed. UKBA has limited the number of restricted Certificates of Sponsorship to 1,500 globally per month and

applications are only considered once a month, meaning this process can be both uncertain and lengthy. Where the salary offered is over GBP150,000 per annum it is not necessary to apply for a restricted Certificate of Sponsorship but one of the unrestricted allocation can be used.

Tier 2 (General) leads to permanent residence after five years. However if this is not taken up or a migrant leaves the UK earlier an exclusion from returning to the UK under any Tier 2 category applies from the end of the latest period of leave.

Tier 2 (Intra-Company Transfer)

This category allows multinational companies to transfer employees from their overseas organization into their UK branch or subsidiary to do a skilled job. Applicants must score a minimum of fifty points for attributes as for Tier 2 (General) and 10 points for maintenance. However, applicants do not have to satisfy the English language requirement under Tier 2 (ICT) until they have been in the UK for more than three years under the Tier 2 (ICT) category.

The Intra-Company Transfer category has been split into four e sub-categories: (i) Long-term Staff; (ii) Short-term Staff ; (iii) Graduate Trainee; and (iv) Skills Transfer.

Under the Long-term Staff and Short-term Staff category, this would allow a sponsoring organization to transfer an overseas employee who has been employed by an overseas company for 12 months or more) to transfer to the UK branch or subsidiary.

ICT Short-term Staff

Employees must earn a minimum of GBP24,000 per annum and can apply for a maximum visa length of 12 months.

- At the end of the visa the migrant will receive a 12 months exclusion from re entry to the UK as Short-term Staff or Tier 2 General

- Visas issued for less than 12 months can be extended up to 12 month limit

- Exclusion runs from date of expiry of visa not date of departure from the UK.

- Therefore if a migrant leaves the UK early the exclusion could in effect be longer than 12 months

- Short-term Staff can return under other categories *i.e.* as Long-term Staff (but cannot switch in country).

ICT Long-term Staff

Employees must earn a minimum of GBP40,000 per annum and can apply for a maximum initial visa of up to three years and can extend up to a total of five years.

- At the end of the visa the migrant will receive a 12 months exclusion from re entry to the UK as Long-term Staff or Tier 2 (General)

- Visas issued for less than three years can be extended up to three and then five years

- Exclusion runs from date of expiry of visa not date of departure from the UK

- Therefore if a migrant leaves the UK early the exclusion could in effect be much longer than 12 months

Graduate Transfer

Under the Graduate Transfer category, overseas companies can transfer recent graduates to the UK branch for training as part of a structured graduate training program. The graduate must have been employed by the overseas company for three months before coming to the UK. The maximum period of leave that can be granted under

Graduate Transfer is 12 months and no switching into other immigration categories is permitted. An exclusion from returning to the UK in the Short-term Staff category or Skills Transfer category will be effective from the end of the Graduate Transfer visa.

Skills Transfer

The Skills Transfer category allows overseas companies to transfer newly recruited employees (no prior employment with the overseas company is required) to the UK to acquire new skills and knowledge relevant to their new role. The maximum period of leave that can be granted under Skills Transfer is six months and like Graduate Transfer, no switching into other immigration categories is permitted.

Any migrant coming to the UK from April 6, 2010, under the Tier 2 (ICT) will no longer be able to apply for indefinite leave to remain or settlement after five years residency in the UK. However any migrant who is already in the UK before April 6, 2010, and extending their leave under the Intra-company Transfer category will still be able to continue on track to settlement. An exclusion from returning to the UK in the Short-term Staff category or Graduate Trainee category will be effective from the expiry of the visa

Other Comments

The spouses, civil partners or unmarried partners of entrants under all of the categories reviewed in this article, except the visitor some Tier 5 categories, must satisfy the following conditions in order to enter as dependents: (i) 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; (ii) they must intend to live with each other during their stay; and (iii) they must obtain entry clearance to enter as a dependent spouse or civil partner or unmarried partner. Dependent children under the age of 18 are also permitted and must obtain prior entry clearance.

In addition, non -EU migrants coming to the UK to join their spouses who are British citizens or have settled status are be required to pass an English language test and sponsors must meet a financial requirement.

Anyone entering the UK in one of the employment-related categories or as the spouse, civil partner or unmarried partner, with the exception of Tier 5, Tier 1 (Post Study Work) and the Tier 2 (ICT) category, will qualify, along with their dependents, to apply for permanent residency or indefinite leave to remain after completing five years of residence in the UK. Upon being granted permanent residency, they will be free to live and work in the UK without any restrictions.

United States of America

Executive Summary

United States law provides many solutions to help employers of foreign nationals. These range from temporary, nonimmigrant visas to permanent, immigrant visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The Department of State ("DOS") is responsible for visa processing at American consular posts abroad.

Many visa applications first require the approval of a visa petition by the prospective US employer filed with the Citizenship and Immigration Services ("CIS").

The Department of Labor, with the purpose of protecting American workers, is sometimes involved in the process – either before the visa petition is granted or during subsequent employer audits and audit compliance.

Inspection and admission of travelers is conducted by the Customs and Border Protection agency ("CBP") at American ports of entry and pre-flight inspection posts.

Investigations and enforcement actions involving employers and foreign nationals is the focus of the Immigration and Customs Enforcement agency ("ICE").

The CIS, CBP and ICE agencies are all part of the Department of Homeland Security ("DHS").

Current Trends

Border protection activity by the CBP and enforcement of immigration-related laws that impact employers and foreign nationals by ICE increased significantly after September 11, 2001. Employers of foreign nationals unauthorized for such employment are increasingly subjected to civil and criminal penalties at both the federal and state level. The global economic downturn only heightened concerns about the impact of foreign workers on the American labor market and identity theft, precipitating greater enforcement directives by DHS. Employers should not rely on past practices for continued success.

Worksite enforcement remains a top priority for the current administration. Enforcement is not limited to ICE audits. CIS has demonstrated a pattern of increased scrutiny in its adjudication of L-1 petitions and H-1B petitions for third-party site placement. CIS has also conducted unannounced on-site visits to employers with the purpose of confirming the validity of the H-1B or L-1 work authorization. DOS has commenced verification of information contained in nonimmigrant visa petitions received from CIS. In the current environment, a company-wide immigration compliance program should be a top priority.

The heightened scrutiny of nonimmigrant visas, as well as the limited supply of immigrant visas for professionals (especially those born in India and China), makes it increasingly important for employers to consider alternative strategies.

Employers involved in mergers, acquisitions, reorganizations, *etc.*, must also evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is especially significant as enforcement activity increases.

Although comprehensive immigration reform remains at a standstill, the immigration debate carries on throughout the country, with the business and human resource community on the watch for significant

changes– both positive and negative – to affect employee mobility to the United States in the coming years.

Business Travel

B-1 Business Visitor Visa

Foreign nationals coming to the US on short-term business trips may use the B-1 business visitor visa. The B-1 authorizes a broad range of commercial and professional activity in the US, including consultations, negotiations, business meetings, conferences, and taking orders for goods made abroad. Employment in the US is not authorized.

B-1 visa applications are processed at US consular posts abroad. They are valid for a fixed amount of time – generally 10 years – and may be valid for multiple or a specified number of entries. The CBP officer at the port of entry makes the determination of whether to admit and for how long.

The permitted length of stay is up to six months, with the possibility of stay extension applications for up to six months – although not generally granted – or a change to another visa status. An accompanying spouse and unmarried, minor children can be admitted under the B-2 tourist visa.

This visa requires proof of the applicant's nonimmigrant intention to depart the US, financial ability to stay in the US without seeking unauthorized employment, and the business purpose of the trip. A departure ticket is recommended.

Visa Waiver

The normal requirement of first applying to a consular post for the B-1 and B-2 visas is waived for foreign nationals of certain countries. The permitted scope of activity is the same as the B-1 and B-2 visas. The length of stay is up to 90 days only, without the possibility of a stay extension or status change. A departure ticket is required.

The following countries are presently qualified under this program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom.

The list of qualified countries changes regularly and the regularly updated list can be found at travel.state.gov/visa/temp/without/without_1990.html#countries.

Foreign national travelers coming to the United States under the Visa Waiver Program must first register on the Electronic System for Travel Authorization ("ESTA"). The electronic system determines a foreign national's eligibility to travel to the United States under the Visa Waiver Program. If ESTA authorization is not granted, the foreign national must obtain a nonimmigrant visa from a US Embassy or Consulate before traveling to the United States. As of September 8, 2010, travelers from Visa Waiver Program countries must pay operational and travel promotion fees in the amount of USD 14 when applying for a new or renewed ESTA.

Training

J-1 Exchange Visitor Visa

The J-1 exchange visitor visa is used for a number of different purposes, including on-the-job training. The purpose is to allow foreign nationals to receiving training that is not otherwise available in their home country and that will facilitate their career when they return abroad, while at the same time affording the opportunity for them to more generally exchange information with people in the US about the two countries. A detailed training program is required.

J-1 training must be administrated by a State Department authorized program, but all of the training itself is generally provided by the sponsoring US company. Compensation for training is not required,

but is permitted. This visa requires proof of the applicant's nonimmigrant intention to depart the US, financial ability to stay without seeking unauthorized employment, and the business purpose of the trip.

The length of stay for such training assignments can be for up to 18 months, including all possible extensions. The spouse and minor, unmarried children may be issued J-2 visas. The J-2 spouse may apply for employment authorization after arrival.

Some, but not all, J-1 and J-2 exchange visitors are subject to a requirement that they return to the home country for at least two years at the end of the J-1 training before being eligible to immigrate or return to work under certain nonimmigrant visas. The country of residence, field of training, and source of any government funding for the training can give rise to this requirement, which often can be waived.

H-3 Trainee Visa

The H-3 nonimmigrant visa is designed for foreign nationals coming for training that is not available in the trainee's own country and that will benefit the trainee's career abroad. H-3 trainees cannot engage in productive employment, unless merely incidental and necessary to the training. They cannot be placed in a position that is in the normal operation of the business and in which local workers are regularly employed.

In practice, H-3 visa requests are more readily granted for formal, classroom-type trainings and are more likely to be denied when an on-the-job training element is included, regardless of statements that such work may be incidental and necessary. A detailed training program is required.

The maximum duration of the H-3 visa is two years. The spouse and unmarried children under the age of 21 may be issued the H-4 dependent visa to accompany the H-3 trainee.

Although the H-3 visa does not impose specific compensation requirements, low salaries are sometimes criticized for the possibility of exploiting foreign labor, while high salaries can be criticized for possibly indicating productive labor. This visa requires proof of the applicant's nonimmigrant intention to depart, financial ability to stay without seeking unauthorized employment, and the business purpose of the trip.

B-1 Visa in lieu of H-3

Foreign nationals may be admitted to participate in H-3 type training programs using the B-1 visa, provided that they have been customarily employed by and will continue to receive a salary from the foreign company. The requirements and permitted activities are unchanged, but the duration is reduced to visits of up to six months. Otherwise, the B-1 visa comments provided earlier apply equally here.

Employment Assignments

L-1 Intracompany Transfer Visa

Multinational companies seeking to temporarily transfer foreign employees for assignment to US operations most often rely on the L-1. This visa is initially valid for assignments of up to three years, and can be extended in two-year increments for a total period of five or seven years, depending upon the nature of the US job duties. Executive and managerial-level employees can hold L-1A status for up to seven years, whereas employees working in a capacity involving specialized knowledge have a maximum stay of five years under L-1B status.

The spouse and unmarried children under the age of 21 may be issued the L-2 for the same period. The L-2 spouse may apply for employment authorization after arrival.

Qualified foreign nationals must have been outside the US for at least 12 months during the three years immediately preceding the L-1 visa request and during that period employed by the US petitioning

employer or a company with a qualifying intra-company relationship. There are a number of relationships that qualify, but all generally rely on common majority control (*e.g.*, parent-subsidiary, subsidiaries of a common parent, branch or representative office). The intra-company relationship need not have existed throughout the period of required employment.

Executive and managerial-level employment is generally shown through the management of subordinate employees or through the management of an essential function within the organization. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization's products, services, research, equipment, techniques, management, *etc.*, or an advanced level of expertise in the organization's processes and procedures.

Additional rules apply to companies during the first year of business operations in the US and to those who intend to place the foreign employee at a job site not controlled by the sponsoring employer (*e.g.*, outsourcing).

Large multinationals may take advantage of special "blanket" L-1 rules for faster government processing.

H-1B Specialty Occupation Visa

US employers of foreign professionals have long relied on the H-1B visa. Status is initially valid for up to three years, with extensions in three-year increments available for up to six years total stay. A potentially unlimited number of extensions beyond the six years may also be available to qualified H-1B visa holders in the immigration process. The spouse and unmarried children under the age of 21 may be issued the H-4 for the same period.

The job offered must be in a specialty occupation, which are jobs that normally require at least a bachelor's degree in a specific field. The foreign national must hold the required degree from an American

university or the equivalent. Foreign degree, employment experience, or a combination may be considered equivalent.

Employers must promise to give H-1B professionals wages, working conditions and benefits equal to or greater than those normally offered to similar employed workers in the US. A strike or labor dispute at the place of employment may impact eligibility. Detailed recordkeeping requirements apply and government audits to ensure compliance are authorized.

Only a limited number of new H-1B visa petitions can be granted each fiscal year. Historically, the limited supply has been quickly exhausted. In prior years, the annual quota has been reached within the first day of the filing period. H-1B visas for FY2013 were available as late as June of 2012.

Given the limited number of H-1B visas available, the government uses random selection to determine which requests to process – making this visa often an unreliable choice when the demand for H-1Bs far exceeds the supply. This problem does not exist for foreign professionals granted H-1B status with other employers, which are generally exempt from limits, as are H-1B requests filed by qualified educational institutions, affiliated research organizations, nonprofits and government research organizations.

H-1B1 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Singapore and Chile may take advantage of additional quota allocations and more streamlined processing rules. Although limited in number, the supply of these visas is consistently greater than demand making them more readily available. The scope of authorized work is essentially the same as the H-1B, but status is granted for up to 18 months, with extensions in increments of up to 12 months available. The spouse and unmarried children under the age of 21 may be issued the H-4 for the same period. This visa requires proof of the foreign national's nonimmigrant intention to depart the US.

E-3 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Australia can take advantage of similar Free Trade Agreement benefits using the E-3 visa. Also limited in number, the supply of these visas too is consistently greater than demand. The scope of authorized work is similar to the H-1B, but status is granted for up to 24 months, with extensions in increments of up to 24 months available. The spouse and unmarried children under the age of 21 may be issued the E-3 for the same period. The E-2 spouse may apply for employment authorization after arrival. This visa requires proof of the foreign national's nonimmigrant intention to depart the country.

TN North American Free Trade Agreement Visa

Employers of foreign professionals who are citizens of Canada and Mexico can take advantage of somewhat different Free Trade Agreement benefits using the TN visa. There are no numerical limits, so the supply of these visas is always available. The job offered must be in one of the professions covered by NAFTA, each of which has its own education or experience requirements. TN status is granted for up to 36 months, with a potentially unlimited number of three-year extensions available. The spouse and unmarried children under the age of 21 may be issued the TD for the same period. This visa requires proof of the foreign national's nonimmigrant intention to depart.

Some of the more commonly used professions covered by the TN include: computer systems analyst, engineer (all types), economist, lawyer, management consultant, biologist, chemist, industrial designer, accountant, and scientific technician. A complete list of the NAFTA professions can be found at www.amcits.com/nafta_professions.asp.

E-1 and E-2 Treaty Trader and Investor Visas

Foreign-owned companies doing business in the US may temporarily employ qualified foreign workers to facilitate international trade or investment activities. E visa status is granted for up to five years, with

a potentially unlimited number of extensions in five-year increments. The spouse and unmarried children under the age of 21 may be issued the E visa for the same period. The spouse may apply for employment authorization after arrival.

The list of countries with E-1 trade and E-2 investment treaties changes often and the government's regularly updated list can be found at travel.state.gov/visa/frv/reciprocity/reciprocity_3726.html. Qualifying companies must be at least 50 percent owned by citizens of the same treaty country. E visa status is only available to citizens of that same country. Not all countries hold treaties or agreements for both E-1 trade and E-2 investment visa status, and many countries hold neither, as can be seen on the following table:

Countries with E-one Treaty Trader Visa Eligibility

Argentina	Australia	Austria	Belgium	Bolivia
Bosnia & Herzegovina	Brunei	Canada	Chile	China, Republic of (Taiwan)
Colombia	Costa Rica	Croatia	Denmark	Estonia
Ethiopia	Finland	France	Germany	Greece
Honduras	Iran	Ireland	Israel	Italy
Japan	Jordan	Korea (South)	Kosovo	Latvia
Liberia	Luxembourg	Macedonia	Mexico	Montenegro
The Netherlands	Norway	Oman	Pakistan	Paraguay
The Philippines	Poland	Serbia	Singapore	Slovenia
Spain	Suriname	Sweden	Switzerland	Thailand
Togo	Turkey	The United Kingdom	Yugoslavia	

Countries with E-2 Treaty Investor Visa Eligibility				
Albania	Argentina	Armenia	Australia	Austria
Azerbaijan	Bahrain	Bangladesh	Belgium	Bolivia
Bosnia & Herzegovina	Bulgaria	Cameroon	Canada	Chile
China, Republic of (Taiwan)	Colombia	Congo	(Brazzaville)	Congo (Kinshasa)
Costa Rica	Croatia	Czech Republic	Denmark	Ecuador
Egypt	Estonia	Ethiopia	Finland	France
Georgia	Germany	Grenada	Honduras	Iran
Ireland	Italy	Jamaica	Japan	Jordan
Kazakhstan	Korea (South)	Kosovo	Kyrgyzstan	Latvia
Liberia	Lithuania	Luxembourg	Macedonia	Mexico
Moldova	Mongolia	Montenegro	Morocco	The Netherlands
Norway	Oman	Pakistan	Panama	Paraguay
The Philippines	Poland	Romania	Senegal	Serbia
Singapore	Slovak	Republic	Slovenia	Spain
Sri Lanka	Suriname	Sweden	Switzerland	Thailand
Togo	Trinidad & Tobago	Tunisia	Turkey	Ukraine
The United Kingdom	Yugoslavia			

The E-1 requires proof of substantial trading activity between the US and the treaty country. The level of trade can be measured by its value, frequency and volume. Only the trade between the US and

treaty country is considered, and that must account for at least 50 percent of the trade of the sponsoring employer. Items of trade range from goods to services, transportation, communications, data processing, finance, *etc.*

The E-2 requires proof of substantial capital investment that has either already been made or that is in the process of being made when the visa is requested. No minimum value threshold is set for the investment. The amount is measured in relation to the total cost of the US business. Only funds or the value of property committed to capital investments are considered, and not the cost of operating expenses. E visa status is available to individual investors with a majority ownership interest, as well as to employees coming to work in either a supervisory role or a position involving skills essential to the venture.

Other Comments

There are many additional nonimmigrant visas less frequently used for global mobility assignments worth a brief mention. Foreign students with the F-1 visa are often granted authorization for employment related to their studies before and after graduation. The O-1 visa authorizes the employment of foreign nationals of extraordinary ability. Foreign nationals with skills in short supply in the US may be able to obtain the H-2B visa.

Immigrant visas generally take longer to obtain, but in some situations compare favorably to nonimmigrant visas. Permanent resident status is often a goal for foreign nationals and US employers rely on immigrant visas to continue to have access to their work after the limited duration of nonimmigrant visas is exhausted. Selecting a nonimmigrant visa that is consistent with a long-term immigrant visa option can be crucial. US employers are well advised to develop policies and practices that recognize the value of the immigration process to recruit and retain skilled foreign professionals, while ensuring corporate compliance with US law.

In addition to employment-based immigrant visas, immigration to the US is possible through family-based immigrant visas by qualified US citizen or permanent resident relatives.

Immigrants are often interested to later become US citizens. Naturalization to citizenship generally requires five years of continuous residence after immigrating, during at least half of which time the immigrant must be physically in the country. Lengthy travel abroad, therefore, can detrimentally impact eligibility.

Further, immigrant status itself can be lost through lengthy travel abroad. US residents may be reluctant to accept assignments outside the US for this reason. It is often possible to address these concerns. The CIS can issue reentry permits to help immigrants maintain status while abroad. Further, immigrants working abroad for US owned companies or their foreign subsidiaries may qualify to protect their eligibility for citizenship. Both requests are time sensitive and should be made before the assignment abroad begins.

Further, US law generally requires immigrants to continue to file federal income tax returns even when all income is earned abroad and immigrant status can be impacted if a nonresident tax return is filed or if no US return is filed.

In the wake of September 11, 2001, greater focus is placed on registration laws requiring all foreign nationals (*e.g.*, tourists, nonimmigrants, permanent residents) to submit the CIS Alien's Change of Address notice within 10 days of changing the US residence address.

Further Information

Baker & McKenzie's *United States Business Immigration Manual* provides further information about American business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Bolivarian Republic of Venezuela

Executive Summary

Venezuelan immigration laws are an increasingly important and sensitive consideration when planning an investment in the country is required. Careful planning of employees' transfer to Venezuela is a key factor to achieve a successful business venture in Venezuela.

Compliance with Venezuelan immigration laws will safeguard companies from sanctions and penalties. While other applicable provisions exist, immigration laws are primarily in the Law on Foreign Nationals and Migration which became effective in November of 2004 (the "Migration Law"). The Migration Law regulates all matters related to the admission, entry and permanence of foreign nationals, as well as their rights and obligations in Venezuela, and it applies to all foreign nationals, regardless of whether they are in Venezuelan territory legally or illegally. In addition to the Migration Law, the Joint Resolution (the "Resolution") issued by the Ministry of the People's Power for Internal Relations and Justice (the "Ministry of Internal Relations and Justice"), the Ministry of the People's Power for Foreign Affairs (the "Ministry of Foreign Affairs") and the Ministry of the People's Power for Labor and Social Security (the "Ministry of Labor"), have set forth the rules and procedures for the issuance of visas (Official Gazette dated January 2000). Although this Resolution was enacted and became effective in 2000, it remains in force and effect for all matters not specifically abrogated by the Migration Law. Finally, it is very important to consider the current administrative policies, rulings and interpretations given from time to time by the officials and other authorities in charge of the relevant governmental agencies responsible for immigration matters, particularly the Ministry of Labor and the Ministry of Internal Relations and Justice, as part of the immigration laws.

The Venezuelan legislation provides many solutions to help employers of foreign nationals. Requirements, processing times and employment eligibility vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for certain visa processing at Venezuelan consular posts abroad. The Ministry of Labor, with the purpose of protecting Venezuelan workers, is involved in the process when a work visa (TR-L) is applied for. Inspection and admission of travelers is conducted by the Ministry of Internal Relations and Justice agency at Venezuelan ports of entry.

Current Trends

Under the Migration Law, employers of foreign nationals unauthorized for such employment are currently subject to administrative and criminal penalties. Employers should therefore not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, *etc*., must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as a result of the risks of penalties provided for in the Migration Law.

Business Travel

Business Visitor Visa ("TR-N")

This type of visa is granted to foreign executives or business persons that wish to enter Venezuela in order to perform financial, commercial or business activities, or any other profitable and legal activity related to their business. The TR-N is valid for one year and confers the right to enter and depart from Venezuela without limitation, although one may only remain in Venezuela for a continuous term of 180 days. Once such term has elapsed, the person must depart from Venezuela; otherwise, the visa will not be renewed. Notwithstanding the foregoing, the person may enter and remain for less than 180 days, as many times as needed.

The TR-N is currently granted by the Ministry of Foreign Affairs through the Venezuelan consulates in the country were the person who wishes to obtain this visa resides. Generally, each of the Venezuelan consulates is autonomous in terms of determining the procedure for the issuance of the TR-N, as well as additional documentation required for such purposes. Additionally, such consulate will analyze the purposes for which the company wishes to invite the person requiring the TR-N visa to come to Venezuela, as well as the nature of the activities to be performed by such person in Venezuela. Once the consulate has reviewed the documents listed below, it will authorize the issuance of the TR-N to the person requesting it. Once the TR-N has expired, it may be extended for an equal period, as many times as the relevant consulate may decide.

Please note that since the TR-N is not granted by the Ministry of Labor, a work permit is not required and it is not necessary to establish a corporate entity in Venezuela as an in-country sponsor, although an invitation letter from an established Venezuelan company usually is required. Furthermore, since the TR-N is a business visa, the person to whom it is granted cannot be an employee of the company for which services will be performed in Venezuela. In this respect, the person cannot be included on the payroll of or receive benefits from such company.

Training

There is no type of visa designed exclusively for training. For on-the-job training that involves productive work, the same visa used for most employment assignments that authorizes employment is the most likely solution.

Employment Assignments

Work Visa ("TR-L")

This type of visa is granted to any employee, business executive or corporate representative that may be performing his/her services in Venezuela for a period of at least one year, under an employment

agreement executed with a company in Venezuela, as explained below. It is valid for one year and confers the right to enter and depart from Venezuela without limitation. If the applicant will be accompanied by family (*i.e.*, husband or wife, children, parents, and father or mother-in-law), the TR-L will extend to each family member. It is important to note that even though the Resolution refers to a working period of at least one year, the TR-L is necessary to legally work in Venezuela even for periods of less than one year.

The procedure to obtain a TR-L is divided into three stages:

- The first stage is before the Ministry of Labor, where the purpose for which the company in Venezuela wishes to hire a foreign employee, as well as the nature of the services to be performed in Venezuela, are analyzed. At this stage, an offer of employment is made by the company before a Notary Public (the "Employment Offer"). Such document will then be considered as an employment agreement between the applicant and the company. The Ministry of Labor will review whether or not the company that will employ the services of the foreign employee will be in compliance with the restrictions for the hiring of foreign employees set forth in Article 27 of the Venezuelan Organic Labor and Workers' Law (the "OLWL"). According to this OLWL provision, at least 90 percent of the company's workers, both laborers and employees, must be Venezuelans. Consequently, though certain exceptions could be obtained in a few cases, no more than 10 percent of the company's workforce may be composed by foreign nationals. If the Ministry of Labor finds that all requirements are met, this first stage finalizes with the issuance of the work permit by the Ministry of Labor.

- The second stage is carried out before the Identification, Migration and Foreign Administrative Service ("SAIME") ("Servicio Administrativo Identificación, Migración y Extranjería"), where the aforementioned work permit and some additional documents are analyzed. This stage finalizes with the

issuance of the authorization to the Venezuelan consulate to grant the TR-L or work visa.

- During the third stage, the applicant must appear before the Venezuelan consulate of his/her country of origin or residence. Such consulate shall issue and stamp the TR-L in the applicant's passport. Please note that each Venezuelan consulate is autonomous in determining its own procedure for stamping the visa, as well as in terms of the documentation that must be submitted for such purposes. Generally, the applicant and his/her family will be subject to medical tests and examinations at the consulate, and also a certification of police records and a cash deposit may be required.

The TR-L may be extended for an equal period once it has expired. In addition, please note that the foreign national could start validly working in Venezuela once the corresponding TR-L has been issued.

Other Comments

Other types of visas for entry into Venezuela, which were not the focus of this article, could be applied for and obtained (for example, resident's visa). If you would like to obtain information about those, please contact us at the information provided below.

According to Article 3 of the OLWL, the OLWL applies to services performed or agreed upon in Venezuela, irrespective of the nationality of the employee. Consequently, when a foreign employee is transferred to work in Venezuela, especially if the work will be performed on a habitual basis in Venezuela, the provisions of the OLWL and the Venezuelan labor legislation apply.

In this respect, the OLWL and the Venezuelan labor and social legislation in general contain a set of mandatory conditions, contributions, obligations and labor and severance benefits that must generally be provided, complied with and paid by the employer in the benefit of his/her/its employees. The employer's failure to do so would subject the employer to potential liabilities. It is important to

obtain legal advice in connection therewith, preferably well in advance of transferring or hiring the employee to work in Venezuela. Based on recent rulings from the Venezuelan Supreme Court of Justice, there might be other legal options for companies to comply or deal with the Venezuelan labor and social security provisions while reducing the implied risks, and we encourage you to contact your Venezuelan legal counsel in order to obtain legal advice on this matter well in advance of transferring or hiring the employee to work in Venezuela.

Socialist Republic of Vietnam

Executive Summary

Vietnam has agreements with many countries on visa exemption for visitors coming into Vietnam for a short period of time. Citizens of other countries without such agreements must secure the proper visa before entering the country.

As regulations change frequently, verification of the following information is highly recommended.

Key Government Agencies

The Ministry of Public Security ("MPS") is responsible for the approval of entry visas to most foreign nationals and overseas Vietnamese residents who wish to enter Vietnam. Applications by other individuals, such as state officials and foreign representatives or diplomats, are addressed to the Prime Minister's office or to the Ministry of Foreign Affairs.

Most foreign nationals who wish to work in Vietnam must obtain a work permit. Work permits are issued by the Provincial-Level Department of Labor, War Invalids and Social Affairs ("DOLISA") or Labor Department of the Industrial Zone Authority at the Provincial-Level ("IZA").

Business Travel

Visitor Visa

The visa type is determined by the foreign national's purpose of entry into Vietnam. The many visas include: A1, A2, and A3 diplomatic visas; the B1, B2, B3, and B4 business visas; C1 and C2 tourist and other purpose visa by invitation from a local individual or organization; and D without an invitation from a local individual or organization visa.

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. For foreign nationals 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, normally a work permit. Without a work permit, decisions are made on a case-by-case basis.

Foreign nationals 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 neighboring 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.

Foreigners Invited to Visit by Non-State Agencies or Individuals Living in Vietnam

Foreign nationals who must first obtain an entry visa issued by the MPS include: foreign nationals who are invited to visit Vietnam by non-state agencies or organizations, foreign organizations (*i.e.*,

foreign-invested enterprises and branches or representative offices of foreign merchants), Vietnamese citizens residing in Vietnam, foreign nationals who are granted permanent residence permits, or foreign nationals 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 foreign national.

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.

Foreigners Intending to Carry Out Investment Projects

Foreign nationals who are entering Vietnam to carry out investment projects which have been licensed by the Provincial People's Committee ("PC") or similar State agency 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.

Foreigners Without Invitation Letters

Foreign nationals 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.

APEC Travel Card Program

By decision of the Prime Minister in 2006, Vietnam began participation in the program called APEC Business Travel Card ("ABTC") of 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 from the date of card issuance and can not be extended. When the issued card expires, the card holders can apply for a new card, if necessary.

Visa Waiver

Vietnam has a visa waiver program for foreign nationals of many countries, both through unilateral and bilateral commitments. Vietnam has entered into fifty-five bilateral visa-waiver treaties and agreements with other countries on visa waiver. Vietnam is considering extending visa waiver for all EU and ASEAN countries, in line with its close relationship with these groups. Vietnam also granted unilateral visa waiver for officials of ASEAN Secretary Committee and citizens of such countries as Japan, Korea, Sweden, Denmark, Poland and Norway. It should be noted, however, that these commitments vary regarding length of stay permitted, 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.

Employment Assignments

Acquiring an entry visa or a temporary residence card (which is similar to the "Blue Book") only addresses the entry, exit and residence rights of foreign nationals in Vietnam. If foreign nationals, including overseas Vietnamese, want to work in Vietnam, they must obtain work permits, unless they qualify for an exemption mentioned above. DOLISA and IZA are responsible for the issuance of work

permits to foreign nationals who wish to work for enterprises and organizations in Vietnam.

Foreigners exempt from work permit requirements

In general, all foreign nationals who wish to work in Vietnam must obtain work permits, except for the following cases:

- Working in Vietnam for a term of less than three months;
- Being a member of a limited liability company with two members or more;
- Being the owner of a one-member limited liability company;
- Being a member of the Management Board of a joint stock (or share holding) company;
- Being the chief representative of representative offices, heads of project offices or authorized representatives for activities in Vietnam of foreign non-government organizations;
- Being transferred to Vietnam as intra-corporate transferees within businesses of sectors provided in Vietnam's WTO Commitments;
- Entering Vietnam for development support projects and journalists licensed by the Ministry of Foreign Affairs of Vietnam
- Entering Vietnam to offer services (contractual service provider);
- Entering Vietnam to solve urgent cases that cannot be solved by Vietnamese experts and foreign experts already in Vietnam, for less than three months; if it is more than three months, a work permit is required;
- Practicing foreign lawyers granted the right to carry out occupational practices in Vietnam by the Ministry of Justice; and

- Being students, and other foreign nationals not captured by work permit requirement provided by Decree thirty-four, as amended by Decree forty-six, who wish to work for an enterprise, organization or individual in Vietnam.

Notification on their employment is required.

Work permits

The application process should take 15 working days, but may take longer in practice. Therefore, companies planning the secondment of an employee (who does not fall under the work permit exemption category) to Vietnam should apply for the work permit well in advance of the intended date of arrival of the employee in Vietnam.

If the criminal record, health certificate, curriculum vitae, or certificates regarding the skills of the foreign national are written in a foreign language, they must be translated into Vietnamese and the translation must be notarized for submittal with the application.

The employer and the foreign employee may only enter into an employment contract after a work permit has been issued by DOLISA.

The term of the work permit will be set as the intended term of the employment but does not exceed 36 months and can be renewed. However, as of May 1, 2013, the term of work permit will not exceed 24 months. In the renewal application, the employer must clearly state the reasons why it has not replaced the foreign national with a Vietnamese person, the name of the Vietnamese person being trained to replace the foreign national, the training expenses, the time period of the training and the place of training. Under the new regulation, a training agreement must be included in the renewal application.

Foreign nationals who work in Vietnam without a work permit may face expulsion from Vietnam. Furthermore, employers who recruit foreign nationals working without proper work permits or being barred from working in Vietnam may be subject to a maximum administrative fine of VND20 million (approx. USD962). With

respect to exemptions and required documents, persons wishing to apply for a work permit should seek professional assistance with regard to their particular circumstances because regulations are often changed or authorities may change their interpretation of existing regulations.

Temporary Residence

If the foreign national intends to stay in Vietnam for more than one-year and is legally registered for employment or for study in Vietnam, an application must be filed with the immigration office at the provincial-level in order to be granted a "Temporary Residence Card" ("TRC") (which is similar to the Blue Book). Processing should take five working days.

The duration of the TRC should be consistent with the purpose of the temporary residence.

The TRCs are valid for one to three years and may be considered for renewal or extension. The TRC holders are exempt from entry/exit visa requirements throughout the TRC's term of validity.

Permanent Residence

Under the Ordinance and its implementing regulations, permanent resident foreign nationals are defined as foreign nationals who have resided, worked and lived in Vietnam for a long time. Only the following temporary resident foreign nationals 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 spouse, children or parents of Vietnamese citizens residing permanently in Vietnam.

Foreign nationals 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 concerned person and with this card, such person is exempt from entry/exit visa.

Other Comments

Registration for permanent residence in Vietnam of Overseas Vietnamese

The Ministries of Public Security and Foreign Affairs provide guidelines on registration for permanent residence in Vietnam of overseas Vietnamese.

Overseas Vietnamese may receive consideration to register for their permanent residence in Vietnam if they hold a valid passport or similar document issued by foreign authorities. They must also meet certain qualifications related to self-sustenance and submit a formal application to the government.

Granting of General Passports for Vietnamese Citizens Abroad

The Government promulgates guidance on the granting, extension, supplementation and amendment of general passports for Vietnamese citizens in foreign countries. These guidelines do not apply to Vietnamese citizens in countries that have signed agreements with Vietnam which provides different provisions on this matter.

Vietnamese citizens must appear at the Vietnamese representative agencies overseas to submit applications and receive passports. Children under 14 years old may be included into the passport application form of their parent for joint travel under the same passport.

Law on Vietnamese Nationality

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, ability of making livelihood in Vietnam, obeying the Constitution and laws of Vietnam.

These conditions may be waived if an individual has a wife or husband who is a Vietnamese citizen or an individual is a father or mother of a Vietnamese citizen.

An individual has a right to Vietnamese citizenship if he was born in Vietnam or overseas to a mother or father who is a Vietnamese citizen. Dual citizenship is not permitted, except some specific cases which requires an approval from the State President.

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 to the following foreign nationals or non-Vietnamese citizens:

- who are spouses, natural parents or natural children of Vietnamese citizens;
- who have made outstanding contributions to Vietnam's national construction and defense; and
- who are helpful to the State of the Socialist Republic of Vietnam.

Such individuals shall be entitled to a reduction of five 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. Further, the dossier for naturalization as a

Vietnamese citizen must be submitted to the Department of Justice ("DOJ") where the applicant resides.

If the applicant resides abroad, the dossier must be submitted to the Vietnamese diplomatic mission or consular office there. The application process should take more than six 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

FOR MORE INFORMATION:

If you would like to receive the *Global Mobility Handbook* in soft copy via e-mail, or would like any additional information about Baker & McKenzie's Global Immigration and Mobility practice or any of our other employment-related practice groups, please contact:

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