The Global Employer:
Focus on Global Immigration and Mobility

2016-2017

Baker & McKenzie

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Editor's Note

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

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* Disclaimer: In order to keep the text concise, we will be using the masculine pronoun "he," as opposed to "he or she," when necessary. The pronoun is intended to encompass both genders.

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Global Immigration & Mobility 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

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

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

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

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

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

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

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

Further Information

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

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

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

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

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

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

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

The Global Employer: Focus on U.S. Business Immigration;

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

The Global Employer: Focus on Trade Unions & Works Councils;

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

Table of Contents

Section 1
Introduction

Introduction

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

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

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

The Global Employer: Focus on Global Immigration & Mobility

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

Global Labor, Employment and Employee Benefits

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

Baker & McKenzie offers comprehensive legal advice related to global immigration – delivered locally around the world. We help employers plan and implement global transfers and provide on-site

legal support to companies and employees in most major business communities around the globe.

Our network of Global Immigration, Employment, International Executive Mobility, Global Equity Services, and other lawyers in other disciplines (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.

Section 2
Major Issues

Immigration

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

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

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

Current Trends

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

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

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

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

Business Travel

Visitor Visas

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

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

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

Visa Waiver

Many countries have provisions that waive the normal visa requirement for tourists and short-term business visitors. These visa

waiver benefits tend to be reciprocal and are limited to citizens of specific countries (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 is undertaken in another, post-sales installation and support are handled by regional centers, and the ultimate users are spread around the world.

Many countries offer specific visas designed for training assignments (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 that are transferred within multinational companies. Most countries exempt business investors and high-level/key employees.

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

Residence Permits

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

Other Concerns

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

Most countries offer derivative visa benefits to accompanying family members, however, what constitutes a family member varies a great deal. The spouse and unmarried, minor children are commonly included. An increasing, but still minority, number of countries offer derivative benefits to different-sex life partners, with same-sex partners benefiting in some other countries (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 the document is, in fact, authentic. An additional step of consular legalization of the authenticated document is required by certain countries (e.g., Brazil, Italy).

Further Information

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

Employment

Integral to mobility planning is identifying and establishing the appropriate employment structure for 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.

- Transfer of Employment – the employee is terminated by the home country employer and is rehired by a new employer in the host country.

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

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

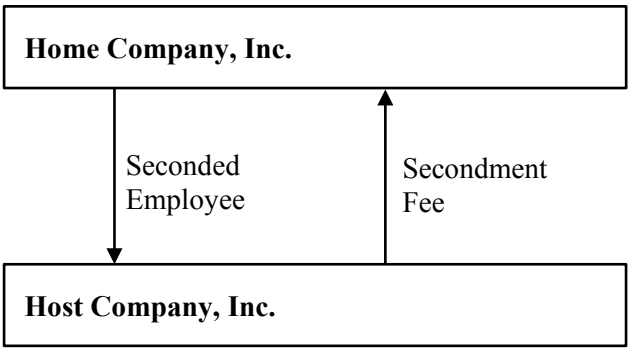
In addition to these four main structures, multinational companies sometimes use other structures, although they are not as popular. For example, in Germany and several other European countries it is possible to use a "dormant contract" approach, whereby the

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 for 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 him 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 the application of host country termination protections and entitlements. As a practical matter, however, it is likely that an employee working in a host jurisdiction will be eligible for the benefits of the employment laws of the host jurisdiction during the course of the secondment and upon termination.

Assignment letters for secondment typically include the following provisions:

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

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

- provisions addressing what happens upon a termination of the assignment, 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 (e.g., severance pay under the laws of both home and host jurisdictions in the event of termination); 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 concern created by use 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. Since an employee is deemed to be an extension of his employer, the mere presence of an employee in a foreign jurisdiction could allow the host country to tax the employee's employer (that is, the Home Company). To mitigate the corporate tax risks for the Home Company associated with a PE, the assignment letter should expressly provide that the individual does not have the authority to conclude contracts on behalf of the Home Company while on secondment. In many cases, this covenant will be extremely helpful to defeat a PE in those situations where the employee is seconded to a host country that has an income tax treaty with the home country. There are exceptions, however, and so consultation with tax counsel about this issue is recommended. Note that in the case of secondments to certain jurisdictions (e.g., Canada, China and India) the covenant not to conclude contracts will unfortunately not be sufficient by itself to mitigate the PE risk.

Another issue presented by secondment is that it sometimes will be challenging to implement where the employee, as a matter of local immigration law, is 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, Middle Eastern and African jurisdictions (e.g., Argentina, Brazil, Colombia, Dubai, Saudi Arabia, Angola and Equatorial Guinea). 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.

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

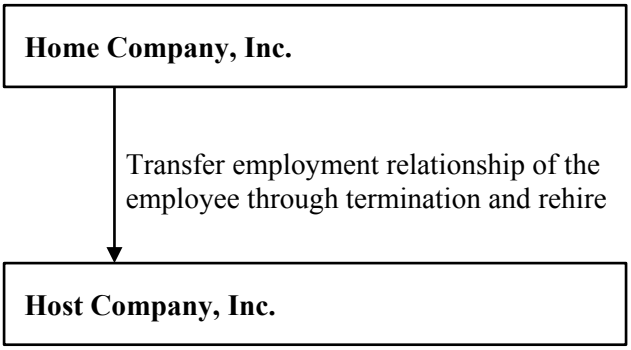
Secondments, nevertheless, remain the most common employment structure for expatriates. Secondment is particularly desirable where the employee desires to remain in home country employee benefit plans, such as a retirement or pension plan, while working in the host country. Many US expatriates, for example,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

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. It also avoids altogether the risk of a PE issue, since the employee will always be employed, that is, directed and controlled, by the Host Company.

Since this structure involves a technical termination of employment, however, all termination-related obligations and payments are triggered (e.g., severance pay, termination indemnities, distribution of accrued pension benefits, the final paycheck and vacation payout, and so forth). While many multinationals handle this issue by asking the employee to waive his entitlement to these benefits, in some jurisdictions the payment of severance upon termination of employment is mandatory, even if the employee is to rehired by a related company, and cannot be waived as a matter of local law and public policy. Another issue to consider is that a transfer of employment requires the employee to start as a "new hire" with the new employer, which may mean the loss of seniority and credits for prior years of service with the former employer (unless the new employer agrees to maintain such seniority and service credits). Further, at the end of the assignment when the employee returns to the Home Company, the employee will again have to be terminated and rehired, which will again trigger severance payments and obligations the same as before. Thus, while it is a preferred approach for some reasons, the transfer of employment structure is also the most expensive, typically, for the employer to implement.

Typical Transfer of Employment Structure



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

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

Global Employment Company ("GEC")

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

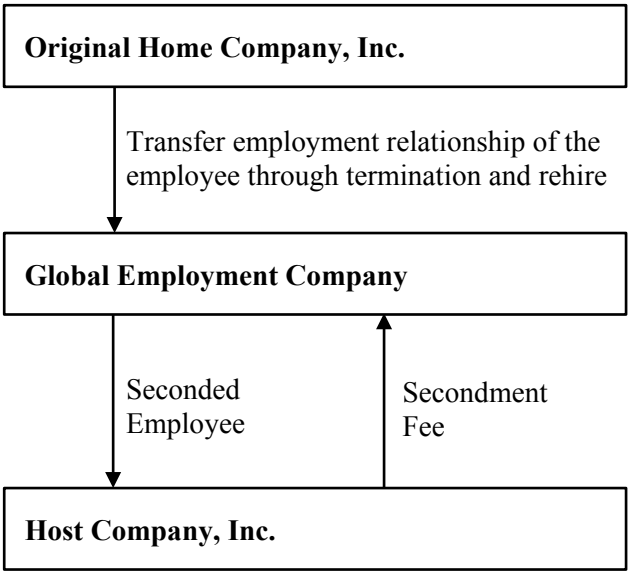
The use of a GEC can offer employers the opportunity to create a uniform structure for their global mobility program. All expatriates would be under one "umbrella" because they would all have the same employer – the GEC. The GEC allows a multinational company the ability to adopt a uniform approach to compensation, benefits, social security, and income taxation for its global workforce. Also, the GEC provides an effective buffer for any PE issues that may arise, since the GEC becomes the "employer" and thus it is only the GEC that has 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. It is common to set up a GEC either in a jurisdiction with a robust income tax treaty network (e.g., the Netherlands, Singapore or Ireland), or in a jurisdiction with minimal or no corporate income taxes (e.g., the Cayman Islands, Bermuda or Guernsey). Other considerations when selecting a GEC jurisdiction include: whether the laws are employer-friendly, whether it is relatively easy to set up a new company in the GEC jurisdiction, whether local laws allow the GEC to be operated and managed from afar, whether the company has other affiliates in or experience with the GEC jurisdiction, and what substance requirements the potential GEC jurisdiction may require to operate the GEC on a daily basis. And, depending on the size and variety of the expatriate population, a multinational may decide to set up multiple GECs for different regions, for different lines of business, or for different nationalities of

expatriates (e.g., a US GEC for US citizen expatriates and a non-US GEC for all other expatriates).

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

Typical Global Employment Company Structure



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

Dual Employment

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

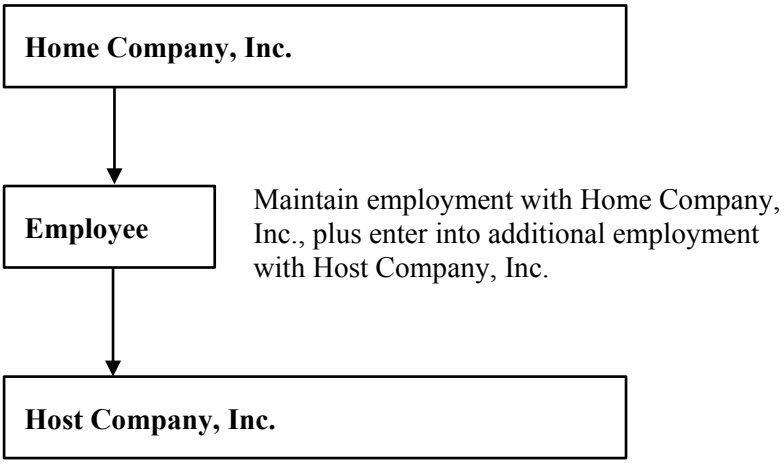
A dual employment structure is often used in a situation where the employee is in fact providing services that benefit more than one entity, such as a sales manager who is selling products covering more than one line of business, or an executive who has multiple titles and reporting relationships in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

This employment structure is more burdensome than the other structures since it requires maintaining two employment relationships, two employment agreements, multiple tax and filing obligations, and

multiple payroll and benefits implications. As a result, it is the least common employment structure for expatriates.

Documenting a dual employment relationship usually involves a separate employment agreement for each employer. These agreements should be carefully drafted to appropriately document the duties, responsibilities, time allotment and compensation for each separate employment relationship, and to avoid paying the employee more than 100 percent of the compensation he is owed for providing services to both employers.

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

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

Compensation and Payroll

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

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

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

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

With 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 paid from the local payroll, that is, he 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 outside of the host country because of currency exchange controls, making a local payroll the only practical option.

Payroll by itself 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 merely because they have an existing payroll function and personnel who are familiar with the local payroll requirements. For example, the host company might pay compensation to the expatriate as a "payroll agent" on behalf of the expatriate's real employer in the home jurisdiction. 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.

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

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

Extending US Tax-Qualified Plans to Employees Working Abroad

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

A US tax-qualified retirement plan may provide certain US tax advantages that a foreign retirement plan cannot, such as a pre-tax

contribution feature (as in the case of a plan under Section 401(k) of the US Internal Revenue Code of 1986, as amended ("Code")), no current US income tax on the contributions made to the plan on the employee's behalf, no current US income tax on earnings of the plan prior to distribution, and favorable US income tax treatment upon distribution (such as tax-free rollover treatment).

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

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

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

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

Accordingly, if the employee is working for a US employer and is seconded to work for a non-US company, then he 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 terminates employment with the US employer and is rehired by a non-US company that is outside of the plan sponsor's controlled group, with a few exceptions (described below) he 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 terminates employment with the US employer and is rehired by a non-US company, his participation in a US tax-qualified retirement plan can be nonetheless preserved where the non-US company is a member of the same controlled group as the plan sponsor 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 one member of the controlled group will be considered to be employment sufficient to participate in the plan as an "employee." Accordingly, an employee can continue to participate in the tax-qualified plan without disqualifying it as long as he 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 is transferring employment from a plan sponsor to a foreign company that is a controlled group member, the plan sponsor is not automatically entitled to a US federal income tax deduction for its contributions made on behalf of such employee, since the plan sponsor may only deduct contributions made on behalf of its own employees. In other words, the controlled group rules and the income tax deduction rules are not synchronized. Notwithstanding, the IRS has ruled in a private letter ruling that if the controlled group member in fact adopts the plan for the benefit of the employee, the contribution made on behalf of an employee who works for the controlled group member is deductible by the plan sponsor, the same as if the employee remained employed by the plan sponsor. Accordingly, the foreign employer would have to adopt the plan in order to preserve the ability to take a US federal income tax deduction for contributions made to the plan.

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

Treat Assignment as a "Leave of Absence"

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

Working for a "Foreign Affiliate"

Another way to continue the employee's participation in the US tax-qualified retirement plan is if the employee is employed by an entity in which an "American employer" (which includes a US corporation) has a 10 percent or more interest (for these purposes, a "foreign affiliate"). This provision is found in Section 406 of the Code, but is not used that much any more since the application of the controlled group rules, described above, has lessened the attraction of this Code provision as a means to continue plan participation. Where this provision is utilized, the employee of the foreign affiliate will be treated as "employed" by the American employer for the purposes of the American employer's tax-qualified retirement plan (even though he really is not so employed), if certain requirements are met, including that the American employer agrees to extend US Social Security coverage to all of the foreign affiliate's employees who are US citizens or residents by means of a Section 3121(l) agreement filed with the IRS, and that the employee does not participate in a local funded, deferred compensation plan.

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

Adoption by Foreign Employer

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

Foreign Law Implications

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

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

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

compensation be no greater than a comparable employee who has been hired locally by the foreign company. There is also a risk in some "acquired rights" jurisdictions that plan participation and benefits may not be terminated or revised unilaterally by the employer without 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 is hired by an employer 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 each year, which results in a larger benefit to the retiree over time. US tax-qualified plans generally do not provide this enhancement.

Finally, local law may 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 participates in a retirement plan in the local jurisdiction.

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

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

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

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

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

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

Unregistered arrangements include a 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.

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

ORSO requires a scheme to be registered if it has or is capable of having the effect of providing benefits, in the form of pensions, allowances, gratuities or otherwise, payable on termination of service, death or retirement, to or in respect of persons gainfully employed in Hong Kong or elsewhere under a contract of service. An exemption to the compliance requirements under ORSO may be granted if the scheme is registered with or approved by an offshore authority 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 Mandatory Provident Fund system in Hong Kong. In keeping with Hong Kong's policy of encouraging market

enterprise, the legislation establishes a mandatory retirement system which is largely run by the private sector. The fundamental requirement of the MPFSO is that every employer of relevant employees must establish or join a Mandatory Provident Fund scheme. Non-Hong Kong employers will be subject to the legislation if they have employees in Hong Kong. A "relevant employee" is defined as an employee of between 18 and 65 years of age, including apprentices.

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

The employer is required to contribute five percent of the employee's relevant income to a Mandatory Provident Fund scheme. Employees who are members of a Mandatory Provident Fund scheme are required to contribute 5 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 plan:

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

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

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

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

US Tax Consequences of Participating in Non-US Plans

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

If an employee participates in a non-US plan funded through a trust, the tax consequences are determined under Code Section 402(b), which 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 or a plan funded using a non-US trust should also address any potential issues under Code Section 409A and 457A. A non-US retirement plan is potentially subject to these rules because it provides a form of non-qualified deferred compensation.

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

ERISA Implications

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

Non-US retirement plans typically do not worry about ERISA because ERISA exempts a plan maintained outside the United States primarily for the benefit of persons substantially all of whom are non-resident aliens. The US Department of Labor, which has primary jurisdiction for the interpretation and enforcement of ERISA, bases its determinations that plans qualify for this exemption on factors such as whether the plans cover all or primarily all non-resident aliens, whether the work location of the employees 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-based 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, carries 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 have taxed the grant of stock options on vesting (e.g., in Australia for options granted between July 1, 2009 and June 30, 2015, that were subject to a "real risk of forfeiture").

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

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.

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 for equity awards under any circumstances (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 of options to 50 or more employees of an indirect or less than wholly owned subsidiary with an offering value equal to or greater than JPY 100,000,000 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 purchase 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.

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

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 is working on foreign assignment. That is, if the expatriate will be required to maintain "minimum essential coverage" while working abroad.

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 for dismissing an employee.

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

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

- the purchase of a specially designed individual policy;
- the enrollment of the employee and his family in a specially designed group health plan for expatriates, which is the common approach for many multinationals;
- the enrollment of the employee and his 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, as a result of the assignment, 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 if there is an event that would otherwise trigger COBRA coverage since the employee would no longer be a "covered employee." In this regard, query whether the employee's transfer of employment to a non-US employer could constitute a "qualifying event" for purposes of COBRA group health plan continuation coverage.

Non-US Health Benefits

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 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

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. This determination will also need to take into account:

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

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

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

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

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

US Federal Income Tax: Short-term Assignments

Where an employee lives and works abroad, it is natural to assume that the country where he is assigned will seek to tax 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 67 countries. Several income tax treaty provisions may be relevant to mobile employees. The provision addressing "dependent personal services" or "income from employment" is primarily directed at certain employees who are sent by their employers to work on short-term assignments in the host jurisdiction.

For example, Article 14 of the US–UK Income Tax Treaty provides a general rule and two exceptions regarding income from employment. The general rule is that salaries, wages and other similar remuneration derived by a resident of the home country in respect of employment is 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: (i) he is not present in the UK for more than 183 days during any 12-month period; (ii) he is paid by or on behalf of an employer outside of the UK; and (iii) the remuneration is not deducted by a permanent establishment which the employer has in the UK.

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

It should be noted that the Organization of Economic Community and Development ("OECD") has recently indicated that the "employer," for the 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. An "economic employer" is deemed to be the one who actually directs and controls the activities of the individual. The "legal employer" is the one who, on paper, is denominated as the employer.

Consequently, when structuring short-term assignments in countries that are adopting the "economic employer" concept, the activities and the actions of the employee need to be reviewed. The treaty exemption will only be available if the *home country entity* meets the test of the "economic employer" and if 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 USD 101,300 for 2016. 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 United States who is a bona fide resident of a foreign country for an entire taxable year; or

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

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

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

In addition to the foreign earned income exclusion, a qualified individual may elect to exclude 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 USD 16,208 (for 2016), 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 USD 30,390 (for 2016), 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 United States, 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 the purposes of this limitation depends on the type of income involved and, in some cases, the residency status of the employee.

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

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

tax were paid or accrued in the employee's first preceding and ten succeeding tax years up to the amount of any excess limitation in those years.

Participation in Non-US Compensation Programs

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

A complete review of 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 to Section 409A 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 under Section 409A on offshore funding and funding tied to the employer's financial condition. If the requirements are not met, the deferred compensation amounts will be taxable to the employee at the time of vesting and an additional 20 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 "non-qualified entities." In general, employers based in jurisdictions that do not have a corporate income tax will be "non-qualified 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 "non-qualified entity" depending upon the extent to which the jurisdiction taxes non-resident income differently from resident income, and also the extent to which the employer's income for the year includes non-resident income. Given the complexities of Code Section 457A, employers are encouraged to consult with tax counsel regarding the potential impact of this Section on their expatriate population.

US Federal Income Tax – US Inbound Assignments

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

Taxation as a "Resident"

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

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

As a non-resident alien, he will 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 United States, that is not "effectively connected" with the conduct of a US trade or business.

The employee's performance of services in the United States will be deemed to be the conduct of a US trade or business. The compensation he receives therefore will be "effectively connected" with a US trade or business and will be taxable at the same rate as 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 United States (i.e., the "green card" test); or

- is in the United States for 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 United States for at least 31 days during the current calendar year; and

- the sum of the days he is present in the United States during the current calendar year, plus one-third of the days he was present in the preceding year, plus one-sixth 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 for fewer than 183 days during the year and has a tax home in 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 non-resident alien who is temporarily present in the United States as a non-immigrant under the foreign student F visa or exchange visitor J visa may exclude from gross income compensation received from a foreign employer or an office maintained outside of the United States by a US person.

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

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

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

Participation in Non-US Compensation Programs

As previously discussed, Code Section 409A has 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 United States, then unexercised stock option grants under such plans may be particularly problematic under Code Section 409A.

Notwithstanding, there are some exemptions under Code Section 409A for deferred compensation 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 United States or any instrumentality thereof;
- an individual who is a resident of the United States;
- a partnership, if two-thirds or more of the partners are residents of the United States;

- a trust, if all of the trustees are residents of the United States; or
- a corporation organized under the laws of the United States or any State.

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

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

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

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

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

United States by *all employees* who are citizens or residents of the United States.

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

Totalization Agreements

Just as the expatriate and his employer might want to avoid the problem of increased income taxation resulting from the foreign assignment, there is also 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, 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 ten 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 25 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 the purposes of determining eligibility for coverage. For example, to qualify for a minimum US Social Security benefit under the totalization procedure, the executive must have at least six quarters of coverage in the United States system. The Totalization Agreements contain parallel provisions for each country, so that if the combined or "totalized" periods of coverage are sufficient to meet the eligibility

requirements for benefits, then pro rata benefits are payable from each country's social insurance system.

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

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

application of FICA tax withholding. In that event, the employee will need to produce a certificate of coverage from the home country authority to claim the exemption.

Employee Reporting Obligations

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

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. This protective language does not work in all cases, however, so consultation with international tax counsel is recommended.

The activities that could constitute a PE vary by jurisdiction, based on income tax treaty provisions and the structure of the employment relationships. The concept of PE has been undergoing significant changes following guidance from the OECD. As a result, in some jurisdictions a covenant that the expatriate does not have the authority to conclude contracts may not be enough to avoid a PE risk. In some jurisdictions (e.g., China) secondment attracts special scrutiny, simply because it is 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 and accrue for the total expected international assignment cost, including estimates of home and host country income and social tax, in cases where the employee is eligible for either tax equalization or tax protection.

Compliance: Withholding and Reporting

As more multinational companies focus on compliance-related issues, it is not surprising that the area of global mobility has received some attention. In particular, companies often look to review their processes and procedures to make sure that all expatriates, extended business travelers and rotators are accounted for, that the appropriate taxes

(income, social taxes) are withheld from their employees' pay, and that the appropriate reporting of such pay is being 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.

Global Equity Compensation

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

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

Key Government Agencies

The Internal Revenue Service ("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.

Further, 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. More recently, since 2014, the IRS has amended the rules for withholding on US-source income received by foreign persons and in August 2015, the IRS published an audit guide for equity (stock)-based compensation

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

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

Business Travel

Depending on the circumstances, non-US resident employees coming to the United States on short-term business trips (e.g., total stay of up to six months) may be subject to US federal income taxation on their wages paid during such business trips. This is based on the general US sourcing rule in Section 861 of the Internal Revenue Code that compensation for labor or personal services performed in the US is US-source income and therefore subject to US income tax unless an exemption applies. Where an individual such as a business traveler performs services partly in and partly outside the US, the applicable

US Treasury Regulations provide that the portion of the individual's compensation for such services that constitutes US-source income should, in many cases, be apportioned on a time basis.

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

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

However, a non-US resident employee on a business trip will be exempt from US federal income taxation on compensation for personal services performed in the US if the individual qualifies as a "short-term business visitor" under Sections 861(a)(3) or 864(b)(1) of the US Internal Revenue Code, or if he is a resident of a US treaty country and meets the tax exemption requirements of the treaty for individuals employed in the US for a short period. The conditions that

must be satisfied for either exemption to apply generally require an assessment of the individual's length of stay in the United States, the amount of compensation paid to the individual while in the United States and the nationality and/or business location of the employer. If an exemption applies, the employee should provide appropriate documentation to his non-US employer, including IRS Form 8233 if a tax treaty exemption is relied on to avoid US income tax withholding obligations.

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

If the individual is from one of the 25 countries with which (as of the date of publication) the US has a social security totalization agreement, there should be an exemption from FICA tax under the temporary assignment provisions of such totalization agreement, provided that the employee's wages (including equity award income) earned while temporarily working in the US are subject to social security taxes in his home country. If a totalization agreement does not apply, but there is an income tax treaty between the US and the country of which the employee is a resident, it may be possible to take the position that the treaty implicitly provides for an exemption from FICA taxes, depending on the treaty.

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

recognize US federal income tax treaty exemptions or foreign tax credit provisions.

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

Similar considerations will apply when a US resident is sent on a business trip to another country, depending on the local tax laws of that country and whether or not such country has entered into a tax treaty or social security totalization agreement with the US. An added complexity is that each country may have its own method of sourcing the income an employee acquires from equity awards for national income tax purposes. Many countries (including the US, as discussed above) broadly follow the model propounded by the Organisation 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 sale in Israel), further complicating the allocation of the income and the availability of foreign tax credit relief where double taxation applies.

Training

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

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

For the purposes of the discussion below, it has been assumed that an individual on a US training assignment holds a J-1 exchange visitor visa, which allows for paid business training assignments for periods of up to 18 months, and that the vesting of the individual's equity awards is not suspended during the assignment.

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

Thus, to determine the extent to which equity award income earned by a J-1 visa holder while in the US is subject to US federal income tax, it is necessary to identify whether the entity that granted and bears the cost of the equity award is a foreign employer, under the above

definition. If this is the case, any income the individual receives from the equity award should be exempt from US federal income tax, notwithstanding that the individual spent a portion of the period over which the award vested employed within the US.

On the other hand, US federal income tax would apply if, for example, the equity award was granted by a US corporation to an employee of one of its foreign subsidiaries, which subsequently sent the employee on a training assignment 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.

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, it is likely that any income, including equity award income, an individual in J-1 status may receive during a US training assignment will be exempt from FICA taxes.

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

Employment Assignments

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

US-Inbound Assignments

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

The result is that employees transferring into 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, as well as being subject to non-US taxes and possibly to withholding on at least a portion of the same income, subject to any relief that may later be available under the terms of an applicable tax treaty.

In addition, in the absence of a social security totalization agreement between the US and the non-US resident's home country (or if there is a totalization agreement and the transfer to the US is for more than five years), with limited exceptions, FICA taxes will apply to the equity award income. Where a non-US resident is from a totalization agreement country (with the exception of Italy) and is transferred to the US for a period of five years or less, FICA taxes generally will not apply, provided that the individual has obtained a Certificate of Coverage from the home country social security authorities (confirming he 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 resorting to general principles is required to assess the tax liabilities.

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

US-Outbound Assignments

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

Revenue Code, federal income tax withholding and reporting obligations will apply to all of the income earned by the transferred employees.

An exclusion from US federal tax applies under Section 911 of the US Internal Revenue Code for a certain amount of foreign income earned by a US citizen or resident (up to USD 101,300 for 2016). However, this exclusion is commonly not useful in the equity award context because the individual's salary income alone surpasses this threshold. (This foreign earned income exclusion is discussed in more depth in the "Income Tax and Social Insurance" portion of this section of the handbook.)

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

Another exception to US federal tax withholding on foreign-source income may apply under the foreign tax credit provisions of Section 901(b) of the US Internal Revenue Code, provided that the transferred employee has indicated eligibility for a foreign tax credit on Form W-4. However, for equity award purposes, an important consequence of relying on this exception is that it is no longer possible to treat the equity award income as supplemental wages, subject to flat rate withholding at 25 percent to the extent the employee's supplemental wages for the year do not exceed USD 1,000,000 (and at 39.6 percent (2016) for amounts in excess of this threshold). Instead, US federal taxes must be withheld at the individual's marginal tax

withholding rate. Thus, depending on the relative amounts of US-source and foreign-source equity award income, the use of this withholding exception may not ultimately reduce the total amount of US taxes required to be withheld. In sum, the application of this exception needs to be carefully reviewed on a case-by-case basis (for further discussion of 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 (including a green card holder) it is necessary to report the entire income on his 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 employer or former employer in two or more countries, relief may be available under the terms of an applicable tax treaty. However, that may be little comfort to the employee when almost all of the proceeds from, for example, a stock option exercise are initially withheld to meet multi-country tax obligations.

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

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

If a totalization agreement applies and an individual's equity award income would otherwise be subject to non-US social security taxes, US FICA taxes will generally no longer apply if the transfer is for

more than five years, although there are some variations depending on the terms of the applicable totalization agreement.

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

Solutions to Double Tax Issues

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

Under a typical equalization policy, tax-equalized employees on foreign assignment will pay approximately the same amount of income and social security taxes that they would have paid had they remained in the US or their home country, with the employer paying any taxes that exceed this amount, and the employee reimbursing the employer if the amount of tax he actually pays is less than his 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 actual tax liability is less than the home country liability.

Developing an Approach to Compliance

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

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

- the individual's citizenship;
- US or foreign permanent residency status;
- US or foreign visa status; 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 be 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.

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.

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

Further, where employees are transferred to a new country after an equity award grant date, particularly where such transfer is on a long-term basis, it may be necessary or desirable to modify the terms of such award to comply with local law or gain the benefit of a favorable

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

Further Information

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

Section 3
Country Guide

Argentina

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

Key Government Agencies

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

The "*RENURE*" inside the NMB is in charge of the registry of the calling entities and determines the validity of the foreign nationals' different types of residences related with each Calling Entity.

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

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

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

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

Current Trends

Work Permits

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

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

Business Travel

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

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

Visa Waiver

US nationals could enter as tourists and are allowed to perform business activities for a period of 90 days.

Employment Assignments

Non-MERCOSUR Citizens

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

Non-MERCOSUR Citizens – Entry Permit and Visa Abroad

If a foreign national who is not a national of the MERCOSUR or its associated countries intends to work in Argentina, he could obtain an "Entry Permit" and the corresponding Working Visa ("Visa"), provided that he has been hired or employed by an Argentine company (Calling Entity) which has been registered as such in the *RENURE* (sometimes moving companies need this Working Visa stamped on the passport to release the household goods).

Registration of the Calling Entity with the RENURE

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

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

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

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

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

First Stage – Entry Permit

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

- Taxpayer's identification number of the Calling Entity.
- Receipts of payment of the VAT, Gross Receipt, and Social Security contributions.
- Last income tax return.
- Full copy of the passport (including blank pages) of the foreign national and of the members of his family who require 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 also applying for the Entry Permit.
- The foreign national's résumé in Spanish.
- An employment contract, valid for at least one year, to be executed between the Calling Entity and the foreign national in accordance with Argentine labor laws. The employment contract must specify that the labor relationship shall be conditioned to the granting of the Visa. The employment contract should be solely signed by a representative of the Calling Entity (the foreign national should sign it after obtaining the Visa) and must be certified by a notary public and legalized by the Notaries' Association.
- A letter from the Calling Entity stating the description of the activities and tasks to be performed by the foreign national in Argentina. The letter should be signed by the legal representative of the Calling Entity and certified by a notary public.
- Power of attorney granted by the Calling Entity to obtain the Entry Permit from the NMB.
- Particular personal data from the foreign national. This first stage finishes once the Entry Permit has been issued.

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

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

- Original passport, with a minimum validity of one year (and a complete copy of all pages), on behalf of the foreign national and each of his accompanying family members.
- Two original birth certificates of the foreign national and of the members of his family who are requesting 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 in Argentina.
- A personal ¾" right profile format photograph.
- Consulate fee.

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

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

Transfer Visas ("Visas de Traslado")

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

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

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

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

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

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

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

Training

Training / Technician Work / Short-term Assignments

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

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

Entry Based on International Agreements

MERCOSUR Citizens

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

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

A Provisional Residence Certificate ("*Precaria*") will be delivered to the applicant, which allows him to obtain a social security ID number ("*CUIL*") and immediately start working. The Precaria will also authorize the applicant to leave and re-enter the country.

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

Australia

Key Government Agencies

The Department of Immigration and Border Protection ("DIBP") 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, in most cases a DIBP officer within a local Australian mission (e.g., an Australian embassy, Australian High Commission or Australian consulate) will process the application. It is important to note that Australia does not offer any visa waiver or visa free travel. All foreign nationals, regardless of their purpose of stay, must obtain the appropriate visa prior to traveling to Australia.

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

Current Trends

The Australian government has placed increased 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 to protect employment opportunities of Australian residents and citizens.

Australian employers must demonstrate that they are investing in training and career development opportunities for local staff. In some cases, employers are required to demonstrate that they have first attempted to recruit from the local labor market before seeking to sponsor a foreign national.

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 – Subclass 601

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 or contravene visa conditions.

Foreign nationals with passports from the following countries and territories 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	Taiwan (must not be official or diplomatic passport)
Germany	Monaco	United Kingdom (including BNO)
Greece	Netherlands	United States
Hong Kong SAR	Norway	Vatican City

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 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). Work of any kind on this visa is prohibited.

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 allows for business activities only and employment of any kind is prohibited.

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

Andorra	Hungary	Portugal
Austria	Iceland	Romania
Belgium	Ireland	Republic of San Marino
Bulgaria	Italy	Slovakia

Croatia	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	

Subclass 600 Visitor Visa – Business

The Subclass 600 visitor visa is for business travel to Australia for passport holders who are ineligible for a Business ETA or 651 visa. The validity and duration of a 600 visa is at the discretion of the DIBP or the issuing Australian mission in the applicant's country of residence. Typically, the visa holder will be granted multiple entries and the length of stay will depend on the applicant's business requirements in Australia. Work of any kind is not permitted.

Employment Assignments

Intra-Company Transfers and Skilled Workers

The work visa options applicable to employment assignments in Australia will vary based on the length of the assignment and the nature of the work duties. The applicable visa option does not discriminate between foreign staff who are moving on the basis of an intra-company transfer and new hires who do not currently work for the employer. Below are the most commonly accessed work visa options for Australia.

Subclass 400 Temporary Work Short Stay Activity Visa

The Subclass 400 visa is a short stay work visa that allows the employee to work in Australia for typically three months. The visa does not require employer sponsorship. However, supporting documents from the employer will be required to verify the employee's claims. The work to be undertaken must be skilled and short-term in nature.

The visa is valid for six months, usually with multiple entries. A maximum stay of three months is normally permitted, although this is negotiable depending on individual circumstances. Up to six months' stay and work authorization may be obtained if there is a strong business case.

Applications must be lodged outside Australia and the employee must be outside Australia on visa grant. Certain passport holders may lodge online, for example, citizens of Canada, France, Germany, Hong Kong SAR, Ireland, Japan, South Korea, Malaysia, Singapore, United Kingdom and the United States.

Otherwise, applications must be lodged in person at the local Australian mission.

Subclass 457 Temporary Work (Skilled) Visa

Australian and foreign businesses that meet certain requirements can be approved to sponsor foreign nationals for paid employment through the Subclass 457 Temporary Work (Skilled) 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 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, the DIBP 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 while working in Australia

As part of the application process, the sponsoring business, whether foreign or Australian, is required to give undertakings to the DIBP 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 the DIBP, not by the sponsor to the employee.

The sponsorship obligations include a responsibility for the cost of return travel of the foreign national and family members. Another obligation is to cooperate with the DIBP in relation to information requests and on-site visits by inspectors. Most obligations cease to apply once the foreign national 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 applicants 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 the appropriate level of English language ability. Exemptions are available in certain situations, such as where the applicant is a native English speaker; the applicant's base salary meets the prescribed minimum; or the applicant has completed at least five years of full time secondary and/or tertiary education where all instructions were delivered in English.

Employers seeking to sponsor foreign nationals will also be required to demonstrate that the foreign nationals 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.

The Australian government also applies the requirement of labor market testing in certain circumstances. This criterion requires the employer to submit evidence that the local labor market has been tested unsuccessfully for the particular role in question. Exemptions are available for certain professional and managerial occupations, as well as in cases of major disaster. Additionally, if Australia's

international trade obligations are affected, the application will be exempt from this requirement.

If the foreign national seeks to change employers in Australia, approval must first be obtained from the DIBP in the form of a nomination application through sponsorship by the new employer or, alternatively, the foreign national 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 the DIBP to sponsor the foreign national for permanent residence and the foreign national 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. Once the ENS visa is granted, employees are no longer restricted by their employment from an immigration perspective and have access to unlimited work and residence rights in Australia.

Training

Business Visa

The business visa referred to in section 3 also allows a foreign national to participate in a maximum of three months of training while in Australia. Note that the visa holder must be undergoing training as a participant and not providing training to others.

Subclass 402 Training and Research Visa

The subclass 402 Training and Research visa ("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. A visa applicant may include his spouse and dependent children.

The 402 visa requires the trainee to be nominated by an Australian business or a 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.

Other Comments

It is an offense for an employer to knowingly or recklessly allow foreign nationals 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 offense may occur if a foreign national is allowed to work after the visa has expired, or if a foreign national is allowed to work even though the visa prohibits work.

An offense would similarly occur if a recruitment agency refers a foreign national whose visa has expired to work for an end user client, or refers a foreign national for full-time work even though the 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 penalties and, in severe cases, imprisonment.

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

It is also unlawful for a person to ask for, offer, give or receive a benefit in return for a migration outcome in relation to certain skilled work visa programs. The DIBP can take direct action where payments for visa outcomes have occurred. Sanctions include fines, imprisonment and visa cancellation. These sanctions are not restricted to Subclass 457 visa holders and their sponsors or employers.

In addition to the visas discussed above, there is a broad range of temporary visas that allow restricted work. From time to time, these visas may be more appropriate for a foreign national 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., the United Kingdom, the United States, 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. 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 or full-time when their course is not in session. These visas may often be more appropriate for 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. In general, the younger and more qualified and/or experienced the applicant, the greater the chance of meeting the requirements.

The family migration program facilitates the movement of spouses, children and other family members of Australian citizens and 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*, to ensure they 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

Key Government Agencies

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

Temporary residence permits and settlement permits are handled by a number of governmental entities within Austria. Usually, the Governor of each federal province (the "*Landeshauptmann*") is the relevant authority for all residence and settlement proceedings. However, the Governors usually delegate their power to the local district administration authority ("*Bezirksverwaltungsbehorde*," known as the "*Magistratsabteilung 35*" in Vienna) which then issues the decision on behalf of the Governor. The relevant local district administration authority will be where the foreign national resides or is planning to live. The relevant authority for appeals is the Federal Minister of the Interior ("*Bundesminister fur Inneres*").

As far as work or posting permits are required, the Central Coordination Office for the Control of Illegal Employment at the Federal Ministry of Finance ("*Zentralen Koordinationsstelle für die Kontrolle der illegalen Beschäftigung nach dem Ausländerbeschäftigungsgesetz und dem Arbeitsvertragsrechts-Anpassungsgesetz des Bundesministeriums für Finanzen*" or "ZKO") and the Austrian Labor Employment Service ("*Arbeitsmarktservice Osterreich*" or "AMS") are the relevant authorities. The AMS operates through several local offices in Austria.

Current Trends

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

The law sets forth several duties for employers who post employees to Austria (e.g., provisioning of certain documents like employment contract, pay slips, time records, etc.; registration of the employees

with the ZKO). The duties differ slightly, depending on whether the employer is located within or outside the EEA.

However, those rules do not apply to cases where employees are sent to Austria in order to perform minor short-term jobs in connection with business meetings or seminars (without any further performance of services), fairs and similar events (except preparatory and final works), attendance and participation at congresses, and certain cultural events, as well as specified international sports events.

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

Since 2015 the authorities may also instruct the service recipient to stop payments to the foreign service provider. However, a stop of payments may only be imposed in cases where prosecution is complicated.

Several provisions also apply to personnel leasing from abroad.

Business Travel

Non-European Economic Area

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

Temporary Visa-based Immigration for Tourists and Business Visitors

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

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

Visa for Temporary Employment

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

Travel Visa C

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

Visitor Visa D

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

Visa Waiver

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

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

Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Barbados, Bahamas, Belgium, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Ecuador (only special passports), Egypt (only special passports), El Salvador, Estonia, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Grenada, Guatemala, Holy See, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan (up to six months), Latvia, Liechtenstein, Lithuania, Luxembourg, Macau, Macedonia, Malaysia, Malta, Mauritius, Mexico, Monaco, Montenegro, the Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Romania, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Korea (up to six months), Spain, Sweden, Switzerland, Taiwan (only holders of passports with ID number), Timor-Leste, Tonga, Trinidad & Tobago, Turkey (only Turkish special passports), United States, UAE, Uruguay, Vanuatu and 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 may be found on the following homepage of the Austrian Ministry of the Interior:

http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/visumspflichten/files/EN_HP_BMI_Visaliste_15_3_2016.pdf

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

Temporary Residence Permits ("Aufenthaltsbewilligungen")

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

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

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

A temporary residence permit does not entitle the foreign national to take up employment in Austria. In this case, a separate work or posting permit will have to be obtained. Alternatively, the applicant may obtain a Red-White-Red Card (see chapter "Skilled Workers" below) in the case that he meets 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 by an international corporation as executives or junior executives or who represent certain foreign interest groups and are being sent to Austria. The employment contract has to include a provision to allow the employer to transfer the employee to different working places. In addition, a work permit will also have to be obtained.

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

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

Self-employment ("*Selbständiger*")

This temporary residence permit is for foreign nationals coming to Austria 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 researchers is used for scientific employees at certified research institutes only. Other researchers may obtain a temporary residence permit, known as the "Special Cases of

Dependent Employment" residence permit. Specific requirements regarding the employment contract as well as the research facility have to be met. There are visa benefits for family members.

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

Special Cases of Dependent Employment ("*Sonderfalle unselbständiger Erwerbstatigkeit*")

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

Settlement Permits ("Niederlassungsbewilligungen")

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

In order to ensure permanent social and cultural integration in Austria, applicants must usually prove basic German-language skills at the A2 level of the Common European Framework of Reference for Languages for certain settlement permits (there is an exception for those who have obtained the RWR Card). In order to obtain the "Permanent Settlement EU" ("*Daueraufenthalt EU*") permit or Austrian citizenship, German-language skills at the B2 level are required.

Employment Assignments

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

Skilled Workers

The Red-White-Red Card

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

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 seeking to work in Austria is able to determine relatively easily whether or not he is qualified by checking off the criteria.

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

- A very highly qualified individual, who is allowed to enter Austria for a period of six months in order to search for employment that matches his credentials. If the individual succeeds in finding adequate employment or has already found employment, he may obtain an RWR Card. In practice, however, this option is also

used in case a foreign company sets up an Austrian branch office and transfers its respectively qualified employees to that branch office.

- A skilled worker in shortage occupations, who may obtain an RWR Card if he is specifically educated in a shortage occupation ("*Mangelberuf*" as determined by the Austrian Secretary for Employment, Social Affairs and Consumer Protection) and provides an adequate employment offer.

- A foreign university graduate, who may extend his stay for six months after finishing studies in Austria in order to find employment that matches his qualifications. A certain minimum salary will have to be paid.

- An independent key worker, who may obtain an RWR Card if there is an overall benefit for the economy, i.e., if he transfers capital or new technologies or know-how to Austria and/or creates new jobs for the Austrian labor market.

- Other key worker, who may obtain an RWR Card if he fulfills certain criteria (qualification, adequate professional experience, language skills, age) and has an adequate employment offer with a defined minimum salary. In addition, there must be no equally qualified Austrian employee available on the job market.

Individuals already in possession of the RWR Card may additionally obtain the RWR Card Plus if they have fulfilled the admission requirements (as described above) during 10 out of the last 12 months before the application. After the issuance of the RWR Card Plus, a foreign national will have unrestricted access to the Austrian labor market and will be entitled to take up employment within Austria.

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

migrating to Austria, all family members have to prove advanced basic German-language knowledge if they want to extend their RWR Cards.

Work Permits

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

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

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

Exemptions from the Austrian Act on the Employment of Foreign Nationals

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

Citizens from the EEA and Switzerland

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

International Researchers

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

Scientific researchers will, in most cases, also qualify for the RWR Card. It is usually recommended to apply for a RWR Card because the foreign researcher can also use this option to settle permanently in Austria.

Senior Managers ("*Besondere Führungskräfte*")

Senior Managers, in the sense of this statutory exception, are those individuals who (i) hold executive positions at board or management level at internationally active corporations and groups of companies or (ii) are internationally recognized scientists. Their duties must comprise (a) building or maintaining sustainable business relationships or (b) creating or securing qualified workplaces in Austria. They have to receive a minimum salary (at least EUR 5,832 gross monthly salary as of 2016).

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

Posting of Employees to Austria

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

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

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

If non-EEA employees working for a company situated within the European Union are being sent to Austria in order to perform services, they are only required to register beforehand with the ZKO. If the posting is lawful, an EU-posting certification will be issued ("*EU-Entsendebestätigung*").

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

Lease of Employees

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

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

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

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

However, the lease of employees of employers situated in the EEA does not require the prior permission of Austrian authorities. But, in such cases, the notification of the assignment to the local trade authority is required.

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

Training

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

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

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

Post-Entry Procedures

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

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

Entry Based on International Agreements

Citizens from the European Economic Area

For citizens of the EEA and Switzerland, gaining employment in Austria can be done easily. They do not need a special residence or work permit 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, a general obligation to notify the Austrian registry authority within three days of arrival also applies to EEA citizens. In addition, EEA citizens and their family members have to register their permanent residence with the local immigration authorities within four months if they intend to reside in Austria for more than three months. In most cases, however, these registration obligations are merely an administrative formality.

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

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

Other Comments

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

There are strict requirements which have to be fulfilled in order to be awarded Austrian citizenship. For instance, at least ten years of legal and continuous residence in Austria, integrity, disposal of sufficient funds and possession of language skills must be proven. If those general requirements are fulfilled, the award of citizenship still lies within the discretion of the authority. However, if the applicant fulfills several further requirements, he may have a legal right to be awarded citizenship. Austrian citizenship may also be awarded in several other

cases in which the applicant resides abroad (e.g., certain relatives of Austrian citizens).

Belgium

Nationals from the European Economic Area ("EEA") (i.e., the European Union Member States, plus Iceland, Norway and Liechtenstein) and Switzerland 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.

Non-EEA nationals, as a rule, must obtain a work permit and a residence permit in order to work and reside in Belgium. Work permit B, if issued to non-EEA nationals who are highly qualified employees and executives, need not comply with the labor market criterion. Alongside the work permit B, specific rules have 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 section "EU Blue Card" 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 national must register with the local commune which has jurisdiction for the intended place of residence in order to obtain a residence permit, work permits are valid for the same duration as the work permit plus one month. The work permit is valid only when combined with a residence permit. Working in Belgium while in possession of a work permit, but without a valid residence permit, is considered a serious offense, subject to substantial criminal sanctions and/or penalties.

The Belgian Act of February 11, 2013 introduced a number of additional obligations for employers who are employing foreign employees (i.e., non-EEA nationals) in Belgium, as follows: (i) obligation to verify whether the foreign employee has a valid residence permit or any other valid residence authorization, prior to engaging in any work; (ii) obligation to keep a copy of the residence permit/residence authorization to the social inspection during the

period of employment of such foreign employee; and (iii) obligation to declare the start and end date of the employment via the Dimona or Limosa declaration. Employers who do not comply with these obligations can be sanctioned with a level 4 penalty (i.e., the highest criminal level). Employers who engage employees without a valid work permit and/or residence permit are moreover jointly liable for the payment of repatriation costs, lump-sum housing costs, and healthcare for the foreign employee and their family members who are illegally residing in Belgium.

The aforementioned Act also introduced a complex mechanism of joint liability for principals and contractors for wage debts in the event the (sub)contractor employs illegal workers. Principals and contractors can therefore be held liable for the payment of wages (including taxes and social security contributions) that their subcontractor has not yet paid to its employees with illegal status in Belgium. The latter does not apply if the principal/contractor has a written statement from the subcontractor confirming that he does not employ any non-EEA nationals who have no legal residence in Belgium. However, the joint liability immediately kicks in again when the principal/contractor is aware that illegal employees are being employed by its subcontractor.

Key Government Agencies

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

The FPS Foreign Affairs, Department of Federal Immigration is the competent authority for issuing 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 plus one month.

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

Business Travel

Schengen Visa

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

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

Work Permit Exemption

Foreign nationals coming to Belgium on short-term business trips are exempt from obtaining a work permit, subject to certain conditions. No work permit is required if the foreign national's activities are restricted to attending so-called "business meetings in a closed circle" 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.

The notion of a business trip or a "meeting in closed circle" is not defined under Belgian law. However, the concept of "meetings in a closed circle" is interpreted restrictively and refers to a range of meetings, including discussions on strategy, contract negotiations with

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

Self-employed individuals coming to Belgium for business purposes (i.e., 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 months.

Visa Waiver

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 (the so-called Schengen visa) prior to entering Belgium for short business visits.

Citizens of certain privileged countries (e.g., the US, Canada, Japan, Brazil, Mexico) do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to enter Belgium on the basis of their nationality and upon presentation of their international passport. The permitted length of stay is up to 90 days in any 180-day period only. A new method of calculation entered into effect on October 18, 2013. In order to apply the 90 days in a 180-day period rule, a calculator has been developed for the general public and for the authorities of each Member State.

Although no visa is required, if subject to 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 also report to the local commune of residence after arrival.

Employment Assignments

As a general rule, a work permit and a residence permit are 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 31 countries belong to the EEA as of April 1, 2016: Austria, Belgium, Bulgaria, Denmark, Croatia, 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.

EEA nationals and their family members are free to be employed by a company or to work in a self-employed status without a 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.

European Headquarters

Executive employees working under a local employment contract of a European Headquarters 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 nationals who are temporarily seconded to a so-called "European Headquarters" in Belgium and remain employed by their foreign employer. Such executives still need a work permit.

"European Headquarters" is defined as a Belgian company or subsidiary of a foreign company, provided that such company can be qualified as an associated company and the foreign national performs activities of a preparatory or supporting nature on behalf of the companies of the group to which the Belgian office belongs. Activities should be in relation to the 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 EUR 66,442 for 2016 (indexed annually). Although no formal work permit is required, the Belgian Headquarters 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 premises qualify as a company's "European Headquarters" 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 does not need to obtain an additional work permit if this employee is transferred to another Member State.

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

Belgian law exempts such foreign nationals from the requirement to obtain a Belgian work permit, provided 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. Work permits are only issued when there are not enough workers available in the European labor market to perform services or to nationals of countries linked to Belgium by international agreements or conventions on the employment of foreign nationals.

For certain categories non-EEA nationals, work permits may be issued without the labor market criterion being 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 national is considered a highly qualified employee or an executive whose annual remuneration amounts to at least respectively EUR 39,824 or EUR 66,442 gross for 2016 (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 EUR 39,824 gross salary per year in 2016, a subsequent annual work permit can be issued for up to four years, renewable once for a maximum additional period of four years. 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 in 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:

- If the employee earns at least EUR 66,442 gross salary per year in 2016 (indexed annually) and holds 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

As part of the efforts to attract foreign highly qualified nationals, 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 are set forth in the EU Blue Card Directive,[1] which was implemented in Belgium in 2012. The Blue Card allows highly qualified non-EEA nationals to work and reside in the territory of the Member State issuing the Blue Card.

The 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-level professional qualifications (through a higher education diploma of a minimum of three years); (ii) an employment contract for an indefinite term, or for a definite term of at least one year; (iii) a gross annual remuneration exceeding EUR 51,494 (2016 amount); and (iv) valid travel documents and health insurance.

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

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 39,824 in 2016).

A dual administrative procedure must be followed in order to obtain the Blue Card, i.e., (i) the employer of the highly qualified foreign national needs to apply for a provisional work authorization with the competent regional immigration authorities in Belgium (the card would be issued within 30 days of filing the application, provided the aforementioned conditions are met); and (ii) the highly qualified employee must subsequently apply for the Blue Card (residence permit type H) at the competent Belgian embassy if he resides abroad, or at his local Belgian residence commune. If the employee resides abroad, a long-stay type D visa will be issued, based upon which the individual can register with his local Belgian residence commune in order to obtain the EU Blue Card permit (valid for 13 months renewable). The EU Blue Card allows the highly qualified foreign national to work in Belgium with the employer who applied for the provisional work authorization. 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 13 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 the need to apply for prior provisional work authorization.

The Blue Card will allow increased intra-Europe mobility. After five years of stay within the EU (including two years in Belgium immediately preceding the application for long-term residence), the foreign national becomes eligible for long-term resident status in Belgium. Moreover, highly qualified foreign nationals who hold an EU Blue Card will not lose their status when leaving the country for 12 months. Once they have obtained long-term resident status, they

may leave the EU territory and Belgium for a maximum of two years and a maximum of six years, respectively.

The current work permit system for highly qualified individuals (i.e., work permit type B) continues to exist alongside the EU Blue Card system. The practical relevance of the Blue Card is somewhat limited due to the narrow scope of application, the administrative burden during the first two years and the rather limited advantages.

The EU Directive EG/810/2009, regarding the 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 stays (beyond 90 days) remains of national competence. However, pursuant to the Visa Code, third-country nationals who hold a long-stay (type D) visa can travel freely within the Schengen area for up to 90 days in any 180-day period.

Specialized Technician Work Permit

The specialized technician work 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 covered in this permit. A foreign national 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 national can apply for the card at the Belgian consulate or embassy abroad, together with the visa application or in Belgium, in case the foreign national resides in Belgium.

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

Training

Employee Training Assignments Not Exceeding Three Months

Foreign national employees who come to Belgium to participate in training not exceeding three subsequent calendar months at the Belgian seat of the multinational group to which their employer belongs, in the framework of a training agreement between the respective companies of the multinational group, are exempted from the work 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 and Herzegovina, Serbia and Montenegro, Macedonia, Morocco, Tunisia and Turkey).

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

Other Employee Training Assignments

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

Training

There is also a specific work permit designed for trainees or interns who, immediately after receiving a diploma or degree, wish to undergo practical training with an employer as a continuation of their 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.

Other Comments

Prior Limosa declaration of employment

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

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 an 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. The first step of the "Limosa" project consists of the obligation for employers who employ foreign nationals 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 and self-employed individuals 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 and 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 nationals or self-employed individuals, directly or indirectly, is held to verify whether the "Limosa" obligation has been complied with prior to the start of the professional activities in Belgium, through delivery of the Limosa-1 declaration.

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

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

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

Identity card for foreign nationals

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

Type A work permit

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 foreign nationals who have four years of relevant professional work experience, but this period can be reduced to three years in some circumstances, e.g., under a type B work permit combined with a legal and uninterrupted residence in Belgium during the ten 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 nationals receive residency rights for an indefinite term and thus no longer need a work permit after five years of uninterrupted stay.

Type C work permit

A type C work permit can be obtained by certain 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 employment with any Belgian employer and its duration is dependent on the duration of the residence title with a maximum of 12 months (renewable).

Planned Legislative Change

Belgium has not yet implemented the European "Single Permit" Directive of 2011 in national legislation. This Directive stipulates that third-country nationals should be able to apply for a work and residence permit through one single application procedure.

In Belgium, there are still two separate procedures to be followed: first the work permit application, and then the residence permit application.

The Belgian government announced in November 2015 that it is planning to proceed with the implementation of the "Single Permit" Directive. This means that the application procedures for the work and residence permit will be changed in the future. It is not yet clear, however, how (and when) this will be done in practice.

Brazil

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 both multinational companies and foreign professionals, as well as tourists.

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

Key Government Agencies

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

The General Coordination of 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 Foreign Nationals ("*Departamento de Estrangeiros*") of the Ministry of Justice deals with requests for modification or extension of certain types of visas, as well as 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 have previously obtained work authorization from the General Coordination of Immigration.

Current Trends

Due to the Brazil's political crisis, which has directly impacted the economic scenario and consequently, the jobs market, the immigration authorities have became stricter on the analysis of visa applications. As they are much more focused on the replacement of manpower, the visa sponsor has to carefully demonstrate the actual necessity of bringing a foreign national to occupy a position instead of hiring a Brazilian employee. To do this, it is advisable to submit the necessary paperwork corresponding to each type of visa, especially the documents stating that the foreign national is experienced and well-trained to occupy the position.

Business Travel

VITEM II (Business Trip) Visa

Foreign nationals entering Brazil for a business trip 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 ten years, with a maximum yearly length of stay of 90 days, subject to one renewal (depending on the foreign national's nationality). Thus, the total number of days in the country may not exceed 180 days 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 funds to support their stay in Brazil.

Renewal of the visa is obtained through the Federal Police Department. Renewal usually requires a letter from the Brazilian company being visited by the foreign national, stating that the

business objectives which brought the applicant to Brazil have not yet been completed and an extension of the visa is necessary.

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 activities resulting in monetary reimbursement of any kind.

The period of validity for the tourist visa is up to ten years and multiple entries into the country are allowed, with each visit not exceeding 90 days. Depending on the foreign national's nationality, 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 (where the foreign national has maintained residence for a minimum period of one year immediately prior to the request).

Tourist and VITEM II Temporary Visa Waiver

Foreign nationals holding passports from the countries and territories listed below do not require a VITUR or VITEM II visa if their intended stay in Brazil does not exceed 90 days (or 180 days, depending on the foreign national's nationality, if duly extended):

Argentina	Greece	Poland
Austria	Guyana	Portugal
Belgium	Honduras	Romania
Belize	Hong Kong	Russia
Bolivia	Hungary	Saint Kitts and Nevis

Bosnia	Iceland	Saint Vincent and Grenadines
Bulgaria	Ireland	San Marino
Chile	Israel	Servia
Colombia	Italy	Slovakia
Costa Rica	Jamaica	Slovenia
Cyprus	Lithuania	South Africa
Czech Republic	Luxembourg	South Korea
Denmark	Macau	Spain
Dominica	Malta	Suriname
Ecuador	Mexico	Switzerland
El Salvador	Monaco	Thailand
Estonia	Mongolia	The Netherlands
Finland	Morocco	Trinidad & Tobago
France	New Zealand	Tunisia
Georgia	Norway	Turkey
Germany	Paraguay	Ukraine
Granada	Peru	Uruguay
Great Britain/UK	Philippines	Vatican City

Foreign nationals holding passports from the countries and territories 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	Panama	Namibia
Barbados	Liechtenstein	

Holders of passports from Venezuela do not need VITUR or VITEM II visas provided that their maximum length of stay does not exceed 60 days.

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 http://www.pf.gov.br/servicos/estrangeiro/estrangeiro.

Internship

The internship visa, based on the Normative Resolution 111/2014, is 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 as part of a work relationship. Visas for interns are requested in the applicant's home country from the Brazilian consulate authority with jurisdiction over the intern, and are valid for up to one year.

Employment Assignments

VITEM V Visa – Temporary Work Visas

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 visa 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 visa is renewable for an equal period, unless specific stipulation is made to the contrary within the agreement or contract. Under a local labor agreement, the VITEM V visa can be transformed, at the end of the two-year period, into a permanent visa by submitting an assortment of required documents to the Ministry of Justice for analysis.

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 explicit permission from 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); or
- one year of professional experience after graduation with a relevant university degree.

To protect and preserve job opportunities for its citizens, Brazil 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, meaning 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 to provide services to the Brazilian company but 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 is also accepted) executed between the Brazilian company (which will receive the services) and the foreign company (which will provide the services and consequently send the

foreign national to Brazil). Furthermore, the applicant must provide evidence of at least three years of relevant professional experience.

Short Term Technical Assistance Temporary Visa

If 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 standard technical assistance temporary visa. The application process for this work permit is usually faster than the application process for other work permits since the visa is issued directly by the Brazilian consulate and does not need to be analyzed by the Ministry of Labor. This is especially beneficial if the Brazilian company has a time-sensitive need to receive the technical services to be provided by the foreign national. This type of visa may only be granted one time within a period of 180 days.

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.

This visa may only be granted when the applicant provides evidence of an 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 life, the environment, or property/assets at risk, or that causes the interruption of the operation of the activities of the Brazilian company.

Training

For those who will travel to Brazil to be trained by the Brazilian subsidiary, it will be necessary to apply for the temporary work visa based on the Normative Resolution 87/10, which is valid for a maximum period of one year.

A document proving that both companies, home and host, are part of the same economic group is one of the most essential documents required to process this type of visa. Frequently, this link between companies is demonstrated by submitting its corporate documents or, when there is no investor in common, it is easily replaced by its annual report.

Under this work visa, the foreign national should remain exclusively in the home company's payroll. Therefore, it is forbidden to receive any remuneration from the Brazilian subsidiary.

Post-Entry Procedure

After arriving in Brazil, under the proper work visa, the foreign national has up to 30 days to file an application for a Brazilian identity card, the National Registry of Foreigners, usually referred to as RNE or CIE. It is also possible to obtain a taxpayer registration number and labor card (when applicable).

Entry based on International Agreements

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

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

Any person who holds a passport from the aforementioned countries and chooses to move to (or, if applicable, remain in) Brazil – with or without the purpose of working – may apply for a "permanence authorization" before the Federal Police (if the individual is in Brazil) or the closest Brazilian consulate (if the individual decides to apply from their home country). Essentially, in order to obtain a "permanence authorization" one must submit proof of nationality and 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 "permanent residence" in case he decides to permanently reside in Brazil. To grant this permanent residency in Brazil, the foreign national is required to submit the required documents to the Ministry of Justice for analysis.

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. Furthermore, the Brazilian consulate may grant permanent visas for "family reunions" where the foreign national is joining a family member who is of Brazilian nationality or a holder of a Brazilian visa.

In practice, executives who are appointed to management positions (administrators, directors, etc.) 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 requires approval of a work permit by the Ministry of Labor and Employment, which may be granted based upon consideration of the factors noted (foreign investment, experience, skills, etc.).

The granting of the permanent visa is conditioned, for a maximum of 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

Further Information

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

Canada

Canadian immigration law facilitates both the temporary and permanent movement of workers with a policy emphasis on the transition of temporary foreign workers to permanent resident status. A growing area of movement into Canada and a key focus of the federal government is the Temporary Foreign Worker Program. The government has created numerous opportunities for these workers to remain permanently in Canada. In addition, over the last decade the provincial and territorial governments have rapidly strengthened their own immigration selection programs, many of them focusing on 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 federal Canadian government immigration department, with visa offices around the world and local offices in Canada for temporary and permanent immigration processing as well as citizenship matters. The 11 Provincial or Territory Nominee Programs (and the separate Quebec provincial immigration program) are run through provincial and territorial ministries responsible for citizenship and immigration in their respective province or territory. The federal department responsible for the labor market, Employment and Social Development Canada ("ESDC"), receives applications where Labor Market Impact Assessments ("LMIAs") are required and tests the Canadian labor market. The remainder of all foreign workers are LMIA exempt, meaning they can apply for a work permit directly by submitting an application to one of CIC's visa offices, or if visa exempt, at the port of entry to Canada. Provincial and territorial governments regulate employment standards through their labor ministries and are increasingly involved in the regulation of temporary foreign workers and in the enforcement of employer compliance and program integrity.

Current Trends

Whereas immigration levels have remained at a steady level (approximately 250,000[1]) 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 G7[2], with burgeoning natural resources, IT, financial services, and advanced manufacturing sectors, ensure a growing demand for foreign workers. Canadian work experience is highly advantageous for anyone who wishes to obtain permanent residence in Canada. The trend toward selecting permanent immigrants from the temporary worker stream looks set to continue.

If there is a further theme in Canadian immigration law in the past year, particularly for employers of temporary foreign workers, it is an increased emphasis on inspection and enforcement of non-compliance. Regulations and Ministerial Instructions have recently been introduced and impact various aspects of the Temporary Foreign Worker Program and the International Mobility Program ("IMP"). "Administrative Monetary Penalties"[3] have been introduced which may be applied against an employer in violation of TFWP regulations. These financial penalties may be applied in conjunction with existing penalties under the Immigration and Refugee Protection Act, which include fines and incarceration for serious offenses.[4]

Federal and provincial governments continue to balance the trend to expand economic immigration, with the need to enforce program requirements to protect the Canadian labor market from abuse

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[1] http://www.cic.gc.ca/english/resources/statistics/facts2013/permanent/01.asp (4/14/2015)
[2] http://www.statcan.gc.ca/pub/75-001-x/10605/8039-eng.pdf (4/14/2015)
[3] http://www.cic.gc.ca/english/department/acts-regulations/forward-regulatory-plan/changes-temporary-foreign-worker.asp (4/14/2015)
[4] http://www.canlii.org/en/ca/laws/stat/sc-2001-c-27/latest/sc-2001-c-27.html IRPA s.125, s126, s127 (4/14/2015)

requiring increased vigilance of employers that participate in Canadian immigration programs. Both levels of government have introduced new programs to monitor, fine, and sanction employers. Compliance with foreign worker and immigration programs is increasingly crucial for domestic and multinational companies carrying on business in Canada.

Business Travel

Foreign nationals who enter Canada to engage in business or trade activities may be exempt from a work permit. Generally, the employee's remuneration and principal place of employment, as well as the employer's principal place of business and accrual of profits, must remain outside Canada. 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 visitor status if accompanying a visitor who is coming to 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 will consider the activities being conducted. Generally, sales trips, business meetings, conference attendance or training sessions tend to 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, however, exceptions may apply if the proper documentation and business needs exist. Business visitors may apply for an extension while in Canada by submitting an online application.

Visa-Exempt Nationals

Foreign nationals from the following countries and territories may enter Canada without a visa, which is an entry document:

Barbados	Belgium	Brunei	Croatia	Cyprus
Czech Republic	Denmark	Estonia	Finland	France
Germany	Greece	Holy See	Hong Kong	Hungary
Iceland	Ireland	Israel	Italy	Japan
South Korea	Latvia	Lithuania	Liechtenstein	Luxembourg
Malta	Monaco	Netherlands	New Zealand	Norway
Papua New Guinea	Poland	Portugal	Saint Kitts and Nevis	San Marino
Singapore	Slovakia	Solomon Isl.	Spain	Sweden
Slovenia	Switzerland	Taiwan	United Kingdom	United States
Western Samoa	Chile			

All other foreign nationals must obtain a Temporary Resident Visa ("TRV") prior to traveling to Canada by applying at a visa office abroad. A TRV is an official document issued by a Canadian visa office that is placed in the foreign national's passport to show that they have met the requirements for admission to Canada as a temporary resident (whether as a visitor, student, or worker). This visa exempt list also includes several other subnational jurisdictions. The 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 and proposed business activities in Canada, as plans may go awry at the border if an officer determines a work permit is required, 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 provided their duties are strictly limited to training activities while in Canada.

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

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 so long as they are not selling tickets. 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 including provincial nominee programs, which provide for work permits as an adjunct to permanent residence (nomination) applications.

There are three scenarios 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 an LMIA; and
- work requiring an LMIA-based work permit.

Before the most appropriate entry category can be selected, a company must first 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 can only engage in business activities while in Canada, and cannot be doing "work."

Activities that are not considered to be "work" include volunteering 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 the 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 a work permit exemption are not typically international assignees of multinational companies. Some common work permit exemption categories 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.

Generally, the vast majority of foreign workers will not benefit from these exemptions and will instead require work permits.

Work permits exempt from Labor Market Impact Assessments

The general rule is that any foreign national doing "work" must obtain a work permit unless there is an available exemption (i.e., business visits and other activities such as those listed above). There are two types of work permits applicable to international assignments: work permits requiring LMIAs, and those which are LMIA-exempt.

Temporary Foreign Worker Program vs International Mobility Program

LMIA approvals may be difficult if not impossible to attain and add complexity and time to the recruitment process, particularly during and in the aftermath of an economic downturn, when unemployment is higher than normal. Therefore, when considering any international assignment to Canada, employers should consider whether any LMIA-exempt work permits are available. Canadian immigration law establishes various categories for LMIA exemptions. The most common of these categories for international assignees follow in the next section.

Intra-Company Transfers

Multinational companies seeking to assign foreign nationals to Canadian positions often use the LMIA-exempt Intra-Company 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 extend their status for up to seven years, whereas specialized knowledge employees are limited to five years.

Executive and managerial-level staff must generally manage other managers or professional employees, although management of crucial company functions or processes may qualify. Employment in a specialized knowledge capacity requires proof that the employee holds advanced knowledge of the organization's proprietary products, services, research, equipment and techniques, and an advanced level of industry knowledge related to the position that is unique and not ordinarily held by others within the industry. Under the General

Agreement on Trade-in Services ("GATS"), a prevailing wage requirement for Intra-Company Transferees in the specialized knowledge category is introduced. Under NAFTA, however, there is no requirement for Intra-Company Transfers to meet any wage requirement.

The applicant must be currently employed by a related organization in a position similar to the proposed role in Canada, and must have occupied the similar role for at least one continuous year in the three years preceding the date of application. There are a number of qualifying relationships that are eligible under this category, but all generally rely on common control (e.g., parent subsidiary, sister corporations, branch or representative offices).

International Agreements

Many International Agreements other than NAFTA and GATS allow international assignees of certain nationalities to obtain work permits without an LMIA, as long as they have arranged employment opportunities in Canada. These agreements include[5]:

- Artists Residencies Program (US, Mexico);
- Professional Trainees (Bermuda);
- Canada Chile Free Trade Agreement ("CCFTA");
- Canada Peru Free Trade Agreement ("CPFTA");
- Film Co-Production Agreements;
- International Air Transport Association ("IATA");
- Canada-Korea Free Trade Agreement ("CKFTA");

[5] http://www.cic.gc.ca/english/resources/tools/temp/work/opinion/codes.asp http://www.cic.gc.ca/english/resources/tools/temp/work/opinion/canada-international.asp (4/14/2015)

- Seasonal Agricultural Program (Certain Caribbean countries);
- Professional Accounting Trainees (Malaysia); and
- Scientific and Technical Cooperation Agreement (Germany).

The most commonly used of the agreements for international employment transfers are still the NAFTA and GATS, which allow certain professionals and skilled workers to come to work in Canada for periods of up to three years (90 days in the case of GATS), subject to extensions.

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 requirements 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 can be issued for up to three years at a time, and 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 160 signatory countries (including the US and Mexico). GATS only provides for one 90-day work permit in any 12-month period. Its list contains nine occupations: engineers, agrologists, architects, foresters, urban planners, foreign legal consultants, land surveyors, geomaticists, and senior computer specialists. All but the last two require licensing and degrees. Computer specialists are given the choice between post-secondary credentials or equivalent work experience.

Reciprocal Employment

This category can be used for international exchanges both in public and private sector contexts. The purpose of this LMIA 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 have a global mobility policy in place which creates equivalent opportunities for Canadians abroad. For companies to benefit from these work permits, they should be able to produce evidence of reciprocity. 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 or territory and result in a nomination for permanent residence in Canada. A benefit of receiving a nomination in most PNP employment categories is the ability of the nominee to receive an LMIA-exempt employer-specific 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 for avoiding LMIAs in an HR manager's arsenal.

Other types of common LMIA-exempt work permits

Several other LMIA-exempt categories are available, and include:

- "Significant Cultural/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 international company assignments, but can be useful recruitment strategies.

IT/Software Workers

There is no longer a specific LMIA exemption aimed at IT workers. A special program was created in 1996 to facilitate the processing of work permits for IT specialists in seven formerly high demand occupations. However, the occupational descriptions became outdated, and in the aftermath of economic downturn, the government ultimately eliminated this exemption category entirely. IT workers now have to obtain work permits through an LMIA or LMIA-exempt category, such as NAFTA, GATS or PNP.

Work Permits Requiring Labor Market Impact Assessments

International assignees who do not fit into any of the exemption categories discussed above must obtain an LMIA before they are eligible to receive a work permit. LMIAs 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. LMIAs are obtained from ESDC through their customer-facing arm, Service Canada, which has offices across the country.

The LMIA process is lengthy: it can take anywhere from three weeks to six months (or even longer in some cases) to adjudicate (depending on the province and the case). The Service Canada officer takes six factors into account in adjudicating the foreign worker request, namely whether:

- work is likely to result in the direct job creation or job retention for Canadian citizens or permanent residents;
- work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- work is likely to fill a labor shortage;
- 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; and
- 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 for four weeks on at least three employment websites. Employers are required to screen out non-qualifying applicants, interview qualifying applicants, and explain why Canadians do not qualify for the position.

Even if the application for the LMIA confirmation is successful, employers must undertake to train Canadians to ultimately take over the position. An employer must ultimately demonstrate to the government that the foreign worker will have a neutral or positive economic effect on the Canadian labor market. Visa-exempt individuals may apply for a work permit directly at a port of entry once a positive LMIA is issued.

Companies requiring many foreign workers may apply for unnamed (bulk) LMIAs, which facilitate the issuance of individual-specific LMIAs 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-wage" LMIA category allows companies to obtain LMIAs for semi- and low-skilled foreign workers if the employer meets stricter hiring conditions, including transportation costs and providing affordable housing. Employers of "low-wage" workers are obligated to gradually reduce their dependence on temporary foreign workers; by June 1, 2016, temporary foreign workers cannot exceed 10 percent of staff levels at any company location.

It should be noted that any of the various LMIA 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 Labor Market Impact Assessments

After just a year, the short-lived Accelerated Labor Market Opinion process was cancelled in early 2013. LMIA applications must now follow the regular process.

However, an LMIA requested for positions in Canada required for a short duration (120 days or less), designated as being in high demand in Canada or where the employee is in the top 10 percent of income-earners in a given province will benefit from a ten-day processing timeframe.

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 LMIA must also obtain a

"*Certificat d'Acceptation*" ("CAQ") from Quebec, and only then can apply for a work permit.

Quebec has facilitated CAQ (and LMIA) processing for 44 occupations, which can be found at http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/quebec.shtml. These occupations (i) need not be advertised and (ii) benefit from far quicker processing.

Accompanying Family Members

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 has to be entering Canada for a highly skilled position that falls under Canada's National Occupation Classification ("NOC") codes O, A, or B with a work permit valid for more than six months. 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, may receive "open" work permits with the payment of a filing fee and a CAD 100 compliance fee. This work permit generally lasts the duration of the spouse's permit, and allows the spouse to work with any employer, in any occupation anywhere in Canada (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.

Turning to studies, school children who accompany a parent with a work permit, and who have not yet reached the age of majority in their province of residence, will be permitted to study while on visitor status.[6]

[6] http://www.cic.gc.ca/english/study/minors-documents.asp (4/14/2015)

The definition of who may be considered a dependent child was changed in 2014. Now, children may only be considered an accompanying dependent until the age of 19.

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 should be checked on a case-by-case basis.

There have been major changes to for the permanent residence application process for parents and grandparents.

Other Comments

Finally, in terms of permanent residence, several recent major changes have changed processing priorities to favor long-term options for temporary foreign workers. In particular, Express Entry, a new online process by which permanent residence applications are filed, promises to offer quicker routes to permanent residence for foreign workers in highly skilled occupations. 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 permanent resident status. Any Intra-Company 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 the above topics, and we would be pleased to provide a copy upon request.

Changes to Canada's Temporary Foreign Worker Program throughout 2014 introduced significant new enforcement measures, including warrantless searches of workplaces, compelled disclosure of documents relating to compliance, onerous record-keeping requirements, and severe penalties for non-compliant employers. All employers hiring workers in LMIA-exempt positions must submit an "Offer of Employment Form" and pay a CAD 230 "Employer

Compliance Fee." The fees being collected will be used to offset the cost of these increased enforcement measures.

Applicants for permanent residence through spousal sponsorship are now entitled to an open work permit while their sponsorship application is in process.

Lastly, on June 11, 2015, the final suite of Strengthening Canadian Citizenship Act reforms took effect which introduced new rules to streamline the citizenship application process and new eligibility criteria for Canadian permanent residents who are considering a transition to citizenship.

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

Chilean law provides many solutions to help employers of foreign nationals bring their employees into Chile. These solutions range from temporary non-immigrant 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. The presence of so many multinational companies in Chile has increased the number of visa applications significantly in the last decade.

Foreign nationals are protected by Labor Law almost in the same way as Chilean employees. Only a few differences are observed (e.g., a company operating in Chile must not have more than 15 percent of foreign national employees, with the exception of foreign professionals and technicians, and companies with fewer than 25 employees).

Immigration is taking on more importance in the country's legislation. A new Immigration Regulation that includes international commitments made by Chile is part of the current government's agenda.

Business Travel

Foreign nationals coming to Chile for short-term business purposes and who do not engage in remunerated activities are considered tourists and, as a general rule, do not require previous authorization to enter Chile. Only individuals from certain countries (e.g., Cuba, China) require such authorization, called the Consular Tourist Visa, which can be requested at the Chilean consulates of the country of origin.

Tourist status authorizes a foreign national to attend 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.

Employment Assignments

Work Contract Visa

This is a visa granted to foreign nationals who enter Chile to comply with a work contract. The same visa is given to the spouse and children of the applicant. The dependents cannot perform remunerated activities unless they apply for their own visas.

In order to obtain this visa, a number of conditions must be satisfied:

- The employer (company or individual) has to be legally domiciled in Chile.

- 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 must be authorized by the corresponding Chilean consul and then legalized in Chile before the Chilean Foreign Affairs Ministry. The work contract must comply with Chilean labor and social security laws.

- The parties must stipulate a special clause in the work contract confirming that:

    - the employer's obligations to pay the employee and his family the costs of their return to their country of origin or to the foreign country on which both parties agree;

    - the employee may not work, until he has been granted his work permit or visa; and

    - the employer will be responsible for the payment of the income tax corresponding to the employment relationship.

The work contract visa has a maximum duration of two years and it may be extended for the same term. If the duration term is not specified in the passport, it will be understood that such term is the maximum.

In any event, termination of the work contract will cause the visa to expire. The sponsor company is obliged to notify the immigration authorities upon termination of the corresponding employment agreement within 15 days of the date of termination. The visa holder has the right to apply for a new visa or permanent residency.

The holder of the work contract visa will be able to apply for permanent residency only after two years as a holder of such visa.

Temporary Resident Visa

If the foreign national executes his activities in a company in Chile but will be remunerated abroad, a temporary resident visa is most appropriate.

The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for Chile. This is the case of professionals, technical specialists, executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than 90 days depending on their activities or interests in Chile.

As in the case of the Work Contract Visa, this visa is also granted as a "holder" to the interested person and as a "dependent" to the members of his family.

The temporary resident visa has a maximum duration of one year and may be renewed only once for the same period. If the visa stamp does not specify the term for which it was granted, it will be understood that its duration is the maximum. Once the one-year period has elapsed, the holder may apply for an extension thereof or permanent residency in Chile. After two years of residence in Chile, the holder shall either apply for permanent residency or leave Chile.

Work Permit

For work assignments of up to 30 days, including possible extensions, a work permit is a sufficient authorization. This is a special permit for tourist visa holders that enables foreign nationals to work in Chile for a limited period of time.

Training

As a Tourist

For short-term training for up to 180 days (including all possible extensions, which are discretionary), Tourist status is not sufficient. The features of Tourist status described above for "Tourist" in the "Business Travel" section are applicable.

Remunerated activities are not allowed unless the foreign national receives a work permit, which is a special permit for tourist visa holders that enables foreign nationals to work for a limited period of time. In order to obtain a work permit, a work contract or a letter from the visa sponsoring company in Chile is required.

Temporary Visa

A temporary visa allows its holder to stay in the country for a maximum period of one year and may be renewed only once for the same period. The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for Chile and it allows its holder to carry out any legal activities without special limitations. The temporary resident visa is granted to foreign nationals whose residency is considered useful or advantageous for Chile. This is the case of professionals, technical specialists, executives, investors, traders, fund holders and in general, business people who travel to Chile for periods lasting more than 90 days depending on their activities or interests in Chile.

This visa is granted to the foreign national (the holder) and can be granted to the members of the family (the dependents).

After one year, the holder may apply for an extension or permanent residency. After two years of residence in Chile, the holder must either apply for permanent residency or leave Chile.

Student Visa

In case training involves studying in an educational institution duly acknowledged by the state, a student visa can be used. The duration of this visa is up to one year, renewable for equal terms. This visa does not allow its holder to execute remunerated activities, yet an additional work permit can be requested.

Entry Based on International Agreements

Chile has created a temporary visa for citizens MERCOSUR (Argentina, Bolivia, Brazil, Paraguay and Uruguay), that facilitates obtaining and submitting for a temporary visa.

The temporary visa, Mercosur, has the same effects and terms as other temporary visas.

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 Chile. 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 their studies.

An individual with permanent residence has the right to reside in Chile indefinitely and carry out any type of legal activity. Permanent residence is tacitly revoked if the main holder remains outside Chile for an uninterrupted period of one year or more.

Chilean nationality can be obtained by children born in Chile of foreign parents in a transit status (e.g., tourists, irregular residents) and children of foreign nationals who are in Chile performing a specific service to their government. In addition, Chilean nationality can be granted by special grace through a law. This does not occur frequently, but has been granted to entrepreneurs who have made a significant contribution to Chile.

The cost of a visa (irrespective if it is a work permit, work contract visa or temporary visa) will depend on what that country will charge a Chilean national for the same due process.

Colombia

Colombian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for work and business purposes.

Foreign nationals who enter the country for work or business purposes may not enter the country without the respective visa or legal permit that allows them to perform the activities for which they enter Colombia (e.g., as employees or legal representatives). Failure to comply will lead immigration authorities to fine the company and/or the local sponsoring entity and even to deport the foreign national.

The issuance of Colombian visas can be performed either abroad at a Colombian consulate or with the Ministry of Foreign Affairs at Bogotá, D.C., unless the applicant is of a restricted nationality, in which case the application must be made at a Colombian consulate abroad, with prior authorization by the Ministry of Foreign Affairs before the entrance of the foreign national to Colombia.

Key Government Agencies

The Ministry of Foreign Affairs located in Bogotá, D.C. and the Colombian consulates abroad are responsible for visa processing.

The Special Administrative Unit of "Migración Colombia" (hereinafter "UAEMC") is in charge of the issuance of temporary permits, safe-conducts and foreign IDs, the registration of visas, and performs the investigations and enforcement actions involving local employers, sponsoring entities, and foreign nationals.

The Professional Councils are no longer part of the visa process. If the foreign national plans to execute activities involving regulated professions (e.g., engineering, medicine, law) in Colombia, they should request a temporary license or validate their undergraduate studies degree. The determination of whether a foreign national executes activities that involve professional experience is a prerogative of the professional councils.

Current Trends

Colombian consulates and the Ministry of Foreign Affairs exercise a great deal of discretion and may ask for additional documentation or requirements.

As of 2013, in Colombia there are three main types of visas, namely:

- Business visa (NE visa). This type of visa is divided into four subcategories that range between the NE-1 visa and the NE-4 visa.
- Temporary visa (TP visa). This type of visa is divided into 16 subcategories that range between the TP-1 visa and the TP-16 visa.
- Resident visa (RE visa).

Business Travel

NE Visa – Business Visa

As a general rule, foreign nationals who visit the country on short-term visits without receiving any salary or compensation in Colombia may request an NE visa. The NE visa applies to a foreign national who is a legal representative, or occupies a managerial or executive position in a foreign company. Foreign nationals who obtain this kind of visa may perform activities of business promotion related to the interests of their company, such as attending board meetings of partners or directors, and the supervision of the operations of economically, strategically and legally related companies. This kind of visa is valid for a term of up to five years, depending on the type of NE visa granted, for multiple entries, and authorizes a stay of up to four years also depending on the type of visa granted. As a general rule, a foreign national entering Colombia under an NE visa cannot take residence or receive a salary or compensation in Colombia.

Foreign nationals who come to work on issues connected to any kind of free trade agreement involving Colombia may also enter by means of a business visa. Exceptionally, for foreign nationals that intend to enter Colombia in furtherance 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 entry. Under this scenario, foreign nationals are allowed to receive salaries or compensation in Colombia as payment for their work as negotiators of an agreement. Family members of the person entitled to an NE visa are allowed to obtain a temporary beneficiary visa, unless the visa holder has an NE-1 visa. Normal government fees are waived for nationals of South Korea, Japan and Ecuador.

TP-12 Visa – Temporary Visitor Visa

The TP-12 visa is granted to foreign nationals in the following events:

- when the foreign national enters Colombia to perform activities as a journalist, reporter, cameraman or photographer;

- when the foreign national enters Colombia to perform commercial or business activities, such as business contacts, business meetings and/or training; and

- when the foreign national enters Colombia to attend academic activities, such as seminars, conferences, presentations or any other non-conventional studies.

The TP-12 visa is granted for a term of up to 90 calendar days with multiple entries and may not be renewed. The term of stay in Colombia for a foreign national holding the TP-12 visa is for the entire term granted in the visa.

The TP-12 visa must be sponsored by an entity domiciled in Colombia. Foreign nationals interested in obtaining this type of visa may not live or establish their residences in Colombia. Currently foreign nationals holding this visa cannot receive salaries or any kind of compensation for the activities performed in Colombia.

Visa Waiver – Temporary visa permit (PIP-6)

The TP-12 visa requirement may be waived for foreign citizens with non-restrictive nationalities. For these citizens of certain countries a temporary visitor permit (PIP-6) may be issued by the UAEMC, provided that the foreign national has neither a labor nor commercial relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or salary).

The PIP-6 permit allows foreign nationals from non-restricted nationalities to enter Colombia and engage in one of the following activities, provided that the foreign nationals do not have a labor relationship within any local entity: (i) academic activities in seminars, conferences, or expositions; (ii) interviews within recruitment processes; (iii) commercial contacts, business activities or visits; or (iv) providing training.

This permit may be granted for a term of up to 90 calendar days within the same calendar year (i.e., between January 1 and December 31). This permit can be extended, before the initial 90 calendar days expire, by requesting a PIP-6 permit from the UAEMC, which can be granted for 90 additional calendar days within the same calendar year.

The PIP-6 permit does not allow multiple entries for the foreign national and shall be requested each time the foreign national enters the country by submitting the required documents from the officials of the UAEMC at the airport.

The PIP-6 permit must be sponsored by an entity domiciled in Colombia, by granting an invitation letter to the foreign citizen.

Visa waiver benefits are available to citizens of: Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Bhutan, Bolivia, Brazil, Brunei-Darussalam, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Federal State of Micronesia, Fiji, Finland, 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, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Trinidad & Tobago, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay and Venezuela.

Visitor visa requirements are waived to citizens of India, China, Thailand and Vietnam who either: (i) hold a residence permit issued by a Member State of the Schengen Area or the US; or (ii) hold a Schengen visa (category C or D) or US visa of any category other than C-1.

Visa Waiver – Temporary visa permit (PIP-10)

Foreign nationals from any of the Schengen Area countries may be issued a temporary visitor permit (PIP-10) by the UAEMC. This permit does not provide any restriction for carrying out any kind of activity in Colombia, except for entering into a labor or commercial relationship with a local entity.

This permit may be granted for a term of up to 90 calendar days within the same calendar year (i.e., between January 1 and December 31). This permit can be extended, before the initial 90 calendar days expire, by requesting a PIP-10 permit from the UAEMC which can be granted for 90 additional calendar days within the same calendar year.

The PIP-10 permit does not allow multiple entries for the foreign national and shall be requested each time the foreign national enters the country by submitting the required documents from the officials of the UAEMC at the airport.

This visa waiver benefit is available to citizens of: Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Slovakia, Slovenia,

Spain, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Republic of Malta, the Netherlands, Poland, Portugal, Czech Republic, Romania, Sweden, Switzerland, Norway, Liechtenstein and Iceland.

Employment Assignments

TP-4 Visa – Work visa

Under Colombian immigration laws, any foreign national that intends to undertake work activities in the country must request a TP-4 visa or a visa under a different category that allows him to work (e.g., TP-10 visa, TP-15 or RE visa). The TP-4 visa is granted for foreign nationals who enter Colombia by virtue of a labor relation or a service agreement with an entity domiciled in Colombia. It is also granted to artistic, sports or cultural groups entering the country for the purpose of a public performance.

TP-4 visas are issued for a maximum term of three years and allow multiple entries. They expire automatically if the foreign national is absent from the country for a period that exceeds 180 continuous days and may be renewed for a period of three years or less in accordance with the term of the labor contract and the evaluation of the submitted documents.

The TP-4 visa must be issued before the foreign national renders services locally or becomes part of a local payroll.

The spouse or permanent companion, parents, and children under the age of 25 of the foreign national who holds a TP-4 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 who holds a TP-4 visa will only be allowed to perform the activity authorized in the visa and only for the company authorized in the visa. In the event there is any change of activity or position, the foreign national and the sponsoring company must

inform the immigration authorities in writing notifying the change and, if such is the case, request the change of the visa.

TP-13 Visas – Technical Visitor Visa

The TP-13 visa may be granted to foreign nationals who intend to enter Colombia to perform specialized urgent technical activities with or without employment or independent services agreements with public or private entities.

The TP-13 visa is granted for a term of up to 180 calendar days with multiple entries and may not be renewed within the same calendar year. The term of stay in Colombia for a foreign national holding the TP-13 visa is for the entire term granted in the visa.

The TP-13 visa must be sponsored by a local entity in Colombia which will be the responsible for the foreign nationals during their stay in Colombia.

Visa Waiver-Technical visitor permit (PIP-7)

The normal visitor visa requirement is waived and citizens of certain countries may be issued a technical visitor permit (PIP-7) by the UAEMC, 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 salary).

The PIP-7 permit may be granted to foreign nationals from non-restricted nationalities who enter Colombia to perform urgent technical services that cannot be provided by a Colombian citizen.

This permit may be granted for a term of up to 30 calendar days per calendar year and cannot be renewed in the same calendar year.

This type of permit is commonly granted to technicians or engineers who will inspect, test, or install equipment, or perform any duties related to their technical expertise.

The PIP-7 permit must be requested by the local sponsoring company at least three business days in advance of the entry of the foreign national in Colombia.

Visa waiver benefits are available to citizens of the same countries listed in the PIP-6 mentioned above.

Training

Foreign nationals who intend to enter Colombia for the purposes of participating in training programs should obtain TP-12 visas.

The TP-12 visa requirement is waived for foreign citizens with non-restrictive nationalities. For these citizens a temporary visitor permit (PIP-6) may be issued by the UAEMC, provided that the foreign national has neither a labor nor commercial relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or salary).

Please refer to the "TP-12 Visa" and "Visa Waiver – Temporary visa permit (PIP-6)" sections above.

Post-Entry Procedures

Obligations of Registration, Foreign ID and Control

Any foreign national who obtains a visa with more than three months of validity should appear at the offices of the UAEMC in order to be registered in the immigration files and, if the foreign national is seven years old or more, should obtain a foreign identity card ("*cédula de extranjería*"). When the immigration authorities issue or renew any visa, the foreign national and his family must present themselves before the UAEMC within 15 calendar days of the day of entry or visa issuance (e.g., in the case of renewals) to register and obtain the foreign identity card.

Foreign nationals entitled to any type of visa valid for a term of less than three months have the prerogative to stand before the UAEMC to register his visa and to obtain a foreign identity card. If the foreign national decides not to stand before the UAEMC, no sanctions will be imposed.

Employers (entities, institutions, or individuals) must inform the UAEMC of the hiring and termination of employment or of the engaging of any foreign nationals within 15 calendar days of such event. Employers should also give notice to the UAEMC whenever the foreign employee's visa is amended or changed.

These notices should be given to UAEMC electronically, via the SIRE[1] platform. The registration in SIRE aims to facilitate the report and registry obligations for companies that hire foreign citizens. To successfully register the foreign citizens on SIRE platform, it is necessary for companies to register on the electronic platform.[2]

Furthermore, foreign nationals must give notice to UAEMC and the Ministry of Foreign Affairs of any change of residence or domicile within 15 days of such event.

The Ministry of Foreign Affairs has broad discretional powers for approving the issuance or renewal of visas and, when denied, the applicants do not have the opportunity to appeal the decision. Prior to filing the visa application, the best practice is to informally approach the immigration authorities to review the fulfillment of the application documents with them. It is important to minimize the risk of denial, since a new petition may be presented only after a six-month wait if a visa request is denied.

The requirements to obtain visas change periodically and should be verified prior to submitting the application.

[1] SIRE stands for Foreign National's Report Information System in Spanish.
[2] http://apps.migracioncolombia.gov.co/sire/public/login.jsf

The process to obtain the visa can be performed either online or at the Colombian consulate or Ministry of Foreign Affairs in Bogotá, D.C. The process takes between four to ten business days, unless the application is submitted by the foreign national personally at the Ministry of Foreign Affairs, in which case the visa will be granted on the same day of the application.

Non-compliance with 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.

Entry Based on International Agreements

Mercosur visa (TP-15 visa)

Citizens from Argentina, Brazil, Bolivia, Peru, Chile, Paraguay, Uruguay and Ecuador may apply for a special visa called the Mercosur visa (TP-15). This visa is a temporary residence permit that may be granted by the immigration authorities for up to two years, and which allows foreign nationals to perform any of the following occupations or activities: performing home activities (cleaning the home, grocery shopping, caring for one's children, etc.), rendering independent services, or undertaking educational, business or work activities for any employer in Colombia.

A foreign national who holds a Mercosur visa for at least two continued and uninterrupted years can apply for a residence visa (RE visa).

The Mercosur visa is recommended for those companies that recently established their entities in Colombia in order to hire foreign nationals from the countries mentioned above.

Pacific Alliance visa (TP-16 visa)

Foreign nationals from Chile, Peru and Mexico may apply for the Pacific Alliance visa (TP-16 visa). This visa is granted for foreign nationals that apply for any holiday-related work, the purpose of which is to promote the expansion of recreation and culture.

This visa may be granted for a term of up to one year for foreign nationals between the age of 18 and 30 years old.

The visa must be requested before a Colombian consulate abroad and may not be renewed.

Czech Republic

The Czech Republic provides several solutions to assist employers of foreign non-EU nationals. A different process is used in case of foreign non-EU nationals seconded to the Czech Republic, and foreign non-EU nationals employed directly by a Czech entity. Requirements, processing time, employment eligibility, and benefits for accompanying family members vary by visa classification and purpose of stay. The immigration process may be lengthy in some cases. Therefore, the application should be filed sufficiently well in advance.

Key Government Agencies

Applications for a Blue Card or Employment Card (which serve as both a residency and work permit) are generally filed through Czech consular posts abroad, and processed by the Department for Asylum and Migration Policy of the Czech Ministry of the Interior. The relevant Czech Labor Office is responsible for the processing of a work permit required for non-EU nationals seconded to the Czech Republic. Applications for short-term Schengen visas are assessed and decided by Czech consular posts. In case the non-EU national will be employed directly by the Czech entity, the prior notification of a job vacancy by the potential employer with the Czech Labor Office is required.

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 for foreign nationals from certain non-EU countries to obtain a work permit. If a foreign non-EU national obtains employment without a work permit, both the employer and the foreign national are subject to administrative penalties.

As of January 2011, the use of Blue Cards has been implemented. A "Blue Card" is a type of long-term residence permit in the Czech Republic for citizens of all non-EU countries. Blue Cards are issued in special cases, i.e., when the foreign national will be employed in a role requiring a high-level qualification (i.e., university education) and such position can be occupied by a non-EU citizen. The Blue Card serves as both a residence permit and a work permit in the Czech Republic.

Residence permit cards containing biometric data are required for foreign non-EU nationals (i.e., data on a facial image and fingerprints).

As of June 2014, the Employment Card was introduced as a new type of permit, serving as both a residence permit and an employment permit in the Czech Republic. The Green Card, which was a joint residency and employment permit for citizens of selected non-EU countries, as well as short-term and long-term visa for the purpose of employment were cancelled, and it is no longer possible to obtain them.

Business Travel

Visa for Dependents

Short-term Visa

In relation to short-term visas, Czech law currently adheres to the EU Visa Code. The EU Visa Code lays down the conditions for granting a short-term visa, the reasons for potential denial, conditions for extension of the period of stay, and the reasons for revocation of its validity.

In accordance with the EU Visa Code, short-term visas are granted by the embassies or consulates of individual Member States. The request for an extension of stay in the Czech Republic on a short-term visa shall be submitted by the foreign national to the Foreign Police.

A short-term visa cannot be granted for the purpose of employment.

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 (employment is not a possibility).

The total duration of the stay of a foreign national in the territory of the Member States under a Uniform Visa may not exceed 90 days within a 180-day period from the first date of entry into the Member States.

Schengen Visa: Visa with Limited Territorial Validity

A Schengen Visa with limited territorial validity is only valid in the territory of the Member State which issued the visa. Occasionally it may be valid in several Member States, provided agreement is received from each of these Member States. This visa is granted mainly on humanitarian grounds, grounds of national interest, or the implementation of international commitments.

Long-term Visa

A long-term visa is a visa for a stay exceeding a period of 90 days.

Permitted purposes are business, participation in a legal entity, study, joining his family, sports, medical care, to take over permanent residency, or for scientific research. The long-term visa cannot be issued for the purpose of employment.

The long-term visa is issued for a period of up to six months.

If 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 / Visa Exemptions

EU citizens do not need a visa to stay in the Czech Republic. They are subject to the registration requirement only. A similar treatment also applies to citizens of Norway, Lichtenstein, Iceland and Switzerland. Some non-EU citizens travelling to the Czech Republic as tourists are not required to obtain a Czech visa, provided their stay does not exceed the stipulated number of days. These individuals are subject to the registration requirement only.

For example, a US citizen entering the Czech Republic for tourist purposes may only stay in the territory of the Czech Republic and Schengen area countries for a period of up to 90 days within a six-month period. If he interrupts his stay in the Schengen area (including the Czech Republic) within these six months (i.e., he travels outside

the Schengen territory), the days spent outside of the Schengen territory are not calculated into the 90-day period.

Employment Assignments

Employee Remains Employed by Foreign Entity

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.

Employment Card

Foreign nationals seconded to the Czech Republic that are not directly employed by a Czech entity need to obtain a work permit and an Employment Card.

An application for an Employment Card is filed at a Czech embassy or a consular post in the country of origin of the applicant, or a country where the applicant's long-term or permanent residence is permitted.

An Employment Card is valid only for the specific job, site and employer listed on the permit. A change in any of these factors may trigger the requirement to obtain the prior consent of the authorities.

Please note that a work permit to employ a non-EU citizen in the Czech Republic is not required (however, a non-dual Employment Card is still required) if the foreign non-EU citizen does not perform work within the territory of the Czech Republic for more than seven consecutive calendar days or a total of 30 days within a calendar year, and provided that the citizen is:

- a performer, performing artist, pedagogical worker, or academic worker of an university;
- a scientific research or development worker, who is a participant in a scientific meeting;

- a scholar or student up to 26 years of age;
- an athlete; or
- a person providing the delivery of goods or services within the territory of the Czech Republic 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 for his employer residing in another EU Member State. However, there are special requirements to meet these criteria.

Intra-Company Transfers

Employees Directly Employed by Czech Entity

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.

Non-EU foreign nationals may be employed, provided that they have been granted an Employment Card that contains both a residence and work permit.

For the purpose of application for an Employment Card, the employer must notify the Labor Office of a job vacancy. The foreign non-EU national may apply for the Employment Card only in the event the job position remains vacant for at least 30 days. The notification of a job vacancy is not required in certain specific situations (i.e., in case of foreign non-EU nationals that graduated in the Czech Republic).

An application for an Employment Card is filed at a Czech embassy or a consular post in the country of origin of the applicant, or a country where the applicant's long-term or permanent residence is permitted.

Skilled Workers

As noted above, a "Blue Card" is a type of long-term residence permit in the Czech Republic for citizens of all non-EU countries.

Non-EU foreign nationals may be employed, provided that they have been granted a Blue Card that contains both a residence and work permit.

For the purpose of application for a Blue Card, the employer must notify the Labor Office of a job vacancy. The foreign non-EU national may apply for the Blue Card only in the event the job position remains vacant for at least 30 days. The notification of a job vacancy is not required in certain specific situations (i.e., in case of foreign non-EU nationals that graduated in the Czech Republic).

An application for a Blue Card is filed at a Czech embassy or a consular post in the country of origin of the applicant, or a country where the applicant's long-term or permanent residence is permitted.

A Blue Card is valid only for the specific job, site and employer listed on the permit. A change in any of these factors may trigger the requirement to obtain the prior consent of the authorities.

Post-Entry Procedures

A non-EU citizen staying in the Czech Republic is obligated to report the beginning of the stay, purpose of the stay, place of residence, and expected length of stay to the Foreign Police within three business days from his arrival. If the non-EU citizen stays with a person/entity who accommodates more than five foreign nationals or provides accommodation in return for compensation (e.g., a hotel), a registration must then be made by the provider of the accommodation. The preceding rule will not apply in case the provider of accommodation is a person related to the non-EU citizen.

If the foreign national changes his place of residence, he is required to notify the appropriate Foreign Police or Department for Asylum and Migration Policy of the Czech Ministry of the Interior. Foreign nationals who possess an Employment Card must notify a change of their place of residence within 30 days from the date on which such change occurred if the foreign national assumes that the change will last at least 30 days.

An EU citizen is obligated to register with the Foreign Police within 30 days of the date of his last entry into the Czech Republic, if his stay is expected to exceed 30 days. Such obligation also applies to his family members if they also stay in the Czech Republic. This obligation does not apply to those EU citizens who fulfill the obligation via the person/entity providing them with accommodation, based on the assumption that the person/entity providing the accommodation registers on the foreign national's behalf.

The change of place of residence of an EU citizen and his family members is subject to notification to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior, if they assume that the change will last longer than 180 days.

All foreign nationals (including EU citizens) are obligated to report respective changes regarding their stay in the Czech Republic to the appropriate Foreign Police or to the appropriate Department for Asylum and Migration Policy of the Czech Ministry of the Interior. The changes shall be reported within three business days from the date on which such change occurred. Changes that need to be reported include, in particular:

- change of travel 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 an appropriate authority, and prove that their stay in the territory is legitimate;
- surrender their 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 their immigration document to the authority that issued the immigration document no later than three days before termination of residence in the Czech Republic (with the exemption of their visa and travel identification card if such documents were issued for the purpose of travel out of the Czech Republic);
- report a loss, destruction, damage or theft of an immigration document within three days from the date of such occurrence;
- immediately report a loss or theft of travel documents to the Foreign Police; and
- submit to such actions as taking fingerprints, video recording, medical examination, etc., in the manner and to the extent stated in Czech law.

In principle, all foreign nationals must have valid and effective health insurance covering their entire period of stay in the Czech Republic. If the foreign national seeks a short-term visa, evidence of travel health insurance must be presented when applying for a short-term visa. The minimum coverage is EUR 30,000. If the foreign national seeks a long-term visa, or an Employment Card, evidence of travel health

insurance must be presented before the issuance of the long-term visa. The minimum coverage necessary is EUR 60,000. The foreign national is obliged to submit evidence of travel health insurance when inspected by the Foreign Police.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Other Comments

Residency in the Czech Republic

Temporary Residence 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 (a non-EU citizen) that has a Czech long-term visa and intends 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.

Such a permit may be issued for the purposes of study in the Czech Republic, being protected in the territory of the Czech Republic, scientific research, business, family reunification, asylum, and diplomatic purposes. It cannot be issued for the purpose of employment.

The Employment Card or Blue Card can be issued for the purpose of employment and contain both a residence permit and a work permit.

Permanent Residence Permit

In general, this permit may be issued to a foreign national after five years of continuous legal stay in the territory of the Czech Republic. Under some special circumstances (e.g., asylum), it may be issued immediately and, in some special cases, it may be after four years of

continual stay in the territory of the Czech Republic (e.g., international protection purposes). A foreign national is obligated, inter alia, to submit evidence that his income is regular for the purposes of proving funds for permanent residence.

Additional comments

All Czech immigration procedures are time-consuming and administratively demanding; 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 the context of an employment relationship with a local employer:

- Preparation stage: four to six weeks to obtain all documentation.
- Notification of the job vacancy to the Labor Office by the Czech employer: up to 30 days to complete the administrative proceedings.
- Application of the non-EU citizen for an Employment Card or Blue Card shall be made at the consular post: up to 60 days to complete the administrative proceedings, however, the authorities may prolong this to 90 days in exceptional cases.

France

France is a popular destination for holiday and business travelers alike. While brief visits generally pose no issue, coming to France to work or stay for a prolonged period of time means complying with strict procedures with various authorities.

It is very important to apply for an appropriate visa in the foreign national's home country before coming to France. In-person attendance at the 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 Regionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*" or "DIRECCTE") endorses employment contracts required for certain work 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 Francais de l'Immigration et de l'Integration*" or "OFII"), or by the DIRECCTE. In both cases, approval is given by the DIRECCTE. After approval, the OFII sends the application to the appropriate consular post for visa issuance.

Current Trends

French immigration policy pursues four objectives: controlling migration flows; favoring integration; promoting French identity; and encouraging the development of partnerships.

Furthermore, France wishes to improve the immigration system for professionals. Therefore, in response to recruitment needs in certain economic sectors, the French government has decided to encourage the immigration of professionals and make it easier for foreign nationals to enter France in selected professions.

Business Travel

Visa Waiver / Visa Exemptions

Visas are not required for citizens of the 28 European Union countries or European Economic Area ("EEA") countries (i.e., Norway, Liechtenstein and Iceland), Swiss Confederation, Monaco and Andorra, to visit France.

In addition, the normal visa requirement is waived for trips of up to 90 days for citizens of the following countries: Albania, Andorra, Antigua, Argentina, Australia, Bahamas, Barbados, Barbuda, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Israel, Japan, Kosovo, Malaysia, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, San Marino, Serbia, Seychelles, Singapore, South Korea, Taiwan, United States, Uruguay, Vatican, and Venezuela. Also included are holders of passports from the Former Yugoslav Republic of Macedonia, the Hong Kong Special Administrative Region of the People's Republic of China and the Special Administrative Region of Macau of the People's Republic of China, the British Overseas Territories, and holders of a valid residence document in France.

Short-Term Visas (less than three months)

In general, and subject to the visa waiver described below, foreign nationals must obtain a visa from the French consulate in the country where they reside prior to coming to France, even for a short visit.

Applicants should apply for a Schengen visa from the French consulate where the main travel destination is France. The Schengen visa allows entry to France and also allows the individual to move freely within other countries in the "Schengen Area."

The following countries are currently members of the Schengen Area: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia,

Liechtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

Schengen visas are not valid for visiting EU countries that are not members of the Schengen Area.

The visa is granted for a maximum period of 90 days in any 180-day period, and allows single or multiple entries. During the validity of the visa, a foreign national is authorized to stay in the Schengen Area for the period indicated in the visa.

The applicant must provide a passport valid for at least three months after the date of return to the country of origin (for a total of six months including the visa period), a return ticket, and evidence of sufficient financial resources and accommodation for the stay in France. In addition, travel insurance has been required since October 18, 2013. This insurance must provide for a minimum coverage of up to EUR 30,000 in order to cover any expenses that may arise in connection with the applicant's repatriation for medical reasons, urgent medical attention, or emergency hospital treatment. The travel insurance should cover the whole period of stay in the Schengen Area.

The start date for the authorized duration of stay is generally determined by the date stamped on the passport when crossing the border into France. In the absence of a stamp, the burden of proof will fall on the foreign national to demonstrate the actual date of entry into France (e.g., showing a travel ticket).

Employment Assignments

Intra-Company Transfer

Employees in this category ("*salariés en mission*") are those who are working in a group of companies and who are assigned by an overseas entity within that group to a French company which is part of the same group. The benefit to filing for employees under the intra-company transferee classification is that the employee may obtain a three-year residence permit. This period is renewable at least once but

can be renewed beyond this if the employee carries on the same mission and subject always to approval from the Labor Authorities. As an additional benefit, the spouse will be issued a "Private and Family" permit allowing him to work.

To benefit from the "intra-company transfer" permit, the employee must fulfill two conditions:

- he needs evidence of a minimum period of three months of service with the foreign employer, prior to being sent to France; and

- he must earn a minimum gross wage of EUR 2,199.93 per month (as of 2016).

Following recent case law, the intra-company transferee card is now only issued to employees with significant experience in the area in which they are employed. The intra-group transferee card can be granted to two types of employees: those who become employees of the French company; and those who, while working in France, remain employees of the overseas entity ("*detaches*").

The employees will receive a renewable three-year residence permit which enables them to work only in the defined positions with the same employer.

If the employee's contract in France is of a minimum duration of six months, family members will also be eligible to obtain residence permits.

The following documents are required from the French sponsoring company:

- an updated original personnel register ("*registre unique du personnel*") (last two pages only) and the two last statements ("*bordereau declarative*") sent to the URSSAF for social contributions;

- an updated original certificates issued within 90 days of filing from the French Tax Administration stating the French sponsor is up to date with the payment of corporation tax ("*impôts sur les sociétés*"), business tax ("*taxe professionnelle*") and VAT; and

- the articles of incorporation, by-laws and extract of the commercial registry.

The following documents are required from the company abroad:

- an original or copy of Social Security Certificate of Coverage, naming the French sponsoring company. Since the normal processing time for the Social Security Certificate of Coverage is four to six weeks, this should be requested as early as possible in the process. The name and address of the French sponsoring company must match the rest of the corporate documents;

- an original signed MOU with all details of employment, title, job description, start date, end date, gross monthly salary, location in France, and address where the employee will be employed;

- an original work certificate duly written in French and English to be signed by a representative of the company; and

- an original letter from the company's healthcare provider (Bupa), attesting that the employee and his family are covered by International Health Coverage, as well as a copy of the company's Coverage Certificate.

The following documents are required from the employee:

- copies of long-form birth certificates for the employee and all accompanying family members and their marriage certificates, as applicable, certified by the clerk of the state/country where the documents were issued (documents must be translated into French by an official translator in France);

- a copy of the employee's university level diplomas and transcripts and a resumé indicating the employee's address abroad;

- copies of all passports held for every applicant (only the pages with information regarding the applicant's ID, passport validity date and residency permit; all passports must have at least six months of remaining validity and two empty pages; and

- for US nationals: W-2 statements or tax statements for the previous two years.

Post-Arrival Requirements

The employee and his family members will typically be required to appear in person to present their visa applications at a French consulate in their country of current residence. Once the employee and their family arrive in France, formalities have to be undertaken with the competent immigration office or Prefecture to start the process for the issuance of residence permits. In addition, the medical examination requested for the employee and spouse must be completed within two months after their arrival in France.

For assignments of three to 12 months, using the intra-company transfer process, the visa issued should be granted for three months only in order for all members of the family to regularize their stay in France.

Once in the country, any change of address by non-EU nationals must be registered with the competent administration there. If the new address is located in another geographical and administrative area (called "*département*"), it is the "*Prefecture*," if the new address is in the same "*département*," it is the "*commissariat de Police*."

A foreign employee may not convert from visitor status to work authorized status once in the country.

Penalties for Non-Compliance

The penalties for employing a foreign worker without an appropriate work permit are five years' imprisonment and a maximum fine of EUR 15,000 for the legal representative of the French employer company. In addition, the company itself may be fined EUR 75,000.

Short-term Assignment

For intra-company transfer 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 transfer procedure, however after approval by the Labor Authorities, the employee must go directly to the French consulate with the approval to obtain a visa enabling him to work in France. However 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 but, where required, must be able to present their work permit authorization issued by the Labor Authorities.

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, introduced 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.

A law dated June 16, 2011 implements this Directive in France and has set up an "EU Blue Card" visa. A decree dated September 6, 2011, sets out the conditions for obtaining the EU Blue Card in France.

The criteria for entry under such a visa are as follows:

- an employment contract in France must be presented, which is valid for at least one year;
- the applicant must have a gross annual salary equivalent to at least one and a half times the average gross annual salary, as determined each year by the Immigration Minister (EUR 52,750 as of 2014); and
- the applicant must present documents which show that 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 at an equivalent level.

The Prefecture's decision to issue an EU Blue Card must be notified in writing to the applicant within 90 days of the application. If notification of approval is not received within 90 days, 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-country nationals and their families can enter and stay in France and pass through other EU Member States.

A third-country national who can show that he has stayed at least 18 months in another EU Member State with an EU Blue Card, can obtain the same card in France if he complies with the conditions set out above.

Skilled Workers

Corporate Executive Visa

Corporate executives for visa purposes include: the president and/or managing director of a French corporation ("*Societe Anonyme*" or "SA"), the president and/or the managing director of a simplified corporation ("*Societe par Actions Simplifiee*" or "SAS"), the managing director ("*Gerant*") of a French limited liability company ("*Societe a Responsabilite Limitee*" 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 their positions in France. When the applicant has been employed by an international company for more than six months and earns a gross monthly salary of at least EUR 5,000, the employer must apply for a visa to the OFII, the Ministry of the Interior and the DIRECCTE.

Employee Visas

Employee visas require that the French employer should first 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.

When the employee and family arrive in France, the employee's spouse must undergo a medical examination with the Immigration Office before receiving a residence permit.

For the employee, the residence permit acts as both a residence and a 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.

The one-year residence and work permit, when applicable, is renewable. Renewals must be requested two months prior to the expiration date.

Regular Employees

In principle, new immigrants are not allowed to arrive and commence work in France. However, because French employers often face difficulties in recruiting local employees who meet the requirements of the available positions, the Labor Authorities can take account of the employment market in France in each relevant sector. The employer should therefore set out the particular difficulties of finding employees in its sector.

In the event that an employer finds a non-EU employee who fulfills the relevant conditions, the employer could be asked to obtain clearance from the National Employment Agency, however, this clearance does not guarantee that the work permit application will be approved.

Training

Citizens of the EU/EEA are able to live and work in France without a visa. Therefore, they are authorized to remain in France for training without securing a French visa.

Citizens of other countries must qualify for one of the visas set out in this chapter. In addition, non EU/EEA citizens will generally be required to hold both a valid residence and a work permit, which is obtained at the relevant administration (Prefecture or OFII) 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 sejour")

The Short-stay Visa can authorize training assignments of up to 90 days. No extension of stay is possible. Furthermore, no more than 90 days can be spent in France during a six-month period. No further administrative steps are required at the French Prefecture.

Long-stay Visa ("visa de long sejour")

The Long-stay visa authorizes foreign nationals to remain for periods of longer than three months. Once in France, it is necessary to start registration either with the OFII or at the Prefecture.

Since June 1, 2009, the following categories of foreign nationals can obtain a Long-stay visa equivalent to a one-year residence permit from the French consulate:

- spouses of French citizens;
- visitors;
- employees who have an employment contract approved by the DIRECCTE (fixed-term contract or indefinite-term contract); and
- students.

For the four above-mentioned categories of foreign nationals, the visa is generally valid for one year but can be issued for a shorter period. If the foreign national wishes to stay in France for longer, a residence permit application must be filed at the foreign national's local Prefecture at least two months before the expiration of the previous visa.

Other Comments

After five years' residency in France, non-EU nationals can apply for a ten-year residence permit ("*Carte de resident*") if they have a good command of the French language and can prove that they have a regular business activity in France (e.g., as a corporate executive, regular employee or otherwise) from which they derive sufficient income. They must also declare that they intend to reside in France for a long period or on a permanent basis. The non-EU spouse of an EU employee working in France may be entitled to obtain a ten-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 ten-year residence permit. Such a one-year residence permit allows the spouse to work as an employee.

The ten-year residence permit enables the holder to take any position in France. This permit is renewable and the holder can be absent from France for up to three years without losing the benefit of the permit.

The benefit can also be extended for an additional year under specific conditions.

Children of non-EU nationals residing in France must secure a residence permit ("*titre de sejour*") after their 18th birthday for the same duration as their parent's permit.

Children of non-EU nationals born in a foreign country may apply for a specific document known as "*Document de Circulation pour Enfant Mineur*" ("DCEM").

Children of non-French nationals born in France may apply for a specific document named "*Titre d'Identite Republicain*" ("TIR").

These documents enable the child to prove his identity, to travel freely in France and to prove that he has a regular domicile in France while traveling outside the country.

A non-EU national who changes address must notify the local police department ("*Commissariat de Police*") or the Prefecture.

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.

The EU Blue Card holder will not have to pay the OFII tax and will not have to undergo the OFII medical examination.

Planned Legislative Change

The law no. 2016-274, dated March 7, 2016, relating to Rights of foreign nationals in France improves the integration of foreign nationals and promotes France as an attractive place for skilled workers. The law provides new regulations regarding residence permits, such as a global multi-year resident permit "*Titre de séjour pluriannuel*" or a talent passport "*passeport talent*."

The Decree implementing the law has not yet been implemented and is expected mid-2016. The implementation of the new provisions will most certainly take some time. Therefore, the following information is only for informational purposes and may be modified.

Multi-year residence permit

The new law provides that all foreign nationals regularly present in France for a year will have the possibility to request a multi-year residence permit. Its validity may last for two to four years.

Talent mobility

The new law provides for a "*talent passport*" for skilled workers, research workers or investors. The duration of validity of the "*talent passport*" is four years.

Germany

Many people migrate to Germany each year. The reasons for leaving their home countries vary, but most foreign nationals come to Germany for employment, business, or 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 may enter Germany without a visa and apply for a residence permit within Germany.

Where a foreign national is required to obtain a visa, the application is submitted to the General of a German embassy ("*Botschaft*") or general ("*Generalkonsulat*") at the applicant's place of residence abroad. Before issuing the visa, the German authority will involve the Aliens Office ("*Auslanderbehorde*") responsible for the place of intended residence in Germany and the Federal Labor Agency ("*Bundesagentur fur 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. The Aliens Office will internally involve the Federal Labor Agency as necessary.

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 positions such as technicians, as well as in the academic subjects of mathematics, information technology, natural science, and technology. The federal

government intends to deal with this deficit of specialists not only by a national campaign for better education, but also by facilitating access to the German employment market for foreign specialists in the areas sought after.

Currently, the possibility exists for employees of certain 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 "EU Blue Card" which facilitates the applicant's access to the German labor market and his move within the Schengen Territory.

Business Travel

Temporary Business Visitor

Except for nationals of non-privileged countries, business visitors are not required to obtain a visa or a residence permit if their stay does not exceed 90 days within a 180-day period.

Anyone who enters Germany as a business visitor is expressly barred from taking employment and to do so is a criminal offense. A business visitor is defined as an individual who normally lives and works outside Germany and comes to Germany to transact business, to attend meetings and briefings, for fact-finding purposes, or to negotiate or conclude contracts with German businesses to buy goods or sell services. A business visitor must not intend to produce goods or provide services within Germany.

Short-term Visa ("Schengen Visa")

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Germany, and must apply for such visa at a German diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for up to 90 days within a 180-day period.

Schengen Visas have to be applied for at the representation of the main destination of the intended travel or, where a main destination cannot be ascertained, at the representation of the country first entered into in the Schengen Area.

Employment Assignments

For most work and employment activities that are carried out in Germany, a residence permit for employment purposes must be requested. Generally speaking, 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.

In most cases the Labor Agency will only approve an employment application in Germany after carrying out a so-called "labor market check" in which it surveys whether:

- no adequately trained or qualified German or EEA personnel are available for the vacancy in question. The Labor Agency can insist on a four-week waiting period during which they will try to find personnel with German, or other EEA country, citizenship who can fill the position, before they grant the approval;

- the salary is comparable to that offered to resident workers in the same position; 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 catalog of possible qualifying professions.

Intra-Company Transfer

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany may apply for their residence/work permits under simplified conditions provided that the intended assignment can be seen as part of a personnel exchange program for internationalization of the group. Furthermore, the assignment must be of crucial interest for the cooperation and development of the group or the company in the international market. It is essential that the employees are permanently employed by the company and that they possess a university diploma or similar level of education. Moreover, it is required that, from time to time, the company also sends skilled employees from Germany to other countries. A work-related residence permit under this provision can be granted for up to three years.

The approval of an intended employment like this has to be granted by a special labor authority ("*Zentralstelle fur Arbeitsvermittlung*") 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.

Skilled workers

Senior Executives

No approval of the Labor Agency is required in case the foreign national is:

- a chief executive officer with full power of attorney ("*Generalvollmacht*" or "*Prokura*") as certified/verified by the German commercial register;
- a member of the executive body of a legal entity (e.g., managing director of a GmbH); or
- a partner and/or shareholder of a trading or commercial company with the power to represent the company.

Highly Qualified Specialists

Highly qualified specialists may apply for a settlement permit that gives unlimited residence rights to them and their family members. Prior approval for the intended employment from the Labor Agency is not required in these cases. Highly qualified persons include:

- scientists with special technical knowledge; and
- teaching or scientific personnel in prominent positions.

EU Blue Card

Foreign employees with a university diploma acknowledged in Germany, who earn a salary corresponding to at least two-thirds of the earnings ceiling of the statutory pension insurance (i.e., at least EUR 49,600 gross yearly salary as of 2016) may apply for a so-called "EU Blue Card." The permit enables the holder not only to reside and work in Germany but, under specific conditions, also in the Schengen Territory. Under certain conditions, foreign nationals holding an "EU Blue Card" can be eligible for an unlimited settlement permit for Germany after a period of 33 months, provided that for the duration of

the stay, contributions to the (statutory) pension scheme are paid. The foreign national can be eligible for a settlement permit after 21 months at the earliest, if German-language skills at a B1 level can be ascertained.

Specific Assignments

For some categories of visitors, the Labor Agency's approval is not required for the issuance of their residence permit for employment purposes, provided the foreign national retains residency outside of Germany. Such privileged categories are, for instance:

- students of foreign universities or vocational schools for a holiday job placed by the Labor Agency (for a temporary limitation of 90 days within a 12-month period); and

- employees of a company whose business is in a country outside of Germany who will install or set up a "ready-to-use" machine or a (computer) system delivered by their foreign company, or who will provide training for the use of such machine or system and the maintenance or repair thereof. An individual is only eligible for this exemption if it can be shown that the company has sold a product or computer system that its employee will implement in its customer office, that some installation or training is necessary and in case the employee's stay does not exceed a duration of 90 days within a 12-month period. The exemption from the Labor Agency's approval only applies if the employer has notified the authority prior to the commencement of work.

Training

The German Immigration Act does not provide a specific visa category for foreign employees who seek on-the-job training in Germany. In principle, training is considered as a kind of employment from the authorities' perspective; therefore trainees must apply for a residence permit for employment purposes. Exemptions may apply if the duration of the inter-company training will not exceed 90 days within a 12-month period, but only if the major focus is on the training

of the foreign employee and not on his employment. There may also be some privileges for specific occupational groups, such as information technology specialists or in the case of an international personnel exchange.

Post-Entry Procedures

In cases where the foreign individual intends to stay in Germany for longer than three months, he will need to register his domicile in Germany at the local municipal office ("*Einwohnermeldeamt*") in the city where he resides upon presentation of the lease contract.

After the individual's move to Germany, he has to schedule an appointment with the responsible Aliens Office at his place of residence in order to apply for the work-related residence permit in person and to receive a temporary permit. The individual is not allowed to start working before he has received the (temporary) permission to work. However, if the foreign individual has applied to a German embassy or consulate for a work-related visa prior to his entry into Germany, he may be allowed to work with this visa even before the appointment with the Aliens Office, provided that the visa provides for a corresponding work permission.

Entry Based on International Agreements

Citizens of EEA countries are, in general, free to reside and work in Germany without any prior formalities. Family members of an EEA national (who are not themselves EEA nationals) will be required to obtain an "EEA Family Permit" to accompany or join an EEA national who is exercising his rights to reside in Germany. EEA nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization. The only obligation is to register their local address after moving to Germany.

Besides Germany, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Republic of

Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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

Other Comments

There are privileges for additional groups. For example, foreign students may stay in Germany for 18 months after the successful completion of their exams for the purpose of looking for work.

Foreign nationals may apply for a settlement permit, which gives unlimited residence rights to the applicant and the family in case the foreign national has held a fixed-term residence permit for at least five years and fulfills further requirements (e.g., contributing to the German (statutory) pension scheme for at least 60 months, proving maintenance and sufficient knowledge of the German language, etc.). The holder of an "EU Blue Card" may apply for a settlement permit after 33 months, if the foreign national can provide proof of his German-language skills at a B1 level.

Spouses and dependent children may accompany the holder of a work-related residence permit. They are eligible to receive a residence title for family reunion purposes. These family members may stay for the same period of time as the applicant. However, the applicant must provide evidence of the ability to financially support the family members during their period of stay in Germany. Family members who receive a residence title for family reunion purposes are also entitled to work without restriction.

Foreign nationals who want to be become naturalized German citizens must legally reside in Germany for at least eight years and must fulfill some other preconditions. Such naturalization generally requires that the foreign national is established in Germany (i.e., is able to sustain

himself and his family without the help of welfare benefits or unemployment assistance), has no criminal record, and possesses adequate command of the German language. Furthermore, applicants are generally requested to give up their present citizenship. In this category, naturalization is generally not possible from abroad.

The same requirements apply in the case of a foreign national who is the spouse or legal partner of a German citizen and wants to become naturalized, provided that they have been married for two years and have been residing in Germany for three years.

Hong Kong Special Administrative Region

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 in Hong Kong. It monitors and controls the movement of people in and out of Hong Kong by land, sea and air. The HKID is also responsible for processing applications for visas, right of abode (i.e., permanent residency), naturalization, Hong Kong travel documents, Hong Kong identity cards, and registrations of births, deaths and marriages.

Current Trends

Suspension of Capital Investment Entrant Scheme

The Capital Investment Entrant Scheme has been suspended with effect from January 15, 2015 until further notice. While the HKID will continue to process applications received on or before January 14, 2015, new applications will not be accepted.

New initiatives and enhancement measures to existing immigration policies

In the second quarter of 2015, the HKID implemented new initiatives and enhancement measures to existing immigration policies governing the admission of talents, professionals and entrepreneurs.

Relaxed Stay Arrangements

The initial stay period granted for employment visas has been increased from one year to two years. Subsequent visa extensions will be granted in three-year intervals.

Introduction of the Top-Tier Employment ("TTE") stream

After holding an employment visa for two years, applicants may qualify under the TTE stream if they have an assessable salary for income tax of not less than HKD 2 million in the previous year of assessment.

Applicants proceeding with the TTE stream are eligible for six-year visa extensions, which are not specific to the employer sponsoring the visa.

Prior approval for a change of employer is not required as employment visas are no longer employer-specific. TTE visa holders only need to notify the HKID in writing upon their change of employment.

Introduction of New Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents ("ASSG")

The ASSG is aimed at foreign nationals aged between 18 and 40 who are born overseas to at least one parent who is both a Hong Kong permanent resident at the time of application and a Chinese national who had settled overseas at the time of the foreign national's birth.

Eligible foreign nationals must also have a good educational background and proficiency in either Chinese (written and spoken Mandarin or Cantonese) or English. Applicants need not secure an offer of employment prior to application.

Business Travel

Visa Waiver / Visa Exemptions

Citizens of over 160 countries are not required to obtain visas as tourists or business visitors if they are staying in Hong Kong for a limited period of time. Their permitted period of stay depends on their country of citizenship. Citizens of the following countries may visit Hong Kong visa-free for the period of stay shown below:

Country	Period of Stay in Days
Australia	90
Austria	90
Bulgaria	90
Canada	90
Finland	90
France	90
Germany	90
Greece	90
India	14
Ireland	90
Italy	90
Japan	90
Netherlands	90
Philippines	14
Russian Federation	14
Singapore	90
Spain	90
Saint Kitts and Nevis	90
Sweden	90
Switzerland	90
Thailand	30
United Kingdom	180
United States	90

The HKID's regularly updated list of visa-free countries and countries requiring visitor visas is published at: http://www.immd.gov.hk/en/services/hk-visas/visit-transit/visit-visa-entry-permit.html.

Visitor Visa

Citizens from non-visa waiver countries should apply for visitor visas from the nearest Chinese diplomatic and consular mission in their country of citizenship or residence, or directly with the HKID by post.

PRC nationals residing in Mainland China must apply for and secure appropriate entry permits and exit endorsements through relevant PRC authorities in Mainland China prior to traveling to Hong Kong. They may apply through an authorized travel agent in the PRC to visit Hong Kong on group tours. Mainland Chinese residents from certain provinces may also directly apply through relevant PRC authorities in Mainland China to visit Hong Kong under the Individual Visit Scheme.

Alternatively, PRC nationals traveling on PRC passports who transit through Hong Kong to and from another country may be granted a stay of seven days without the need to obtain a prior entry visa to Hong Kong or entry permit and exit endorsement from the PRC, provided the usual immigration requirements are met, including possession of a valid entry visa for the destination country and a confirmed onward booking.

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

Non-Visitors

Foreign nationals who wish to enter Hong Kong, other than as tourists or business visitors, may consider applying for one of the following visas based on the eligibility criteria described below (please note that special guidelines apply to PRC nationals):

- training;
- employment;
- employment (investment);
- quality migrant; and
- dependent.

Employment Assignments

An employment visa is required for a foreign national to work in Hong Kong, regardless of (i) whether the foreign national is paid or unpaid for services rendered in Hong Kong, (ii) the locality of the employer, and (iii) the duration of the employment or assignment in Hong Kong. Failure to do so is an offense under the Hong Kong Immigration Ordinance.

Extensions of the employment visa are available and are granted in increments of three years. The employment visa is employer specific. A foreign national granted an employment visa is only authorized to work for the sponsoring employer in Hong Kong. If the foreign national wishes to work for another employer, notwithstanding the fact that the visa has not expired, prior approval is required from the HKID. If an employment visa holder is required to work other than for the approved employer, the foreign national must first obtain side-line approval from the HKID. This requirement is noteworthy in cases where a foreign national may be required to supervise or engage in activities for several related companies in Hong Kong.

Upon termination, the sponsoring employer in Hong Kong must inform the HKID. The employer may be required to bear the cost of the foreign national's repatriation.

General Employment Policy ("GEP")

A foreign national who possesses special skills, knowledge or experience that is of value to and not readily available in Hong Kong may apply for an employment visa under the GEP.

The HKID assesses each employment visa application on its own merits. An application may be favorably considered if:

- the business sponsoring the employment visa is beneficial to the economy, industry and trade of Hong Kong;
- the foreign national possesses skills, knowledge and experience not readily available in Hong Kong; and
- the position cannot be easily filled by someone locally in Hong Kong.

Nationals of Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam are not eligible for employment visas under the GEP. Employment visas for PRC nationals residing in Mainland China are discussed below.

Admission Scheme for Mainland Talents and Professionals ("ASMTP")

Despite Hong Kong's reversion to the PRC in 1997, the entry of PRC nationals into Hong Kong remains restrictive. For example, a PRC national residing in Mainland China traveling to Hong Kong from China as a visitor or resident is required to carry an Exit-entry Permit for Traveling to Hong Kong and Macau ("EEP") with the appropriate exit endorsement issued by the Public Security Bureau ("PSB") in Mainland China. Restrictions on the use of available visa categories by PRC nationals are noted in various sections in this chapter.

Employment visa applications for PRC nationals are evaluated under the ASMTP. The eligibility criteria for such applications, as well as training visas and employment (investment) visas for PRC nationals, are applied quite strictly. Document requirements tend to be more extensive than for other foreign nationals.

The sponsoring entity should submit the application directly to the HKID on behalf of the PRC national. Upon application approval, the HKID will issue an entry permit. The PRC national must present the entry permit to the PSB in Mainland China and apply for an EEP and a relevant exit endorsement before traveling to Hong Kong.

Immigration Arrangements for Non-Local Graduates ("IANG")

Foreign nationals and PRC nationals who have completed tertiary education in full-time and locally accredited programs in Hong Kong (e.g., bachelor's degree or higher level studies) ("non-local graduates") may remain in or re-enter Hong Kong for employment after graduation.

Non-local graduates who wish to remain and work in Hong Kong within six months of their graduation date may submit their employment visa application to the HKID without first securing an offer of employment. Non-local graduates who wish to re-enter and work in Hong Kong six months after their graduation date are required to secure an offer of employment at the time of application.

Non-local graduates who have obtained their 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.

Nationals of Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam are not eligible for employment visas under IANG.

Other Entry Visa Options

Employment (Investment) Visa

A foreign national investing and starting a business in Hong Kong may apply for an employment (investment) visa. The business should be beneficial to the local economy, commerce and industry of Hong Kong, usually shown by the creation of jobs. Further, it is important to show that the foreign national has the expertise and resources to carry on and finance the operation of the business.

Nationals of Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam are not eligible for employment (investment) visas. Employment (investment) visas for PRC nationals residing in Mainland China are discussed in the previous section (see "Employment Assignments – Admission Scheme for Mainland Talents and Professionals" above).

Quality Migrant Visa

The Quality Migrant Admission Scheme is available for highly skilled or talented persons. Applicants need not secure an offer of employment prior to application. There are two types of points-based assessments: the General Points Test and the Achievement-based Points Test.

The General Points Test allocates marks according to the following five factors:

Factors	Maximum Points
Age	30
Academic / Professional Qualifications	70
Work Experience	55
Language Proficiency in Chinese and English	20

Factors	Maximum Points
Family Background	20
Total Points	195

Applicants must achieve above a minimum mark set by the HKID. The minimum mark is subject to change.

The Achievement-based Points Test is for individuals with exceptional talent or skills, requiring receipt of awards of exceptional achievement (e.g., Olympic medals, Nobel prize) or proof that their work has been recognized by industry peers or has significantly contributed to the development of the individual's field (e.g., lifetime achievement award from an industry). Applicants must obtain the maximum mark of 195 or face refusal.

High-scoring applicants assessed under either the General Points Test or Achievement-based Points Test will be short-listed for further selection by the Advisory Committee, comprising official and non-official members appointed by the Chief Executive of Hong Kong. The Advisory Committee meets quarterly to assess applications based on the prevailing socio-economic needs of Hong Kong, the sectoral mix of candidates, and other relevant factors. Applicants who are allotted a place in the scheme quota will be published on the HKID's website and issued with an Approval-In-Principle letter. After document verification, successful applicants will be granted Formal Approval and may sponsor their spouse and minor children for dependent visas.

Nationals of Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam are not eligible under the Quality Migrant Admission Scheme.

Dependent Visa

Foreign nationals not subject to a limit of stay in Hong Kong (i.e., foreign nationals who are Hong Kong permanent residents, residents

with the right to land, or on unconditional stay), may sponsor their spouse, unmarried dependent children under the age of 18, and dependent parents aged 60 and above to take up residence in Hong Kong as their dependents.

Foreign nationals and PRC nationals admitted to Hong Kong to take up employment, investment, or training, or to study in full-time undergraduate or post-graduate programs in local degree-awarding institutions, or as quality migrants, may sponsor their spouse and unmarried children under the age of 18 for dependent visas.

Dependent visa holders are free to study and take up employment in Hong Kong without the need to apply for separate visas (except for dependents sponsored by student visa holders), so long as their principal sponsors maintain their resident visa status, or if their sponsors are not subject to a limit of stay in Hong Kong.

Under current immigration policy, common law and same sex spouses, as well as children born under surrogacy, are not eligible for dependent visas but may be able to obtain prolonged visitor visas. The success of a prolonged visitor's visa application is at the sole discretion of the HKID.

PRC nationals residing in Mainland China (except for those whose sponsors hold employment visa, employment (investment) visa, training visa, student visa, and visas under the Quality Migrant Admission Scheme); former Mainland Chinese residents residing in Macau who have acquired residence in Macau through channels other than the One-way Permit Scheme; and nationals of Afghanistan and Korea (Democratic People's Republic of) are not eligible for dependent visas.

Hong Kong Identity Card

Once a foreign national (including a PRC national) has secured the appropriate resident visa, registration for a Hong Kong identity card with the Registration of Persons Office is required if the foreign national is permitted to reside in Hong Kong for more than 180 days.

Hong Kong residents aged 11 and above must register for a Hong Kong identity card. Hong Kong residents aged 15 or above must carry at all times a Hong Kong identity card. Failure to do so is an offense under the Immigration Ordinance.

Training

Training visas are typically granted to foreign national students and intra-company transferees to acquire skills, knowledge or experience in Hong Kong otherwise not available in their country of residence. A training visa is valid for a maximum period of 12 months and is not renewable. At the end of the training, those foreign nationals are expected to apply their knowledge gained in Hong Kong to their studies or work overseas.

Nationals from Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam are not eligible for training visas. Training visas for PRC nationals residing in Mainland China are discussed in the previous section (see "Employment Assignments – Admission Scheme for Mainland Talents and Professionals" above).

Other Comments

Foreign nationals may be eligible to apply for right of abode (permanent residence) after maintaining continuous ordinary residence in Hong Kong for seven years or more.

A Chinese national who is a Hong Kong permanent resident and holder of a valid Hong Kong permanent identity card may apply for a Hong Kong SAR passport. Naturalization to become a Chinese national is possible under strict criteria. However, because the PRC does not recognize dual nationality, naturalization applicants must relinquish all foreign citizenship(s) prior to acquiring Chinese nationality.

Hungary

Hungarian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Usually, there are several possible solutions for entry and stay in Hungary that are worth considering during the planning phase of 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 permission to enter the country 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 ("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 ("*Nagykövetség*") or consulate ("*Konzulátus*") at the place of residence abroad. The visa application may also be processed by various forms of cooperation of member states, such as limited representation, co-location, common application centers, recourse to honorary consuls and cooperation with external service providers. The application for a residence permit is forwarded to the regional office of the Office of Immigration and Nationality ("*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 demonstrate to the border guard officer that specific requirements set out in the 562/2006/EC regulation are met (i.e., they hold a valid passport and visa; justify the purpose of their stay; the cost of their living in Hungary is covered by sufficient financial resources; they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry; and they are not considered to be a threat to public policy, internal security, public health or the international relations of Hungary).

If gainful activity is the purpose of a foreign national's entry into Hungary, a work permit or joint work and residency permit (hereinafter: "joint permit") is required, provided that the performance of said gainful activity is not exempted from work permit requirements. Usually no work permit is required if the foreign national is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation.

Current Trends

Foreign nationals from a privileged or semi-privileged country for which the European Community has abolished or simplified the visa requirement may enter Hungary without a visa and may submit the application for a residence permit/joint permit to the regional office of

the Office of Immigration and Nationality directly. Notwithstanding this, work cannot be commenced until a work permit/joint permit has been issued.

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 with Asia and other countries in the last two decades. As a consequence of this, there is a significant demand on flexible immigration rules that decrease the bureaucratic burdens for business travelers as well as foreign nationals who are employed by Hungarian entities or international corporations, but sent to Hungary for work.

Although, in the case of short-term stay in Hungary, foreign nationals from non-privileged countries are still obliged to obtain a visa, the visa is issued within 15 calendar days. This period may be extended to 30 calendar days when further scrutiny of the application is necessary, or in cases where a diplomatic delegation processes the visa application and certain authorities of Hungary are consulted. In exceptional situations where additional documentation is necessary, the period may be extended to a maximum of 60 calendar days.

For long-term residence in Hungary, non-EEA nationals are required to obtain a residence permit/joint permit. 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, national interest); therefore, applicants can easily

choose a category that accommodates their stay in Hungary. In addition, the applicable law also provides specific provisions on foreign nationals who intend to work seasonally or whose residence is related to the care or study of the Hungarian language, culture, or family relations, except in the case of family reunification.

As of January 1, 2016, so-called summary procedures have been introduced to the immigration procedure. That said, if the background facts and documents of an application are clear and the administrative deadline for the procedure is less than two months or 60 days, the immigration bureau grants a decision about the permit application within eight days. This significantly accelerates certain types of residency permit procedures in Hungary.

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 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 a work permit. If the EEA nationals stay for longer than 90 days within any 180-day period, they

are required to notify the competent regional office of the Office of Immigration and Nationality about their residence in Hungary no later than on the 93rd day of their stay in Hungary and the competent office will issue a registration card certifying the notification.

Besides Hungary, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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

EEA citizens and family members who have resided legally and continuously within the territory of Hungary for five years have the right of permanent residence. However, in certain cases, less than five years' residence is required for EEA citizens who have been residing in Hungary with the purpose of gainful activity (e.g., more than three years is required, if the EEA citizen performing a gainful activity is entitled to receive pension upon termination of his employment). The right of permanent residency must be terminated if such EEA citizen spends more than two years outside of Hungary or if such EEA citizen is subject to residence restriction in Hungary.

Business Travel

Short-term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Hungary and have to apply for their visa at the Hungarian diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France,

Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for a maximum period of 90 days within any 180-day period.

Schengen Visas 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 90 days within any 180-day period if they meet the specific requirements (e.g., justify the purpose of their stay, have sufficient financial resources to cover their healthcare services and similar) included in the Third-Country Nationals Act.

The applicable law distinguishes between the following type of visas and permits:

- a visa for a longer period than 90 days within any 180-day period (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 90 days within any 180-day period but no longer than six months; or a national visa may be issued under specific international agreement, for single or multiple entry and for a period of longer than 90 days within any 180-day period);

- a residence permit (which might be either a regular type of residency permit or a joint residency permit);

- an immigration permit;

- a permit for settling down;

- an interim permit for settling down;

- a national permit for settling down;
- an EC permit for settling down; or
- an EU Blue Card.

Residence Permit

Based on the residence permit, a foreign national is entitled to stay in Hungary for longer than 90 days within any 180-day period. If the purpose of the stay is the performance of work and the applicant is not subject to a work permit exemption, the residence permit must be applied for in a joint permit procedure, which joint permit will permit both work and residency in Hungary. 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.

As a novelty with respect to residency permits, citizens of foreign countries, other than the European Economic Area, who invest in buying Hungarian state bonds may qualify as persons whose residency is desirable in Hungary due to "national interests" and may obtain a residency permit for their stay in Hungary.

Settlement permit

The applicable law specifies three types of settlement permits: (i) an interim settlement permit; (ii) a national settlement permit; and (iii) an EC settlement permit. However, the Third-Country Nationals Act also acknowledges 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 of stay in Hungary is: (i) to work, with the exception of seasonal employment; (ii) to engage in studies or vocational training; or (iii) for some other certified reason. Such permit can be obtained for five years, but occasionally it can be extended for another five years.

A national settlement permit may be issued to third-country nationals holding a residence visa or residence permit, or an interim settlement permit, and provided the particular person satisfies the specific requirements included in the Third-Country Nationals Act.

An EC permit for settling down may be issued to a third-country national after he has lived legally for at least five years in Hungary prior to the filing of the application.

Third-country nationals whose stay in Hungary is in the "national interest" (as defined by law, which now includes those investing in state bonds as referred to above) and who possess a residency permit for at least six months may apply for a national settlement permit, which enables the third-country national holder to reside in Hungary for an indefinite term.

EU Blue Card

The Hungarian Office of Immigration and Nationality issues EU Blue Cards to support work and residence of third-country nationals having especially high skills. An EU Blue Card is a work permit and a residence permit and is issued for at least one year; it is valid for a maximum of four years and can be extended for an additional four-year period.

Spouses and children

Hungarian immigration law provides specific provisions on the residence permits of spouses and other close relatives of foreign

nationals holding a residence permit, a settlement permit or other valid long-term visa. These specific provisions aim to facilitate the cohabitation of families during the residence in Hungary.

Training

There is no visa category exclusively for training. Training is considered as either: (i) a kind of employment; or (ii) if the foreign employees only attend lectures and classes in the scheme of the training, a type 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 requirements only. Similar treatment applies to citizens of Norway, Liechtenstein, Iceland and Switzerland. However, the employer is required to notify – not later than on the commencement date of the employment – the competent labor center concerning the employment of an EEA national without a work permit. Furthermore, the employer must also notify the labor center on the termination of such employment.

Other foreign nationals may be employed, provided that they have been granted (i) a work permit, (ii) a joint permit, depending on their length of stay in Hungary, or (iii) a residence permit.

Work permit and joint permit

As a general rule, a work permit must be obtained if a foreign national would like to perform work in Hungary for less than 90 days within any 180-day period. A joint permit (including the approval of the labor center and a residency permit) is necessary if a foreign national would like to perform work in Hungary for a period exceeding 90 days within any 180-day period.

If a work permit or a joint permit is required, the Hungarian entity for which the foreign employee will work must initiate a manpower procedure as a preliminary step. This means that the applicant (employer) must submit a valid manpower request to the regional branch of the labor center. The purpose of this procedure is to examine whether the position to be opened for the third-country national can be filled by a Hungarian national.

A manpower request form and a data sheet of the Hungarian entity must be submitted for a manpower request.

After a valid manpower request has been filed:

- a work permit application must be filed with the labor center if the foreign national would like to perform work in Hungary for less than 90 days within any 180-day period; and

- if a foreign national would like to perform work in Hungary for a period exceeding 90 days within any 180-day period, the manpower procedure must be followed by a joint permit application to be filed to the immigration bureau. The immigration bureau will make, as a one-stop shop, an official inquiry to the labor center and send the application for a work permit to the labor center. In this case, the deadline for deciding on the joint permit application shall be 70 days. If issued, the joint permit will be valid for a maximum of two years which may be extended by up to two additional years at a time.

Under certain circumstances, the work permit/approval of the labor center may be issued/obtained in a simplified procedure, i.e., there is no need to go through a manpower request procedure when submitting the work permit application to the labor center/the joint permit application to the immigration bureau. Among others, the following circumstances may give rise to a simplified procedure:

- if one or more foreign firms (or persons) have majority ownership interest in the company applying for the work permit, provided

that the total number of foreign nationals to be employed by the applicant in one calendar year does not exceed 5 percent of the total workforce of the company as of December 31 of the immediately preceding year;

- if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreign national for installation work, or to provide guarantee, maintenance or warranty-related activities for more than 15 consecutive working days (however, no work permit is required at all, if the foreign nationals are to be employed by the applicant for less than 15 consecutive working days occasionally); or

- if the foreign individual is exempt from work permit requirements, a residency permit must be applied for.

Rather than providing an exhaustive listing of each category exempted from the requirement of the work permit, below is a summary of those categories that are relevant for business travelers and foreign nationals sent by multinational corporations for the performance of work in Hungary.

No work permit is required for the performance of work by a foreign national:

- who is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation;

- who is the head of the branch of the representative office of an enterprise having its registered seat abroad based on international treaties;

- who performs work related to the installation, warranty, and other repairing activities based on a contract concluded with a foreign enterprise, provided that such activity does not exceed 15 working days per occasion; and

- who performs scientific, educational or art-related work for a period of no more than five working days per calendar year.

Other Comments

There are additional authorizations that may apply to 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 he disagrees with the process of rejecting their visa application. The applicant may appeal within five working days, if his application for residence permit was rejected. Since the duration of the general application process is 15 calendar days, which can be prolonged to up to 30 calendar days, the best practice is to visit the consulate or contact the immigration authorities 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

There are several visas that allow foreign nationals to enter Indonesia for business purposes.

For working in Indonesia, foreign nationals must be sponsored by an Indonesian entity that will need to obtain the appropriate work permit. In addition, the foreign national will need to obtain a Limited Stay Visa.

It should be noted that certain positions are not open for foreign nationals working in Indonesia. In addition, the Indonesian government has issued several regulations with regard to the specific positions that foreign nationals can hold in certain sectors.

Key Government Agencies

The Embassy or Consular Office of the Republic of Indonesia is authorized to issue 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 ("MOLHR"). The DGI may fully authorize the Indonesian Embassy or Consular Office to approve or reject visa applications.

Work permits are issued by the Ministry of Employment ("MOE").

Admission to Indonesia remains under the authority of the Immigration Officers at the port of entry.

Current Trends

With the enactment of Minster of Employment Regulation No. 16 of 2015 (which was amended by Minister of Employment Regulation No. 35 of 2015) ("Regulation 16"), there have been changes to the requirements for obtaining work permits. Although in general the process for obtaining a work permit should be much simpler (and therefore faster), the MOE continues to review and consider each application carefully. In some cases, the MOE may not approve the

total number of foreign nationals an Indonesian entity intends to employ (i.e., the MOE may approve less or may not approve any at all).

Business Travel

Foreign nationals coming to Indonesia for business trips may use a Visit Visa (Single Entry or Multiple Entry), which needs to be obtained prior to entry into Indonesia.

Citizens of certain countries may use a Visit Visa on Arrival, which is obtained at certain major international gateways and seaports in Indonesia upon entry into the country.

Citizens of certain countries may be eligible to enter the country using a Visa Free Facility.

Visit Visa (Single Entry or Multiple Entry)

A Visit Visa is provided for non-working purposes, including all aspects related to governmental duties, tourism, socio-cultural visits, business visits (but not for working), family visits or transits.

A Single-Entry Visit Visa allows the foreign national to stay in Indonesia for a maximum period of 60 days. The Single-Entry Visit Visa can be extended in the country for up to four times. Each extension is for a maximum stay period of 30 days.

A Multiple-Entry Visit Visa can be granted if the activities concerned require several visits to Indonesia. The maximum validity period of a Multiple-Entry Visit Visa is one year. Upon expiry, the Multiple-Entry Visit Visa cannot be renewed or extended, i.e., a new Visit Visa needs to be obtained.

The holder of a Multiple-Entry Visit Visa can stay in Indonesia for a maximum period of 60 days for each visit.

Examples of activities permissible for a holder of a Visit Visa are:

- tourism;
- family;
- social;
- arts and culture;
- governmental duties;
- sports (non-commercial);
- comparative study, short training, or courses;
- carrying out guidance, counseling, and training in the implementation and innovation of industry and technology to increase the quality and design of industrial products/technology, in addition to foreign marketing cooperation for Indonesia;
- carrying out emergency and urgent works;
- carrying out journalism activities that have received a permit from the competent institution;
- making a non-commercial film that has received a permit from the competent institution;
- conducting business discussions;
- carrying out the purchase of goods;
- giving lectures (seminar) or joining seminars;
- attending international exhibitions;

- attending meetings with headquarters or representatives based in Indonesia;
- conducting audits, production quality control or inspections of a company branch in Indonesia;
- foreign employee candidates participating in a required fit and proper test prior to commencing employment;
- continuing travel to another country; and
- joining a transportation vessel within the territory of the Republic of Indonesia.

Visit Visa on Arrival

Citizens of certain countries (see below) may obtain a Visit Visa on Arrival to enter Indonesia. The Visit Visa on Arrival is provided for the purpose of tourism, socio-cultural visits, business visits (but not for working), or governmental duties and will be given on arrival in Indonesia with a stay period of 30 days, which can be extended for another 30 days with approval from the DGI. The Visit Visa on Arrival can be given at the determined Special Economy Area.

The types of activities that can be performed under the Visit Visa on Arrival are theoretically the same as those of a Visit Visa.

With the issuance of Minister of Law and Human Rights Regulation No. 12 of 2015 on the Seventh Amendment to Minister of Law and Human Rights Regulation No. M.HH-01.GR.01.06 of 2010 on the Visit Visa on Arrival, citizens of the following countries are presently qualified to obtain a Visit Visa on Arrival: Algeria, Andorra, Argentina, Australia, Austria, Bahrain, Belarus, Belgium, Brazil, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, England, Estonia, Fiji, Finland, France, Germany, Greece, Hungary, India, Iceland, Ireland, Italy, Japan, South Korea, Kuwait, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Mexico, Monaco, the Netherlands, New Zealand, Norway, Oman,

Panama, People's Republic of China, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Taiwan, Timor-Leste, Tunisia, Turkey, UAE and the US.

A Visit Visa on Arrival is only available at major international gateways and seaports in Indonesia.

The seaports are located at: Sekupang, Citra Tritunas (Harbour Bay), Nongsa, Marina Teluk Senimba, and Batam Center in Batam (Riau Islands), Bandar Bintan Telani Lagoi and Bandar Seri Udana Lobam in Tanjung Uban (Riau Islands), Sri Bintan Pura in Tanjung Pinang (Riau Islands), Tanjung Balai Karimun (Riau Islands), Belawan (North Sumatra), Sibolga (North Sumatra), Yos Sudarso in Dumai (Riau), Teluk Bayur in Padang (West Sumatra), Tanjung Priok in Jakarta, Tanjung Mas in Semarang (Central Java), Padang Bai in Karangasem (Bali), Benoa in Badung (Bali), Bitung (North Sulawesi), Soekarno-Hatta in Makassar (South Sulawesi), Pare-pare (South Sulawesi), Maumere (East Nusa Tenggara), Tenau in Kupang (East Nusa Tenggara) and Jayapura (Papua).

The airports are located at: Sultan Iskandar Muda in Banda Aceh (Nanggroe Aceh Darussalam), Sabang (Nanggroe Aceh Darussalam), Kualanamu in Medan (North Sumatra), Sultan Syarif Kasim II in Pekanbaru (Riau), Hang Nadim in Batam (Riau Islands), Minangkabau in Padang (West Sumatra), Sultan Mahmud Badaruddin II in Palembang (South Sumatra), Soekarno-Hatta in Jakarta, Halim Perdana Kusuma in Jakarta, Husein Sastranegara in Bandung (West Java), Adisutjipto in Yogyakarta, Ahmad Yani in Semarang (Central Java), Adi Sumarmo in Surakarta (Central Java), Juanda in Surabaya (East Java), Supadio in Pontianak (West Kalimantan), Sepinggan in Balikpapan (East Kalimantan), Sam Ratulangi in Manado (North Sulawesi), Hasanuddin in Makassar (South Sulawesi), Ngurah Rai in Denpasar (Bali), Lombok (West Nusa Tenggara) and El Tari in Kupang (East Nusa Tenggara).

A Visit Visa on Arrival is also available at the land point of entry at Entikong (West Kalimantan).

Visa Free Facility

Under Presidential Regulation No. 21 of 2016 on the Visa Free Facility ("Regulation 21"), citizens of the following 167 countries and two special administrative regions of certain countries can enter Indonesia using a Visa Free Facility:

South Africa, Albania, Algeria, the US, Andorra, Angola, Antigua & Barbuda, Saudi Arabia, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, the Netherlands, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia & Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Czech Republic, Chad, Chile, Denmark, Dominica (Commonwealth), Ecuador, El Salvador, Estonia, Fiji, the Philippines, Finland, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guyana, Haiti, Honduras, Hungary, Hong Kong (SAR), India, England, Ireland, Iceland, Italy, Jamaica, Japan, Germany, Cambodia, Canada, Kazakhstan, Kenya, Marshall Island, Solomon Island, Kiribati, Comoros, South Korea, Costa Rica, Croatia, Cuba, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Lichtenstein, Lithuania, Luxembourg, Macau (SAR), Madagascar, Macedonia, Malawi, Malaysia, Mali, Malta, Morocco, Mauritania, Mauritius, Mexico, Egypt, Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Norway, Oman, Palau, Palestine, Panama, Ivory Coast, Papua New Guinea, Paraguay, France, Peru, Poland, Portugal, Puerto Rico, Qatar, Dominican Republic, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, San Marino, Sao Tome & Principe, New Zealand, Senegal, Serbia, Seychelles, Singapore, Cyprus, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Taiwan, Tajikistan, the Vatican, Cape Verde, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda,

Ukraine, UAE, Uruguay, China, Uzbekistan, Vanuatu, Venezuela, Vietnam, Jordan, Greece, Zambia and Zimbabwe.

Under Regulation 21, citizens of the above countries cannot use a Visa Free Facility for journalistic purposes.

It is our understanding that based on the current unwritten policy of the DGI, for citizens of countries that are also listed in the Visit Visa on Arrival eligibility above, the Visa Free Facility will only be applicable for visits to Indonesia for tourism purposes. It should be noted that the unwritten policy could change at any time. In addition, it is possible that an implementing regulation or decree could be issued by the DGI to further elaborate the Visit Visa on Arrival and Visa Free Facility eligibility.

Employment Assignments

Intra-Company Transfer

Indonesian law does not differentiate between:

- a foreign national who is an employee of a foreign entity and assigned to work at the Indonesian affiliate of that foreign entity as part of an intra-company transfer; or

- a foreign national who is directly hired by an Indonesian entity.

Limited Stay Visa

The Limited Stay Visa is granted to a foreign national clergy, expert, worker, researcher, student, investor or elderly individual, as well as to their families, to a foreign national who is legally married to an Indonesian individual, and to a foreign national traveling to the Indonesian territory to stay for a limited period of time or to work onboard a ship, floating device, or other vessel operating within the Indonesian seas, territorial seas, continental shelf, and/or Indonesian Economic Exclusive Zone.

Work Permit

Indonesian law requires any employer intending to employ foreign nationals to obtain written permission ("*Izin Mempekerjakan Tenaga Kerja Asing*" or "IMTA") from the MOE. Employers who fail to obtain an IMTA for employing a foreign national may be subject to a criminal sanction of imprisonment for a minimum of one year and a maximum of four years and/or a fine of a minimum of IDR 100,000,000 and a maximum of IDR 400,000,000.

The process to obtain an IMTA begins with an application by the sponsoring Indonesian entity at the MOE for the approval of the Foreign Manpower Utilization Plan ("*Rencana Penggunaan Tenaga Kerja Asing*" or "RPTKA").

Once the approval of the RPTKA is issued, the Indonesian company must submit an application for the IMTA to the MOE.

Applications for the approval of an RPTKA and an IMTA are submitted online (through the MOE's online application website www.tka-online.depnakertrans.go.id).

Payment of the Compensation Fund for Foreign Worker Utilization ("DKP-TKA")

The DKP-TKA is set at USD 100 per month for each foreign national employed. If the IMTA application is valid for 12 months, the amount is increased to USD 1,200.

Once the DKP-TKA is paid, evidence of the payment must be submitted through the online application process on the MOE's website.

Issuance of the IMTA

If all required documents are complete (and the DKP-TKA has been paid), the IMTA should be issued.

The IMTA can then be used as the basis to obtain the relevant visa to enter Indonesia for the purpose of working (commonly known as a "VITAS") and the limited stay permit ("KITAS"). The VITAS and KITAS are required if the foreign national intends to reside and work in Indonesia.

Qualification for Foreign Workers

Foreign nationals intended to be employed by employers in Indonesia must:

- have an educational background appropriate to the job title to be held by the foreign national;
- have a competency certificate or evidence of having at least five years' work experience relevant to the position to be held by the foreign national;
- sign a statement letter confirming that they will transfer their expertise to the Indonesian counterpart worker, which will be proven by a report on the implementation of their imparted education and training;
- have an Indonesian Taxpayer Identification Card, if they have been working for six months;
- provide evidence of having insurance policy with an Indonesian insurance company; and
- participate in the national social security program if they have been working for six months.

Appointment of Indonesian Counterpart Workers

Indonesian law requires that for every foreign national employed, the employer must appoint an Indonesian as the counterpart worker of the relevant foreign national ("Counterpart"). The only exception to this requirement is if the foreign national is holding the position of a

director (i.e., a member of the Board of Directors) or commissioner (i.e., a member of the Board of Commissioners).

The law does not specify who qualifies to become a Counterpart. However, the focus of the "counterparting" is on the transfer of technology and expertise from the foreign national to the Counterpart. In this regard the Counterpart is expected to have the capability to replace the foreign national at the appropriate time.

The current policy of the MOE is that in appointing Counterparts, the employer must consider education, expertise and qualifications between the Counterpart and the foreign national. Ideally, a Counterpart should be the subordinate of the foreign national.

An employer who violates the Counterpart requirement may be subject to a criminal sanction of detention for a minimum of one month and a maximum of 12 months and/or a fine of a minimum of IDR 10,000,000 and a maximum of IDR 100,000,000.

Ratio

The number of foreign nationals an entity in Indonesia is able to employ depends on a variety of factors, e.g., industry, size of the Indonesian entity, number of Indonesian employees, etc.

In the past, the MOE applied a ratio of one foreign worker to ten Indonesian employees. For a director-level role, the Indonesian company would have needed five Indonesian employees to hire one foreign worker. This strict ratio system is no longer in place but essentially, if an Indonesian employer would like to employ a large number of foreign nationals, the MOE will expect the employer to employ a greater proportion of Indonesians. In addition, the MOE may require the employer to explain why it needs to employ such a large number of foreign nationals.

Temporary Work Permit

Under Regulation 16, a temporary work permit ("TWP") is required for the following activities:

- making a commercial movie that has received authorization from the relevant agency;
- conducting audits, production quality control or inspections of Indonesian branches for more than one month; and
- work related to machinery installation, electrical equipment, after-sales service, or products that are in the business exploration stage.

A TWP must be sponsored by an Indonesian entity. The MOE has indicated that the holder of a TWP can only enter Indonesia using a Single-Entry Visit Visa sponsored by the Indonesian entity that sponsors the TWP. That is, according to the MOE a foreign national holding a TWP cannot enter Indonesia using the Visa Free Facility, Visa on Arrival, Multiple-Entry Visit Visa or APEC Card.

19 Positions that Cannot be Held by Foreign Nationals

The Minister of Manpower and Transmigration issued Decree No. 40 of 2012 on Certain Positions That Are Restricted for Foreign Workers ("Decree 40"). Decree 40 lists 19 positions that cannot be held by foreign nationals ("List") (see prohibited positions below). Please note that 18 out of the 19 positions are related to human resources. This follows from Article 46(1) of the Law No. 13 of 2003 on Labor ("Labor Law"), which includes a prohibition on foreign workers holding a position "*managing personnel and/or certain positions*."

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 Declaration Administrator
9.	Kepala Eksekutif Kantor	1210	Chief Executive Officer
10.	Ahli Pengembangan Personalia dan Karir	2412	Personnel and Career Specialist
11.	Spesialis Personalia	2412	Personnel Specialist
12.	Penasehat Karir	2412	Career Advisor
13.	Penasehat Tenaga Kerja	2412	Job Advisor
14.	Pembimbing dan	2412	Job Advisor and

No.	Name of Position		
	Indonesian	ISCO Code	English
	Konseling Jabatan		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 Foreign Nationals in Certain Sectors

The MOE also issued several decrees describing positions that foreign nationals can hold in certain sectors. Below are examples of the positions in certain specific sectors:

- Construction: Positions ranging from project manager, project engineer and architect, to construction management specialist and construction management engineer.

- Educational Services: Positions ranging from school principal, vice principal, advisor and academic specialist to teachers and lecturers of certain particular subjects.

- Chemical Substances and Products from Chemical Substances Industry: Positions ranging from president commissioner to certain engineers.

- Wholesale, Retail, Repair and Maintenance of Cars and Motorcycles: Positions ranging from president commissioner to certain engineers.

- Air Transportation: Positions ranging from traffic manager, flight operational manager and flight engineer, to pilot, co-pilot, pilot instructor and flight attendants for international flights.

- Arts, Entertainment, Crafts and Creativity and Sports: Positions ranging from art director, music director, show manager and film director, to actor, dancer, karaoke guide, bodyguard and fashion model.

- Beverage Industry: Positions ranging from president director, director, president commissioner, commissioner, financial director, marketing director, financial manager, research and development manager, general manager, marketing advisor, quality control advisor and architect, to electrical engineer and after sales service engineer.

- Water Supply, Waste and Recycling Management, Disposal and Cleaning of Waste and Trash Category, Waste Management: Positions ranging from members of the president director, vice president director, director, president commissioner, commissioner, financial director, operational director, factory manager, environmental design engineer, quality control advisor and production advisor, to electrical engineer and commissioning engineer.

- Textile Industry: Positions ranging from president director, director, president commissioner, commissioner, financial director, marketing director, quality control manager, marketing manager, quality control advisor and quality assurance advisor, to cotton classer specialist and electrical engineering.

- Ready to Wear Clothing Industry: Positions ranging from president director, president commissioner, director,

commissioner, financial director, marketing director, general manager, logistic manager, material manager, product design advisor, sewing specialist, cutting specialist, mechanical engineer, electrical engineer and commissioning engineer, to auditors and after sales service engineer.

- Food Industry Main Classification: Positions ranging from president director, president commissioner, director, commissioner, financial director, marketing director, general manager, sales manager, product development manager, branch manager, factory manager, information technology advisor, purchasing advisor, laboratory advisor, logistic advisor, quality assurance supervisor and chemical engineer, to food specialist and nutritionist.

- Non-Machinery Metal Goods and their related Equipment Industry: Positions ranging from president director, president commissioner, director, commissioner, production director, marketing director, commercial director, general manager, financial manager, electrical manager, procurement manager, marketing advisor, financial advisor and production advisor, to power generating engineer and market research analyst.

- Accommodation, Food and Beverage Services: Positions ranging from president director to chef.

Despite the above decrees, the MOE has extensive discretion to determine the position that can be held by a foreign national working in Indonesia. It is not uncommon for the MOE to issue an IMTA with the position of the foreign national being different than the position that the Indonesian entity is applying for.

Foreign Nationals Working in the Lines of Business of Services, Trade and Consultancy

Based on an announcement issued by the MOE in January 2015, in relation to the employment of foreign nationals by companies with the lines of business of services, trade and consultancy:

- the validity of a work permit for a foreign national holding the position of "advisor" (e.g., marketing advisor, quality control advisor) can only be for a maximum period of six months; and

- the validity of a work permit for a foreign national holding the position of "director" or "manager" can be for a maximum period of 12 months.

Working and Holidaying in Indonesia for Australians

Applications made by Australians for the limited stay visas should be made in Australia and, if granted, will be valid for 12 months. The visa will allow the holder of the visa to work, with or without pay (volunteer work) in the education, tourism, health, social, sport and cultural sectors. However, the work should not be an ongoing matter, which requires a longer commitment of the person working on it.

There is an annual quota for the special limited stay visas. For each year from July 1 until June 30, the maximum number of special limited stay visas is 100. The visas are also subject to strict conditions:

- the main purpose for the foreign national is to visit Indonesia during another season;

- the applicant is aged between 18 and 30;

- the applicant holds, at least, a degree-level qualification or is two years into a higher education qualification;

- the applicant holds a recommendation certificate from the Department of Immigration and Citizenship in Australia;

- the applicant is functionally literate in Indonesian;

- the applicant holds a return air ticket and has a minimum of AUD 5000 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.

Training

As noted above, the Visit Visa and Visit Visa on Arrival allow foreign nationals to enter into Indonesia to participate in short-term training. However, it is not advisable for participants of on-the-job training to enter Indonesia using a Visit Visa or Visit Visa on Arrival, if they will receive remuneration/wages from the Indonesian entity conducting the on-the-job training or if the length of the training is relatively long (e.g., more than three months). A Limited Stay Visa should be obtained for that purpose, and the Indonesian entity carrying out the on-the-job training should also arrange a work permit for the foreign national participants.

Post-Entry Procedures

KITAS and Re-Entry Permit

Once the foreign worker has arrived at an Indonesian airport (using the VITAS), the immigration officer who is in charge at the airport will provide a stamp of admission indicating that the foreign worker is permitted to enter Indonesia and must report to the Local Immigration Office within 30 days from the date of arrival at the airport. This means that within this period of 30 days, the foreign worker is required to process a KITAS and Re-Entry Permit at the Local Immigration Office where the foreign worker is domiciled in Indonesia.

The foreign worker is required to present himself to the Local Immigration Office as his fingerprints will be taken and he will need to sign various forms. By holding the KITAS and the Re-Entry Permit, the foreign worker has legally complied with the Indonesia immigration law and regulations. However, as a KITAS holder, the foreign worker will also be required to obtain, in due course, the following additional certificates or permits:

- a Police Report Certificate ("STM") issued by the Local Police Office where the foreign worker is domiciled (in Indonesia);
- a Temporary Residential Card ("SKTT") issued by the Local Population and Civil Registry Office where the foreign worker is domiciled (in Indonesia);
- a Certificate of Family Composition of Foreign Citizen ("SKSKPS") issued by the Local Population and Civil Registry Office; and
- a report on the existence/arrival of the foreign citizen issued by the local office of the MOE where the foreign worker is domiciled.

Each accompanying dependent family member of the foreign worker must also obtain their own KITAS, STM and SKTT. The SKSKPS will need to include details about the accompanying dependent family member(s) of the foreign worker.

Entry Based on International Agreements

The Association of South East Asian Nations ("ASEAN") issued a number of mutual recognition agreements opening certain work fields to professionals (i.e., medical practitioners, dental practitioners, engineering services, nursing, tourism professionals, accountancy and architectural services). However, Indonesia has not yet ratified these mutual recognition agreements and as such they are not yet effective.

APEC Card

A foreign national who holds an APEC Card can come to Indonesia for business. Having an APEC Card means that the holder does not need to apply for a visa when they enter Indonesia. However, having an APEC Card does not mean that the foreign national does not need to obtain a TWP or an IMTA and relevant visa (if needed). If a foreign national is:

- conducting any of the activities referred to under Regulation 16 as needing a TWP, they will need to obtain a TWP and the relevant visa, i.e., there is no exemption to obtain a TWP (if required) if a foreign national has an APEC Card; and

- working in Indonesia, they will need to obtain an IMTA (and other expatriate documents), i.e., there is no exemption to obtain an IMTA (if required) if a foreign national has an APEC Card.

Other Comments

The Visit Visa and Visit Visa on Arrival both allow their holders to enter Indonesia for business purposes. However, some immigration officials (in Jakarta) have viewed that a Visit Visa on Arrival and a Visa Free Facility are only for "tourism purposes" (not applicable for business purposes). While this view is not necessarily correct from a legal perspective, a better solution to minimize the risks of possible difficulties is to use a Visit Visa to enter Indonesia for business purposes – keeping in mind, however, that an application for a Visit Visa for business purposes needs to be supported by an Indonesian sponsoring company.

Planned Legislative Changes

Implementation of Regulation 21

The DGI may issue a regulation or decree to further implement Regulation 21. There is no information at the moment regarding what the implementing regulation or decree would cover (if it is issued).

However, if issued, it is possible that the implementing regulation or decree will further elaborate the Visit Visa on Arrival and Visa Free Facility eligibility.

Indonesian Language Test

It has been planned that the MOE would introduce an Indonesian language test for foreign nationals working (or intending to work) in Indonesia. If this plan is materialized, a new regulation on this would likely be issued. However, this is yet to be confirmed.

Israel

Israel's immigration policy in 2014 essentially remains unchanged since the time, more than 60 years ago, when the newly-formed country began encouraging the return of the Jewish diaspora to the Biblical homeland. Indeed, Israel's first and still primary immigration law, enacted in 1950, is the *Law of Return*. While Israel has emerged as an important player in the global economy, its immigration laws lag behind the challenges of global corporate migration.

Current Israeli immigration law provides for only one general type of non-immigrant work status: the B-1 visa category. While this single category itself is divided into a number of sub-categories (Agricultural Workers, Nursing Professionals, and Hotel Workers, for example), two subcategories are most relevant to global corporate migration: "Foreign Experts" and "Managers, Senior Representatives or Employees in Positions of Personal Trust."

Key Government Agencies

PIBA

Israel's national immigration authority is the Population, Immigration and Border Authority ("PIBA"). This authority is part of a larger government agency, the Ministry of Interior ("MOI"). PIBA plays the primary role in the Israeli non-immigrant work visa process. A more minor, but still critical role in this process is played by the local district offices of MOI.

MFA

The Israeli non-immigrant work visa process also involves a second government agency, the Ministry of Foreign Affairs ("MFA"). This agency, through its consular posts abroad, is responsible for the issuance of initial entry visas to foreign nationals coming to Israel for purposes of temporary employment.

*Last edited January 2015

Recent Developments

The past two decades have seen Israel emerge as a key player on the global business stage, particularly in the high-tech, science-based, and homeland security industries. As a result, the need on the part of international firms to send key personnel to Israel has been steadily growing. Regrettably, Israel's immigration-related laws have not kept pace with the challenges of global corporate migration; indeed, these laws are still firmly linked to Israel's founding mission of encouraging the return of the Jewish diaspora to the Biblical Jewish homeland.

A recent academic study, "Managing Global Migration: A Strategy for Immigration Policy in Israel" concluded that:

> "The State of Israel remains the only Western democracy without an immigration policy. Israel has no modern immigration laws, its government agencies are not prepared to meet the challenge, and there is no strategic planning or vision; long-term goals or objectives have not been set and there are no reliable data on which policy could be based... Continuation of the present situation is prejudicing the vital interests of the State of Israel and to abusive treatment of foreigners which shames us as a people and as a country."

This academic study was cited in the recent case of *Naget Serge et al vs. The Knesset et al*, in which the Israeli Supreme Court laid down blistering criticism of Israeli immigration policy. Writing in this case, Justice Hayot opined:

> "The flooding of Israel by illegal migrants in recent years demonstrates Israel's dire need for an immigration policy and for defined goals and rules which will provide the authorities with the tools for meeting the challenges of this trend... The situation is clearly unacceptable. The lack of legal clarity creates substantial uncertainty for individuals who sometimes reside significant periods in Israel."

*Last edited January 2015

While Israeli immigration policy has remained essentially frozen in time, significant numbers of foreign firms have arrived in-country, either by establishing a new local presence or by acquiring existing Israeli companies. This growing foreign business presence has been paralleled by the need of foreign firms to temporarily send managers and specialized knowledge workers to Israel on temporary assignments. In many cases, the primary mission of the individual on temporary assignment is simply to act as the local "eyes and ears" of the foreign firm.

In light of the above, the number of B-1 work visa applications submitted on behalf of "Foreign Experts" and "Managers, Senior Representatives or Employees in Positions of Personal Trust" has risen significantly from past years. This increase motivated the Israeli government to establish PIBA as the central immigration authority in 2008, and to vest its Foreign Permits unit with authority to adjudicate B-1 work visa applications.

New Investor Visa

Israel is actively working to create a new visa classification for temporary investors. The impetus for this new visa was the law signed by United States President Barack Obama, which added Israel to the list of countries eligible for E-2 treaty investor visas. Because implementation of the "E-2 for Israel" law is conditioned upon reciprocity, the Israeli government, led by the Economics Ministry, is currently working on creating a visa status similar to the E-2.

The new investor visa will be available to global firms and to individual investors alike. This visa will be a seminal event in the development of Israeli migration policy. For the first time, temporary work visas are set to be issued for an initial validity period of five years, with the opportunity to renew the visa for an additional five years (compare this with the current system of one-year validity visas with a maximum five-year stay). Another ground-breaking development will apparently be the availability of employment authorization for the accompanying spouse of a foreign investor.

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Israel will, of course, reserve the right to deny visas to foreign investors who are nationals of countries considered "hostile" under Israeli security-related laws.

The new investor visa will include provisions requiring applicant companies and individuals to demonstrate the present or future capacity of the investment enterprise to make a significant economic contribution to the Israeli economy. Local job creation will be considered the most "significant" contribution.

B-1 for Jewish Employees

While still rooted in the 1948 policy of "Jewish Return," one recent development in the context of Israeli corporate migration is the creation of a B-1 work visa process for foreign nationals of Jewish heritage. Under this special process, foreign nationals of the Jewish faith are entitled to an expedited B-1 work visa procedure. The expressed goal of this process is to encourage Jews living abroad to consider immigrating to Israel.

Upsurge in Unauthorized Migration

The present Israel boasts a thriving economy and a robust democracy. As such, it is a magnet for the nationals of many other nations in the region seeking freedom and a better standard of living. The result: waves of nationals from countries such as Sudan, South Sudan and Eritrea have illegally crossed Israel's border with Egypt.

In a recent case, the High Court of Israel struck down an amendment to Israel's *Law for the Prevention of Infiltrators* authorizing the state to hold individuals who had entered the country without permission for extended periods of three years or more. In so doing, the High Court ordered that the state review or dismiss the administrative detention of approximately two thousand individuals, mostly African migrants, who had entered the country without permission and had not been processed in deportation proceedings or refugee status determinations.

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The latest PIBA statistics with regard to the number of individuals present in Israel without authorization include the following:

Foreign Nationals who Entered via the Egyptian border Without Inspection

Country of Origin	Number of individuals entering without inspection	Percentage
Sudan	13,551	25%
Eritrea	36,067	67%
Other	4,583	8%
TOTAL	54,201	100%

Foreign Workers Currently in Israel

Foreign workers with valid work authorization: 68,960. The major occupations involved are nursing (57 percent), agriculture (30 percent), and Foreign Experts (3 percent).

Foreign workers employed without valid work authorization: 14,188. Nursing is the major occupation, with about 80 percent of the illegally employed foreign workers.

Foreign Nationals Remaining Beyond Their Authorized Stay

Country of Origin	Number of Individuals in Thousands	Percentage
Former Soviet Union	51.9	55.8%
Jordan	6.5	7%
Mexico	3.9	4.2%
Turkey	2.6	2.8%
Columbia	2.1	2.3%

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Country of Origin	Number of Individuals in Thousands	Percentage
India	2.0	2.2%
Egypt	1.9	2%
Nepal	1.9	2%
Slovakia	1.7	1.8%
Peru	1.5	1.6%
Other	17.0	18.3%
TOTAL	93	100%

Israel's Visa Waiver Program

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.

At the start of 2014, the countries whose citizens qualify for visa-free travel to Israel include:

Visa Waiver Program – Participating Countries

Albania	Andorra	Argentina	Australia
Austria	Bahamas	Barbados	Belgium
Belize	Bolivia	Brazil	Bulgaria
Canada	Central African Republic	Chile	Columbia
Costa Rica	Croatia	Cyprus	Czech Republic

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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	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	Saint Kitts and Nevis	Saint Lucia	St. Vincent and the Grenadines
Surinam	Swaziland	Sweden	Switzerland
Taiwan	Tonga	Trinidad & Tobago	Ukraine
United States	United Kingdom	Uruguay	Vanuatu

Certain nationals of a Visa Waiver Program country must nonetheless apply for a visa to enter Israel. One must apply for a visa under the following circumstances:

- the individual wishes to work or study in Israel; or

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- the individual failed to depart Israel within the authorized 90-day period during a previous stay on the Visa Waiver Program; or
- the individual has been refused an Israeli visa before; or
- the individual has a criminal record.

Tourists

Nationals of non-visa waiver countries are required to apply at an Israeli consulate for a B-2 entry visa. 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; and
- visa application fee.

Business Visitors

Business visitor status is appropriate for those making a short trip to Israel, generally on behalf of one's foreign employer, for purposes such as negotiating contracts, consulting with business associates, or participating in a scientific or business conference. As a rule, business visitors may not be compensated for their activities by an Israeli source.

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The following is a basic list of the types of activities permitted to be performed by business travelers to Israel:

- take orders as a merchant for goods produced abroad;
- negotiate and sign for contracts or other commercial agreements;
- consult with and advise business associates;
- participate in scientific, educational, professional or business conventions, seminars, etc.; and
- participate in board meetings as director of an Israeli company.

It is often useful for business visitors to carry with them a detailed meeting itinerary and a letter from their foreign employer explaining the nature of the brief business trip to Israel.

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 the 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; and

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- visa application fee.

In addition to the above, nationals of some countries are also required to provide medical and police clearances as part of the Israeli visa application process.

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

B-1 Foreign Experts

The basic eligibility requirements for the B-1 Foreign Experts sub-category include: Possession of specialized knowledge and skills; salary and other benefits at least double the Israeli prevailing wage; creation by the proposed position of local employment opportunities; and an advanced level of education as evidenced by a baccalaureate degree from a recognized institution of higher education.

Traditionally, the B-1 Foreign Experts subcategory has been appropriate for degreed professionals and corporate transferees. Firms typically utilize this subcategory for positions such as Business Consultants, IT Specialists, Team Leaders, Field Engineers, and Technicians. The Foreign Experts subcategory is also an attractive option for mid-to-lower level managers coming to Israel to lead efforts involving a specific project or product.

One recent positive trend has been the willingness on PIBA's part to approve B-1 Foreign Expert petitions involving a wide variety of non-traditional positions for projects in "the national interest." (The definition of this term is dynamic, and often comes down to creative advocacy). Over the past two years adjudicators have applied a liberal level of scrutiny of petitions for key personnel involved in "national interest" projects. For example, global energy companies – both those

working on off-shore rigs and those developing solar energy solutions in the Negev desert – have benefited from this flexibility and, as a result, workers in positions including Electricians, Surveyors, and Solar Panel Installers have been granted B-1 Foreign Expert status.

B-1 Managers, Senior Representatives or "Trust" Employees

For purposes of this B-1 subcategory, "Managers" are generally senior-level personnel sent to Israel to establish the goals and policies of a domestic firm and to supervise and control the work of subordinate local and international workers. Accordingly, foreign nationals assigned to Israeli firms in the position of President, Chief Executive Officer, Chief Operating Officer and the like, are traditional candidates for B-1 Manager status.

More recently, a growing number of global firms have sought to place individuals in Israel to act as their local "eyes and ears." These firms include, for example, international communications firms which have entered into agreements with Israeli business partners for the local development of next-generation technologies for use in upgrading product offerings. These individuals – the "eyes and ears" of the international business partner – may qualify for B-1 visas as a "Senior Representative" or as an "Employee in a Position of Personal Trust."

One notable advantage of this subcategory is that a foreign firm may itself sponsor a B-1 visa petition on behalf of a Manager, Senior Representative, or "Trust" Employee; thus, even a firm without a formal presence in Israel may sponsor an employee for an Israeli B-1 work visa. Parenthetically, only two individuals may be employed under this subcategory by a given firm at any one time.

The Current B-1 Process

Since the establishment of the PIBA Foreign Permits unit in 2009, the B-1 work visa process is comprised of the following four procedural steps:

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Step 1: The sponsoring employer files an underlying petition with PIBA. The timeline for adjudication of this initial petition is currently about two months.

Step 2: Following the initial petition approval by PIBA, the employer files a "Request for Consular Notification" with the local office of the MOI having jurisdiction over the proposed place of employment. The nature of this application is a request that the appropriate Israeli consulate abroad be authorized to issue a B-1 entry visa to the proposed foreign employee. The timeline for completion of this Consular Notification request is approximately seven to ten days.

Step 3: The proposed employee submits a visa application at the local Israeli consulate. In the scope of this visa application procedure, the individual undergoes a brief interview with the Israeli consul, and the consulate initiates security checks with regard to the individual. Certain Israeli consulates, such as those in China, require medical examinations as a condition for visa issuance. The employee will generally receive a single-entry visa valid for 30 days from issuance.

Step 4: Within 30 days of entry to the country, the individual applies at the local MOI office for a multiple-entry B-1 visa stamp, valid for the duration of PIBA approval (generally one year).

Accompanying family members of B-1 Foreign Experts 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.

B-1 visa status may be renewed for consecutive one-year periods, for a maximum stay in Israel of five years.

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Non-immigrant Visa Forms:

Non-immigrant Visa Application Form:
http://www.mfa.gov.il/NR/rdonlyres/44168E15-E688-4377-9DE1-A93922EB0860/0/EntryVisa.pdf

Petition for B-1 Non-immigrant Worker (Hebrew version only):
http://www.piba.gov.il/Subject/ForeignWorkers/Forms/Documents/%D7%98%D7%95%D7%A4%D7%A1%D7%99%20%D7%91%D7%A7%D7%A9%D7%94%20%D7%9C%D7%9E%D7%95%D7%9E%D7%97%D7%99%D7%9D.pdf

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Italy

Italian law provides many solutions to help employers of foreign nationals. These range from short-term to long-term visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

Italian diplomatic authorities and consular representatives are responsible for visa processing. 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 foreign national's Bureau of Police Headquarters ("*Questura*"), which also handles the permit to reside ("*permesso di soggiorno*") after arrival in Italy.

Current Trends

A distinction should be made between EU citizens and non-EU citizens as far as immigration and becoming a resident in Italy are concerned.

EU citizens have the right of free movement throughout the EU. If an EU citizen wishes to work or reside in Italy, 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 himself 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 such visa usually allows multiple entries into the Schengen Area during its validity period. This visa requires a return-trip booking or ticket or proof of available means of personal transport, proof of economic means of support during the journey, health insurance with a minimum coverage of EUR 30,000 for emergency hospital and repatriation expenses, the business purpose of the trip, and the status as financial-commercial operator of the applicant.

Visa Waiver

As noted previously, EU citizens have the right of free movement throughout the EU. The normal requirement of first applying to an Italian consular post for the business visa is waived for non-EU citizens of certain countries. The permitted scope of activity is the same as the business visa. The length of stay is up to 90 days only, without the possibility of extending or changing status. A departure ticket is required.

The following countries are presently qualified under this program:

Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, Dominica, Timor-Leste, El Salvador, Former Yugoslav Republic of Macedonia, Guatemala, Grenada, Honduras, Hong Kong, Israel, Japan, Malaysia, Macau, Mauritius, Mexico, Moldavia, Monaco, Montenegro, New Zealand, Nicaragua, Northern Marianas, Palau, Panama, Paraguay, Saint Kitts and Nevis, Samoa, Saint Lucia, Serbia, Seychelles, Singapore, South Korea, Saint Vincent and the Grenadines, Taiwan, Tonga, Trinidad & Tobago, United States, UAE, Uruguay, Vanuatu and Venezuela.

The list of qualified countries might change and the regularly updated list can be found at http://www.esteri.it.

Employment Assignments

Permits granted to non EU citizens outside quotas

This permit is issued pursuant to article 27, par. 1, lett. a) of 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 requires the following 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 comes to Italy for employment reasons on a temporary basis through secondment in order to perform his activities under a contract ("*contratto di appalto*") executed between his employer and an Italian client.

Permits are valid for a maximum period of two years and may be renewable. In addition, this type of work permit is granted independent of quota restrictions that otherwise generally apply to non-EU citizens.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Employers must undertake to give foreign national employees wages, working conditions, and benefits equal to those normally offered to similar employed workers in Italy.

Training

Study Visa

A study visa allows foreign nationals to come and stay in Italy for a short or long period 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 country of origin; and
- that the applicant is older than 14.

Other Comments

There are additional visas less frequently used for global mobility assignments worth a brief mention. One of them is the Mission Visa, which is issued at the discretion of the Italian diplomatic authorities and consular representatives in the place of residence of applicants coming to Italy for "reasons of public utility between a foreign state/international organization and Italy." This type of visa is granted independent of quota restrictions. This visa requires:

- an invitation letter prepared by the foreign state or international organization concerned outlining clearly the purposes of the invitation, the scope and the description of the mission that the invited applicant will have to perform, the duration of the stay in Italy, and the entity that will bear the travel and living costs;
- a letter from the applicant outlining the proposed itinerary and confirming the purpose of the trip and the duration of the stay as indicated in the invitation letter; and
- a confirmed return airplane ticket or return airplane ticket reservation print-out (open airplane tickets are acceptable).

The 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 to 120 days or longer. Once the visa has been issued, and within eight days from entering Italy, the foreign national employee 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 ten years may request Italian citizenship. Citizenship is discretionally granted by decree of the President of the Republic, upon the proposal of the Ministry of Internal Affairs.

EU Blue Card

Another possibility that exists for a non-EU national to be hired by an Italian company is the EU Blue Card. Essentially, the Blue Card is a fast-track permit for non-EU employees that have a special skill proven by a university diploma.

Holders of a Blue Card are able to apply for a two-year renewable residence permit giving them rights almost equal to EU nationals. It is also easier to bring along family members, as well as to move to other EU countries after the first 18 months in Italy.

Promise to Integrate

Starting March 10, 2012, all applicants for residence permits with a minimum of a one-year duration must sign an Integration Agreement. This new integration requirement is a points-based system concerning 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.

Within 30 days of signing the agreement, the applicant is required to attend a five-hour course in English (eight other languages are also available) to learn about Italy and Italian culture. Failure to attend this course results in the loss of 15 points.

One month before the expiry of the Integration Agreement, the Prefecture will carry out an audit to verify the number of points the applicant has obtained. The applicant may take a test to demonstrate their degree of knowledge of the Italian language, civic culture and civic life in Italy. The result of the audit can be a finding that the requirement has been completed (if 30+ credits are obtained), a one-year extension (if less than 30 credits), or final resolution (zero credits or less, resulting in permit of stay revocation and expulsion from Italy).

Japan

In general, foreign nationals who come to Japan must apply for landing permission at the port of entry. If Japanese immigration inspectors grant landing permission, the appropriate status of residence ("*zairyu shikaku*") from among the 33 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:

(i) a visa issued from a Japanese consulate located overseas;

(ii) landing permission applicable at the port of entry; or

(iii) a visa granting residency status.

For the purpose of avoiding confusion, this chapter will refer to (i) above as a visa, (ii) as Landing Permission, and (iii) as either status of residence or visa status.

In Japan, the focus is on facilitating entry and residency for foreign nationals with specialized knowledge and skills, while the admission of unskilled foreign nationals has generally been outside the scope of discussion.

Key Government Agencies

The Immigration Bureau of the Ministry of Justice has jurisdiction over immigration and residence in Japan. The Immigration Bureau has eight regional immigration bureaus, seven district offices, 61 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

As of November 2007, all applicants (with limited exemptions) upon arrival must submit their personal identification, be fingerprinted, and be photographed as part of an immigration inspection.

Effective July 1, 2010, the government created a new status of residence tentatively titled "Technical Intern Training," and, in addition, unified the College Student and Pre-College Student statuses under the "Student" status.

According to revisions to the Immigration Control and Refugee Recognition Act ("Immigration Act") in July 2009, which entered into force on July 9, 2012, records for foreign nationals in Japan are managed by the Immigration Bureau to ensure the availability of Japanese administrative services for foreign nationals. In addition, the alien registration system was replaced with a new system that uses a "Residence Card." Upon the implementation of the Residence Card system, valid periods of stay and re-entry permits can be extended for up to five years. Holders of Residence Cards will not be required to obtain re-entry permits for absences from Japan lasting no more than one year.

The Immigration Bureau started the e-Notification System on June 24, 2013. The Electronic Notification System is to allow medium- to long-term residents and their employers to submit mandatory notices online to the Minister of Justice. Currently, the Electronic Notification System accepts notices concerning employers which are filed by their medium- to long-term resident employees, and notices concerning medium- to long-term resident employees which are filed by their employers.

The Immigration Act was recently amended, effective June 2014. Notable changes are below.

1) Re-organization of statuses of residence (effective April 1, 2015)

- To further promote acceptance of foreign nationals with advanced and specialized skills, a new status of residence, "Highly Skilled Professional I," is now available for foreign nationals with advanced and specialized skills who were previously granted the "Designated Activities" status of residence, which affords various kinds of preferential immigration treatment. In addition, another status of residence, "Highly Skilled Professional II," was established for holders of Highly Skilled Professional I status who remain in Japan under the Highly Skilled Professional I status for a certain period of time. Such foreign nationals will be permitted to engage in a wider range of activities in Japan and to remain in Japan for an indefinite period of time.

- The name of the "Investor/Business Manager" status of residence has been changed to "Business Manager" and no longer requires applicants to establish ties to foreign capital/investment. Holders of Business Manager status may now engage in business operations/management of Japanese-owned business entities.

- The "Engineer" and "Specialist in Humanities/International Services" statuses of residence have been consolidated. In order to respond to the needs of companies, etc. concerning acceptance of foreign nationals in specialized and technical fields, the division between those two statuses of residence, which had been based on differences in the types of knowledge in which they specialized (e.g., natural sciences vs. humanities), has been abolished. These statuses of residence are now the comprehensive "Engineer/Specialist in Humanities/International Services" status of residence.

2) The categories of foreign nationals eligible to use automated gates will be expanded to include foreign nationals who frequently visit and stay in Japan under Temporary Visitor status. The start date will be announced in due course.

3) The Japanese government submitted a bill to the Diet proposing the establishment of a new status of residence for care workers with the goal of alleviating the general manpower shortage in that field.

Business Travel

Temporary Visitor

"Temporary Visitor" is a status of residence for foreign nationals who intend to stay in Japan for a limited amount of time (up to 90 days) for such business purposes as meetings, contract signings, market surveys, and post-sale services for machinery imported into Japan.

Activities involving business management (i.e., profit-making activities) or remuneration other than those activities permitted under the status of residence ("paid activities") by Temporary Visitor visa status is not permitted. Violation of the status of residence rules is considered illegal labor. Both the foreign national and the employer may incur criminal liability.

"Paid activities" means activities for remuneration for certain services, such as employment by another person or organization for compensation, or any other activities for compensation (both financial and material) for the completion of any project, work, or clerical work. There is an exemption for certain types of incidental or non-recurring compensation of certain amounts that occur within 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

As of December 2014, Japan has entered into reciprocal visa exemption agreements with 67 countries and regions as shown in the list below. Foreign nationals from these areas are not required to obtain a visa to enter Japan if the purpose of their stay is within those authorized under the Temporary Visitor visa status, and the length of their stay does not exceed the terms of the agreement between their country and Japan (either six months, 90 days, 30 days, or 15 days).

List of Countries and Regions With Visa Exemption as of December 2014:

Countries and Regions	Term of residence
Asia	
Brunei	15 days
Hong Kong (BNO, SAR passport)	90 days
Indonesia	15 days
South Korea	90 days
Macau (SAR passport)	90 days
Malaysia (ePassport in compliance with ICAO Standard)	90 days
Singapore	90 days
Taiwan (passport which includes a personal identification number)	90 days
Thailand (ePassport in compliance with ICAO Standard)	15 days
North America	
Canada	90 days
US	90 days

Countries and Regions	Term of residence
Europe	
Austria	6 months
Germany	6 months
Ireland	6 months
Liechtenstein	6 months
Switzerland	6 months
United Kingdom	6 months
Andorra	90 days
Belgium	90 days
Bulgaria	90 days
Croatia	90 days
Cyprus	90 days
Czech Republic	90 days
Denmark	90 days
Estonia	90 days
Finland	90 days
France	90 days
Greece	90 days
Hungary	90 days
Iceland	90 days
Italy	90 days
Latvia	90 days
Lithuania	90 days
Luxembourg	90 days
Macedonia	90 days

Countries and Regions	Term of residence
Malta	90 days
Monaco	90 days
Netherlands	90 days
Norway	90 days
Poland	90 days
Portugal	90 days
Romania	90 days
San Marino	90 days
Serbia	90 days
Slovakia	90 days
Slovenia	90 days
Spain	90 days
Sweden	90 days
Latin America and Caribbean	
Mexico	6 months
Argentina	90 days
Bahamas	90 days
Barbados (MRP, ePassport in compliance with ICAO standard)	90 days
Chile	90 days
Costa Rica	90 days
Dominican Republic	90 days
El Salvador	90 days
Guatemala	90 days
Honduras	90 days
Suriname	90 days

Countries and Regions	Term of residence
Uruguay	90 days
Middle East	
Israel	90 days
Turkey (MRP, ePassport in compliance with ICAO standard)	90 days
Oceania	
Australia	90 days
New Zealand	90 days
Africa	
Lesotho (MRP, ePassport in compliance with ICAO standard)	90 days
Mauritius	90 days
Tunisia	90 days

It should be noted that immigration inspectors at ports of entry have a wide discretion to decide a period of stay in Japan for foreign nationals wishing to enter Japan. As for Temporary Visitor status applicants, the immigration inspector grants either 15 days, 30 days, or 90 days, whichever they consider as appropriate to cover such foreign national's stay.

Nationals of countries and regions that have taken measures concerning the waiver of visa requirements with Japan for stays of up to six months are granted permission to stay in Japan for 90 days at the time of entry. Nationals of these countries and regions who wish to stay in Japan for more than 90 days must apply at their nearest local immigration bureau 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 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, in the case of nationals of Barbados (since April 1, 2010), Lesotho (since April 1, 2010), and Turkey (since April 1, 2011).

Expanded eligibility for the use of automated gates

Eligibility for the use of automated gates will be expanded to include foreign nationals who frequently travel to Japan and are deemed to pose little immigration control risk ("Trusted Travelers") on the condition that they complete the prior registration process (including filing of fingerprints, etc.). Such Trusted Travelers will be permitted to enter and leave Japan without needing to apply for landing permission each time, for the purpose of simplifying and streamlining the immigration process (expected to start by the end of 2016).

Employment Assignments

Foreign nationals may engage in the activities authorized for the specified period of time under their visa only after obtaining the appropriate status of residence. Therefore, it is crucial that the applicant and intended activities meet the criteria for at least one status of residence category, and that they fulfill the criteria required specifically by the status of residence for which they are applying.

Among the 33 types of status of residence allowed in Japan, holders of 21 categories thereof are allowed to engage in profit-making and paid activities. The four most common statuses of residence for employment are engineers, specialists in humanities or international services, intra-company transferees, and investors or business managers, as well as family members with dependent visa status.

Engineers/Specialists in Humanities/International Services

This status of residence covers both the former Engineer and Specialist in Humanities/International Services statuses of residence. No major changes have been made to the required qualifications for this category. It still targets applicants who intend to engage in services which require knowledge and/or skills relevant to: (i) the natural sciences (e.g., physical science, engineering, etc.) ("Engineers"); (ii) the humanities (e.g., law, economics, social science, etc.) ("Specialist in Humanities"); or (iii) specific ways of thinking or sensitivity acquired through experience with foreign cultures ("International Services").

The law requires the activities to be based on contracts with public organizations or private companies in Japan. Therefore, the applicant must enter into an employment agreement, service contract, or consignment agreement. The applicant's employer must have an office located in Japan, and is in many cases required to arrange social and labor insurance for the applicant.

Applicants must 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 ten years of experience (including the 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.

If the job requires specific training or sensitivity based on experience with foreign cultures, the applicant must have a minimum of three years of experience in the relevant field, except where the applicant will engage in a translation, interpretation, or language-related role.

In addition, the applicant must be offered a salary equal to the salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount that satisfies this requirement; however, it is currently understood that a minimum of JPY 200,000 is to be paid as monthly salary.

Intra-Company Transferee

This status of residence authorizes activities for personnel transferred to business offices in Japan for a limited period of time from business offices established in foreign countries by public organizations or private companies that have head offices, branch offices, or other business offices in Japan, and where applicants' work at these business offices is encompassed by the activities described in the engineers/specialists in humanities/international services status.

The applicant must be transferred from a business office located overseas to a business office in Japan, both offices being of the same company, to engage in a job requiring skills or knowledge pertinent to physical science, engineering or other natural science fields, or knowledge pertinent to jurisprudence, economics, sociology or other human science fields, or to engage in services that require specific training or sensitivity based on experience with foreign cultures.

The main difference between the intra-company transferee and engineers/specialists in humanities/international services status of residence categories is that an intra-company transferee status does not require the applicant to have a contract with public organizations or private companies in Japan. The applicant therefore may receive his salary from business offices overseas.

Transfers between offices of the same company include transfers between the parent company and its subsidiary, as well as a transfer

between group companies that have a certain level of financial ties with each other. In addition, applicants for the intra-company transferee status of residence are different from applicants who are to operate or manage the operations of business offices located in Japan (who should apply for the business manager status).

Applicants must have been continuously employed at business offices outside of Japan for at least one year immediately prior to the transfer to Japan in a position that falls under the status of residence category of engineers/specialists in humanities/international services.

Further, the applicant must receive a salary equal to the salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount that satisfies this requirement; however, it is currently understood that a minimum of JPY 200,000 is to be paid as monthly salary.

Business Manager

This status of residence authorizes foreign nationals to operate or manage an international trade or other businesses.

Further, if the applicant is to operate or manage that business, the following conditions must be satisfied:

- The office for the business must be located in Japan. If the business has not yet completed the start-up process, the location which will serve as its office must be in Japan.

- One of the following conditions should be satisfied:

    - the business concerned must have the capacity to employ at least two full-time employees residing in Japan in addition to those who operate and/or manage the business. Full-time employees mentioned here exclude foreign nationals residing in Japan, except for foreign nationals with a status of residence as “permanent resident,” “spouse or child of a

Japanese national," or "spouse or child of permanent resident," or "long-term resident"; or

- the amount of investment in the business is at least JPY 5 million, which may vary depending on the size of the entire business operating in Japan.

If the applicant is to engage in the management of international trade or other businesses in Japan, the applicant must:

- have at least three years' experience in the operation or management of the business (including the time during which the applicant majored in business operation and/or management at a graduate school); and

- receive a salary equal to a salary a Japanese national would receive for comparable work.

Highly Skilled Professional I

This status of residence targets applicants who will engage in one of the following activities designated by the relevant Ministry of Justice ordinances as those offered by highly skilled professionals who are expected to contribute to Japan's academic research and/or economic development:

- research activities, research guidance activities or education activities based on a contract with a public or private organization in Japan, and the same activities engaged in simultaneously with the aforementioned based on the business the applicant runs himself or a contract with another public or private organization in Japan;

- activities which require knowledge and/or skills related to the natural sciences or humanities fields based on a contract with a public or private organization in Japan, and activities related to operating a business which simultaneously engages in the aforementioned activities; or

- activities related to the operation of international trading or other businesses, management of such trading and businesses at a public or private organization in Japan designed by the Minister of Justice, and activities related to operating a business which simultaneously engages in the aforementioned activities.

Applicants for the Highly Skilled Professional I category must first qualify for a status of residence other than Diplomat, Official or Technical Intern Training. The applicant's intended activities in Japan must not be considered harmful to Japan's industries or to the lives of its citizens.

A holder of Highly Skilled Professional I status will be given preferential immigration treatment, including: (i) permission to engage in multiple types of activities during his stay in Japan; (ii) a five-year period of stay; (iii) relaxation of the requirements for the granting of permission for permanent residence in line with his history of staying in Japan; (iv) preferential processing of immigration and stay procedures; (v) employment permission for his spouse; (vi) permission to bring his parents into Japan; and (vii) permission to bring a domestic servant he employs.

In addition, a qualified applicant must engage in activities categorized as "academic research activities," "advanced specialized/technical activities," or "business management activities," and earn 70 points or more under the points-based system in order to be recognized as a "Highly Skilled Foreign Professional."

Highly Skilled Professional II

This status of residence targets holders of Highly Skilled Professional I status who have lived in Japan for a period of three years or longer.

In addition to enjoying the above-listed types of preferential treatment granted to holders of Highly Skilled Professional I status, holders of Highly Skilled Professional II status will be allowed an infinite period of stay (as opposed to a maximum of five years for Highly Skilled Professional I) and will be allowed to engage in a much wider variety

of activities (practically any work activities authorized under any work-related status of residence).

Dependent

This status of residence is for applicants whose daily activities are as the spouse or dependent children of foreign nationals who are staying in Japan with a status of residence other than "diplomat," "official," "temporary visitor," "pre-college student," or "designated activities."

A dependent spouse must be legally and substantively married to the principal applicant. The Immigration 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 that family members are reasonably expected to be engaged in, such as household duties or attending elementary and high schools. Profit-making activities and paid activities are excluded. However, job hunting is considered to be within a dependent's authorized activities. Subject to obtaining special permission from the Immigration Bureau, a holder of the dependent visa status may engage in profit-making activities within the limit of 28 hours per week.

Other Comments

Certificate of Eligibility

The Certificate of Eligibility ("CoE") is a document issued by the Minister of Justice prior to the arrival at a port of entry in Japan, certifying that the applicant 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 expedite the process for landing permission at the port of entry.

The CoE evidences that the examination of status of residence has been completed and disembarkation permission has been granted. Therefore, a CoE will speed up the visa process at the Japanese consulate overseas (usually completed within three to five business days after filing), as well as the process for obtaining landing permission at the port of entry.

In principle, the applicant's proxy (staff of the sponsoring company) or its agent (authorized attorney at law and administrative scrivener or "*gyoseishoshi*") in Japan must submit the CoE application to the local immigration bureau. The application documents, as provided by the Immigration Control Act Enforcement Regulations, differ depending on the status of residence category.

Landing permission and residence card

When a foreign national enters Japan, he will be granted landing permission, which includes his status of residence and an authorized period of stay if he is proven to meet the landing requirements upon screening at the port of entry.

When landing permission is granted, a residence card will be issued to a foreign national authorized to stay in Japan for three months or more (called a "medium- to long-term resident"). A residence card carries the holder's ID photo, name, address in Japan, gender, status of residence, period of stay (expiration date) and contains an IC chip that also stores information of the holder.

Medium- to long-term residents are now required, as with Japanese nationals, to file a resident registration in order to allow their relevant local city governments to provide them with the same services that are available to Japanese nationals.

Where any items stated/recorded in a medium- to long-term resident's residence card are changed, the medium- to long-term resident is required to report such change(s) to his local city government so that they can be reflected in the residence card and resident registration.

Re-entry permit

The status of residence granted to foreign nationals at the time of their entry automatically expires upon departure. If a foreign national subsequently wishes to re-enter and continue the status of residence 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 the status of residence for the stay period originally granted.

A residence card holder is considered to hold a re-entry permit valid for one year from the date of his last departure from Japan, because the act of presenting a residence card to an immigration official at the port of departure from Japan is considered equivalent to issuing a valid re-entry permit.

However, if a foreign national leaves Japan and presents the residence card at the port of his departure without holding an actual re-entry permit and fails to return to Japan within one year after such departure, the foreign national will lose his status of residence. This is because the one-year period during which a residence card holder is deemed to hold a re-entry permit cannot be extended while outside Japan.

Further, foreign nationals with a re-entry permit may register their personal identification information (e.g., fingerprints and photograph) with the Immigration 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, he must apply for permission at his local immigration bureau before the current visa status expires.

Filing an application does not mean an extension of period of stay will be approved. The Minister of Justice will give permission only if it can be determined that there are reasonable grounds to grant an extension.

As mentioned earlier, the temporary visitor visa status generally may not be extended because it is intended only for foreign nationals who plan to stay in Japan for a short period of time.

Change of status of residence

If foreign nationals in Japan wish 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 intending to switch to another company for a job that falls under his current status of residence.

Republic of Kazakhstan

Key Government Agencies

The MFA is responsible for processing of first-time issuances of all categories of visas (except exit visas) in Kazakhstan and at the Kazakhstani consular posts abroad.

In the territory of Kazakhstan, the Ministry of Internal Affairs issues private visas and permanent residence visas, in certain limited circumstances, as well as exit visas. Local departments of the Ministry of Internal Affairs also register foreign nationals upon their arrival to Kazakhstan.

Local executive bodies (so-called "Akimats") are responsible for issuing work permits, which are a necessary precondition for working in Kazakhstan.

Current Trends

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 heavy bureaucracy. Further, it must be mentioned that the immigration environment in Kazakhstan is highly discretionary, non-transparent and very volatile, changing on a regular basis. For example, officials are not required to provide any reasons for their refusal to issue or revoke a visa. There are some legal ambiguities in relation to the immigration regulations, and there is a lack of consensus as to the proper interpretation of certain aspects of the legislation, which allows the authorities a great deal of discretion in exercising their functions.

This summary provides a general overview of the immigration rules, processes, and procedures most pertinent to business-related immigration, i.e., those associated with businesses, investors, permanent residents, work permits, and work visas only.

Permanent Residents and Temporary Visitors

In Kazakhstan, foreign nationals are divided into the following two general categories:

- foreign nationals permanently residing in Kazakhstan ("Permanent Residents"); 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 in Kazakhstan for work purposes (or arrives on a business visa, but stays in Kazakhstan for a period exceeding 120 days in any calendar year), in addition to the work visa, a work permit would be required in connection with his employment in Kazakhstan. Generally, the work permit obligation lies 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 14 categories of visas available in Kazakhstan based on the purpose of stay and the status of the foreign national, as follows:

- Diplomatic Visas;
- Official Visas;
- Investor Visas;
- Business Visas;
- Private Visas;
- Tourist Visas;
- Missionary Visas;
- Student Visas;
- Work Visas;
- Humanitarian Visas;
- Permanent Residence Visas;
- Family Reunification Visas;
- Exit Visas; and
- Transit Visas.

Further, visas can be single-, double-, triple-, or multiple-entry ones. Single-entry visas give a foreign national the right to enter Kazakhstan

once and thereafter exit the country, while double-, triple-, and multiple-entry visas give the foreign national the right to enter the country two, three, and multiple times, respectively, and thereafter exit Kazakhstan, in each case within the validity period of the subject visa.

Process overview

Generally, obtaining a Kazakhstani visa consists of the following two stages (please note that a different procedure applies to certain categories of visas, such as exit visas):

- Stage I involves filing the applicable application documentation (including an invitation letter) with, and obtaining a visa endorsement number from, the Consular Service Department (the "Consular Department") of the Ministry of Foreign Affairs (the "MFA") in the cities of Almaty or Astana; and

- Stage II involves obtaining a visa on the basis of the visa endorsement number from a Kazakhstani consulate or embassy abroad.

Business Travel

Business visas are issued for single, double, triple and multiple entries and can be of eight different categories. 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.

As of May 2013, each of these visas has a number of sub-categories that affect the scope of permissible actions and the permissible length of stay per visit to which their holders are entitled.

Depending on its category, the following activities are permitted under a business visa:

- D1 visa – participation in conferences and forums, reading lectures;
- D2 visa – business trips, assembly, repair and technical maintenance of equipment, student exchanges;
- D3 visa – humanitarian aid, negotiations and signing of contracts, rendering consulting and audit services;
- D4 visa – international motor transportation;
- D5 visa – activities carried out by train crews;
- D6 visa – activities carried out by flight crews without an ICAO certificate;
- D7 visa – activities carried out by sea craft and river boat crews; and
- D8 visa – activities carried out by people serving in military units located in Kazakhstan.

A business visa can be issued on the following bases depending on the intended frequency of travel and the type of visa being applied for:

- D1 visa – up to 90 days. Please note that a D1 visa can be issued for single, double, or triple entries only;
- D2 visa – multivisa is valid for one year;
- D3 visa – multivisa is valid for three years, however, D3 business visas are usually issued for a maximum of one year;

- D4 visa – single visa is valid for 90 days; multivisa is valid for one year;
- D5 visa – single visa is valid for 90 days; multivisa is valid for one year;
- D6 visa – single visa is valid for 90 days; multivisa is valid for one year;
- D7 visa – single visa is valid for 90 days; multivisa is valid for one year; and
- D8 visa – multivisa is valid for the period of time to be served by the military units.

However, as will be discussed further below, from a practical perspective, business visas should not exceed 120 days per calendar year as there may be a risk that the local authorities will insist on a work permit and work visa.

Business visas are issued to foreign nationals coming to Kazakhstan:

- on a business trip with the aim of, for example, attending business meetings for fact-gathering purposes, but no hands-on activities;
- for contract negotiations and execution;
- to render consulting or auditing services, for example, analyzing and assessing data; providing recommendations, but no hands-on activities;
- to participate in conferences, symposiums, forums, exhibitions, concerts, and cultural, scientific, sport and other events;
- on a youth student exchange program, other than for purposes of studying in a Kazakhstani educational institution;

- for international car delivery/transportation;
- as members of 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 provide humanitarian aid;
- for short-term lectures and teaching at local universities; and
- for the assembly, installation, repair, and technical servicing of equipment, however, the installation/maintenance of software and IT will likely not fall within this category as they not qualify as equipment.

A foreign national holding a business visa should not, among other things:

- receive compensation from the host entity in Kazakhstan;
- receive/send directions from and to the host country entity's officers and employees;
- act as a representative of the host company, such as having a personal assistant, office, workplace or business cards; or
- stay longer than 120 days within one calendar year.

Business visas are generally issued on the basis of an invitation letter from a local Kazakhstani 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 home country. From filing it usually takes five business days until a visa number is assigned.

Foreign nationals of Kazakh nationality and citizens of the countries listed below may apply for a single-entry business visa (for up to 30 days) directly through an applicable embassy/consulate without an invitation letter and visa support (recommendation) from the Consular Department/the MFA:

Australia, Austria, Luxembourg, Hungary, Hellenic Republic, Israel, Qatar, Ireland, Italy, Denmark, Saudi Arabia, Spain, Iceland, Canada, Liechtenstein, Monaco, Netherlands, Norway, Sweden, Belgium, Lithuania, Latvia, New Zealand, United Arab Emirates, Portugal, Singapore, Poland, Croatia, The Republic of Korea, Bulgaria, Cyprus, Malta, Slovenia, Romania, United States, UK, Slovakia, Oman, Finland, France, Germany, Malaysia, Brazil, The Czech Republic, Switzerland, Estonia, Japan and Jordan.

A foreign national may stay in Kazakhstan on the basis of a business visa for up to 120 calendar days per calendar year. If the foreign national works or stays for business purposes for a longer period, this is deemed to constitute employment in Kazakhstan. In such cases, as a general rule, subject to certain limited exceptions, the local employer must obtain a work permit (or, if such foreign national is a professional in one of the 30 specified specialty areas, the foreign national may apply for a work permit on his own), and the foreign national must obtain a work visa.

Visa Waiver/Visa Exemptions

There are a number of foreign states that have signed international agreements with Kazakhstan, which allow citizens of these countries to enter and stay in Kazakhstan without any visa for a prescribed or non-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 persons without any diplomatic or other special status. Finally, please note that absence of a visa requirement does not necessarily exempt the individual from the work permit requirement. Only Permanent Residents and certain other limited categories of foreign employees (e.g., heads of branch or representative offices of

the foreign entities, and citizens of Russia, Belarus and Armenia) are exempted from the work permit requirement.

- Armenia (for a term not exceeding 90 days);
- Azerbaijan (for an unlimited term);
- Belarus (for an unlimited term);
- Georgia (for a term not exceeding 90 days);
- Kyrgyzstan (for an unlimited term);
- Moldova (for a term not exceeding 90 days);
- Mongolia (for a term not exceeding 90 days);
- Russia (for an unlimited term);
- Serbia (for a term not exceeding 30 days);
- Tajikistan (for an unlimited term);
- Turkey (for a term not exceeding 30 days)[1];
- Hong Kong Special Administrative Region of the PRC (for a term not exceeding 14 days);
- Ukraine (for a term not exceeding 30 days); and

[1] Turkish and Ukrainian citizens may enter and stay in Kazakhstan without a visa for up to 30 days (it is not clear from the applicable agreement, however, whether this 30-day visa-free stay limitation is a per stay or a per year limitation; in practice, Turkish nationals re-enter Kazakhstan every 30 days); however, they are not allowed to work in Kazakhstan. If the purpose of the stay is business or employment, a Turkish citizen must obtain the appropriate visa for entering Kazakhstan, and if the purpose of the stay is work, a work permit must be obtained (with certain exceptions).

- Uzbekistan (for an unlimited term).

Additionally, citizens of the US, Great Britain, Germany, France, Italy, Malaysia, the Netherlands, UAE, Republic of Korea, Australia, Hungary, Monaco, Belgium, Spain, Norway, Sweden, Singapore, Finland, Switzerland and Japan may visit Kazakhstan without a visa if their visit does not exceed 15 calendar days. This exemption is only effective until December 31, 2017.

Employment Assignments

Generally, a foreign employee coming to Kazakhstan for work purposes (or who comes to Kazakhstan for business purposes but stays in Kazakhstan for more than 120 days in any calendar year) would be required to have a work permit (the work permit is issued either to the local employer or the employee, as discussed below) and a work visa. The law provides for a number of exceptions to the work permit requirement. For instance, certain categories of foreign employees are exempt from the work permit requirement, including, among others, Permanent Residents, heads of representative or branch offices of foreign entities in Kazakhstan, citizens of Russia, citizens of Belarus and Armenia, actors, conductors, professional athletes, certain airspace specialists, and members of sea/air/railroad crews.

Work Permits

General

Generally, work permits are issued on the basis of an application by a local employer, the "Sponsor," with such work permits being the "Employer WPs." If a foreign entity sending its employees to Kazakhstan for work purposes does not have legal presence in Kazakhstan (no subsidiaries, representative offices, or branch offices) and if such foreign entity sends its personnel to work exclusively for a counterparty/client (host) based in Kazakhstan, then such local counterparty/client (host) would be responsible for obtaining the applicable work permits, subject to satisfaction of all applicable requirements including quotas and ratios, as applicable. However,

once the foreign entity establishes legal presence in Kazakhstan, this secondment option, whereby the local counter-party/client (host) would "sponsor" work permits for the foreign employees of the foreign entity would no longer be available. There is also a corporate transfer option available to foreign employees temporarily transferred to an affiliate of a foreign entity registered in Kazakhstan. The corporate transfer option is mostly similar to obtaining work permits on a regular basis, except for a slightly easier procedure and different effective terms of work permits.

Certain foreign employees, however, might be able to avoid the local sponsor requirement and apply for a work permit themselves, which offers a number of advantages (at least in theory) over the Employer WP process (e.g., no need to satisfy the local content ratios, no imposition of special conditions, faster processing, including due to the absence of the local labor market search). The work permit rules allow a very specific and narrow group of foreign professionals to apply for an Employee WP directly without the local employer's sponsorship.

Among such foreign professionals who qualify for 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 below:

1.	Anthropologist
2.	System Architect
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
31.	Database Administrator

32.	Systems Analyst
33.	Digital Equipment Designer

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. Therefore, in practice, this may result in delays and procedural complications.

Validity Term

- Employee WPs are issued and extended, subject to the annual quota availability, for a term of up to three years. Extension is available up to two times, not exceeding five years in total.

- Employer WPs are valid for the following periods depending on the foreign employee category:

Category	Validity period	Extension
Category 1 (chief executives and their deputies) (other than small businesses)	Up to 3 years	Annually, for a period of up to 12 months
Category 1 for "small business" enterprises	12 months	For a period of 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) and 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 are distributed among different regions and categories of employees. In addition, the local labor authorities (the Ministry of Labor and Social Protection of the Republic of Kazakhstan) may, upon "suggestion" of the interested governmental authorities (e.g., city and regional departments of labor and employment), reallocate the annual quotas among the regions and cities, but within the established quotas for that year.

The annual quotas apply in both the Employer WP and the Employee WP scenarios.

Labor Market Search

The labor market search is triggered in conjunction with the Employer WP application only. A labor market search is not required in conjunction with the Employee WP application.

A 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 the 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 citizens of Kazakhstan, creation of additional jobs for citizens of Kazakhstan, etc. Employee WPs and work permits for Category 1 employees (mentioned above) 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 beyond the expiration date of the work visa.

Work visas are issued on the basis of an approved and valid work permit (if the work permit is required) and an invitation letter from the local sponsor/local employer filed with the Consular Department. The Consular Department then, based on its review of the application materials, makes a recommendation to the applicable visa issuing authorities (embassies/consulates in the case of first time issuances to employees located outside of Kazakhstan). Typically, it takes five business days for the Consular Department to conduct such a review from the moment it accepts the application materials and issues a visa endorsement number.

A visa then can be obtained on the basis of the visa endorsement number from a Kazakhstani consulate or embassy abroad. It is important to consult the specific Kazakhstani consulate or embassy abroad where the work visa application will be filed, as the requirements vary from one country to another.

Post-Entry Procedures

As a general rule, foreign nationals who enter Kazakhstan have to register with the migration authorities.

The procedure for registering foreign nationals differs depending on the purpose of travel and whether there are any applicable international treaties between Kazakhstan and the country in which the foreign nationals reside. We summarize below the main requirements.

Most foreign nationals must be registered within five working days from the date of arrival into Kazakhstan.

Registration requires the issuance of a registration certificate. The registration certificate form is not set up by the law, therefore local forms can differ. Most foreign nationals should obtain their registration from the local migration police departments of the Ministry of Internal Affairs. Certain categories of foreign nationals (such as foreign nationals invited by the Ministry of Foreign Affairs or diplomats) may be registered at local departments of the Ministry of Foreign Affairs. Since September 1, 2006, citizens of certain countries[2] may register during their border control crossing at 12 designated international airports in Kazakhstan. The registration for this category of foreign nationals is valid for up to 90 calendar days.

As mentioned above, except for the citizens of countries with visa-free entrance arrangements, a foreign national must have obtained a visa as a pre-condition of obtaining their registration.

For foreign nationals arriving from countries with an arrangement for visa-free entrance, the initial registration term is 30 days (which may be extended by another 30 days). Foreign national who arrive on the

[2] Citizens of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, Lichtenstein, Luxembourg, Malaysia, Monaco, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, UK and the US.

basis of a visa will be issued a registration valid for the same period indicated in the visa application. Likewise, the validity term of the registration of a foreign national arriving on the basis of a work permit is to be identical to the term of the relevant work permit.

Special provisions with respect to registration apply to citizens of Russia and Belarus. For example, the registration of Russian and Belarusian citizens is valid for up to 90 calendar days and can be extended for another 90 days.

There is also a separate document (in addition to the registration certificate) known as a migration card, which will be issued to each foreign national on arrival. The migration card will identify the foreign national's date of arrival, should be kept in the foreign national's passport while in Kazakhstan and is required to be forfeited to the migration officials on departure from Kazakhstan.

Other Comments

Permanent Residence

Permanent residence visas are also issued on the basis of visa endorsement by the Consular Department to persons coming to Kazakhstan for permanent residence, to those who arrived in Kazakhstan on private business, to those who have made a request to stay permanently in Kazakhstan and to those asking for refugee status. Permanent residence visas can be single- or double-entry, which are issued, in each case, for up to 90 days. In addition, permanent foreign nationals must receive a residence permit, which allows them to reside in Kazakhstan for an unlimited period of time.

Liability for Violating Immigration Laws

Depending on the nature and seriousness of the violation, a foreign citizen who violates any visa, work permit or other immigration laws of Kazakhstan, may face the following penalties:

- an administrative fine of up to approximately USD 280;

- an invalidation of authorized stay in Kazakhstan;
- an administrative arrest for up to 15 calendar days; and/or
- 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 time frame specified by the migration police, potential penalties include:

- a penalty in the amount of approximately USD 1,700; and/or
- an administrative arrest for up to 75 days.

For intentional illegal crossing of the Kazakhstani border, e.g., without a national passport or a proper visa, a foreign national may also be penalized in the form of:

- a fine of USD 620; and/or
- imprisonment up to one year.

A Kazakhstani company/employer that violates the work permit or other immigration laws of Kazakhstan may face the following penalties:

- an administrative fine of up to approximately USD 6,200;
- a suspension or revocation of all valid work permits issued to the company/employer; and/or
- a temporary ban on the issuance of work permits for a period of up to two years.

An officer/manager, who repeatedly violates the work permit rules of Kazakhstan may face the following penalties:

- an administrative fine of up to approximately USD 2,800; and/or
- an arrest of up to 90 days.

Luxembourg

Luxembourg's popularity as a destination for business travelers continues to grow. Although brief visits generally pose little to no immigration issues for EU citizens (or those treated as such, i.e., Norway, Liechtenstein, Iceland and Switzerland), for non-EU citizens, working and residing in Luxembourg entails compliance with a number of procedures with various authorities.

Non-EU citizens wishing to work for a period of over three months in Luxembourg will need to obtain a temporary residence certificate and, where relevant, the appropriate visa before entering Luxembourg.

Key Government Agencies

Visa applications are processed at Luxembourg embassies and consular posts around the world or at a diplomatic mission which represents Luxembourg. Personal appearance at the embassy or consular post is generally required.

A request for a permanent residence permit with authorization to work in Luxembourg may only be filed further to receipt of a temporary authorization from the Minister of Foreign Affairs ("*Direction de l'Immigration*"). If the foreign national resides in a non-European Economic Area ("EEA") country, the 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.

A registration or declaration of arrival will be required at the commune of the place of residence in Luxembourg.

A business which intends to recruit staff must file a declaration of job vacancy with the Employment Administration Office ("*Administration de l'emploi*" or "ADEM") at least three working days before publishing the job offer. The ADEM will carry out a market labor test and, should a suitable candidate not be found within three weeks, the employer may request a certificate entitling the hire of a third-country

national. This certificate will be required for the residency permit processing of certain categories of workers.

Non-EU nationals (or assimilated nationals) who wish to stay for more than three months in Luxembourg must undergo a medical check-up involving a medical examination by a doctor established in Luxembourg and a TB screening by the Health and Social Welfare League ("*Ligue médico-sociale*" or "LMS").

Current Trends

One ministry is in charge of the immigration procedure in Luxembourg and the timeframe of immigration procedures is therefore fairly short in comparison to other EU countries. Specific status and/or fast-track procedures exist for different categories of applicants, including employees arriving in Luxembourg via an intra-group transfer, highly qualified employees, family members, students, researchers and sportsmen, for example.

Business Travel

Short-Term Visas (less than three months)

The nationality of the non-EU national will determine whether or not a visa is required for such person to travel to Luxembourg (see www.gouvernement.lu/4843909). In general, and subject to the visa waiver described below, non-EU nationals wishing to visit, transit through or work in Luxembourg for a period of less than 90 days must obtain a Schengen short stay type C visa from the Luxembourg embassies and consular posts where the non-EU national resides or from a diplomatic mission representing Luxembourg, prior to coming to Luxembourg (see www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises).

The type C Schengen visa allows the holder to enter Luxembourg and move freely within other countries in the Schengen Area.[1]

The Schengen visa does not grant its holder the right to visit other EU countries that are not members of the Schengen Area.

A short stay type C visa is granted for an uninterrupted period of no more than 90 days or for 90 days accumulated over a 180-day period for a limited number of activities, including business trips, participating in corporate management or shareholding meetings, intra-group service provision and so forth. The visa may be issued for one or multiple entries, depending on the reasons for the stay. The type C visa does not grant its holder the right to carry out a paid activity in Luxembourg. Only a long-term type D visa confers the right to a non-EU citizen to carry out paid activity in Luxembourg (together with a work or residence permit).

The visa application must be accompanied by supporting documentation including evidence of the reason of the visit, health insurance, a hotel reservation and a return travel ticket, as well as sufficient resources for the stay in Luxembourg.

Visa Waiver

Visas are not required for EU and EEA (i.e., Norway, Liechtenstein, and Iceland) citizens to visit Luxembourg.

In addition, the normal visa requirements are waived for citizens of the following countries: Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Hong Kong, Israel, Japan, Macau, Macedonia, Malaysia,

[1] Currently, the Schengen Area is comprised of: 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.

Mauritius (Isle), Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, San Marino, Serbia, Seychelles, Singapore, South Korea, Taiwan, the US, Uruguay, Vatican City and Venezuela.

Before entering Luxembourg

Citizens of the EU/EEA are entitled to freely train in Luxembourg without a visa.

Save for cases of visa waiver, non-EU citizens must qualify for either a short stay type C visa for professional training if the training is under three months, or a long stay type D visa for private reasons for trainings of a duration of over three months.

A non-EU national wishing to reside in Luxembourg to undergo intra-group training for under three months may be exempted from requiring a work permit. A non-EU national wishing to reside in Luxembourg to undergo intra-group training will be required to apply for a temporary residence permit for private reasons prior to arriving in Luxembourg with 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 is valid for 90 days as of its deliverance, during which time the non-EU trainee must finalize the administrative formalities to receive the permanent residence permit.

A non-EU national holder of a residence permit issued by another EU Member State where said person shall continue to reside during the intra-group training in Luxembourg is exempted from requesting a work permit during the validity of the EU residence permit.

After entering Luxembourg

Declaration of arrival/accommodation form

Non-EU/EEA citizens staying for a period of under three months in Luxembourg will be required to either make a declaration of arrival in their new commune of residence within three days of their arrival or to complete an accommodation form at the establishment where they are staying (hotel, bed & breakfast, etc.).

Non-EU citizens staying over three months in Luxembourg must make a declaration of arrival at their commune of residence.

Registration certificate (EU nationals)

EU nationals must register in their commune of residence and will receive a registration certificate at the latest three months after their arrival.

Medical check (non-EU nationals)

The non-EU national must undergo a medical check as soon as possible, which consists of:

- a medical examination by a doctor established in Luxembourg; and
- a TB screening by the Ligue Médico-Sociale ("LMS").

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Residence permit application (non-EU nationals)

Non-EU nationals must submit an application for a residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The residence permit takes the form of a chip card containing the individual's biometric data.

Employment Assignments

EU/EEA employee

Citizens of the EU/EEA are entitled to free circulation within the EU, giving them the right to work and live anywhere in the EU.

EU/EEA nationals must hold a valid national identity card or passport.

A business which intends to recruit staff must file a declaration of job vacancy with the ADEM at least three working days before publishing the job offer.

The formalities to be completed depend on whether the EU/EEA citizen intends to stay for over three months. Should they intend to stay for a duration of over three months then a declaration of arrival must be completed within eight days of arrival in Luxembourg, at the offices of the authorities of the commune where they intend to take up residence.

The EU/EEA national will receive a registration certificate as a result of their application.

Third-country employee

Before entering Luxembourg

Declaration of vacant position

A business which intends to recruit staff must file a declaration of job vacancy with the ADEM at least three working days before publishing the job offer. If the ADEM cannot provide a suitable candidate within three weeks, the employer may request a certificate entitling the hire of a third-country national.

Temporary residence certificate

Prior to their arrival in Luxembourg the future third-country employee must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate from their country of origin. The application must be submitted and approved before entering Luxembourg.

The application for a temporary residence certificate must contain, in particular, a police record, a copy of the applicant's diplomas or professional qualifications, and a copy of the employment contract (compliant with Luxembourg law) dated and signed.

The temporary residence certificate will be sent by post to the address given by the applicant. It is valid for 90 days.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in their country of residence, or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a period of between 90 days and one year, is affixed in the passport in the form of a seal.

After entering Luxembourg

Declaration of arrival

A third-country national must arrive in Luxembourg with valid travel documents (passport and visa, where required) within 90 days of issue of the temporary residence certificate.

A declaration of arrival at the administration of the commune where they intend to establish residence must be completed within three days of arrival in Luxembourg. The applicant will receive a copy of such declaration of arrival.

The copy of the declaration of arrival together with the residence certificate is valid as a work and residence permit until the permanent residence permit has been processed.

Medical check

The third-country national salaried worker who intends to stay for more than three months must undergo a medical check as soon as possible which consists of:

- a medical examination by a doctor established in Luxembourg; and
- a TB screening by the LMS.

After receiving the results of these examinations, the Immigration Medical Department of the National Health Directorate will issue a medical certificate, which will be sent to the Immigration Directorate of the Ministry of Foreign Affairs to allow the residence permit application to be processed.

Permanent residence permit

Third-country national salaried workers holder of a temporary residence permit must submit an application for a permanent residence permit to the Ministry of Foreign Affairs within 90 days of entry into Luxembourg.

The residence permit takes the form of a chip card containing the individual's biometric data.

Intra-Company Transferee

The employees in this category are those working under an employment contract for an indefinite duration and who are temporarily assigned by their employing company to a Luxembourg entity which is part of same group as the transferring company. The transferring and the receiving companies must have concluded a transfer contract and a new employment contract must be concluded

between the transferred worker and the Luxembourg entity indicating the specific activities and duration covered by the transfer.

Intra-group transfers do not require prior declaration and are not subject to the ADEM local market test.

Short-term transfer of under 90 days

Transferred employees who are EU nationals, or equivalent, foreseeing to stay in Luxembourg for less than three months do not need to carry out any particular formalities.

Third-country national transferred workers who will reside for less than three months in Luxembourg must hold a valid passport and, where applicable, a type D visa before entering the country, and make a declaration of arrival within three days of arriving in their new commune of temporary residence.

Transfer of over three months

Before entering Luxembourg

Temporary residence certificate

Before entering Luxembourg, the non-EU transferred worker must submit an application for a temporary residence certificate to the Luxembourg Immigration Directorate. The application for a temporary residence certificate must notably detail the work to be performed and the duration of the transfer. Accompanying documentation will include a birth certificate, a social security registration certificate issued by the country of transfer, a copy of the signed and dated permanent employment contract between the transferred worker and the transferring company, as well as a copy of the employment contract or transfer agreement as signed between the host company and the transferred worker indicating the duration of the transfer. The temporary residence certificate is valid for 90 days.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission in his country of residence, or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

After entering Luxembourg

For a stay of over 90 days, EU citizens must make a declaration of arrival at the administration of the commune where they intend to establish residence within eight days of their arrival. The transferred worker must also complete a registration form at the commune within three months of arrival with a copy of their employment contract.

The third-country national must fulfill the three conditions detailed above in "Third-country employee":

- declaration of arrival;
- medical check; and
- permanent residence permit application as a transferred worker.

The permanent residence permit with authorization to work as a transferred worker will be issued for a duration of one year and may be renewed for the same duration.

Employee seconded in the framework of a service agreement

This category concerns employees temporarily seconded to Luxembourg by their foreign employer to a third-party company for the performance of specific services (i.e., technical assistance) in the scope of a service agreement.

The secondment should not result in the employee's effective involvement in the daily running of the Luxembourg host company's activity and the seconded employee will remain part of the sending business's permanent staff.

Before entering Luxembourg

Although the posting business will not need to file a declaration with the ADEM for a local market test, a number of procedures will need to be fulfilled:

Secondment authorization

The Luxembourg host company must submit application posted work application form to the Luxembourg Inspectorate of Labor and Mines and appoint a temporary holding person who will be charged with providing the mandatory documentation in the event of an inspection by the Luxembourg authorities. The application must be submitted and approved before entering the country. If more than one employee is concerned, a collective secondment application will be filed online.

Social security

The posting entity established in a EU Member State, or equivalent, must demonstrate affiliation to the social security in the country of origin for the full duration of the posted work (notably by requesting an A1 or E101 certificate).

A posting entity established outside the EU must ensure that the seconded employee is affiliated with the social security system in the country of origin if a bilateral social security agreement exists between Luxembourg and the posting company (www.secu.lu/conv-internationales/conventions-bilaterales/). If no bilateral convention exists, the posted worker must be affiliated with Luxembourg social security for the duration of the secondment.

Tax

The posting entity must ensure that the seconded workers' salaries are subject to the income tax of the country in which the posting company has its registered office, if the Luxembourg stay of the posted worker is under 183 days. If their stay should exceed 183, the posting entity must ensure that the workers' salaries are subject to Luxembourg income tax.

Labor law

Luxembourg labor law provisions must be respected for the duration of the seconded employees' posting, notably regarding working times and minimum salary.

Temporary residence certificate

A non-EU citizen being posted to Luxembourg by a non-EU business will need to apply for a temporary residence permit prior to arriving in Luxembourg. The application for a temporary residence certificate must contain the nature and duration of the work to be performed and the circumstances that justify the issuance of a posting authorization. A copy of an employment contract for an indefinite duration with a minimum of six months' length of service with a foreign employer and a copy of service contract between this foreign employer and the Luxembourg host company will also be required.

As an exception, the undertaking located in any other EU/EEA Member State or in Switzerland may post their workers, within the framework of a service provision agreement, to Luxembourg irrespective of their nationality, insofar as such workers are entitled to reside and work during the posting in the country where the posting entity is located.

Visa D

Before traveling and leaving the country of origin, the third-country national subject to a visa must complete the visa type D application form and deposit it at the Luxembourg diplomatic or consular mission

in their country of residence or the embassy or consulate of the country in the Schengen Area which represents Luxembourg with regard to the issuance of visas (Belgium or the Netherlands).

The visa, valid for a maximum period of three months, is affixed in the passport in the form of a seal.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above in "Third-country employee":

- declaration of arrival;
- medical check; and
- permanent residence permit application as a posted worker.

The residence permit with authorization to work as posted employee will be issued for the effective duration of the work foreseen to perform the provision of services. It may be extended in exceptional circumstances.

Highly qualified employee (EU Blue Card)

A third-country national with high qualifications or experience in a specific sector who: (i) will be employed for a highly qualified position of one year minimum in Luxembourg; (ii) will earn at least 1.5 times the average gross salary in Luxembourg (certain professions have a lower minimum salary requirement of 1.2 times the average gross annual salary); and (iii) can provide proof of having of the requisite professional qualifications to carry out the activities indicated in the employment contract, may request an EU Blue Card work and residence permit.

Before entering Luxembourg

The position must be declared with the ADEM, but will not be subject to the local market test.

Temporary residence certificate

The highly qualified employee must submit a temporary residence application to the Luxembourg Immigration Directorate. The application must be submitted and approved before entering the country.

The application for a temporary residence certificate must contain, in particular, a police record, a copy of an employment contract for a highly qualified position with a minimum of a one-year duration and a minimum salary of at least 1.2 or 1.5 times the Luxembourg gross annual average, and certified copies of the applicant's diploma's or professional qualifications.

After entering Luxembourg

The third-country national must fulfill the three conditions detailed above in "Third-country employee" with no special status:

- declaration of arrival;
- medical check; and
- application for an EU Blue Card residence and work permit.

The EU Blue Card is valid for a period of two years, or for the duration of the employment contract plus three months, and may be renewed upon request if all requirements are satisfied. The EU Blue Card provides the highly qualified employee with limited access to the employment market for a period of two years. After two years, the highly qualified worker benefits from equal treatment to Luxembourg nationals as regards highly qualified employment (with certain exceptions).

Training

Luxembourg law differentiates between paid and unpaid training and the immigration requirements differ accordingly. Unremunerated training is generally defined as the obligatory professional training

provided by a educational institution or company in Luxembourg in the context of a training course or continuing educational scheme organized and taught by a higher educational institution. The training must be of an educational nature and may not in any case be considered as employment. Intra-group training conducted within companies of the same group is not considered as being an occupation equal to employment and is therefore treated as unremunerated training.

Remunerated training is, on the other hand, considered as equivalent to employment.

Other Comments

After five years of continuous and lawful stay on Luxembourg, third-country nationals may apply to obtain long-term residence status ("*Carte de resident*"), if they can prove that they have a regular business activity in Luxembourg (e.g., as corporate executive, regular employee or otherwise) from which they derive stable, regular and sufficient income to support the applicant and any family members. The long-term residence permit is valid for a period of five years and is renewable.

Malaysia

As the domestic economy continues to enjoy foreign direct investments, notwithstanding the current economic climate and the continued requirement for foreign expertise in Malaysia, Malaysian immigration laws provide a range of visas and passes to non-Malaysians to enter and/or remain in Malaysia for business purposes.

Key Government Agencies

While certain government bodies have the authority to approve the employment of non-Malaysians, the Malaysian Immigration Department processes all applications for, and is the issuing body of, all immigration passes and visas. It also enforces immigration laws and policies in Malaysia together with the Royal Malaysian Police Force. Visas are issued by the Malaysian Immigration Department at all points of entry into Malaysia.

Depending on nationality, it may be necessary to obtain a pre-entry visa. Where pre-entry visas are not strictly required, it is nevertheless possible to apply for such visas, which would permit a longer duration of stay in Malaysia. Applications from abroad for pre-entry visas may be sent to a Malaysian embassy/consulate.

Current Trends

Malaysia has always welcomed skilled foreign nationals. The Malaysian government recognizes foreign expertise as instrumental in achieving the goal of increasing the overall income for the population. The Malaysian government has also continued to implement steps to reduce Malaysia's dependency on blue collar foreign employees. While this will largely affect less skilled workers, employers may need stronger justification for bringing foreign nationals into Malaysia, as a whole, in the nearer term. It is expected that this may affect certain industries more than others.

Generally, the Malaysian Immigration Department has not unreasonably withheld approvals for skilled foreign employees who will assume managerial, technical, or executive posts in Malaysia. A higher success rate in obtaining immigration passes may be seen in

certain industries or fields, such as oil and gas, science and medicine, information technology, and aerospace.

However, with a goal of preserving more job opportunities for Malaysians, the Malaysian Immigration Department is becoming more stringent in respect of approving the immigration passes of foreign nationals for employment in the country. The Malaysian government is also looking into various means to encourage skilled Malaysians who are currently working abroad to return.

In early 2014, the Malaysian Immigration Department implemented a new online system for the application of work permits in Malaysia. The system is managed by the Expatriate Services Division ("ESD") of the Malaysian Immigration Department and the application for work permits is now a two-step process: a one-off registration of the applicant company with the ESD and, upon approval of the registration, an online application for the work permits for foreign nationals. The registration process with the ESD is often lengthy, due to the Malaysian Immigration Department's queries, as well as its requests for letters of approval, letters of support and letters of no objection from other government agencies (the requirements appear to be more stringent now than under the previous regime).

Given the volume of applications received by the ESD, applications for work permits in Malaysia in the last two years have experienced delays.

Business Travel

Social Visit Pass

For a short stay in Malaysia for social or business purposes (i.e., other than for employment), a Social Visit Pass may be obtained at the point of entry into Malaysia. The validity period of the Social Visit Pass varies, depending on the nationality of the traveler. Further, depending on the nationality, a pre-entry visa issued from a Malaysian embassy may be required.

The Social Visit Pass is generally for the purposes of social visits. However, as a matter of policy and practice (and not law), a person who has been issued the Social Visit Pass is permitted to carry out the following activities (which are generally preliminary in nature) while in Malaysia:

- attending meetings;
- attending business discussions;
- inspecting a factory;
- auditing a company's accounts;
- signing agreements;
- conducting surveys 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 or to undertake any activities which are outside the scope of the above permitted activities.

As the Social Visit Pass permits its holder to remain in Malaysia for a limited period, 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.

Employment Assignments

Employment Pass

There are generally three types of employment pass. An Employment Pass (Category I) 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 Malaysian representative office), and is generally valid for two years. An Employment Pass (Category II) may be obtained where the foreign national is to be employed by a Malaysian entity for a period of less than 24 months. An Employment Pass (Category III) is for foreign nationals whose employment contract with the Malaysian employer is 12 months or less.

The holder of Employment Pass (Category I) or (Category II) must earn a salary of at least MYR 5,000 while the holder of Employment Pass (Category III) must earn a salary of MYR 2,500 to MYR 4,999.

An Employment Pass will allow the holder to engage in a full range of employment activities. Unless the applicant is in the information technology (IT) sector, the candidate needs to be at least 27 years old.

Application for an Employment Pass should be made at least three months prior to the arrival of the foreign employee. It is common, although not always advisable, for a foreign national to enter Malaysia 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 for the foreign national prior to the commencement of his employment in Malaysia. In such circumstances, pending the issuance of the Employment Pass, the individual is not permitted to exercise employment in Malaysia but he will be entitled to carry out the permissible business activities under the Social Visit Pass.

A limited number of Employment Passes may be granted to foreign nationals employed by a Malaysian subsidiary. Generally, the Malaysian Immigration Department is less willing to grant Employment Passes to foreign employees of a branch of a foreign company, except with a letter of support from a Ministry or government body, and this usually applies where the branch is involved in a government project.

Generally, once the registration with the ESD is approved, the applicant can proceed to apply to the Malaysian Immigration Department for the issuance of the Employment Pass.

However, note that for certain industries, separate government agencies have been authorized to approve the employment of expatriates. In such circumstances, the applicant does not need to register with the ESD and the application for the Employment Pass should instead be sent to these appointed agencies:

- manufacturing and its related services sectors, regional office, operational headquarters and international procurement center – Malaysian Investment Development Authority;
- information technology sector, specifically companies that have been awarded MSC status – Multimedia Development Corporation Sdn Bhd;
- financial, insurance and banking sectors – Central Bank of Malaysia;
- securities and futures market – Securities Commission; and
- health and education sectors – Public Service Department of Malaysia.

Given the delays in the online application system with the ESD, applications to the above agencies may prove to be more expedient. However, additional sector-specific guidelines and requirements may be imposed by the relevant approving agencies.

After the Employment Pass is approved by the relevant agency, the passport of the expatriate needs to be submitted to the Malaysian Immigration Department for the endorsement of the Employment Pass.

The Employment Pass is specific to the employer for which the pass has been approved. If the holder changes employers, the existing Employment Pass will need to be shortened and the new employer will have to apply for a new Employment Pass.

An application for renewal before the expiry of an existing Employment Pass may be submitted but there is no guarantee of approval.

Reference/Journey Performed Visa

All non-Malaysians (save for holders of passports of Commonwealth countries) who are entering Malaysia for the purposes of employment are required to obtain a Reference Visa prior to entry into Malaysia. The Reference Visa can be collected from a Malaysian consulate/mission in any country once the issuance of the Employment Pass is approved by the Malaysian Immigration Department.

Note that, in practice, if the expatriate is in Malaysia at the time of submission of the application for the issuance of the Employment Pass, the Malaysian Immigration Department may issue Journey Performed Visas to the expatriate (save for holders of passports from restricted countries such as India, China, Bangladesh, Indonesia and the Philippines). In such circumstances, the Journey Performed Visas will be issued together with the Employment Pass and the Reference Visa will not be required.

Training

Visit Pass (Professional)

Non-Malaysian employers who wish to second their non-Malaysian employee to Malaysia on a temporary basis should arrange for the employee to be issued with the Visit Pass (Professional).

A Visit Pass (Professional) allows its holder to engage in a professional occupation or work in Malaysia on a secondment basis;

there must be no employee-employer relationship with the local sponsor (the Malaysian entity to which the employee is seconded). Normally, a Visit Pass (Professional) is granted only for a period of three to six months, but it may be further extended. The aggregate validity period of the original Visit Pass (Professional) and any extension to the same must not exceed 11 months.

An application to the Malaysian Inland Revenue Board for the registration of the intended holder of a Visit Pass (Professional) must be submitted at the same time as the application to the Malaysian Immigration Department for the Visit Pass (Professional).

In the application for a Visit Pass (Professional) submitted by the local sponsor, the local sponsor must disclose the activities that the secondee intends to conduct in Malaysia. The local sponsor must also agree to be responsible for the maintenance and repatriation of the Visit Pass (Professional) holder, 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 only be made with the written consent of the Director-General of Immigration.

In order to apply for a Visit Pass (Professional), the local sponsor must first be registered with the ESD. Upon approval of the registration, the online application for the Visit Pass (Professional) can be submitted.

Other Comments

Dependent Pass

Many holders of the Employment Pass wish to bring their families to Malaysia. Dependent passes are available for the spouse and children (below 18 years of age) of the expatriate. Dependent passes are typically applied for once the application for the issuance of the Employment Pass has been approved by the Malaysian Immigration Department.

Residence Pass

The Residence 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 ten-year renewable pass for highly qualified foreign nationals to continue to reside and work in Malaysia. Unlike the Employment Pass, the RP is specific to the RP holder, and not to the employer. Accordingly, an RP holder has the flexibility to change employers without having to renew the pass.

Additionally, the spouse and dependents (under 18 years old) of the RP holder are also eligible for the RPs. The spouse who holds an RP 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/Master's Degree or Diploma in any discipline from a recognized university or a professional/competency certificate from a recognized professional institute;
- possess a minimum of five years of work experience;
- earn a gross taxable income of MYR 144,000 per annum; and
- have an income tax file number in Malaysia and have paid income taxes in Malaysia for a minimum of two years.

Malaysia My Second Home Program

For foreign nationals who are not employed in Malaysia and yet would like to reside in Malaysia, the Malaysian government has introduced the Malaysia My Second Home Program ("MM2H").

Under this program, qualified MM2H participants aged 50 and above with specialized skills and expertise that are required in the critical sectors of the economy are allowed to work not more than 20 hours per week. Additionally, MM2H participants are allowed to invest and actively participate in business, subject to existing government policies, regulations, and guidelines, which are in force for the relevant sectors. Note that this program does not guarantee permanent resident status.

There are financial requirements, but participants are also provided with various incentives during their stay in Malaysia under the program. These include, among others, acquisition of residential units, car purchase and education.

The Social Visit Pass issued to foreign nationals under the MM2H is valid for ten years, subject to the validity of the passport, with the possibility of an extension for another ten years. The foreign nationals under this program will also be issued multiple-entry visas.

Further Information

Our *Immigration to Malaysia Manual* provides further information relating to residing in Malaysia and citizenship.

Mexico

This chapter outlines how foreign nationals can remain in the Mexican territory in accordance with the proper immigration procedures and receive authorization to perform activities, remunerated or not, in Mexico. Set out below, for the benefit of companies and foreign nationals, is a brief outline of the different types of visas and immigration documents applying in Mexico, and the conditions of those visas and documents.

The Immigration Law ("IL") determines the different conditions under which visas and immigration documents may be authorized. The Regulations ("ILR") and Guidelines ("ILG") determine the processes that need to be followed in order to obtain the various types of visas and documents. The IL, ILR and ILG now require anticipated planning for the issuance of visa and immigration documents since changes to immigration status 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*"), 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 created ongoing confusion in immigration processes, since they changed the processes completely. Although there is still some confusion as to how these new processes are to be implemented in practice, immigration officers have been forthcoming in responding to companies' and foreign nationals' queries in regard to the same, and processes seem to be faster. However, certain processes, including the Employer Certificate process, are still very slow and confusing.

Business Travel

There is a new business immigration form called the Multiple Immigration Form ("FMM" by its Spanish acronym). This form is used for all visitor visa authorizations.

Visitor Visas

Visitor visas are authorized for activities not 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 authorized stay of up to 180 days per trip. These visas and immigration forms may not be renewed, but may be requested each time a foreign national travels to Mexico.

Nationals of the following countries must apply for a visitor visa from a Mexican embassy or consulate abroad prior to entering Mexico:

Afghanistan	Albania	Algeria	Angola	Antigua and Barbuda	Armenia	Azerbaijan
Bahrain	Bangladesh	Belarus	Benin	Bhutan	Bolivia	Bosnia and Herzegovina
Botswana	Brunei	Burkina Faso	Burundi	Cambodia	Cameroon	Cape Verde

Central African Republic	Chad	China	Comoros	Congo	Cote d'Ivoire	Cuba
Dem. Rep. of the Congo (Zaire)	Djibouti	Dominica	Dominican Republic	Ecuador	Egypt	El Salvador
Equatorial Guinea	Eritrea	Ethiopia	Fiji	Gabon	Gambia	Georgia
Ghana	Grenada	Guatemala	Guinea	Guinea-Bissau	Guyana	Haiti
Honduras	India	Indonesia	Iraq	Iran	Jordan	Kazakhstan
Kenya	Kiribati	Kuwait	Kyrgyzstan	Laos	Lebanon	Lesotho
Liberia	Libya	Macedonia	Madagascar	Malawi	Maldives	Mali
Mauritania	Mauritius	Moldova	Mongolia	Montenegro	Morocco	Mozambique
Myanmar	Namibia	Nauru	Nepal	Nicaragua	Niger	Nigeria
North Korea	Oman	Pakistan	Palestine	Papua New Guinea	Philippines	Qatar
Rwanda	Russian Federation	Sahrawi Arab Democratic Republic	Saint Kitts and Nevis	Saint Vincent and the Grenadines	Saint Lucia	Samoa
São Tomes and Príncipe	Saudi Arabia	Senegal	Serbia	Seychelles Islands	Sierra Leone	Solomon Islands
Somalia	South Africa	Sri Lanka	Sudan	Suriname	Swaziland	Syria
Taiwan	Tajikistan	Tanzania	Thailand	Timor-Leste	Togo	Tonga
Tunisia	Turkmenistan	Turkey	Tuvalu	Uganda	Ukraine	United Arab Emirates
United Arab Republic	Uzbekistan	Vanuatu	Vatican City	Vietnam	Yemen	Zambia
Zimbabwe						

Nationals included in the list that hold a valid visa for the US do not require a Mexican visa prior to travel to Mexico and may be granted an FMM at the port of entry into Mexico. Nationals of countries not on the list may also be granted an FMM at the port of entry in Mexico, regardless of having a Mexican visa prior to travel or not.

Documents supporting a foreign national's trip into Mexico may be requested by the immigration authorities (i.e., invitation letter, support letter, proof of sufficient funds, return airplane tickets, among others).

These visas will authorize any activity not remunerated in Mexico, including work, technical activities, and training, as long as the conditions are met. Correctly indicating the intended activity to be performed while in Mexico at the port of entry is essential so that the foreign nationals experience no immigration-based legal issues while in Mexico.

Employment Assignments

Visitor Visas

Visitor visas may also be requested for work assignments of less than 180 days in Mexico. This authorization is requested only when a Mexican company or establishment will pay the foreign national's salary or remuneration. These authorizations must first be requested at the INM, which will send the proper authorization to the Mexican consulate abroad ("MC"). The foreign national will receive a visitor visa at the MC, and will then travel to Mexico where he will receive an FMM, which will authorize him to receive remuneration in Mexico for up to 180 days.

This visa and immigration document may not be renewed and the foreign national must leave Mexico after the authorization has expired.

Visitor visas for remunerated activities in Mexico are seldom requested since foreign nationals usually have problems in receiving social security and tax ID numbers with these immigration forms.

Temporary Residents

Temporary residents are allowed to stay in Mexico for up to four years. These visas and immigration documents also authorize multiple entries and exits into Mexico. Temporary residents are allowed to

enter to perform activities not remunerated from a source in Mexico, as well as activities remunerated from a source in Mexico. When the foreign nationals will perform activities not remunerated from a source in Mexico, they must request a visa for a temporary resident at any MC. If, however, they will perform activities remunerated from a source in Mexico, the authorization must be requested at the INM first, which will send the authorization to the MC abroad so that the MC may issue a visa.

After 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, and a new one needs to be requested.

Foreign nationals are authorized to remain in Mexico for the entirety of their first year in Mexico as a temporary resident and may request renewals for up to three additional years. After the total authorized time of four years is granted, the foreign national may not extend his temporary resident visa and must either leave Mexico or seek permanent resident status.

Foreign nationals that are not authorized to receive remuneration in Mexico may request a work authorization while in Mexico in order to receive salary or remuneration from a Mexican company or establishment.

Permanent Residents

Permanent residents may remain in the country indefinitely and are authorized to work in Mexico. Permanent resident status may be obtained by having stayed in Mexico for four consecutive years, by being married to a Mexican national and remaining for two years in the country, or by having Mexican children.

Permanent resident status may also be requested by a special points system that has yet to be published. There is no timeline for these new rules to be implemented.

Other Comments

Mexican Entities Receiving Services from Foreign Employees

Federal Labor Law protects the economic development of the country and Mexican workers. For that purpose, all companies or businesses are obligated to ensure that at least 90 percent of their workforce consists of Mexican nationals.

In the technical and professional categories, the employees must be Mexican citizens, with exceptions when there are no specialized employees in that field; in such case, the employer may temporarily hire foreign national employees, provided that they do not exceed 10 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, general administrators or general directors.

The IM also states that there will be a visa quota for specific activities. This has not yet been implemented, and so it is still unclear how this will impact immigration into Mexico.

Employer Certificate

A Mexican company or institution that has foreign nationals rendering services must request the INM to open an "Employer Certificate" which shall be incorporated with the information of the company or institution and the Mexican and foreign employees working for it. This information must be updated periodically. Local INM offices will request that an Employer Certificate be incorporated as a prerequisite in order to process authorizations for foreign nationals.

Notifications

Foreign nationals must notify the INM of changes in domicile, marital status, nationality, and place of work. These changes must be notified within 90 days; otherwise, foreign nationals may be subject to administrative sanctions, may have to regularize their situation in Mexico, or may even be deported.

Temporary Permits to Leave and Return to Mexico

Foreign nationals with pending immigration processes may request a temporary permit to leave and return to Mexico in order to travel internationally. This permit may be requested at the HSM or at a port of entry, in case of urgent travel.

Foreign nationals that are processing a regularization in Mexico who were discovered to have an irregular document in Mexico (i.e., did not notify changes, did not renew in time, or did not leave Mexico in time) may not request a temporary permit to leave and return to Mexico and may only leave Mexico by cancelling their immigration process.

Further Information

Baker & McKenzie's *Mexico Immigration Manual* provides further information about Mexican business visas, including a broader range of non-immigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Kingdom of The Netherlands

Under Dutch immigration law, there are various procedures available in order to obtain the required work and residence permits for foreign nationals. These procedures range from temporary business visas to permanent residence permits. Often more than one procedure is worth consideration. Requirements and processing times vary by procedure.

Key Government Agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service ("*Immigratie- en Naturalisatiedienst*" or "IND") is part of the Ministry of Justice and, in general, is responsible for the decisions on visa applications and residence permit applications.

The Public Employment Service ("*UWV WERKbedrijf*") handles work permit applications, with investigations and enforcement actions involving employers and foreign nationals being the particular focus of the Labor Inspectorate.

Business Travel

Not Exceeding Three Months

Foreign nationals coming to the Netherlands from most countries are generally required to have a tourist or a business visa to enter the Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required, since the countries qualifying for visa waivers can change.

The visa is issued for a maximum period of 90 days, and is not extendable. Furthermore the holder of the visa may remain no longer than 90 days in a 180-day period within the Schengen Area, the Member States of which include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands,

Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and Switzerland.

Visa Waiver

Passport holders of the following countries do not require a visa for a stay of 90 days or less: Andorra, Argentina, Austria, Australia, Belgium, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania, Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Vatican City and Venezuela.

The above list of countries also includes European countries. Nationals of EU/European Economic Area ("EEA") Member States and Switzerland do not require a visa in general, regardless of the duration of stay.

Temporary Stay Visa (MVV)

A foreign national intending to remain in the Netherlands for more than three months must apply for a residence permit. The conditions for obtaining a residence permit depend entirely on the purpose of coming to the Netherlands. A foreign national wishing to work in the Netherlands must, usually, obtain three types of documents:

- a temporary residence permit ("*Machtiging tot Voorlopig Verblijf*" or "MVV"), which enables the holder to enter the Netherlands. An MVV is not required for citizens of the EEA, the European Union and Switzerland, Japan, Canada, Australia, the United States, Monaco and New Zealand. Foreign nationals in 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

- a work permit, which under certain conditions, enables the holder to work in the Netherlands.

The individual can apply for the MVV in the country of residence. The employer in the Netherlands, or the person with whom the foreign national will be staying in the Netherlands, can file the application in the Netherlands.

Depending on the purposes of stay, obtaining an MVV can take between two weeks and six months. The employer in the Netherlands or the person with whom the foreign national will be staying while in the Netherlands can follow a single procedure to apply for an MVV and a residence permit for the foreign national.

Residence Permit

A foreign national who intends to stay in the Netherlands for more than three months is required to obtain a residence permit ("*verblijfsvergunning*"). A residence permit will not be granted if the foreign national is first required to obtain an MVV.

The residence permit is generally issued for a maximum of one year or – in case of residence for labor purposes – for the duration of employment in the Netherlands, up to a maximum of five years. If no changes of circumstances have occurred, it is extendible. 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.

Employment Assignments

An employer who wishes to recruit a foreign national from outside the EU or EEA usually needs to apply for a work permit for that individual. Note that the Netherlands has temporarily – until July 1, 2020 – opted out of the full mobility of the workforce agreement in

respect of the new EU Member State, Croatia, which means that Croatian nationals still require work permits.

There are different procedures for work permit applications. The applicable procedure depends entirely on the applicant's specific circumstances, the nature of the current employer abroad, and the nature of the company offering the work in the Netherlands. Under certain circumstances a combined work and residence permit ("GVVA") can be applied for, via the IND (which in turn liaises with the UWV regarding the conditions for work authorization).

Generally, the Dutch employer must prove that the labor market has been scanned for workers who have priority (workers from the Netherlands and the EEA are prioritized). In this respect, the employer must prove that the vacancy has been reported to the UWV and, usually, to the European Employment Service ("EURES") at least five weeks prior to the work permit application. Furthermore, the employer is required to advertise the job in a Dutch national newspaper, a professional journal, and must have engaged a recruitment office. The employer even has to prove that candidates who were registered at the UWV's employment office were approached for the job and indicate the results thereof (i.e., the reason for not hiring a registered candidate). If a company is unsure whether it must report the vacancy, the company is advised to consult an attorney. 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.

Work permits that are granted based on the state of the Dutch and European job markets will not be issued for more than one year, meaning that employers will need to renew the work permit each year. The work permit will only be renewed if there are no alternative personnel taking priority in the Dutch and European labor market.

The application procedures for different types of employment require extensive preparation. This is not only necessary for the application as described above, but also for those who want to stay in the

Netherlands as self-employed individuals, and for those who want to work in a university, in the field of sports, among others.

The different types of procedures for which a recruitment period as stated above is not necessary are mentioned in the below paragraphs. It is not possible to apply for a combined work and residence permit ("GVVA") for these categories. Consequently, separate permit application procedures must be followed, unless a separate work permit is not required (e.g., for a Knowledge Migrant).

Intra-Company Transfer

Multinational companies seeking to temporarily transfer foreign nationals to the Netherlands can do so under an intra-company transfer, if:

- the employee will receive a gross salary of at least EUR 4,240.00 per month (EUR 4,579.02, including 8 percent holiday allowance);
- the multinational company has affiliates in at least two different countries;
- the individual is in possession of (at least) a Bachelor's Degree; and
- the multinational company has a worldwide turnover of at least EUR 50 million.

The work permit application generally takes approximately five weeks and will be valid for a maximum of three years.

The residence permit will be granted within approximately one month after the approval of the work permit. The residence permit can be extended as long as all the conditions (intra-company transfer) are still met and work privileges under a work permit continue in place.

Customer Producer Relationship

The "customer producer relationship" allows foreign nationals to work in the Netherlands on a work permit if:

- there is not an actual employer in the Netherlands, but only a customer;
- the individual will be sent to the Netherlands in order to supply/adapt/install goods on a contractual basis as well as to provide instructions on the use of the goods;
- the individual has been employed for at least one year;
- the salary of the individual is less than the value of the supplied goods; and
- the supplied goods must be produced primarily by the employee's company.

The work permit application will take approximately five weeks and the work permit will be valid for a maximum of one year. The residence permit will be granted within approximately one month after the approval of the work permit. The residence permit can be extended as long as all the conditions are still met and work privileges under a work permit continue in place.

Permanent residence

As soon as a foreign employee has been in possession of Dutch work and residence privileges for five consecutive years, work in the Netherlands is permitted without having to be in possession of a work permit, provided that the foreign employee obtains a permanent residence permit.

Knowledge Migrant

Skilled and highly educated foreign nationals do not require work permits for employment. 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 a gross monthly salary of at least EUR 4,240 (EUR 4,579.20, including 8 percent holiday allowance) or at least EUR 3,108 (EUR 3,357.72, including holiday allowance) if younger than the age of 30 years.

Employers who want to hire Knowledge Migrants must hold so-called authorized sponsorship with the IND. Authorized sponsors benefit from the IND's assumption that they fulfill all relevant obligations under the Dutch Modern Migration Policy Act. As a result, the IND applies an expedited handling procedure and aims to decide on a permit application within a period of approximately two weeks. Unfortunately, the IND is hardly ever able to meet its two-week target term in practice. Generally, the procedure will take an additional two to four weeks. Employers who do not yet qualify as authorized sponsors should consider waiting an additional two to three months in order to apply for authorized sponsorship first. Provided that the IND grants the request, authorized sponsorship will be granted for an indefinite period.

The residence permit for a Knowledge Migrant provides residence and work privileges in the Netherlands. As indicated above, an additional work permit is not required, unless the foreign national no longer qualifies as a Knowledge Migrant (for example, he no longer meets the salary threshold) or starts work activities for an employer who does not hold authorized sponsorship.

A Knowledge Migrant may receive a residence permit for up to five years, assuming that his passport and employment contract are valid for at least five years. Should this not be the case, then the residence permit will be issued for the shortest validity period mentioned in the employment contract or assignment letter.

The Knowledge Migrant may start working in the Netherlands upon receipt of the residence card or – if they require an MVV entry visa first – upon receipt of the visa with indication that work activities are allowed in anticipation of the residence card. Dependents who accompany the Knowledge Migrant to the Netherlands will not require a work permit to perform work activities in the Netherlands. Upon receipt of their residence cards, they will obtain residence and work privileges similar to those granted to the Knowledge Migrant.

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 of being 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 for self-employed persons are rarely issued.

Although a work permit is not necessary, it is required to obtain a residence permit that provides both residence and work privileges. The residence permit will be issued as long as the company serves an essential Dutch interest. In order to judge this, the Ministry of Economic Affairs has developed a points system based on level of education, experience as an entrepreneur, work experience, the innovative aspects of the business, etc.

Dutch-American Friendship Act

Under the Dutch-American Friendship Act, US citizens are allowed to remain in the Netherlands as self-employed persons without having to serve an essential Dutch interest. To qualify, the US citizen must be coming either to conduct trade and activities related to this trade between the Netherlands and the US or engage in a professional practice in which a considerable amount of money has been invested.

In this context, it should be noted that "professional practice" does not include the "free" professions (i.e., lawyers, dentists, doctors, etc.).

The amount of money that is brought into the company is one of the determining factors as to whether to grant the residence permit. The following is applicable:

- General partnership ("*vennootschap onder firma*") – at least 25 percent of the firm capital, with a minimum of EUR 4,500;
- Limited partnership ("*vennootschap onder commandite*") – for the managing partner, the same as the general partnership is applicable. Since the limited partner cannot be classified as a self-employed person under Dutch immigration law, limited partners cannot qualify;
- Private company with limited liability ("*Besloten vennootschap*") – at least 25 percent of the firm capital;
- Corporation ("*Naamloze venootschap*") – at least 25 percent of the placed capital, amounting to a minimum of EUR 11,250; and
- Sole Proprietor – a minimum investment of EUR 4,500.

Training

A trainee is a foreign national who will receive on-the-job training for a maximum period of 24 weeks. The purpose is to allow the individual to receive training and experience abroad that is required for their function back in his home country.

A work permit application must be filed with the UWV. A detailed training program must be presented as well as declarations from the employer and the Dutch company that the trainee will not fulfill a vacancy in the Netherlands. Compensation for the training is required, on the basis of conditions in line with the Dutch market.

The foreign trainee will require a residence permit, unless he has a Visa Waiver nationality and will not reside in the Schengen Area for more than 90 days within 180 days.

Post-Entry Procedures

All residents in the Netherlands (who stay for longer than four months) must register accordingly – in person – with the municipality where they take residence. The process should be started within five days upon arrival in the Netherlands. Often an appointment with City Hall is required.

The recorded information will remain stored in the Municipal Personal Records Database. In case of changes to the individual's information, the registration must be updated (e.g., in case of relocation to another municipality).

Residents who leave the Netherlands for a period of longer than eight months must deregister ultimately within five days of the date of departure.

Other Comments

In addition to the employment-based permits, immigration to the Netherlands is possible through family-based immigrant permits or exchange programs.

Immigrants to the Netherlands are often interested in becoming Dutch citizens. In principle, this is possible after they have been in possession of a Dutch residence permit for five consecutive years. It is advised to consult an attorney to determine whether expedited procedures are available.

New Zealand

For any migrant to gain a work visa or residence in this country justification must be proven by applicants either being international transfers of key people and skills or for gaining a position within the skill shortages in order that it can be seen that the vacant position is not disadvantaging a New Zealand resident or citizen.

The skill shortage lists in New Zealand are updated every six months.

There is always a shortage in the education, medical, engineering, IT, and all trade professions. The continued trade skilled shortage with the rebuilding of Christchurch resulting from the earthquakes together with building strengthening across the country has further increased demand for qualified people. Central and Local Government decisions have now been finalized along with the insurance industry making settlement in both commercial and residential building.

New Zealand is a country where small businesses are the life blood of the economy and approximately 69 percent of these businesses will be looking for new owners over the next ten years as the New Zealand population ages. This creates good opportunities for entrepreneurs and investors.

International employers who have a company or subsidiary registered in New Zealand 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 New Zealand.

Investors are very welcome with a number of different available visa categories. Some of these categories lead directly to residence from inception.

*Last edited January 2015

Key Government Agencies

Immigration New Zealand under the Department of Labor is the government department responsible for migration and entry into New Zealand. 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: There is a lack of consistency of information provided by Immigration New Zealand between case officers and branches. Care needs to be taken in choosing the right path to avoid rejections.

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 qualifications 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 six to 12 months or longer.

The number of people approved for residence in the 2012/13 financial year was approximately 40,000 compared to 47,749 for the previous year, and this does not meet the government's expectation of 45,000 - 50,000 pa. of the total for the period 60 percent of these were

*Last edited January 2015

residence gained through the business/skilled streams and the balance of 30 percent through family unification and 10 percent humanitarian.

The UK was the largest source country of Skilled Migrants followed by the Philippines, India, and China. The Uncapped Family Sponsored Streams showed China was the largest source country of approvals followed by the UK and India.

Work approval numbers in the financial year to date has increased since the last year.

A considerable number of New Zealanders have returned from their careers overseas, which has resulted in a reversal of a net migration loss to a net migration gain of some 20 percent in the last financial year. This has placed a huge burden of the housing and infrastructure in the country.

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 list helps 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 list helps potential migrants determine which visa category is most applicable, based on experience and skills relevant to particular industries and regions.

*Last edited January 2015

Business Travel

New Zealand does not have a business travel visa, but a reciprocal agreement with a number of countries which allows for visa free travel to New Zealand. Business visitors need to ensure that they are here for genuine business purposes and not for employment.

- Business visitors who are not considered to be undertaking employment may be granted a visitor visa, provided that they intend to stay in New Zealand for no longer than three months in any one year.

- Business visitors who are not considered to be undertaking employment include:

    - Representatives on official trade missions recognized by the New Zealand Government;

    - 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;

    - 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; and

    - 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.

- 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.

*Last edited January 2015

Note: Business visitor instructions reflect New Zealand's international trade commitments.

People from some countries do not need a visa to enter New Zealand, however they can only attend meetings or visit to conduct an inspection 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
Slovakia	Slovenia	South Africa
Spain	Sweden	Switzerland
United Arab Emirates	United States	Uruguay
Vatican City		

*Last edited January 2015

Employment Assignments

Principal applicants coming to New Zealand for work reasons must designate a New Zealand employer who is responsible for them. The New Zealand 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 New Zealand.

Limited Purpose

A foreign national who does not meet all the requirements for a specific purpose can, at the indulgence of Immigration New Zealand, be issued a Limited Purpose visa. The limited time would be for 12 months or less. The individual would have to leave the country on conclusion of the specified period without eligibility to extend.

Specific Purpose

A foreign national 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 that he is being brought in for or changed to another visa once he is in New Zealand. This commonly applies to inter-company transfers or specific contracts 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 the following must be proven:

- There is no New Zealand resident or citizen workers available before an employer is allowed to recruit an overseas worker; and

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- The terms and conditions of employment, including the paid hours of work, meet those of the New Zealand market and New Zealand 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.

If you are highly skilled and qualified, meeting the points threshold, the opportunity exists with a Work to Residence visa, to come into New Zealand, find a job relevant to qualifications, work three months for the employer, and be granted New Zealand 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; (ii) the accredited employer having direct responsibility for those employees and their work output; and (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 sports 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 sports.

*Last edited January 2015

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")

This policy is currently under review and currently closed.

Entrepreneur Plus

Originating from the long-term business visa, proving you have successfully established a business in New Zealand, investing at least NZD 0.5 million in the business, working in the business, and creating three full time positions for New Zealand residents or citizens means that 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 NZD 10 million for three years, spending 20 percent of your time in each year or 44 days in New Zealand.

*Last edited January 2015

Investor 2

Prove you have a minimum of three years business experience, provide evidence of NZD 1.5 million to invest over a four-year period, plan on spending 146 days or more of each calendar year in New Zealand, be under the age of 66 years.

Temporary Retirement Category

Visitors who want to stay longer in New Zealand can apply for a two-year multiple entry visitor visa. This approach is for applicants ages 66 and over. They are 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 visas and permits. 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.

In a recent study, the six main reasons given for migrating to New Zealand were:

- Investment opportunities;
- Relaxed pace of life;
- Climate or clean, green environment;
- A better future for children;
- Employment opportunity; and
- Friendly people.

*Last edited January 2015

The New Zealand Government 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. This new law is defined in the Immigration Advisers Licensing Act ("IALA") which is managed by the Immigration Advisers Authority ("IAA").

Similar to the UK 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 vacation in New Zealand. Applicants must be under the age of 30.

All migrants entering New Zealand are subject to health and character checks.

An offense occurs should an individual be employed in New Zealand beyond the period of the visa or should the foreign national change employers or job or location without applying for a variation of conditions.

New Zealand 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.

*Last edited January 2015

Further Information

Baker & McKenzie does not have an office in New Zealand, but is able to coordinate global mobility services 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.

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The People's Republic of China

Having become the world's second largest economy in 2010, the People's Republic of China ("PRC") remains the number one destination for multinational companies seeking investment opportunities in the Chinese market. Like many other countries in the world, its immigration policy strives to achieve the delicate balance of maintaining border sovereignty and an adequate employment rate for local residents, and at the same time facilitate trade and commerce.

To encourage economic growth and firmly establish its role in the global economy, the PRC has comprehensive laws and regulations governing foreign nationals coming to do business in the country (see "Current Trends" below). While the laws are generally national in scope, practice and procedure are often dictated by local government offices, giving rise to significant variation within the country.

The Special Administrative Regions (e.g., Hong Kong and Macau) have retained their own immigration systems. Hong Kong is discussed in a separate chapter.

Key Government Agencies

The Ministry of Foreign Affairs operates the PRC diplomatic missions, consular posts, and other agencies abroad, which are responsible for processing visa applications.

The local labor bureaus, which are overseen by 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, Macau and Taiwan ("HMT") residents, and overseas Chinese (i.e., PRC nationals with permanent residency in foreign countries).

Foreign nationals with specific qualifications or those who will engage in certain types of activities may obtain authorization to work in the PRC from designated government agencies in lieu of employment permits. The State Administration Bureau of Foreign Experts Affairs and its local counterparts are responsible for

processing foreign expert certificates for qualified foreign nationals; the Ministry of Culture and its local counterparts are responsible for the approval of foreign nationals who will engage in commercial performances in the PRC; China National Offshore Oil Corporation is responsible for the approval of foreign nationals who will engage in Offshore Petroleum Operations in the PRC.

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 and foreign nationals' residence permit applications domestically. The PSB also is responsible for enforcing applicable laws and regulations and carrying out penalties for non-compliance.

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 came into effect on July 1, 2013, and was shortly followed by the implementation of Regulations on Exit-Entry Administration for Foreign Nationals on September 1, 2013. These two main pieces of legislation superseded existing entry and exit control laws.

In November 2014, the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs, the Ministry of Public Security and the Ministry of Culture jointly distributed the Relevant Handling Procedures for Foreigners Entering China for the Accomplishment of Short-term Work Assignments (for Trial Implementation) ("trial procedures"). The trial procedures came into effect on January 1, 2015, providing clarity on the use of available visa categories for various short-term activities in the PRC.

The new legislation is designed to curb illegal employment while attracting only highly skilled individuals to support the Chinese economy. While the legislation on the national level has been enacted, there remain some gaps in the legislation that are filled at a local level, based on local interpretation.

Local rules and policies governing foreign nationals' employment and residence permits also vary by city and can change on a regular basis. For example, in Beijing and certain cities in the Guangdong Province, the PSB regularly audits new residence permit applications. The audits may include multiple requests as the PSB sees fit, from an on-site inspection to a request for proof of the sponsor's proper registration to an in-person interview with the foreign national.

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. These documentation differences can affect the overall processing time for a foreign national to complete the work authorization process in the PRC.

The PRC is encouraging all people to start their own businesses and to make innovations so as to create more jobs and improve upward social mobility. In some cities, such as Shanghai and Beijing, local PSBs have implemented new exit-entry related policies to attract foreign talent to live and do business in the PRC, reflecting the country's new emphasis on knowledge and creativity. If a foreign national is certified by the local relevant talent-in-charge authorities to be a "Foreign High-level Talent," he may obtain a long-term residence permit and enjoy a fast route to apply for a PRC permanent residence permit. It is anticipated that additional tier 2 and tier 3 cities in the PRC may also implement similar policies to support the local establishment of innovation centers having national and global influence in the near future.

This guidance is based on the existing legislation and current practices which are subject to change as further rules are introduced.

Business Travel

Visa Waiver

Currently, nationals of Brunei, Japan and Singapore may enter and stay in the PRC for a period of up to 15 days without applying for a visa for the purpose of tourism, business, visiting relatives or friends, or transit.

72 hours/144 hours visa-free transit

Since September 1, 2013, a number of international entry points into the PRC (including to Beijing, Chengdu, Chongqing, Guangzhou, Shanghai, Tianjin and Xiamen) have adopted a visa-free policy for certain passport holders to transit for up to 72 hours (three days). Since January 30, 2016, all international entry points to Shanghai and air entry points to Nanjing and Hangzhou have increased the transit period to 144 hours (six days). Importantly, the transit requirement means the foreign national must depart the PRC for a third country and may not depart from and return to the same country.

Business Visa

Foreign nationals who travel to the PRC for commercial and trade activities should apply for an M business visa. Visa applications are submitted to PRC consular posts, many of which require an invitation letter issued by the relevant business partner or "inviting company" in China. The most common types of M visas are as follows.

Type (or number) of Entry	Visa Validity	Duration of Stay Per Visit
Single	30 or 90 days	30 or 90 days
Double	90 days	30 days
Multiple	180 or 365 days	30 days

Note: Currently, US and Canadian citizens may be granted multiple-entry M visas valid for ten years based on the countries' reciprocal visa validity agreement with the PRC. Similarly, starting from January 11, 2016, British citizens may be granted multiple-entry M visas valid for two years, five years and ten years respectively.

Employment Assignments

In general, foreign nationals who wish to work in the PRC must apply for a Z work visa, regardless of whether they are intra-company transfers or skilled workers. 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. To apply for a Z visa, a foreign national must obtain one of the below-listed documents as well as an Invitation Letter of Duly Authorized Unit (the application for such documents must be sponsored by the PRC host entity (typically, the employer)):

- Alien Employment License;
- Foreign Expert License;
- Representative Certificate, confirming that the foreign national is a registered representative under the representative office of a foreign company;
- Approval Document for taking up commercial performance in China, issued by the local authority responsible for cultural affairs; and
- Letter of Invitation to Foreigners for Offshore Petroleum Operations in China, issued by the China National Offshore Oil Corporation.

Employment License

Foreign nationals who wish to work in the PRC must meet the following conditions:

- be 18 years of age or older and in good health;
- have professional skills and job experience required for the intended employment;
- have no criminal record;
- have a clearly-defined employer; 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 PRC's mandatory retirement age of 60 are, in general, not entertained.

In many cities, a university degree plus a two-year post-graduate degree, as well as 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 of 18 years and over must also complete medical examinations.

It is not necessary for a resident representative office of a foreign enterprise to apply for 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 foreign affairs office, 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), the family members should apply for an S1 visa to enter the PRC. For an S1 visa application, kinship certificates legalized by the relevant PRC consular office must be provided.

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 the PRC to implement agreements between governments or international organizations;

- foreign professional personnel in the areas of education, scientific research, news, publishing, culture, art, health, or sports. The

foreign national should also have a degree higher than a bachelor's degree and more than five years' work experience. For language teachers, a degree higher than a bachelor's degree and more than two years of work 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 work experience;

- foreign representatives of overseas expert organizations or talent agencies; and

- 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.

If the foreign national will be accompanied by family members, the family members should also apply for an S1 visa to enter the PRC.

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).

In Shanghai, a simplified procedure is introduced as part of a series of policies encouraging foreign talent to seek employment in the PRC. If a foreign national is already in the PRC on a business M visa when his Employment License is approved, he may apply for a residence permit directly and then an employment permit without the need to obtain a Z

visa offshore. Whether a foreign national is eligible for the simplified procedure will also be at the discretion of the local PSB.

Training

There is no specific visa designed exclusively for training. Depending on the circumstances, another visa category may be appropriate. It is recommended to seek guidance based on individual circumstances.

Post-Entry Procedures

A Z work visa is single entry and allows a foreign national to enter the PRC within 90 days after visa issuance and stay for up to 30 days to complete post-arrival applications. The accompanying dependents should enter the PRC with an S1 visa, which is also single entry.

Within 15 days of arrival, 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/S1 visas.

Employment permits (Foreign Expert Certificates) and residence permits are employer and location specific. A foreign national typically can only work for the entity shown in his employment permit and should reside in a location 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 (Foreign Expert Certificate) must be de-registered with the relevant authority 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 Macau residents or their mainland travel permit for Taiwan residents.

HMT residents are required to obtain employment permits. In some locations, Chinese nationals with overseas permanent residence status may be required to complete certain registrations for employment verification in China.

Temporary Residence Registration

Foreign nationals, HMT residents and overseas Chinese are required to carry out temporary residence registration at the local police station in the district where they reside within 24 hours after they arrive in the PRC. For most hotel residents, this registration process is carried out by the relevant hotel upon check-in. If they move to a new residence or obtain new visas during their stay in the PRC, they are required to re-register with the local police station.

Peru

Key Government Agencies

The Peruvian Immigration system has two important government agencies in charge of foreign national procedures: the Ministry of Labor and the Peruvian Immigration Office. The Ministry of Labor is responsible for the approval and registry of all foreign employment agreements; while the Peruvian Immigration Office is in charge of evaluating visa applications and issuing work visas.

Business Travel

According to the Peruvian Immigration Law, foreign nationals who should apply for a business visa are those who enter Peru for the purpose of managing legal business operations or similar activities, but who do not intend to take up residence in the country. With this type of visa, foreign nationals are allowed to sign contracts or transactions. However, they are prohibited from preforming remunerated or lucrative activities or from receiving Peruvian-source income, with the exception of directors of companies domiciled in Peru, individuals receiving fees as speakers or international consultants hired under contracts that do not exceed 30 calendar days (continued or accumulated) in a 12-month period.

For many years, immigration regulations have established that the business visa must be requested at the Peruvian consulate of the city in which the foreign national was born or at the Peruvian consulate of the city in which the foreign national has permanent residence. Nevertheless, there have been modifications regarding the obtaining of this type of visa:

- Foreign nationals from Mexico, Colombia and Chile are not required to request – prior to their entry into Peru – a business visa. These foreign nationals can obtain a business visa for a maximum of 183 days simply by submitting their passports to the Peruvian airport immigration officer, and informing such officer expressly that they are coming to Peru for business purposes.

- As of November 2015, all nationals from the European Union Member States of the Schengen Area travelling to Peru for journalism or study-related purposes are no longer required to request – prior to their entry to Peru – a business visa. This exemption is applicable for a maximum stay of 90 days and is valid for a period of six months.

- Furthermore, since February 2016, the Peruvian government extended the above-mentioned exemption to Iceland, Norway and Switzerland (each of which are countries with Schengen Area membership). In addition, the government also extended the exemption to Bulgaria, Croatia, Cyprus, Liechtenstein and Romania.

Employment Assignments

Foreign companies have two alternatives in order to have foreign personnel working in Peru: (i) a working visa; or (ii) execution of an employment agreement.

Working Visa

In order for a foreign national to be authorized to work in Peru, he must:

- execute an employment agreement and have it approved by the Labor Authority; and

- obtain a working visa.

Foreign nationals may only perform remunerated services once the employment contract is approved and the working visa is obtained.

Execution of an Employment Agreement with Foreign Nationals

Employment agreements with foreign nationals are formal documents that shall meet all the requirements stated by Legislative Decree 689 and its regulations, such as:

Restrictions: The number of foreign nationals shall not exceed 20 percent of the total of employees of the company; and their salaries shall not exceed 30 percent of the salaries of its personnel.

The employers may apply exceptions to those limits, among others, in the following cases:

- the foreign national is a high-level professional or high-level specialized technician; or
- the foreign national is a high-level executive in a new company or corporate reorganization.

Peruvian law also provides certain cases in which foreign nationals are not subject to the above-mentioned restrictions, such as:

- individuals having a Peruvian spouse, ancestor, descendant, or sibling;
- individuals with an immigrant visa; and
- citizens of a country with which Peru has negotiated a dual nationality agreement or other reciprocation agreement, e.g., Spain.

The documents required for obtaining an employment agreement approval may differ depending upon whether the employer is applying to said exceptions or not.

Term: The maximum term per contract is three years, however, parties may extend the employment for a similar period. Please note that the duration of the agreement may have consequences for the

calculation of the severance in case of termination without cause, which is equivalent to 1.5 times the monthly remuneration per month due until the completion of the agreement, up to an amount of 12 monthly salaries.

Mandatory rights: Foreign nationals are entitled to the same rights as any other Peruvian citizen. It is important to verify with local counsel the costs of the mandatory labor benefits and social contributions, as well as the corresponding tax rate, when calculating the compensation package. The particular benefits that may be deemed as salary should also be verified.

Migratory status when signing the employment agreement: The agreement will be signed within the country if the individual entered the country with a business visa. If not, he must obtain a special permit for signing contracts from the Peruvian Immigration Office. Bear in mind that, due to tax-related issues (please see below), in some cases it may be advisable to have the agreement signed abroad.

Timing: The approval of the employment agreement before the Labor Authority may take eight business days.

Obtaining a Working Visa

Once the employment agreement is approved, the foreign national may start the process for obtaining the working visa. This process may take about two months.

The Peruvian Immigration Office has just mandated the use of an online system in order to obtain an appointment to submit the visa application file. The system generally is one month behind with granting appointments.

If the foreign national needs to leave the country during the process, he must obtain a special permit.

Once the foreign national obtains the working visa, the Peruvian Immigration Office will issue the corresponding identification card.

Tax Issues

Expenses that are not Taxable Income

In cases where the employment agreement is signed abroad by the foreign national and he qualifies as a non-domiciled taxpayer, the following items, if provided by the employer, may not be considered as taxable income:

- airfare tickets at the beginning and conclusion of the employment relationship;
- room and board expenses incurred during the first three months of residence in the country;
- moving expenses of household goods at the beginning and upon termination of the employment agreement; and
- annual airfare tickets during vacation leave to his home country within the term of the employment relationship.

Please note that the employment agreement must stipulate that such expenses will be paid by the employer.

Income Tax Rate

Due to his condition as a foreign national, the individual is considered a non-resident in Peru and is taxed on Peruvian-source income only, in accordance with the non-resident income tax criteria. The income tax rate for non-domiciled individuals is a flat 30 percent.

A non-domiciled individual will be deemed to be a domiciled individual once he has resided in Peru for at least 183 days within a 12-month period. The change of status (non-domiciled to domiciled) will be effective as of January 1 of the next fiscal year.

Once foreign employees become domiciled, they are entitled to the below progressive income tax rates:

Annual progressive rate	Percentage
Until 5 UIT (PEN 19,750)*	8%
More than 5 UIT until 20 UIT (until PEN 79,000)	14%
More than 20 UIT until 35 UIT (until PEN 138,250)	17%
More than 35 UIT until 45 UIT (until PEN 177,750)	20%
More than 45 UIT (more than PEN 177,750)	30%

* After the deduction of the first PEN 27,650.00

Special Cases

Depending on the individual's nationality, the approval of the Labor Authority might not be necessary. For the following countries, the visa application process might be shorter: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Uruguay and Spain.

Assigned employee visa

This type of visa is for foreign nationals who enter the country with the purpose of continuing their labor relationship with the foreign employer. In this case, the assigned employee is sent by a foreign employer for a limited and defined term, to render a specific duty on behalf of his foreign employer to a local entity.

Therefore, the relationship between the local company and the foreign employer shall be autonomous. That means that the assigned employee shall be under the exclusive subordination of his foreign employer and cannot be incorporated in the Peruvian payroll.

Restrictions: The assigned employee is allowed to sign contracts and transactions, but he is prohibited from performing remunerated or lucrative activities or from receiving Peruvian-source income.

Term: The assigned employee shall obtain the assigned employee visa granted by the Peruvian Immigration Office. This visa may only be granted for a 90-calendar-day term, with the possibility of a one-year extension.

Timing: The procedure for obtaining this visa may take about two months.

Skilled workers

If a company decides to incorporate the foreign employee in the Peruvian company's payroll and this employee is a high-level professional or a high-level specialized technician, the Peruvian company has the possibility to request the exemption of the legal limitation percentages.

On the other hand, according Peruvian to immigration rules, assigned employees should be highly skilled employees, and such condition must be declared in the visa application documents.

Training

All foreign employment agreements shall include a clause that states the obligation to train national personnel in the same position held by the foreign employee.

Recommendations for Foreign Residents in Peru

Foreign residents in Peru should take into account the following recommendations:

- To renew their visas every year. It is important to renew the visa before its expiration date. If foreign residents leave the country without renewing their visa, they will lose their residence.

- Pay the Immigration Annual Rate ("*Tasa Annual de Extranjeria*" or "TAE"). The payment must be made during the first three months of every calendar year. After that period of time, foreign

nationals must pay a fine equivalent to 100 percent of the cost of the TAE per each expired trimester.

It is important to note that the payment of the TAE must be made before commencing any other immigration procedures, such as the renewal of visas.

- Do not leave the country for more than 183 calendar days, otherwise it would result in the loss of residence. These 183 days can be consecutive or accumulative.

Entry Based on International Agreements

Foreign nationals from certain countries with which Peru has entered into International Agreements have different procedures to follow in order to be authorized to work in Peru.

These International Agreements are the following:

MERCOSUR Agreement[1]/Peru-Argentina Agreement[2]

These agreements provide foreign nationals with a non-renewable temporary residence in Peru of up to two years, without them being obligated to be previously engaged with an employment agreement.

Additionally, foreign nationals under these agreements are considered to be local employees, and so will not fall under the limitation percentages established for foreign employees (during the two-year term).

[1] Countries that have signed the MERCOSUR Agreement are: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay.
[2] Countries that have signed the Peru-Argentina Agreement are: Peru and Argentina.

Andean Community of Nations ("CAN")[3]

Foreign nationals from the CAN countries are treated as local employees, and so will not fall under the limitation percentages established for foreign employees. In consequence, their employment contracts may be agreed for an indefinite- or fixed-term period.

This agreement only allows the Ministry of Labor to exonerate the approval of the work contract but, in order to obtain the working visa, foreign nationals should be subjected to one of the immigration procedures applicable in their cases.

Planned Legislative Change

In September 2015, Legislative Decree No. 1236 (the Immigration Legislative Decree), was published. This decree modifies the current Peruvian Foreign Law and establishes new immigration statuses, such as the frontier employee, provisional resident and short-term employee, among others. This decree also modifies the current requirements for the existing immigration statuses; for example, foreign resident employees would be able to render not only subordinated services to a local employee, but will also be allowed to render independent services.

Please note that this decree is not yet in force; it will take effect 90 days after the publication of its implementing regulation, which has not yet been published.

[3] Countries that belong to CAN are: Bolivia, Colombia, Ecuador and Peru.

Philippines

The Philippines has had a relaxed set of immigration policies since 1989, aimed at benefitting foreign nationals who wish to work, invest, retire, or obtain permanent residence in the Philippines.

Key Government Agencies

The Bureau of Immigration ("BI") is responsible for visa processing and the monitoring of the entry and exit of foreign nationals in the Philippines. Unlike in other jurisdictions, the work visa application process is usually (and preferably) initiated after the arrival of the foreign national in the Philippines as a tourist or a temporary visitor.

The Department of Labor and Employment ("DOLE") is also involved in the process of authorizing a foreign national to work in the Philippines. The DOLE determines whether the foreign national is competent, willing and able to perform the requested services and thereafter issues an Alien Employment Permit ("AEP") to the foreign national.

The Department of Foreign Affairs, through embassies and consulates around the world, is responsible for granting entry visas to "restricted" foreign nationals.

An Authority to Employ from the Department of Justice is required to be issued before a foreign national may be employed by a nationalized or partly nationalized entity (entities in industries where foreign ownership/control is limited).

Business Travel

Temporary Visitor/Tourist Visa

"Restricted nationals" are required to obtain a temporary visitor visa from the Philippine embassy or consulate in their country of origin or residence before entering the Philippines. In addition to a temporary visitor visa, "restricted" nationals must also hold valid tickets for their return journey to the port of origin or next port of destination. Department regulations require that their passports should be valid for

a period of not less than six months beyond the contemplated period of stay.

Visa Waiver

Non-restricted nationals are allowed to enter the Philippines without visas for a limited period, depending upon their nationality.

As of April 2014, nationals from the following countries are allowed to enter the Philippines without a visa for a stay of 30 days or less:

Andorra, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Croatia, Colombia, Comoros, Congo, Costa Rica, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, 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, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of

Tanzania, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Zambia, and Zimbabwe.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding 59 days: Brazil and Israel.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding seven days: Hong Kong Special Administrative Region ("SAR") passports, British National Overseas ("BNO") passports, Portuguese passports issued in Macau, and Macau Special Administrative Region ("SAR") passports.

Visa waiver visitors are still required to comply with the passport and return ticket requirements stated above.

A foreign national who wishes to extend his stay must obtain approval from the BI.

If an individual intends to travel to the Philippines, it is suggested that they refer to the Department of Foreign Affairs website (www.dfa.gov.ph) for the latest restrictions.

Employment Assignments

Pre-Arranged Employment Visas/9(g) Visa

The most common work visa is the 9(g) visa. The 9(g) visa is available to foreign nationals who intend to occupy an executive, technical, managerial, or highly confidential position in a company in the Philippines. It is also available to foreign nationals who proceed to the Philippines to engage in any lawful occupation, whether for wages or salary or for other forms of compensation where a bona fide employer-employee relationship exists. The petitioning company must establish that there is no person in the Philippines 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 national's dependents who will join him in the Philippines are entitled to the same visa.

Special Non-Immigrant 47(a)(2) Visas

The Philippine President is authorized to issue this visa when public interest warrants so. The President, acting through the appropriate government agencies, has exercised this authority to allow the entry of foreign personnel employed in supervisory, technical, or advisory positions in Export Processing Zone Enterprises, Board of Investments-registered enterprises, and Special Government Projects.

The employing entity must apply with the relevant government agency for authority to employ the foreign nationals. This visa is generally valid for an initial period of one year and is renewable from year to year.

The foreign national's dependents who will join him in the Philippines are entitled to the same visa.

Multiple-Entry Special Visa

Multiple-entry special visas are available to:

- foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philippines to operate as such. The foreign personnel shall be issued a multiple-entry special visa (also known as a visa under Presidential Decree No. 1034), valid for a period of one year; 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

A foreign investor is entitled to enter the Philippines as a treaty trader or investor if he is a national of the United States, Germany or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty investors or traders. The local petitioning company must be majority-owned by United States, German, or Japanese interests. The nationality of the foreign national and the majority of the shareholders of the employing company must be the same.

The term "treaty trader" includes an alien employed by a treaty investor in a supervisory or executive capacity.

The following must be proved:

- the individual or the employer intends to carry on "substantial trade" between the Philippines and the country in which the alien is a national; or

- the individual intends to develop and direct the operations of an enterprise in which the foreign national or the employer has invested, or is in the process of investing, a substantial amount of capital.

"Substantial trade" refers to a non-nationalized business in which an investment in a substantial amount in Philippine currency has been made. It is important to note, however, that the size of the investment is merely one of the factors considered in determining what is deemed "substantial trade."

When granted, the visa extends to the investor's spouse and unmarried children 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.

There are certain foreign nationals who are exempt/excluded from securing an AEP, such as: (i) a corporate officer as defined in the Corporation Code of the Philippines and the Articles of Incorporation and By-Laws of the Corporation, i.e., president, secretary and treasurer; (ii) an intra-corporate transferee who is a manager, executive or specialist and who been employed by the foreign service supplier for at least one year prior to deployment to a branch/subsidiary/affiliate or representative office in the Philippines; and (iii) a consultant who does not have an employer in the Philippines.

Aliens who have commenced employment while their applications for an AEP or work visa are still pending must secure a Provisional Work Permit ("PWP"). The PWP is valid for three months or until the work visa has been issued for the applicant, whichever comes first.

Authority to Employ

Entities engaged in nationalized or partly nationalized industries can only employ foreign nationals as technical personnel and subject to the issuance by the Department of Justice of an Authority to Employ.

Short-Term Employment

Special Work Permit ("SWP")

An SWP is a special permit issued to a foreign national who intends to work in the Philippines for a short-term period not exceeding six months and occupy a temporary position. The SWP is issued for an initial period of three months and is extendible for a final period of another three months. The validity of the SWP requires that the holder must maintain a valid temporary visitor's visa. 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 receive non-competitive training, who would be classifiable as temporary workers or industrial trainees;
- foreign nationals authorized to search for hidden treasure;
- film 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 the Philippine national interest. They are issued on a calendar basis and cannot exceed the numerical limitation of 50 in a given year. The most common type of non-quota visa is one that is issued to a foreign national on the basis of marriage to a Philippine citizen.

The SRRV is available to foreign nationals and former Filipinos who are at least 35 years of age, and who deposit the minimum amount required by law with an accredited bank, to be invested in any of the specifically designated areas. The required deposit is USD 50,000 or USD 20,000 (maintained balance) for applicants who are aged 35 to 49; and USD 20,000 for applicants above 50 years of age (if the 50-year-old applicant receives a monthly pension, the required deposit is USD 10,000).

Retirees enrolled under the SRRV program (except for those who are aged 35 to 49 and deposited only USD 20,000) may be allowed to withdraw their deposit for conversion into an investment after a holding period of 30 days from the issuance of the SRRV.

The SIRV is a program offered by the Philippine government to foreign investors wanting to obtain a special resident status with multiple entries for as long as their required USD 75,000 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 USD 50,000 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 ten 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 be naturalized and become citizens. Dual citizenship of former Filipino citizens is permitted.

Further Information

Baker & McKenzie's *Philippine Immigration Manual* provides further information about Philippine business visas, including a broader range of non-immigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign nationals.

Poland

All nationals of the European Union and European Economic Area ("EEA") Member States, as well as those of Switzerland (jointly "EU citizens"), enjoy freedom of movement and the right of residence. These nationals are also released from the obligation to have a work permit to be employed in Poland.

Citizens of countries that are not members of the EU, EEA, or Switzerland ("non-EU citizens") who wish to stay and/or work in Poland are subject to a different legal regime than EU citizens. Non-EU citizens have to legalize their stay in Poland by obtaining an appropriate visa or residence permit and legalize their work (if this is the purpose of their stay) by obtaining a work permit.

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, known as a "Voivode" ("*wojewoda*"). Work authorization is required regardless of whether a foreign national is to perform work in Poland on the basis of an employment contract or on the basis of another type of agreement such as a service agreement, or is entrusted with the performance of any other kind of remunerated work in Poland. The exceptions to that rule are detailed in the section concerning employment assignments.

Key Government Agencies

Polish consulates abroad are responsible for processing Polish visas. When crossing the border, a foreign national may be required to prove financial means sufficient to cover the cost of entry, stay and exit from Poland. The decision to refuse entrance into Poland may be issued by the Commander of the Border Guards, if the foreign national's details are included in the register of foreign nationals denied the right to stay within Poland or the foreign national lacks a valid travel document or another valid document certifying their identity and citizenship. The decision to refuse entry may be appealed with the Commander of the Border Guard Unit.

Applications for issuance of residence permits are submitted to the Voivodeship Office (Department of Citizen's Affairs) competent for the place of residence of the foreign national in Poland. Applications for issuance of visas are, in principle, submitted to the Polish consular offices in the foreign national's country of origin.

The Head of the Office for Foreigners is the central authority of the Polish central government administration. It handles all matters connected with foreign nationals' entry into, transit through, residence in and leaving Poland, granting of refugee status, asylum, tolerated stay and temporary protection with reservation to the competencies of other authorities as provided for in the applicable laws. The Minister competent for internal affairs exercises supervision over activities of the Head of the Office for Foreigners.

The basic overview of the procedure for obtaining the work permit and categories of foreign nationals exempt from the obligation to obtain a work permit, 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 and EEA Member States, as well as those of 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 their state of origin confirming the person's identity and citizenship.

The Member States of the EU (currently 28 countries) are: Belgium, France, the Netherlands, Luxemburg, Germany, Italy, Denmark, Ireland, Great Britain, Greece, Spain, Portugal, Austria, Finland, Sweden, Poland, Slovakia, Slovenia, Lithuania, Latvia, Hungary, Czech Republic, Estonia, Malta, Cyprus, Bulgaria, Romania and Croatia.

The Member States of the EEA are: all of the EU Member States, as well as Iceland, Norway and Liechtenstein.

Switzerland is not a Member State of the EU or the EEA.

A total of 26 states, including 22 EU states (except for Ireland, the United Kingdom, Cyprus, Bulgaria, Romania and Croatia) and four non-EU members (Iceland, Norway, Liechtenstein and Switzerland), are bound to the full set of rules in the Schengen Agreement, which deals with the abolition of systematic border controls among the participating countries. On December 21, 2007, Poland joined the Schengen Agreement, which means that as of that date there are no internal borders (on land or water) between Poland and other EU countries. The air borders at airports were internally opened for the other Schengen zone countries on 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: Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei Darussalam, Bosnia and Herzegovina, Chile, Canada, Costa Rica, Former Yugoslav Republic of Macedonia, Guatemala, Honduras, Israel, Japan, Malaysia, Mauritius, Mexico, Republic of Moldova, Monaco, Montenegro, New Zealand, Nicaragua, Panama, Paraguay, Salvador, San Marino, Saint Kitts and Nevis, Serbia, Seychelles, Singapore, South Korea, Taiwan, United States, Uruguay, Venezuela, Vatican, and the Special Administrative Regions of the People's Republic of China: Hong Kong and Macau, as well as overseas British nationals not holding United Kingdom citizenship.

As a basic rule in Polish law, a foreign national who is a citizen of two or more states will be treated as a citizen of the state whose travel document was the basis for entry into Poland.

Business Travel

EU Citizens

EU citizens may enter and reside in Poland for a period not exceeding three months on the basis of a valid travel document or another valid document certifying his identity and citizenship. Additionally, an EU citizen who entered the territory of Poland in search of work may reside for a period of not more than six months, unless after this period he demonstrates that he continues to actively seek employment and has a genuine chance of finding a job. A family member of an EU citizen who is a non-EU citizen may enter Poland on the basis of a valid travel document or visa, if required. During the stay in Poland for a period of up to three months, a family member who is a non-EU citizen must have a valid travel document.

EU citizens should have the right to stay in Poland for a period longer than three months, if he fulfills one of the following conditions:

- is an employee or a self-employed person in Poland (in this case the right to stay extends over family members staying in Poland with an EU citizen);

- is covered by general health insurance or is a person entitled to health insurance or is entitled to health insurance benefits on the grounds of the regulations on coordination of health insurance benefits financed from public funds or is covered by the private health insurance of a specific scope, and is in possession of enough funds to cover the cost of living in Poland without the need to make use of social insurance benefits (in this case the right to stay extends over family members staying in Poland with an EU citizen);

- studies or receives vocational training in Poland and is covered by the general health insurance, is entitled to health insurance, or entitled to health insurance benefits on the grounds of the regulations on coordination of health insurance benefits financed from public funds or is covered by the private health insurance of

a specific scope and has 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 children supported by an EU citizen or by the spouse who is staying with or joining the EU citizen in Poland); or

- is married to a Polish national.

If residency in Poland lasts for more than three months, an EU citizen is obliged to register the residence address in the Voivodeship Office competent for the place of residence in Poland. A family member who is a non-EU citizen is obliged to obtain an EU citizen family member residence card.

The application for registration or issuance of the residence card for a member of an EU citizen's family must be submitted personally to the competent Voivodeship Office no later than on the next day following the end of three months from the date of entry into the territory of Poland.

Non-EU Citizens

Foreign nationals coming to Poland on short-term business trips will most likely use one of these types of visitors visas:

- a Schengen visa, which gives right of entry and continuous stay inside the Schengen Member States or for several consecutive stays for a total period not exceeding three months within the period of six months, counted from the date of the first entry into the stated territory; or

- a national visa, which gives right of entry and continuous stay in Poland or for several consecutive stays for a total period not exceeding one year during the visa's validity period.

A national visa can be issued if the circumstances require a foreign national to stay for more than three months.

Examples of the purposes of entry and stay for both Schengen and national visas include:

- a visit;
- carrying 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 education or training;
- enjoying temporary protection; and
- 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.

Employment Assignments

EU Citizens

All EU citizens as well as members of their family are exempt from the obligation to obtain a work permit to be employed in Poland. If the assignment in Poland is expected to last for more than three months, an EU citizen is obliged to register the residence address as mentioned above in the "Business Travel" section.

As long as EU citizens are in paid employment (or perform work in Poland as an independent service provider or on other basis), they are subject to the same legislation for social contributions and benefit from the same advantages as national employees. Exceptions may apply if the EU citizens perform work in more than one country.

Every EU citizen may make use of public employment services.

Non-EU Citizens

According to Polish law, a foreign national wanting to work legally in Poland must obtain a work permit ("*zezwolenie na prace*"), issued by one of the Polish Voivodeship Offices and a document confirming his legal stay in Poland with the right to perform work, which is either: (i) a visa for the purpose of work ("*wiza krajowa w celu wykonywania pracy*") issued by a Polish consulate; or (ii) a temporary residence permit in Poland ("*zezwolenie na pobyt czasowy*") issued by the Department of Citizen's Affairs at the Voivodeship Office.

There are several categories of non-EU citizens who are exempted from the obligation to obtain a work permit. These categories are, in particular:

- foreign nationals with a permanent residence permit;
- foreign nationals granted a long-term European Community ("EC") resident status in Poland;
- foreign nationals granted a long-term EC resident status in another EU country, with a temporary residence permit in Poland issued on the basis of the declared intention to start business or study in Poland;
- refugees, people granted temporary protection, and people granted the tolerated stay status;
- foreign nationals holding a valid Pole's Card;

- foreign nationals who are allowed to perform work in Poland without having to obtain a work permit according to international contracts and agreements binding the Republic of Poland and signed with the country of their citizenship;

- members of international military forces stationed in Poland;

- journalists and other foreign mass media correspondents fulfilling specific criteria;

- artists (individual or in groups) participating in different kinds of artistic events (not exceeding 30 days per calendar year);

- athletes performing work for institutions registered in Poland in relation to sport events;

- people delegated by their foreign employers (provided that they have permanent residence abroad), for a period not exceeding three months, for the purpose of:

    - assembly, maintenance or repairs of the delivered devices, structures, machinery or other equipment, if the foreign employer is a manufacturer thereof;

    - training the employees of the Polish employer being the recipient of devices, structures, machinery or other equipment referred to above, on its operation or use;

    - acceptance of devices, machinery, other equipment or parts produced by a Polish company; and

    - assembly and disassembly of exhibition stands, if the exhibitor is a foreign employer who delegates them for this purpose;

- people entitled to reside and work in one of the EU or EEA Member States or Switzerland who are temporarily delegated by their EU employer to provide services in Poland; and

- management board members of legal entities that have been registered under the respective provisions in Poland, if they enter Poland on the basis of an appropriate visa and their stay in Poland does not exceed six months within a 12-month period.

A work permit is a specific type of authorization issued following an investigation by labor authorities into the reasons for employing foreign nationals in Poland. There are several types of 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 candidates suitable for the given work post to be found in the domestic market (in case of work permit type A).

Commencing work in Poland without a work permit is strictly prohibited and may result in financial sanctions imposed on the individual concerned and the hosting entity employing the individual.

A work permit is applied for and issued to an employer as permission to employ a specific, named, non-EU citizen, for a specific job and for a specific period of time. Moreover, if a foreign national performs work in various positions at the same employer, a work permit for each position is needed.

In case of the work permit type A, the Polish legal entity or person who wants to employ the non-EU citizen (the "employer") undertakes an attempt to fill the vacancy with a Polish national. In order to do so, the employer is obliged to make an announcement of a free vacancy with the labor agency, i.e., the District Labor Office competent for the place in which the work is to be performed.

If there are no available Polish citizens suitable for the position, the Labor Office issues an appropriate confirmation to the employer in writing.

Once the employer obtains the confirmation from the District Labor Office, it submits an application for the issuance of a work permit for a foreign national, attaching the received confirmation, to the local immigration authority (the immigration section of the Voivodeship Office).

In the work permit application, the employer is obliged to provide documentation regarding its entity, personal details of the foreign national, the details of the passport document and, if needed, information on the foreign national's qualifications and professional experience.

Furthermore, the employer must specify the proposed post in Poland, the intended period of employment, and the legal basis of employment (e.g., employment agreement, service agreement). All documents submitted to the Polish immigration authorities must be in Polish. Therefore, certain documents, such as the foreign national's certificates and diplomas, will have to be translated into Polish by a sworn translator.

After submitting the application form, the Voivode examines the application in view of the local labor market situation, taking into consideration the confirmation from the District Labor Office.

In case the confirmation from the District Labor Office shows that there are no Polish candidates on the local labor market fulfilling the employer's criteria and the application fulfills all the formal requirements, the Voivode issues the work permit.

According to the legal rules, the work permit may be granted for a period not exceeding three years. However, in practice, the Voivode issues the first work permit for a maximum period of one year, after which it may be extended for longer periods (multiple times).

The work permit document is issued in triplicate, one copy being for the employer, one for the employee, and one for the Voivode Office.

After having obtained the work permit, the employer must deliver it to the non-EU citizen so that he may submit it when applying for the work visa.

A national visa for the purpose of performing work may be issued to a non-EU citizen who presents a permit to work in Poland or a 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. It can be issued for the period of stay corresponding to the period indicated in the work permit, but no longer than one year.

In case a non-EU citizen intends to stay in Poland for longer than the period of stay envisaged by the visa, it is possible to apply for a temporary residence permit in Poland. That document can be issued for a maximum period of three years, but no longer than the validity period of the work permit. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreign national is in Poland, application for that permit is filed with the Department of Citizen's Affairs at the Voivodeship Office.

In May 2014, new provisions came into force which allow foreign nationals to apply for a combined permit for residence and work. This new procedure includes the requirements of the separate work and residence permit procedures, with the difference being that it is mainly conducted by the foreign national (in cooperation with the employer); previously obtaining the work permit was a sole responsibility of the employer. A combined permit for residence and work is issued in one document.

Having completed all the formalities, the employer signs an agreement with the non-EU citizen for the time specified in the work permit (or the combined permit for residence and work). The contract should

strictly reflect conditions in the permit in regard to time, place of work, position, etc. Change of workplace requires immediate notification to the Voivode.

After arriving in Poland, the foreign national is obliged to register his residence in Poland with the administrative local authority using his temporary address in Poland ("*zameldowanie*").

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.

In regard to payment of social contributions for non-EU citizens, Polish law states that that the duty arises in the country in which the person is employed and where the work is being performed, the "*lex loci laboris*" principle.

This means that the employer employing a foreign worker (as an employee or a service provider) in Poland is subject to Polish social security laws and not the social security laws of the country in which the employing entity might be located or of which the foreign worker is a citizen. The effect of this is that 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 delegated by their employers (provided they have permanent residence abroad) to perform work in Poland for a specified period of time or nationals of countries which are parties to international agreements, recommendations, conventions, and provisions binding on Poland in 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.

Training

There is no specific type of visa designed exclusively for training.

EU citizens have the right to stay in Poland for the purpose of studying according to the regulations described above.

For non-EU citizens the most suitable solution for training purposes is to obtain a visa (either Schengen or national depending on the type and length of training).

EU citizens do not need any visa or work permit to receive training in Poland. According to the specific regulations, there are also several categories of non-EU citizens who are not required to possess a work permit in Poland in connection with training, such as:

- trainers and qualified advisors participating in programs financed by the EU, other international organizations, or by loans taken out by the Polish government;
- foreign language teachers fulfilling additional criteria;
- people who occasionally give lectures and presentations (not exceeding 30 days a year), if they have permanent residence abroad;
- students of Polish universities during summer break in July, August and September;
- students on internships arranged by international student associations;
- students within a framework of cooperation between Polish employment services and their partners abroad;
- foreign students on paid internships (for a maximum period of six months during one calendar year); and

- scientists in research and development institutions.

If a non-EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of education, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but no longer than three 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.

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 Poland register on their own with the administrative local authority at their temporary registered address in Poland ("*zameldowanie*"). This registration must be done no later than after four consecutive days in Poland. In order to be registered, a foreign national will be required to present the document confirming his legal title to the apartment in which he resides (e.g., a lease agreement) and the relevant work visa/residence or work permit or, in case of EU citizens, a passport or an ID card.

The national visa of a foreign national staying in Poland can be extended if all of the following conditions are met:

- there is an important professional or personal interest of the foreign national or humanitarian considerations in favor of it;

- the events which are the reason for applying for 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 exist.

The period of stay in Poland on the basis of an extended visa may not exceed the period of stay envisaged for the given type of a national visa. This means that a national visa issued for a maximum period of one year may not be extended, even if the above conditions are met.

If a foreign national intends to stay in Poland for longer than the period of stay envisaged by the visa instead of extending the visa, the foreign national can apply for a temporary residence permit. That document is issued for the period necessary for achieving the purpose of the foreign national's stay in Poland, but not longer than three years, and is issued for various purposes, such as:

- performing work;

- carrying on economic activity pursuant to the provisions applicable in this field in Poland;

- studying at a university; or

- conducting scientific research.

Temporary residence permit may also be granted to a foreign national who is married to a Polish citizen and for other reasons specified in the Aliens Act of June 13, 2003 (Journal of Laws of 2011 No. 264, item 1573 with further amendments).

Legal stay in Poland is also guaranteed by obtaining:

- a permanent residence permit, issued to a foreign national who:
    - has a valid Pole's Card and intends to settle in the territory of Poland;
    - has been married to a Polish citizen for at least three years before filing the application and, immediately before that had continuously stayed in Poland for at least two years on the basis of a temporary residence permit;
    - immediately before filing the application had continuously stayed in Poland for a period not shorter than ten years on the basis of a consent of tolerated stay;
    - is a child of a Polish citizen who exercises parental authority over him; or
- a long-term EC resident stay permit, which may be granted to a foreign national who has legally and continuously stayed in Poland for at least five years immediately before filing the application, and who has:
    - a stable and regular source of income sufficient to cover the costs of maintenance for himself and dependent family members; and
    - health insurance within the meaning of provisions on public health insurance or insurer's confirmation of coverage of the costs of medical treatment in Poland.

The above rules do not apply to foreign nationals who:

- stay in Poland in order to undergo studies or professional training; or

- are workers delegated by a service provider for the purpose of cross-border provision of services.

Polish Citizenship can be granted by the decision of the President of the Republic of Poland. Additionally, a foreign national may be declared a Polish citizen after residing in Poland for at least three years on the basis of having a permit to settle, long-term EC resident status, or right of a permanent stay, a stable and regular source of income in Poland and the legal title to their occupied premises, provided that the foreign national has a certificate confirming his knowledge of the Polish language; or in certain other cases specified by the provisions of law.

Russian Federation

Under Russian law, an employer planning to employ foreign nationals needs to obtain the necessary work permits (or patents for work) and work visas before the individual may start performing their job duties in Russia. Currently, Russia requires citizens from certain countries, including the US, Canada, China, India, Japan, Korea, as well as all Latin American and European Union countries, to obtain a visa to enter Russia. A work visa is generally issued for a period of one year.

As of January 1, 2015, employees from countries enjoying a visa-free regime with Russia must obtain a "patent" (a special permission document issued in a standard simplified procedure and in the form prescribed by statute) instead of a work permit.

Foreign nationals who enter Russia on business visas have the right to participate in negotiations, training and similar activities, but cannot be legally employed prior to obtaining both a work visa and work permit.

The procedures for obtaining a permit to hire, a work permit and a work visa invitation involve several consecutive steps, and typically take about four to five months to complete (if the quota for work permits has already been achieved). Additionally, as a precondition for obtaining a permit to hire and a work permit for employees who enter Russia under a visa regime, a company must file an annual application for a quota for work permits for the following year before July 1. Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time to complete such procedures. Russian migration legislation is currently undergoing significant amendments and changes, and 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.

The procedures for obtaining a 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 the 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:

- a 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 of these documents can be obtained from the Federal Migration Service of the Russian Federation.

Current Trends

In order to obtain work permits, foreign nationals are required to provide relevant certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

There is also a special category if the foreign employee is a highly qualified foreign specialist. The main criterion for recognizing a foreign employee as a highly qualified foreign specialist is a salary level of RUB 167,000 (approx. USD 2,500) per month or more. Highly qualified foreign specialists can take advantage of a simplified procedure for obtaining work permits and work visas.

Employers seeking work permits for highly qualified foreign specialists are exempt from:

- obtaining a quota for work permits;
- registering vacancies with the employment authorities; and
- obtaining a permit to hire foreign nationals.

Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

A work permit for a highly qualified foreign specialist may be valid for three years, with the possibility of repeatedly extending it as long as the specialist has a valid employment contract. The specialist may work in more than one region in the Russian Federation.

In accordance with effective legislation it is prohibited to hire Turkish citizens, with the exception of companies on the list of employers authorized by the Russian government to employ Turkish citizens within the number of Turkish citizens employed by these employers in 2015. The renewal of work permits and work visas of Turkish citizens who were employed in Russia in 2015 is carried out on a case-by-case basis.

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 visas:

- 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 can only be used for a limited period of time, as set out below.

Multiple-entry visas for citizens of the European Union (except for the UK) and South Korea can also be issued for a term of two or five years, but only after a foreign citizen has visited Russia under a one-year multiple-entry visa or a two-year multiple-entry visa, respectively. Russian consulates consider applications for visas for a term of more than one year on a case-by-case basis.

Any foreign national can stay in Russia on the basis of a one-year multiple-entry business visa, without having to leave Russia, for up to 90 days in a period of 180 days. Thus, the maximum period of uninterrupted stay in Russia on the basis of such a business visa is currently 90 consecutive days, and the maximum period of stay in Russia is 180 days in total per year. Every 90 days, foreign nationals on a one-year multiple-entry visa have to leave the country. Upon re-entry they can stay in Russia for no longer than another 90 days.

The procedure for issuing business visas to citizens of the US differs from the general procedure. Pursuant to the treaty regarding simplified visa procedures between Russia and the US, visas for US citizens can be valid for up to 36 months. However, a US citizen cannot stay in Russia for the entire 36 months without leaving the country. The duration of each entry should not be longer than six months. After the expiration of six months, the US citizen should leave Russia and then re-enter, if necessary.

The situation with the issue of business visas to Turkish citizens is unclear due to the difficult political situation between Russia and the Turkish Republic (currently business visas are not issued to Turkish citizens).

Pursuant to the migration legislation, a foreign national is prohibited from being employed or working under a civil law contract based on a business visa. Therefore, 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 of the purpose declared for visiting Russia. Such misrepresentation is considered an administrative violation and is severely prosecuted if disclosed.

Visa Waiver

There are several narrow exceptions when a visa is not required for entry into the Russian Federation. These exceptions 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.

Employers do not need to obtain a 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 a patent for work. When hiring such foreign nationals, employers must ensure that they have a valid patent for work.

The current Russian legislation provides for several exemptions when the employer is not required to obtain a work permit (or a patent) (for further details see "Work Permit or Patent Waiver" below).

Employment Assignments

Generally, all employers operating in Russia who plan to engage in a labor or civil law contract with foreign nationals who enter Russia under a visa regime must obtain the following:

- permit to hire and use foreign employees – 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 typically 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 process.

Intra-Company Transfer

Russian law does not envisage the concept of secondment, therefore, foreign nationals seconded to Russian subsidiaries must be hired by the Russian subsidiaries subject to compliance with Russian labor rules. A foreign national who intends to work in the Russian Federation as an intra-company transferee must either obtain a work visa and work permit or obtain a patent (for those foreign nationals who do not require a visa to stay in Russia) allowing travel to and employment in the Russian Federation (except for citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan).

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. This step normally takes at least two to 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 representative office or branch and all further visa support applications, should be filed by an authorized representative of the company or representative/branch office. Such representative should hold a relevant power of attorney issued by the employer.

- **Step two**: The employer obtains an invitation for a single-entry visa from the Federal Migration Service. This step usually takes at least two to 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 visa 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) will be

cancelled by the Russian consulate simultaneously with the issuance of the new single-entry visa.

- **Step four**: 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. This procedure takes up to 21 days, during which the foreign national cannot leave Russia without aborting the work visa procedure.

Accredited representative or branch offices of foreign firms may also use the traditional procedure and apply for work visa support only to their accrediting body. In this case, the representative/branch office of a foreign firm must first obtain a personal accreditation card for the foreign national 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 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 arrival in Russia (please refer to steps three and four above of the procedure for obtaining a work visa).

However, the above personal accreditation procedure does not apply to branch offices and representative offices of foreign non-commercial organizations; they are not accredited in Russia, but registered with a federal government agency. Branch offices and representative offices of foreign non-commercial organizations can apply for work visas for their foreign employees after they are registered with the Chamber of Commerce and Industry pursuant to a special registration procedure for the purposes of visa support.

The maximum duration of a work visa is one year, but 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 obtaining a new work visa.

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 July 1.

The Russian authorities have adopted a list of quota-exempt professions/positions, which allows employers to hire foreign employees without observing the quota requirement. In particular, the list contains the following positions: general director and director of a joint stock company, director of a representative office, director of a factory, chairman and deputy chairman of an executive committee, director of economics, department director, information security engineer, among other positions.

An employer that plans to hire a foreign national who requires a visa to enter Russia should apply to the Federal Migration Service for a permit to hire and work permit. 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) employment agreement, among other documents.

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 medical establishments in Russia 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 cannot 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 filing an application for a work permit. 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 a candidate or prepare a motivated rejection of such candidate in order to be able to justify its need for a specifically foreign national.

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. 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

subsequent one-year term. Renewal of a work permit involves the same procedure and takes the same amount of time as obtaining the first work permit.

A work permit is 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 a decree of the Russian government and fall into two main categories:

- if the employee is sent on a business trip; and
- if the work is of a traveling nature, or if work is done en route (which must be specified in the employment agreement).

After obtaining the permit to hire and work permit, the employer needs to document the commencement of employment of 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 individual's labor book on his 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.

While performing work duties the employee is obliged to have a valid medical insurance policy or be entitled to medical help on the basis of the agreement concluded between the employer and medical organization. Certain base for the medical treatment constitutes an essential term of the employment agreement with the foreign national.

Skilled Workers

As mentioned above, the Russian legislation on foreign nationals recognizes a special category of foreign employees: the highly qualified foreign specialist and later "the specialist." The specialist can enjoy a simplified procedure for obtaining of a work permit and a work visa.

The main criterion for recognizing a foreign employee as a specialist is a salary level of RUB 167,000 (approx. USD 2,500) per month or more. Defining the required qualification level and the assessment of the competence of foreign national as a specialist is left to the employers themselves.

To obtain a work permit and work visa for the specialist, his employer is exempt from:

- obtaining a quota for work permits;
- registering vacancies with the employment authorities; or
- obtaining a permit to hire foreign nationals.

A work permit for a specialist and a relevant multiple-entry work visa invitation are processed by the Federal Migration Service within 14-17 business days.

A work permit and work visa for the specialist may run for three years, with the possibility of repeatedly extending them for as long as the specialist has 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, non-profit and religious organizations, and those employers who have been penalized for illegal employment of foreign nationals in Russia within the last two years, cannot use the simplified procedure for obtaining work permits and work visas for a specialist.

Pursuant to the legislation, employers must inform the Federal Migration Service on a quarterly basis on the fulfillment of the duty to disburse salary payments to such specialist and on the conclusion and termination of the specialist's employment or civil law contract.

Work Permit or Patent Waiver

The current Russian legislation provides for several narrow exceptions when the employee is not required to obtain a Russian work permit or patent. These exceptions apply, in particular, to the following foreign nationals:

- citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan;
- temporary and permanent residents of Russia holding a temporary resident permit or a permanent resident permit respectively;
- employees of diplomatic and consular institutions of foreign countries in Russia, or employees of international governmental organizations enjoying diplomatic status, and their private domestic employees;
- participants in the State Program for Assistance to the Voluntary Movement to the Russian Federation of compatriots residing abroad and their family members;
- employees of foreign legal entities (producers or suppliers), performing installation (contract supervision) works, servicing and after-sale service of technical equipment supplied to the Russian Federation by their employers;
- journalists duly accredited in the Russian Federation;
- students at Russian educational institutions working 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 activities 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.

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 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 the 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.

Post-Entry Procedures

Migration Records

Under Russian law, the Russian migration authorities should be notified of the arrival of every foreign national entering Russia under any type of visa or enjoying a visa-free regime (i.e., the migration notification requirement should be observed). Specifically, a foreign national is required to be registered for migration purposes either at the place of his residence (with the landlord acting as the hosting party) or at his workplace (with the employer acting as the hosting party) by way of filing a 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 specialist or his family member is not required if the specialist or his 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 specialist and his family members within seven business days. After the specialist and his family members are registered they may travel within the territory of the Russian Federation for a term of up to 30 days without having to obtain a new registration. If they leave their registered address for a longer period they will need to be registered at their new temporary address.

If a specialist owns residential property in Russia, he may be the hosting party for his family members (his spouse, children, children's spouses, parents (including foster parents) and their spouses, grandparents and grandchildren) and register them at the address of residential property that he 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.

Entry Based on International Agreements

Business visa invitations for foreign nationals from some counties (e.g., citizens of the European Union (except for the UK), Japan, South Korea, the US, etc.) having bilateral treaties with the Russian Federation can be prepared by their Russian hosting party (i.e., the hosting party can issue a visa invitation on its letterhead without having to apply to the Federal Migration Service).

Other Comments

Other Types of Ordinary Visas to Enter Russia

Foreign nationals can obtain different types of visas depending on the purpose of their visit, as follows (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 USD 750 and, if the violation is committed in Moscow, Saint-Petersburg, or the Moscow or Leningrad Regions, up to USD 1,050 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 USD 11,800 and, if the violation is committed in Moscow, Saint-Petersburg, or the Moscow or Leningrad Regions, up to USD 14,750 can be imposed on the employer for the same violation.

Moreover, separate fines may be imposed for each individual violation, e.g., one fine for the absence of a permit to hire, another fine for the absence of a work permit, etc. In 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 USD 75 and, if the violation is committed in Moscow, Saint-Petersburg, or the Moscow or Leningrad Regions, up to USD 105, and deportation from Russia.

Deportation or imposition of administrative fines on foreign nationals may also cause difficulties for them when visiting Russia and/or obtaining work permits and work visas in the future.

Failure to Comply with the Visa Regime Requirement

A foreign national entering Russia to provide services under a civil law contract or to be employed on the basis of a visa other than a work visa (for example, a business visa) may be considered to be infringing the visa regime. The employer and/or its officers could become subject to the following administrative fines for this infringement:

- a fine of up to USD 750 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 therefor;

- a fine of up to USD 7,400 can be imposed on the employer;

- the foreign national could also become subject to an administrative fine of up to USD 75, and, in a worst case scenario, deportation from Russia; and

- deportation or imposition of administrative fines could also cause difficulties in visiting Russia and/or obtaining work permits and work visas in the future.

Failure to Notify the Migration Authorities on Employment/Contracting of a Foreign National

According to Russian migration legislation, the employer should notify the migration authorities upon receipt of a work permit or conclusion of an employment agreement with a foreign employee (including those who enter Russia with or without visas, and highly qualified foreign specialists), or termination of an employment agreement with a foreign citizen within three business days from the day a work permit is received or from the day an employment agreement is concluded/terminated.

Failure to comply with the requirement to notify the migration authorities upon receipt of a work permit or conclusion/termination of an employment agreement with a foreign employee can result in the

imposition of additional administrative fines, in the amount of up to USD 750, on the employer's officers, and up to USD 11,800 on the employer or, in a worst case scenario, 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.

Singapore

Singapore's receptiveness to foreign talent is evident in its immigration laws, which offer many solutions to help employers of foreign nationals. Such solutions range from non-immigrant visas to permanent immigrant visas, although requirements, processing times, employment eligibility, and benefits for accompanying family members necessarily vary by visa classification.

Key Government Agencies

The Work Pass Division ("WPD") of the Ministry of Manpower ("MOM") facilitates and regulates the employment of foreign nationals in Singapore. This is achieved through the administering of three main types of work passes, namely: Employment Passes, S Passes and Work Permits. In addition to these, there are other passes used only for specific cases.

The Immigration & Checkpoints Authority ("ICA") is a government agency under the Ministry of Home Affairs. The ICA is responsible for the security of Singapore's borders against the entry of undesirable persons and cargo through Singapore's land, air and sea checkpoints. The ICA also performs other immigration and registration functions such as issuing travel documents and identity cards to Singapore citizens and various immigration passes and permits to foreign nationals. It also conducts operations against immigration offenders.

Other relevant agencies may include SPRING Singapore, a governmental board overseeing Singapore's productivity standards and quality ("SPRING"), and the Economic Development Board ("EDB").

Current Trends

In the light of the current economic downturn, many professionals, managers and executives ("PMEs") in Singapore have been retrenched or terminated from their jobs. The retrenched or terminated PMEs are largely over the age of 40, many of whom find it difficult to be re-hired in an equivalent or similar role.

In line with the government's policy, employers of foreign employees will face tighter MOM regulation in relation to the number of foreign employees they may employ if they are both weak in the Singaporean core and are not making a significant contribution to the economy of Singapore. Nevertheless, Singapore is well placed in the region to conduct business. Besides offering ample financial opportunities, the city-state boasts a high standard of living in the essential areas of health care, education, accommodation, order and security.

In order to mobilize their workforce, employers must first familiarize themselves with the immigration laws relevant for global mobility assignments. In this regard, this Singapore chapter offers an introductory insight.

Business Travel

Visit Pass

Foreign nationals visiting for short business negotiations and discussions may generally enter Singapore on a visit pass. Visit passes are issued on arrival in Singapore and the permitted period of stay is usually either 30 or 90 days. Extensions are considered on a case-by-case basis.

With the limited exception in some cases for diplomatic and official passport holders, foreign nationals holding travel documents issued by the following countries will require a valid entry visa prior to arrival in Singapore:

Level I Countries

Armenia, Azerbaijan, Belarus, Georgia, India, Kazakhstan, Kyrgyzstan, Moldova, Myanmar, Russia, People's Republic of China, Tajikistan, Turkmenistan, Ukraine, Uzbekistan Holders of Hong Kong Identity Document, and Holders of Macau Special Administrative Region Travel Permit.

Level II Countries

Afghanistan, Algeria, Bangladesh, Egypt, Iran, Iraq, Jordan, Lebanon, Libya, Mali, Morocco, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, and Yemen.

Miscellaneous Work Pass

The Miscellaneous Work Pass is for eligible foreign nationals on short-term work assignments, such as:

- a foreign national who is involved in activities directly related to the organization or conduct of any seminar, conference, workshop, gathering or talk concerning any religion, race or community, cause, or political end;

- a foreign religious worker giving talks relating directly or indirectly to any religion; and

- a foreign journalist or reporter, or accompanying crew member, not supported/sponsored by any Singapore government agency to cover an event or write a story in Singapore.

The Miscellaneous Work Pass enables a foreign national to take on assignments of up to 60 days in Singapore.

Work Permit (Performing Artists)

This is applicable to foreign artists performing at any public entertainment licensed bar, discotheque, lounge, night club, pub, hotel, private club, or restaurant for a maximum duration of six months.

Work Pass Exempt Activities

A work pass is generally necessary to carry out any work in Singapore. However, for certain activities, the government exempts foreign nationals from this requirement. These exempted activities are divided into various different categories.

Arbitration or Mediation Services

A work pass is not required if the individual is providing arbitration or mediation services (e.g., as an arbitrator or a mediator) in relation to any case or matter which:

- does not relate directly or indirectly to any religious belief or to religion generally;
- does not relate directly or indirectly to any race or community generally; or
- is not cause-related or directed towards a political end.

Exhibitions

A work pass is not required for participation in any exhibition as an exhibitor.

Note: This does not include trade fairs which require a Trade Fair Permit issued under Section 35 of the Environmental Public Health Act, Cap 95, or the activities at any makeshift stalls therein (such as *Pasar Malams* (street markets)).

Journalism Activities

A work pass is not required for journalism activities (including media coverage for events or media tours) supported by the government, or any statutory board constituted by or under any written law for a public purpose.

Junket Activities

A work pass is not required for activities relating directly to the organization, promotion or conduct of a junket in a casino and performed by:

- junket representatives employed by a junket promoter whose principal place of business is situated outside Singapore, or whose

principal business activity is conducted outside Singapore. Junket representatives are required to hold a valid junket representative license issued by the Casino Regulatory Authority; or

- self-employed junket promoters whose principal place of business is situated outside Singapore, or whose principal business activity is conducted outside Singapore. Junket promoters are required to hold a valid junket promoter license issued by the Casino Regulatory Authority.

Location Filming and Fashion Shows

A work pass is not required for activities relating to any location filming leading to a television or movie production or fashion show (including involvement as an actor, model, director, member of the film or technical crew, or photographer).

Note: Foreign artists performing at entertainment outlets certified with a public entertainment license (i.e., bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants) are required to hold Work Permits for performing artists.

Performances

A work pass is not required for:

- performing as an actor, singer, dancer or musician, or involvement as key support staff in an event supported by the government or any statutory board; or

- performing as an actor, singer, dancer or musician, or involvement as key support staff in an event. The performance venue can be any place to which the public or any class of the public has access (gratuitously or otherwise). This includes any theater or concert hall.

Note: Foreign artists performing at entertainment outlets certified with a public entertainment license (i.e., bars, discotheques, lounges, night clubs, pubs, hotels, private clubs and restaurants) are required to hold Work Permits for performing artists.

Provision of Specialized Services related to a New Plant/Operations/ Equipment

A work pass is not required for providing expertise or specialized skills, including in:

- the commissioning or audit of any new plant and equipment (including any audit to ensure regulatory compliance or compliance with one or more standards);
- the installation, dismantling, transfer, repair or maintenance of any equipment or machine, whether in relation to a scale-up of operations or otherwise; and
- the transfer of knowledge on processes of operations in Singapore.

Note: The expertise or specialized skills shall be of a kind that is not available in Singapore or is to be provided by the authorized service personnel of the manufacturer or supplier of the equipment.

Seminars and Conferences

A work pass is not required for activities relating directly to the organization or conduct of any seminar, conference, workshop, gathering or talk, which:

- does not have the sale or promotion of goods and services as its main purpose;
- does not relate directly or indirectly to any religious belief or to religion generally;
- does not relate directly or indirectly to any race or community generally; and

- is not cause-related or directed towards a political end, including involvement as a speaker, moderator, facilitator or trainer.

Sports

A work pass is not required for persons involved in any sports competition, event or training (e.g., an athlete, coach, umpire, referee or key support staff) supported by the government or any statutory board constituted by or under any written law for a public purpose, other than being engaged as an athlete of any Singapore sports organization pursuant to a contract of services.

Tour Facilitation

A work pass is not required for activities relating directly to the facilitation of a tour and performed by tour leaders or tour facilitators employed by a foreign company, i.e., a company whose principal place of business is situated outside Singapore or whose principal business activity is conducted outside Singapore.

Note: Tour facilitation refers to the provision of logistical support to the visiting tour group and ensuring that the activities in the tour itinerary are carried out according to plan, but does not include guiding tourists for remuneration. To facilitate a tour, a valid tourist guide license, issued by the Singapore Tourism Board, must be obtained.

Procedure

Foreign nationals performing work pass exempt activities are required to submit an e-Notification to the MOM before engaging in these activities. They can perform these activities for the duration of their short-term visit pass, subject to a maximum of 60 days. Beyond that, they will need to obtain a work pass. Those carrying out work pass exempt activities without notifying the MOM can be prosecuted under the Employment of Foreign Manpower Act.

In addition, the waiver of the work pass requirement does not exempt foreign nationals from having to comply with other specific legal requirements in Singapore.

Employment Assignments

In General

All matters pertaining to the employment of foreign nationals in Singapore come under the review of the MOM.

The MOM adopts a graduated approach towards foreign talent, offering the most attractive terms to those who can contribute the most to the economy in order 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

Employment Passes are issued to foreign nationals who work in managerial, executive or specialized roles, earn a fixed monthly salary of at least SGD 3,300 (though more experienced candidates need higher salaries), and have acceptable qualifications, usually consisting of a reputable university degree, professional qualifications or specialist skills.

The spouse and children under 21 years of age of Employment Pass holders who earn at least SGD 5,000 are eligible for Dependent's Passes to stay in Singapore. In addition, those earning SGD 10,000 or more may also bring their parents on long-term visit passes.

In order to apply and hire Employment Pass holders, a company is required to place an advertisement for the relevant job position with the Jobs Bank, a free job portal established by the Singapore government. Certain exceptions apply to small companies, high-level or short-term employees, and intra-corporate transferees.

The S Pass

The S Pass is meant for mid-level skilled workers who earn a fixed monthly salary of at least SGD 2,200. Applicants are assessed on a points-based system, taking into account multiple criteria including salary, education qualifications, skills, job type, and work experience. Employers need to pay a monthly levy and also purchase medical insurance coverage of at least SGD 15,000 per year for each S Pass worker. The MOM currently places a quota on the number of S Pass holders a company may employ, being 15 to 20 percent depending on the industry sector (such as service, construction or manufacturing).

Similar to Employment Pass holders, an S Pass holder must earn a fixed monthly salary of at least SGD 5,000 in order to be eligible for Dependent's Passes for his spouse and children under 21 years of age.

Additional Information

Applications for Employment Passes and S Passes can be made for a duration of up to two years. These work passes can be renewed six months before their expiry date. The duration granted in the first instance and for renewals is up to the discretion of the MOM, though in the case of Employment Passes, the maximum duration is extended to three years for renewals.

EP Online

This is a one-stop portal for companies and organizations to perform transactions such as the following:

- submit new applications for Employment Passes (excluding Sponsorship schemes), S Passes, Dependent's Passes, long-term visit passes, letters of consent and training employment passes (not applicable to employment agencies);

- renew applications for Employment Passes (excluding the sponsorship scheme), S Passes, Dependent's Passes, long-term visit pass, and letters of consent;

- upload relevant supporting documents for work passes/related pass applications;
- appeal for rejected applications;
- check applications and renewal statuses;
- issue Employment Passes, S Passes and related passes;
- cancel Employment Passes, S Passes and related passes;
- view rejection reasons for most of the unsuccessful applications;
- access and print application outcome letters and notification letters; and
- check an organization's S Pass quota and tier information.

Business employers who have not applied for S Passes before are required to set up an account with the Central Provident Fund Board and declare their business activity for the account.

Work Pass Account Registration

The Work Pass Account Registration is a portal for business employers to register for various work pass online accounts, including EP Online and WP Online, and also to declare their business activity.

An administrative user must be appointed. As a SingPass account is required to log in, this person should be either a Singapore citizen, Singapore permanent resident ("PR") or work pass holder.

It takes 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 take approximately seven working days to be processed. This reduced processing time is the main benefit of using EP Online, as manual applications can take up to five weeks. If a pass application is approved, the MOM will issue an in-principle approval letter.

EntrePass

The EntrePass is an employment pass for foreign entrepreneurs who would like to start a new business in Singapore. Applications must be made manually by completing the application form and submitting the required documents in support of the application at a SingPost branch. The MOM will issue EntrePasses for successful applicants.

The EntrePass holder must be actively involved in the operations of the Singapore company or business. At the point of submission for the EntrePass application, the applicant must not have registered the business with the Accounting and Corporate Regulatory Authority for longer than six months. The company must also have at least SGD 50,000 in paid-up capital and the pass holder must hold at least 30 percent of the shares in the company.

Applicants must also fulfill at least one of the following requirements:

- the applicant received funding or investment from a recognized third-party venture capitalist or business angel who is accredited by a Singapore government agency;
- the applicant holds intellectual property that is registered with an approved national IP institution;
- the applicant has an ongoing research collaboration with a research institution recognized by the Agency for Science, Technology and Research (A*STAR) or Institutes of Higher Learning in Singapore; and/or
- the applicant is an incubatee at a Singapore government supported incubator.

Renewal of the EntrePass is something which should be taken into consideration at the outset. For each year that the applicant holds an EntrePass, both the number of local jobs he needs to create and the required minimum total business spending by the business venture increases.

The proposed business venture must not be engaged in illegal activities. In addition, businesses not of an entrepreneurial nature (e.g., coffee shops, hawker centers, food courts, foot reflexology, massage parlors, karaoke lounges, money changing/remitting, newspaper vending, geomancy, tuition services) will not be considered for an EntrePass.

Personalized Employment Pass

The Personalized Employment Pass ("PEP") is a premium work pass for top-tier foreign talent. The difference between the PEP and a normal Employment Pass is that the latter is linked to a specific employer and any change in employer requires a fresh application for a new Employment Pass. As such, unless an Employment Pass holder is able to find employment with a new company, he may be required to leave Singapore if he does not hold any other relevant entry permits, such as a visit pass. In contrast, the PEP is linked to the individual and will be granted on the strength of an individual's merits. The PEP will allow holders to remain unemployed in Singapore for up to six continuous months to search for employment opportunities, after which the PEP will expire. PEP holders can generally take on employment in any sector, with the exception of some jobs which may require prior permission.

The following groups of foreign nationals are eligible for the PEP:

- Employment Pass holders whose fixed monthly salary is at least SGD 12,000; and

- overseas-based foreign professionals whose last drawn fixed monthly salary was at least SGD 18,000. 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 is non-renewable. PEP holders must earn a minimum annual salary of at least SGD 144,000 during this period. A PEP applicant may bring his spouse, children under 21 years of age, and parents.

PEP holders and their employers will need to keep the MOM informed of any changes in the PEP holders' employment status and contact particulars and will have to agree to reveal their annual basic salary to the MOM. The processing time for a PEP application is estimated to be about two weeks for online applications and five weeks for manual submissions.

PEP Application

Existing EP holders may apply for the PEP. The PEP application must be made manually by completing the application form and submitting the required documents in support of the application at a SingPost branch. Once submission has been made, it will take about five weeks for the application to be processed. The outcome will be posted to the address provided by the applicant in the application.

Work Permit

A Work Permit may be issued to lesser skilled or unskilled foreign workers (e.g., foreign factory workers, construction workers, domestic maids, etc.). It is, however, generally necessary for the employer to show that there is a shortage of local labor and/or that no suitably qualified Singaporeans are readily available. The number of Work Permit holders a company can employ is limited by industry-specific quota.

Generally, Work Permits 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.

Work Permits will be issued to semi-skilled foreign workers with suitable qualifications, as well as unskilled foreign workers.

Foreign workers holding Work Permits are not allowed to bring their immediate family members to live with them in Singapore.

Unless the company has a levy waiver in respect of a foreign worker, companies employing Work Permit holders are required to pay a foreign worker tax, the amount of which varies from industry to industry, and depends on whether the worker is skilled or unskilled, as well as the number of Work Permit holders already employed by the company.

An application for a Work Permit is submitted to the work permit department of the MOM and takes approximately one to seven days to process.

Training

Training Employment Pass

The Training Employment Pass is intended to cater to corporate trainees from overseas undergoing practical training in Singapore for professional, managerial, executive, or specialist jobs for their eventual work back in their own country. The Training Employment Pass is also applicable to foreign undergraduates or graduates who wish to gain internship experience for professional or specialist jobs.

This pass is eligible to foreign students and trainees from foreign offices or subsidiaries who earn a fixed monthly salary of at least SGD 3,000 and the graduate or trainee must be sponsored by a well-established Singapore-registered company. For foreign students, the training attachment must also be part of their degree program and they must be studying at an acceptable university.

Training Work Permit

The Training Work Permit is for unskilled/semi-skilled foreign nationals undergoing training in Singapore and also for foreign students studying in Singapore. The Training Work Permit is valid for up to six months.

Other Comments

Global mobility today has wider connotations than merely working abroad. The phrase also encapsulates the idea of taking up permanent residence in another country and ultimately, citizenship.

Non-Singaporeans who fall in one of the following categories may be eligible to apply to become Singapore PRs:

- the spouse or child of a Singapore citizen or PR;
- aged parents of a Singapore citizen;
- Employment Pass/S Pass holders (applying under the Professionals/Technical Personnel and Skilled Workers Scheme); and
- investors.

The grant of PR status is at the sole discretion of the Singapore authorities and no reasons or explanation will be given in the event that an application is not approved.

To maintain PR status, all PRs who intend to travel outside of Singapore must first obtain Re-Entry Permits ("REP") and must return to Singapore within the validity period of the permit. A Singapore PR will risk losing his PR status if he remains outside of Singapore without a valid REP.

A REP is usually valid for multiple journeys for a period of five years. A REP may not be issued or renewed if the PR does not continue to be

gainfully employed in Singapore or does not maintain sufficient connections with Singapore.

Singapore citizenship may be acquired by birth, descent, registration or naturalization. The waiting period for PRs to qualify for Singapore citizenship is currently two to six years. Applicants must be of good character, be financially able to support themselves and their dependents, and intend to reside permanently in Singapore. The evaluation criteria takes into consideration how the rest of the applicant's family (e.g., the applicant's spouse and children) can integrate into Singapore society, the applicant's demonstrated educational qualifications, and his immediate economic contributions. The decision to confer citizenship is discretionary and will be decided on the merits of each case. Dual citizenship is not permitted, so applicants must be prepared to renounce citizenship for all other countries.

All male PRs and citizens in Singapore, aged 16 to 40 years (or 50 years for officers and members of certain skilled professions), are subject to the Enlistment Act. Male ex-Singapore citizens and ex-Singapore PRs who are granted Singapore PR status are liable to be called upon for National Service.

A first generation male PR is automatically exempted from National Service if he applied under the Professionals/Technical Personnel and Skilled Workers Scheme or the Investor Scheme. However, he will be required to register himself with the Central Manpower Base if he is below 40 years of age. The male children of a first generation PR are, however, liable for National Service.

Slovakia

Slovakia provides several solutions to assist employers of foreign non-EU nationals. A different process is used in case employees seconded to Slovakia, and foreign non-EU nationals employed directly by a Slovak entity. 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

Applications for a Blue Card or residency permit (including Joint Work and Residency Permit) are generally filed through Slovak embassies and consulates abroad, and processed by the Ministry of Interior. The relevant branch of the Slovak Office of Labor, Social, and Family Affairs according to the place of work is responsible for the processing of work permits. Short-term Schengen 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.

Current Trends

On January 1, 2014, the Act No. 495/2016 implemented the Directive 2011/98/EU of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

Business Travel

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

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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.

*Last edited January 2015

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 Slovakia's commitments under international treaties, or for the benefit of Slovakia.

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 Slovakia. A temporary residency permit is differentiated by purpose of stay, e.g., employment, business activities, joining a family member, or 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 Slovakia 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 Slovakia.

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Permanent residence is defined as:

- permanent residence for five years;
- permanent residence for an unlimited period of time; or
- 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 who possess 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 is prevented, by a reasonable and unforeseeable obstacle, from leaving Slovakia at the time of expiration of his visa or residence permit, if there is an obstacle of his administrative expulsion. For example, if his life is endangered on the grounds of his race, nationality, religion, or 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 basis of the issuance of the permit continues to exist.

Visa Waiver

EU citizens do not need a visa to stay in Slovakia. They are only subject to the registration requirement. Some non-EU country citizens traveling to Slovakia 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.

*Last edited January 2015

Citizens of the following countries are allowed to arrive in Slovakia 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, e.g., a 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, Macau, Macedonia, Malaysia, Mauritius, Mexico, Monaco, Montenegro, Netherlands, Antilles, Nicaragua, New Zealand, Panama, Paraguay, Salvador, San Marino, Seychelles, Singapore, Serbia, Saint Kitts and Nevis, South Korea, Switzerland, Taiwan, Uruguay, the US, Vatican, and Venezuela.

For example, according to Slovak law, an US citizen entering Slovakia for tourist purposes may only stay in the territory of Slovakia and in the Schengen Member States for a period of up to 90 days within a 180-day period. If he interrupts his stay in the Schengen territory (including Slovakia) within these 180 days, 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 180-day period (i.e., exempting only those days when he is out of the Schengen territory). However, any US citizen is prohibited from working within the Schengen territory without a work visa.

Employment Assignments

EU citizens do not need a work permit or residency permit to work in Slovakia. They are only subject to the registration requirement.

Work Permit

Non-EU foreign nationals may be seconded to work in Slovakia, provided that they have been granted a Slovak work permit and a residence permit (for employment purposes). Certain exemptions apply.

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The Slovak entity where the seconded employee must discuss the secondment with the relevant Labor Authority, which approves the number of the seconded employees, their job position and the length of the secondment. However, it is not necessary to notify a vacant position prior to the secondment (unlike in the case of direct employment by a Slovak entity).

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 becomes valid and effective.

Intercompany Transfer – Employees Directly Employed by Slovak Entity

EU citizens do not need a work permit or visa to stay or work in Slovakia. They are only subject to the registration requirement.

Other non-EU 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.

A Slovak employer that is a legal entity registered in Slovakia must notify the local Office of Labor, Social and Family Affairs of a job vacancy. The non-EU foreign national may apply for the work permit only in case the job position remains vacant for at least 30 days. The notification of a job vacancy is not required in certain specific situations (e.g., in case the employee was granted a residency permit as a dependent).

An application for a Joint Work and Residency Permit for a foreign national is filed by the individual at the respective Slovak embassy or consulate abroad.

*Last edited January 2015

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 commence once the Joint Work and Residency Permits become valid and effective.

Work Permit Exemptions

There are some typical work permit exemptions. A work permit to employ a non-EU citizen in Slovakia is not required, for example, if the individual has:

- a Slovak permanent residency permit;
- a Slovak temporary residency permit for study purposes and his work does not exceed ten hours per week or its equivalent number of days or months per year;
- a Slovak temporary residency permit for research and development and his teaching activities do not exceed 50 calendar days per calendar year;
- an employment relationship in the territory of Slovakia that does not exceed seven consecutive calendar days or in total 30 calendar days per calendar year based on the assumption that he is: (i) a pedagogical employee, academic employee of an university, or scientific, research or development employee participating in a professional scientific event; or (ii) performance artist participating in a performance event; or (iii) a person ensuring the supply of goods or provision of services or who supplies goods or assembles in Slovakia 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 Slovakia; or

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- been seconded to Slovakia by an employer residing in another EU Member State within the services provided by this employer.

However, a visa/residency permit is in most cases required no matter whether the exemption from a work permit applies.

Skilled Workers

A "Blue Card" is a residence permit in Slovakia valid 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., education) and such position may be occupied by a foreign national who is not a citizen of the European Union.

For the purpose of application for a Blue Card, the employer must notify the Office of Labor, Social and Family Affairs of a job vacancy. The foreign non-EU national may apply for the Blue Card only in case the job position remains vacant for at least 30 days.

Applications for the issuance of a Blue Card should be filed at the respective Slovak embassy or consulate abroad. If a member of a third country legally resides in the territory of Slovakia, an application may then be filed with 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 Slovakia (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.

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Also, the border police have the right to request evidence of funds available for the stay in Slovakia. 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; and
- change of name.

Foreign nationals are also obligated to, upon prior request of the police:

- 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; and
- 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.

*Last edited January 2015

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.

Other Comments

It is recommended to insist that a passport is stamped with an entry stamp at the Slovak border whenever a foreign national crosses the border, if possible.

All Slovak immigration procedures are time-consuming and administratively demanding; therefore, advanced planning is crucial.

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Spain

New regulations came into force on September 28, 2013. Law 14/2013, dated September 27 (the "Law for Entrepreneurs"), was approved by the government in an effort to attract foreign investment and talent to Spain and to facilitate the movement of personnel within multinational companies. The Law for Entrepreneurs runs in parallel with the general Spanish Immigration Act and its rules of implementation (the "general immigration law"), which continue to be valid. The current immigration scenario is, therefore, confusing at times as immigration law practitioners tend to complete what has not been established in the Law for Entrepreneurs with the general immigration law, despite the Law for Entrepreneurs being a separate, independent law that makes little reference to the general immigration law, which should be treated independently.

With the Law for Entrepreneurs, Spanish immigration procedures for highly skilled professionals or for intra-company transfers are far more flexible and more adapted to business needs than the general immigration law, which should not be contemplated as an option in the case of intra-company transfers or work permits for highly skilled professionals. In this chapter, two legal options will be addressed: (i) work permits under the Law for Entrepreneurs; and (ii) work permits under the general immigration law that may be of interest to multinational companies. Given the benefits introduced by the Law for Entrepreneurs, only a couple of options under the general immigration law will be referenced.

Key Government Agencies

Under both the Law for Entrepreneurs and the general immigration law there are several public institutions involved in the processing of visas and/or work and residence authorizations. The Ministry of External Affairs, Directorate of Consular Affairs (the "Ministry") is responsible for visa processing at Spanish consular posts abroad. Spanish consulates abroad have the authority to directly grant temporary visas for business visitors, students (if certain timeframes are not met by the immigration office in Spain) and tourists. Such visas do not entail resident status for the foreign national.

All residence visas or labor-related visas first require the approval of the Large Companies Unit ("LCU") in the case of the Law for Entrepreneurs; while the approval of the applicable Government Delegation, Sub-delegation or Autonomous Community Authority located at the province where the foreign national will live in Spain must be sought for permits under the general immigration law.

Current Trends

Border protection activity and the enforcement of immigration-related laws that impact employers and foreign nationals have increased in Spain and in Europe. The government is making greater efforts to avoid illegal immigration by significantly increasing the amount of the fines for immigration sanctions. Sanctions for the general immigration law are clear. Breaches of the Law for Entrepreneurs have not yet been established but will certainly be approved soon. General immigration law establishes the implementation of computer systems at ports of entry to better control the entries and departures of foreign nationals. Employers of foreign nationals unauthorized for employment are increasingly subjected to administrative and criminal penalties. Concerns about the impact of foreign workers on the Spanish labor market, given the very high current unemployment rate in Spain and the lack of personnel to handle the procedures, are frequently the reasons stated to justify longer processing times and the increase in refusals of petitions under the general immigration law. Employers should evaluate alternatives prior to hiring foreign nationals as they should not rely on past practices for continued success.

Employers involved in mergers, acquisitions or reorganizations must also bear in mind the status of foreign employees and the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence in evaluating the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

The Law for Entrepreneurs provides a completely new perspective to immigration procedures now open in Spain, but implementation of the new law is still evolving. The Spanish government has made a clear effort to better adapt to multinational companies' needs on the immigration front and, for now, has allowed the adjudicators of visa applications some discretion.

Business Travel

Foreign nationals coming to Spain on short-term business trips may use short-term or multiple short-term stay visas, details of which are set out below. In both cases, the purpose of the foreign national's stay in Spain must be either business or tourism-related but under no circumstance should it be for work.

Unfortunately, the Law for Entrepreneurs has failed to clearly establish what activities fall under the jurisdiction of "business" as opposed to "work," although the line between one and another may be determined based on the duration of the foreign national's stay in the country. A business visitor may carry out commercial and professional activities in Spain, such as business meetings, conferences, negotiations and general administration activities. Employment in Spain or work-related activities are prohibited.

Short-term stay visas are valid for a maximum three-month stay within a six-month period in Spain. They may be issued for single, double or multiple entries.

Multiple short-term stay visas authorize the foreign national for multiple entries into Spain but such stays may not exceed 90 days (continuous or cumulative) within a six-month period. The visa is normally valid for a year but may, in exceptional cases, be issued for a period of several years.

Visas may be extended in Spain but only if the visa authorizes a stay that does not exceed 90 days. For instance, when the visa granted to the individual is valid for one month only, the foreign national may try

to obtain an extension prior to the visa's expiry but may only be granted an additional 60 days.

Unless the foreign national qualifies as a student, for stays over 90 days within a six-month period the foreign national must obtain a residence visa.

To extend the visa, the foreign national must prove that he has sufficient funds to cover expenses during the stay, medical insurance, accommodation, proof of intent to depart Spain (e.g., a departure ticket) and, finally, proof of the business purpose of the stay in Spain.

Visa Waiver

The normal requirement of first applying at a Spanish consular post for the short-term stay visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as for short-term stay visas or multiple short-term stay visas. The length of stay is up to 90 days within a six-month period only, without the possibility of a stay extension or status change. A departure ticket is required together with proof of financial means during the stay in Spain, medical insurance and accommodation.

All EU and EEA countries together with the following non-EU/EEA countries are presently qualified under this program: Andorra, Argentina, Australia, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, Nicaragua, New Zealand, Panama, San Marino, Singapore, South Korea, Switzerland, United States, Uruguay, Venezuela, Special Administrative Region of Hong Kong (People's Republic of China), and Special Administrative Region of Macau (People's Republic of China).

Employment Assignments

Normally, a labor market test must be completed before a work permit may be granted. Permits processed under the Law for Entrepreneurs do not require the labor market test.

The options regarding the type of work permit to be obtained are the following:

Law for Entrepreneurs

Intra-Company Transfer

The intra-company transfer visa is available to employees transferring temporarily to Spain from a related company outside the European Union.

This type of permit applies both to company employees and to independent contractors.

This type of permit has a maximum two-year duration (as long as the duration of the assignment in Spain is also equal to that time period) and may be extended for equal periods. However, in practice, the Social Security treaties between Spain and other countries will establish the maximum time period the individual may remain in Spain under this type of permit (for example, the agreement on social security between Spain and the US establishes a maximum five-year period). In the case of countries that do not have a treaty on social security with Spain, there is currently no limitation as to how many times the permit may be renewed. Certain conditions must be met as follows:

- the individual's length of service in a company of the multinational group must be at least three months, prior to his assignment to Spain, and he must have at least three years' general work experience in the same field of activity; and

- during the individual's temporary transfer, his employment or service agreement relationship (payroll and social security payments) must be maintained in the transferring country, if possible.

The intra-company transfer work permit may be processed while the individual is in Spain in a legal capacity (as a business visitor or tourist) although until the work permit is approved he would not be authorized to work.

Local Hire Highly Skilled Professional Work Permits

This type of permit applies to individuals holding a university-level degree or a post-graduate degree issued by a business school, irrespective of the country in which the degree was issued.

The salary and position of the employee should be consistent with a highly skilled professional and must comply with the minimum wage established by the collective bargaining agreement applicable to the Spanish company for positions that require a university level degree. If the employee were to travel with his family then his salary should be sufficient to sustain his family as well. In addition, contributions to the Spanish social security must be consistent with a highly skilled professional group.

Beneficial treatment, in terms of documentation involved in the processing of highly skilled professional work permits, applies to employers that meet certain criteria related to:

- employment – more than 250 employees in the company group in the three months preceding the work permit application in Spain;
- foreign investment – an average EUR 1 million in revenue in the three years prior to the work permit application; and
- activity – regardless of the size of the company, if the company's activity is related to a certain line of work, for instance, aeronautics or aerospace, or renewable energies.

General Immigration Law

Long-term resident permits (Permanent Resident permits) are a viable option in the following situations:

Individuals who have held legal resident status for more than five years have the right to apply for a long-term resident permit. As a general rule, absences from Spanish territory should not exceed 10 or 12 months, depending on specific circumstances, in the five-year period preceding the long-term resident permit application.

In Spain there are two types of long-term resident permits: (i) the ordinary long-term resident permit that does not provide mobility benefits within the EU; and (ii) the EU long-term resident permit that does provide these benefits. The EU long-term resident permit may be processed by those who have been legal residents for five years (either in Spain or in other EU countries under an EU Blue Card) of which the last two years should have been in Spain. There are also income requirements as the individual must have a salary of at least 150 percent of the "IPREM" (Public Indicator of Income approved yearly by the government, which is listed as EUR 7,455,14 gross yearly for 2015), for a family of two. The IPREM amount increases by 50 percent for each additional family member. The individual should also prove that he has medical coverage in Spain. As previously mentioned, the EU long-term resident permit provides mobility benefits to its holder in the sense that long-term resident status may be acquired in other EU countries following a very simplified procedure. Also, the holder of an EU long-term resident permit issued in another EU country may acquire long-term resident status in Spain if the conditions are met. A labor market test for those who intend to work as employees in Spain is not required.

Family Members

Family members (spouses, de facto couples, children under 18 years of age, or other dependents, where justified reasons for residing in Spain can be provided) may obtain a residence permit that authorizes those of legal age to work in Spain, in the following circumstances:

- Via the Law for Entrepreneurs. The spouse, de facto couple and children under 18 years old (or over that age who are financially dependent and have not formed a family of their own) may apply for a residence permit simultaneously or successively to the individual's work permit application.

- Via family reunion. The foreign employee who has applied for the renewal of the residence permit may apply for the family's residence authorizations at the Government Delegation/Sub-delegation/Autonomous Community Authority with jurisdiction over the residence in Spain. If the residence authorizations are approved, family members will have 30 days to submit their residence visa applications at the Spanish consulate located in their country of origin or country of legal residence. Once the visas have been issued on the applicants' passports they may travel to Spain and apply for their foreign national ID cards.

- Via ordinary non-lucrative residence authorizations. Family members of top management employees may submit their visa applications at the same time as the employee does. However, their residence visas will be approved two to three 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 time consuming. In the future, applications will be transmitted electronically, which will hopefully decrease significant delays.

Of all three cases, only if the family members obtain their residence permits via the Law for Entrepreneurs or family reunion would they be able to work in Spain directly without having to additionally obtain a work permit. With respect to the other procedure to obtain a family residence permit, it does not authorize work, but family members (in the case of children they must be of legal age, i.e., 16) may process work permits at a later stage if they are offered a position by a company established in Spain. Depending on the circumstances, a labor market test will or will not be required.

Training

If the purpose of the foreign national's stay in Spain is to study, or to carry out either scientific or medical investigations or training-related activities that are not professionally remunerated, it is appropriate to obtain a student visa at the Spanish consulate in the country of origin or country of legal residence abroad.

The student visa applicant must provide proof of enrollment in official studies or investigation centers, both private and public, with an approved attendance schedule and studies/training or investigation plan. The foreign national qualifying as a student must show proof of having sufficient funds to support himself during the studies or investigation activities (scholarships or personal funds). Once the student is in Spain, if the duration of his studies is over six months, an application for a student card must be submitted. The card will be valid for the duration of the studies/training program, up to a maximum of 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:

- students of medicine and surgery, psychology, pharmacy, chemistry, or biology holding a degree officially authorized by the Ministry of Culture and Education in Spain and that are enrolled to study specialized studies in Spain may carry out remunerated

work as required by such studies. The labor authorities in Spain must be notified about such activities; and

- holders of student cards may obtain a work authorization conditioned on the validity of the student card to work on a part-time or full-time basis, however, in the latter case, the work authorization will only be valid for a maximum of three months, as long as the student card is valid for that time period.

Holders of student cards for at least three years may convert the student card into a work and residence authorization if the following conditions are met:

- the student must have finished his studies/research activities satisfactorily;

- the student must not have been granted a scholarship inherent to cooperation or country development programs (private or public); and

- the conversion petition must be filed while the student card is still valid or during the processing of the extension of the student card.

Family members of students who meet the above requirements to convert their student cards into work and residence permits may also convert their student cards into non-lucrative residence permits.

Other Comments

There are additional authorizations that may apply to specific cases, such as work permit exceptions and residence authorizations that apply to directors or professors of foreign or local universities, or to entrepreneurs. Also, Spanish immigration regulations establish a way to obtain a work and residence authorization based on the years a foreign national has remained in Spain and on his integration into Spanish society. In effect, work and residence authorizations based on exceptional circumstances, "*arraigo social*," may be obtained if a

foreign national has remained in Spain for more than three years and has been offered employment for more than a year.

Immigrants to Spain are often interested in becoming Spanish citizens. Naturalization to citizenship requires, as a general rule, ten years of continuous and effective residence after immigrating, however, this general period is shorter for nationals of certain countries, for example: Morocco or Philippines (five years); nationals of all South and Central American countries (two years); and spouses of Spanish nationals or the children or grandchildren of Spanish nationals (one year).

Sweden

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 the activities that will be performed while in Sweden. The Swedish government has simplified the rules for immigrants to bring their knowledge and experience to the Swedish labor market.

Key Government Agencies

The Swedish State Department is responsible for receiving visa applications at Swedish embassies or consulates abroad. The visa applications are either processed by the Swedish embassy or consulate abroad or, in certain cases, by the Swedish Migration Board. The Swedish Migration Board is responsible for processing applications for work and residence permits in Sweden. Applications for work permits normally require that a certain form, i.e., an offer of employment, has been completed by the Swedish employer before an application is made. In the offer of employment, the relevant union(s) shall state their opinion regarding the proposed salary, insurance coverage, and other terms of employment that will be offered.

A decision rendered by the Swedish Migration Board may, in certain cases, be appealed to 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 customs and border police at Swedish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals are handled by the Swedish Police.

The Swedish regulation concerning immigration and foreign nationals in Sweden is principally found in the Aliens Act (2005:716), the Aliens Ordinance (2006:97) and the Schengen Borders Code (562/2006/EC).

Current Trends

The Swedish Migration Board has been criticized for its long processing times, resulting from its heavy work load. The Swedish Migration Board advises all work permit applicants to complete the application online at the Swedish Migration Board's website to avoid the long processing time. If the application contains all the required (and correct) information, the processing time is normally two months. However, one in four applications currently has a processing time of more than nine months.

Business Travel

Visa

A visa is a permit which is required to enter and/or remain in Sweden and the other Schengen countries for a limited period of time. A visa granted by any of the Schengen countries is valid throughout the Schengen area. However, in exceptional cases the visa may be limited for entry merely to the issuing country or certain countries, and this applies primarily if the holder's passport is not approved by all Schengen countries.

A visa may be granted for a number of reasons, e.g., visits to friends and/or relatives, to businesses or conferences, and for medical treatment. A visa is usually granted for a stay in the Schengen area for a maximum period of three months during a six-month period. This means that a person who has stayed in any of the Schengen area for three months cannot be granted a new visa until the six-month period has elapsed, nor is it possible to extend a visa permit. However, provided that special circumstances are considered, a visa may be granted for up to one year.

Special circumstances may, inter alia, be considered if a person needs to travel to Sweden several times a year for business purposes or needs to visit children in Sweden. If there are such special circumstances, it is possible to extend a visa.

The requirements for a visa may vary from time to time and among the Schengen countries. Up-to-date information regarding the requirements may be found at the website of the Swedish Embassies and Consulates: www.swedenabroad.com/.

The 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 expiration of the visa and which has been issued in the last ten-year period. Another condition is that the person applying for a visa must have the monetary means to support himself during the stay and the journey back to his home country. The Swedish authorities have established that a person should have approximately EUR 45 for each day of the stay. A person must also present proof that they have medical travel insurance which covers any cost that may arise in conjunction with emergency medical assistance, emergency hospital care, and transport to their home country due to medical circumstances. The insurance should cover costs of at least EUR 30,000 and be valid in all of the Schengen area countries.

If a person applies for a visa for business or conference purposes, the applicant shall submit an invitation letter from the company or the person arranging the stay in Sweden. The invitation letter should, 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 financial support during the duration of the stay in Sweden.

Visa Waiver

Most non-EU/European Economic Area ("EEA") citizens are required to hold a visa before entering Sweden. However, citizens of the following countries are currently exempted from the visa requirement: Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, Dominica, Grenada, Guatemala, Honduras, Israel, Japan,

Mauritius, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Palau, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, El Salvador, Samoa, San Marino, Seychelles, Singapore, South Korea, Switzerland, Taiwan, Timor-Leste, Tonga, Trinidad and Tobago, the United States, Uruguay, Vanuatu and Venezuela.

Since the introduction of biometric passports, the exemption from the visa requirement has been extended to cover citizens from Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Moldova and Serbia, if they are holders of biometric passports.

Employment Assignments

Non-EU/EEA nationals and non-Swiss nationals who want to live and work in Sweden need to be granted a work permit. If 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 Sweden. The requirement to obtain a work and residence permit and a visa applies regardless of whether or not the employee is employed by a Swedish company.

Intra-Company Transfer

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) are exempted from the work permit requirement. Also, an employee who participates in practical experience, internal training or other skills development at a company in an international group for a maximum period of three months in aggregate over a period of 12 months is exempted from the work permit requirement.

Skilled Workers

Visiting research fellows or teachers at higher education institutions who participate in research, teaching or lecturing activities in Sweden for a maximum of three months during a 12-month period are exempted from the requirement.

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 nationalities to apply for the vacancy. The easiest way for an employer to do so is to advertise the employment with the Public Employment Service ("*Arbetsförmedlingen*"). The vacancy will then also be accessible on the European Job Mobility Portal (EURES). The vacant position must have been advertised for a period of ten days before the position can be offered to the non-EU/EEA national.

Requirements for Work Permit

In order to be granted a work permit, the following requirements apply: (i) there must be an offer of employment from an employer in Sweden; (ii) the employee must have a valid passport; (iii) the employee must earn enough from the employment to support himself; (iv) the terms of employment have to be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry; (v) the relevant union has to be given the opportunity to state an opinion on the terms and conditions of employment; (vi) the vacant position must, in case of new recruitment, have been advertised in Sweden and the EU; and (vii) the employer must intend to sign health insurance, life insurance, job security insurance and occupational pension insurance for the employee when the employment begins. Family members may be granted a residence permit for the same duration as the term that the principal residence and work permit are granted.

Certain industries are subject to more stringent control before the Migration Board grants a work permit for, inter alia, cleaning, hotel and restaurants, construction, trading, agriculture and forestry, automobile repair, service, and staffing.

Validity of a Work Permit

If the employment is temporary, the foreign national may be granted a residence and work permit valid for the period of employment and for a maximum period of two years at a time. The initial work permit may be extended multiple times. However, the period of validity for the work permit may not exceed four years in aggregate. After four years, the employee will be eligible for a permanent residence permit. The Migration Board may withdraw the work and residence permit if a person loses his employment and provided that the person has not found new employment within three months after the expiration of the previous employment.

In certain cases, a new application for a work permit must be submitted. For the first two years, the residence and work permit is restricted to a specific employer and a specific occupation. If a change of employer is made during the first two years, a new work permit is required. If a residence and work permit is extended after two years, the permits will be restricted only to a specific occupation.

Self-Employed Persons

In order to remain in Sweden for more than three months, to start a company or enter into a company partnership, a residence permit is required. A self-employed person does not need a work permit. However, citizens of certain countries are required to hold a visa before entering Sweden.

To obtain a residence permit for a self-employed person in Sweden, the person is required to, inter alia, establish that: (i) the person is running the business, has the ultimate responsibility for the business and that the ownership is at least 50 percent of the company; (ii) the business' services or goods are sold and/or produced in Sweden; (iii)

the person has significant experience in his field and previous experience of running his own business; (iv) the person possesses documentary evidence of having the necessary capital to establish or purchase a company; (v) the person has proof of ability to support himself and his family during the first two years; (vi) the person has details of annual accounts for the previous two years (if the business has been in operation earlier); (vii) an income statement and a balance sheet are in existence; and (viii) the person has details of customer references, banking connections, and/or former experience in the business. Moreover, a contract for business premises and a contract with customers or suppliers must be included with the application.

EU Blue Card

It is possible for a non-EU citizen to apply for a European Blue Card ("EU Blue Card") in all EU Member States. In order to be eligible for an EU Blue Card, which is both a work and residence permit, the individual must have been offered a highly qualified position for a minimum of one year and a salary requirement of at least one and a half times the average gross salary in Sweden. Having been granted an EU Blue Card means that the person can apply for another EU Blue Card immediately after entry into another EU Member State and credit the years in both Member States when applying for a status as a long-term resident.

The basic requirement is to have a university degree or five years of work experience and to be offered a highly qualified position for the minimum extent of one year. To be eligible for the EU Blue Card the salary has to be at least approximately EUR 5,000. The applicant must also have a valid passport and apply for complete Swedish health insurance.

Notification to the Swedish Tax Agency

Sweden has implemented the EU directive (2009/52/EC) on sanctions and measures against employers of illegally staying third country nationals. The new rules require employers to notify the Swedish Tax

Agency ("*Skatteverket*") when hiring third country nationals to work in Sweden.

Notification must be made to the Swedish Tax Agency no later than the 12th day of the month after the calendar month in which the employment started. The notification should, inter alia, contain the name and the address of the employer and the employee, the employee's Swedish personal identification number, or coordination number, the employer's corporate identification number, and the start date of the employment.

Before the employment begins, the employer is obliged to confirm that a person who employs a third country national must ensure that the third country national has a valid residence permit or corresponding document. The employer must also save a copy of the document for 12 months after the termination of the employment.

The term "third country national" means a person who is not a citizen of the EU, an EEA country, or Switzerland and is not a family member of a citizen of the EU, an EEA country, or Switzerland.

Employers that deliberately or negligently hire someone who does not have the right to stay or work in Sweden may have to pay a penalty, have their rights to all public support, grants, and benefits rescinded for five years, or may be ordered to repay previous grants and/or be sentenced to a fine or even to imprisonment.

Notification to the Swedish Work Environment Authority

Foreign employers that post workers in Sweden for more than five days are obliged to notify the Swedish Work Environment Authority ("*Arbetsmiljöverket*") in writing. When registering, the foreign employer must appoint a contact person in Sweden. The contact person must be able to provide documents that show that the employer is complying with the requirements in the Swedish implementation of the European Posting of Workers Directive. The registration must be made before the employee starts work in Sweden. Failure to timely

report a posting and a contact person for registration may subject the company to a fine of approximately EUR 2,250.

Application Procedure for Work Permit

As a rule, a person must apply for a work permit from the country where he resides. However, in certain cases, an individual may apply for a work permit in Sweden. This applies, inter alia, if the individual would like to extend a current permit, the individual needs a new permit because he is switching employers or occupations, the individual has a residence permit to attend a college or university, or if the individual is visiting an employer (only if there is a high demand for workers in the occupation).

If the application is made from outside of Sweden, it can either be done electronically on the Migration Board's website (www.migrationsverket.se) or at a Swedish agency abroad (embassy or consulate) in the country of residence. An application made from Sweden can be filed electronically on the Migration Board's website, by mail to the Migration Board, or at any Migration Board Permit Unit. A copy of the passport, offer of employment, and receipt showing that the application fee is paid must be attached to the application.

An application for an EU Blue Card can be made either in the person's country of residence by sending the application to a Swedish Embassy or Consulate General, or if the applicant already has a valid EU Blue Card issued in another EU country, the application may be submitted in Sweden to one of the Swedish Migration Board permit units.

Training

An employee who participates in training, testing, preparation or completion of deliveries, or similar activities within the framework of a business transaction for an aggregate period of three months during a 12-month period is also exempted from the work permit requirement.

Post-Entry Procedures

If an employee has obtained a permit to work in Sweden for more than three months, the employee will also be granted a residence permit card. The card proves that the employee has permission to reside in Sweden. It also contains information such as the employee's fingerprints and photograph. As soon as the employee has arrived in Sweden, the employee must therefore visit the Swedish Migration Board to be fingerprinted and photographed (provided that the employee did not need a visa to enter into Sweden, in which case this would have been included in the visa application).

Entry Based on International Agreements

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 himself is entitled to reside in Sweden. This means 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. As of May 1, 2015, EU/EEA nationals do not need to register with the Swedish Migration Board even if their stay in Sweden will be for more than three months. If any of the family members are not an EU/EEA national, that family member needs to apply for a residence card. Citizens of Switzerland and their family members are not required to apply for a work permit but must apply for a residence permit. Nordic citizens do not need to register or hold a residence permit.

Switzerland

Switzerland has one of the highest rates of immigration in Europe. With more than one 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 Federal Act on Foreign Nationals ("FNA"), in force since January 2008, and in the Bilateral Agreement on the Free Movement of Persons concluded with the EU, which came into force on June 1, 2002.

Key Government Agencies

The State Secretariat for Migration ("*Staatssekretariat für Migration*"/"*Secrétariat d'Etat pour les migrations*"/"*Segretariat di Stato della migrazione*") is responsible for all concerns related to aliens and asylum in Switzerland.

The Cantonal Migration Authorities are responsible for 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 Act on Foreign Nationals 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 the European Union or European Free Trade Association.

Under the new law, there remain large restrictions on the employment of foreign nationals from non-EU/European Free Trade Agreement ("EFTA") Member States for activities other than those pertaining to specialists, management and qualified personnel. Regulations on

salaries, working conditions and limits on visas for third country citizens have to be observed.

Business Travel

Foreign nationals who provide cross-border services or a gainful activity in Switzerland upon the instruction of a foreign employer must hold a work permit if they perform either of these activities for more than eight days per calendar year. Foreign nationals not taking up any form of employment in Switzerland may remain in the country without a residence or work permit for as long as three months. After three months, foreign nationals are required to leave the country for at least one month. Foreign nationals are not authorized to stay in Switzerland for more than six months in a 12-month period. Individuals who require a visa can stay for the duration specified on their visa.

Visa Waiver

Depending on the foreign national's citizenship, the normal requirement of an entry visa may be waived. The list of countries qualifying for such benefits is subject to change. For current information, please visit www.bfm.admin.ch.

Employment Assignments

Switzerland introduced a dual system of recruiting foreign labor in 2002. Under this system, nationals from European Union and 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 ("third country nationals") are admitted in limited numbers, provided that they are sufficiently qualified.

Priority

Third country nationals may only be admitted if a candidate cannot be recruited from the labor market of Switzerland or another EU/EFTA Member State. Swiss citizens, foreign nationals with either a long-

term residence permit or residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded the Bilateral Agreement on the Free Movement of Persons (i.e., the EU and EFTA Member States), are granted priority. Employers must prove that they have not been able to recruit a suitable employee from these priority countries despite intensive efforts.

Vacant positions must be registered with 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 typically used in the specific industry (e.g., specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers, written confirmation from employment agencies, or other kinds of documentation. Often it is helpful for authorities if the employer submits a brief overview of all candidates with a short explanation of which qualifications for a particular job were lacking. In special cases, the authorities can request an employer to intensify the recruitment efforts.

Salary/Terms and Conditions of Employment Customary in the Region and in the Business

The salary, social benefits and terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular sector. Some sectors and businesses lay down these conditions in a collective labor agreement which is legally binding either on a national or, 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 by both the employer and the employee and that contains a note reading "contract only valid on condition that the authorities grant a work permit." This provides both contracting parties with legal certainty.

With the exception of seconded employees who remain employed by their foreign employers, Swiss employers are obliged to register all employees with the statutory social security institutions.

Foreign nationals who do not have a long-term residence permit are subject to tax at source and must therefore be registered with the tax authorities. It is then the responsibility of the employer to deduct the amount of tax each month from the employee's wage and pay the sum to the tax authorities.

The new Federal Act on Illegal Employment ("LTN") facilitates, on the one hand, the payment of social security contributions for smaller, employed jobs. On the other hand, it contains new measures and more severe penalties to prevent and combat illegal employment. One provision that remains unchanged for both the employer and foreign employee is that everyone – whether in paid or unpaid employment – requires a permit.

Non-compliance with minimum salary requirements and with other terms of employment customary to a particular region or sector of industry is investigated first and foremost by the cantonal immigration authorities or, in some sectors, by offices established mainly for this purpose. Employers found not to comply with the legal requirements may be blacklisted and may not receive any further work permits for foreign workers for a period of up to five years.

Personal Qualifications

Executives, specialists and other qualified employees will be admitted if no suitable candidate is found on the local market. "Qualified employee" means, first and foremost, 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 long-term professional and social integration. These include professional and social adaptability, knowledge of a national language, and age.

The Swiss authorities examine the applicant's qualifications on the basis of his 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 useful for the immigration authorities if documents are submitted containing additional information on the institution and the length and content of the education or training course. Documents that may be helpful include 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. The following is a partial list of the most frequent exceptions:

- employment pursuant to cooperation agreements/projects, i.e., joint ventures;

- service and guarantee work for products from the country of origin;
- temporary duties as part of large projects for companies with their headquarters in Switzerland (international assignments);
- pursuit of special mandated practical training and further education with professional associations and international business enterprises;
- transfer of executives or specialists within a multinational company or pursuant to reciprocity agreements;
- employment in certain professions where it is difficult to recruit in the labor market;
- highly qualified scientists with a degree obtained in Switzerland in areas or sectors in which there is a lack of potential labor; and
- certain employment following the conclusion of a person's studies.

Family members of Swiss nationals and persons with a long-term residence permit do not require authorization for self-employment. Family members of other foreign nationals staying in Switzerland do require a permit, however.

Foreign nationals may only be admitted for employment if they have suitable accommodation and if they have concluded health insurance covering them in accordance with statutory requirements.

Training

Trainees are eligible for a short-term residence permit. These permits are granted for a maximum period of 18 months.

Trainees are persons aged 18 to 35 who have completed their occupational training, and want to undergo some advanced

occupational or linguistic training in the context of gainful employment in Switzerland. Trainees are subject to rules, which have been laid down in special treaties. Thus, they are subject to special quotas. The legal provisions concerning issues of national priority are not applicable to them.

Trainee permits are granted on the basis of a written employment agreement with an integrated training program.

Trainees should receive salaries comparable to those of host country nationals in the same job and with similar qualifications, and should in any case be able to cover their living expenses.

Employers are free to look for candidates in their own subsidiary companies abroad or through business connections. If they prefer, however, they may ask the government officials responsible for the scheme to help them find suitable trainees for any positions available.

Nationals from EU/EFTA Member States in Switzerland

Nationals from EU/EFTA Member States have the right to reside and work in Switzerland.

For the pre-2004 EU Member States (EU 15), Malta, Cyprus and EFTA (Norway, Iceland and Liechtenstein), there were transitional restrictions regarding access to the labor market that were removed on June 1, 2007.

Protocol II, extending the Agreement on the Free Movement of Persons 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 May 31, 2016 at the latest. Thus, nationals from these two states continue to face restricted access to the Swiss labor market.

Despite the fact that Croatia became the 28th member of the European Union on July 1, 2013, from July 1, 2014, Croatian nationals remain subject to separate quotas on access to the Swiss labor market as a

result of the constitutional amendment aimed at stopping mass immigration, adopted by the Swiss electorate on February 9, 2014. The admission of Croatian nationals to Switzerland is therefore still subject to the provisions of the Foreign Nationals Act.

Nationals of the EU 15, Malta, Cyprus and EFTA Member States Employed in Switzerland

A Work and Residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; there is only an obligation to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Employment of Less Than Three Months per Calendar Year

No permit is required. The employer can simply announce the presence of the foreign national using the online procedure of the Federal Office for Migration.

Employment Contracts Between Three Months and 364 Days

A short-term L EC/EFTA permit will be issued for the duration of the contract. Upon 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 B EC/EFTA residence permit is issued with an initial validity of five years.

Cross-Border Workers

Workers living in the EU/EFTA and employed in Switzerland on the basis of a Swiss employment agreement can receive a G EU/EFTA frontier worker permit, provided that they return home at least once a

week. Due to the fact that they stay in Switzerland during the week, they must register with the communal authorities where they are staying.

Settlement Permit (C-EU/EFTA)

The settlement permit is not regulated by the Agreement on the Free Movement of Persons. It is currently granted to 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 ten 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) Employed in Switzerland

Since May 1, 2012 nationals from these countries are subject to transitional restrictions regarding access to the labor market. Work permits are subject to the following:

- Economic needs test – a permit is only granted if no equivalent person is already available on the Swiss labor market.

- Control of wage and working conditions – a permit is only granted if local wage levels and working conditions are respected.

- Quota – a permit is only granted if the respective quota for the L or B permit has not yet been met. 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.

Nationals of EU/EFTA Member States wishing to start a business in Switzerland can apply for a five-year B EU/EFTA permit with the respective cantonal authorities. This permit will be granted if there is proof of an effective independent activity. The cantonal authorities determine what documents must be presented. As a general rule, these include some or all of the following: a business plan; proof of capital for starting the business; proof of specific preparations for launching the business like rental agreements for real estate; and a registration with the register of commerce.

Nationals of Third Countries in Switzerland

Permit B: Residence Permit

Resident foreign nationals are foreign nationals who are resident in Switzerland for a longer period of time for a certain purpose with or without gainful employment.

As a rule, the period of validity of residence permits for third country nationals is limited to one year when the permit is granted for the first time. First-time permits for gainful employment may only be issued within the limits of the ceilings and in compliance with the Federal Act on Foreign Nationals ("LEtr"). Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offenses, dependence on social security or 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 of regular and uninterrupted residence in Switzerland. US nationals are subject to a special regulation. However, third country nationals have no legal entitlement to settlement permits. Apart from the provisions of settlement treaties, such a claim can only be derived from the LEtr. Persons who hold a settlement permit are no longer subject to the Limitation Regulation, are free to choose their employers, and are no longer taxed at source.

Permit Ci: Residence Permit with Gainful Employment

The residence permit with gainful employment is intended for members of the families of intergovernmental organizations and for members of foreign representations. This concerns spouses and children up to 25 years of age. The validity of the permit is limited to the duration of the main holder's function.

Permit G: Cross-Border Commuter Permit

Cross-border commuters are foreign nationals who are resident in a foreign border zone and are gainfully employed within the neighboring border zone of Switzerland. The term "border zone" describes the regions which have been fixed in cross-border commuter treaties concluded between Switzerland and its neighboring countries. Cross-border commuters must return to their main place of residence abroad 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 to the term of the employment contract. In exceptional cases, this permit can be extended to an overall duration of no more than 24 months if the holder works for the same employer throughout this time. Time spent in Switzerland for a basic or advanced traineeship is also considered short-term residence. Permits issued to foreign nationals who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation.

Permit F: Provisionally Admitted Foreign Nationals

Provisionally admitted foreign nationals are persons who have been ordered to return from Switzerland to their native countries, but in whose cases the enforcement of this order has proved inadmissible (e.g., violation of international law), unreasonable (e.g., concrete endangerment of the foreign national), or impossible for technical reasons of enforcement. Thus, their provisional admission constitutes a substitute measure. Provisional admission may be ordered for a duration of 12 months and be extended by the canton of residence for a further 12 months at a time. The cantonal authorities may grant provisionally admitted foreign nationals work permits for gainful employment irrespective of the situation of the labor market and in the economy in general. A residence permit granted at a later date is subject to the provisions of the LEtr.

Other Comments

Holders of an EU/EFTA permit are entitled to a family reunion, regardless of the nationality of their family members. Qualifying family members may include the spouse, the registered partner in homosexual couples, and children under 21. Parents and children over 21 also qualify, provided they are financially dependent on the main permit holder. If family members of EU/EFTA nationals do not have EU/EFTA nationality, they may be subject to visa requirements when entering Switzerland before having received their family reunion permits.

Planned Legislative Change

On February 9, 2014, Swiss citizens adopted a modification of the Federal Constitution aimed at stopping mass immigration. This amendment requires that immigration policies be restricted by the introduction of quantitative limits and quotas. These limits and quotas will apply to all permits covered by the legislation on foreign nationals, including cross-border commuters and asylum seekers, and will be geared towards Switzerland's overall economic interests. In sum, when hiring, employers will have to give priority to Swiss nationals.

The new constitutional provisions do not specify how these quotas should be developed, nor do they specify who should set and allocate them, or according to what criteria. These details need to be defined by the legislature, which has a period of three years to work out and implement the new system.

The new constitutional provisions require that any international treaty that violates their overall purpose be renegotiated and amended within three years, i.e., by February 8, 2017. On February 11, 2015 the Federal Council approved the draft of the new legislation on foreign nationals and additional measures to make better use of the potential workforce within Switzerland. It also made a final decision on the negotiating mandate with the EU on the Agreement on the Free

Movement of Persons. The immigration system that the Federal Council has devised contains annual quantitative limits and quotas for all foreign nationals and provides that Swiss residents should be given priority when recruiting new staff. The admission of nationals of EU/EFTA Member States will be regulated by the Agreement on the Free Movement of Persons as before, but the Agreement will have to be amended in line with the constitutional requirements. The results of the negotiations being sought with the EU are therefore key to the draft legislation. For nationals of third countries, the draft legislation being submitted for consultation provides for quotas and the prioritization of existing Swiss residents, as was previously the case. Foreign nationals who already live in Switzerland will therefore not be affected by the new legislation.

For the time being, the exact effects of the popular vote are still unknown. However, the principles on which the new constitutional amendment rests indicate that it should still be possible to bring well qualified employees to Switzerland as foreign nationals with specific skills that cannot be found in the local market.

Taiwan, Republic of China

Taiwan has a three-tier immigration protocol that differentiates foreign nationals in general, People's Republic of China ("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-Taiwanese 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 chapter, the term "foreign nationals" means non-Taiwanese nationals, apart from nationals of the PRC, Hong Kong SAR or Macau SAR.

Most foreign national business travelers may obtain short-term visitor visas through a Taipei Economic and Cultural Office or 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.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for Republic of China ("ROC") visas, whether processed through ROC (Taiwan) embassies and consulates, Taipei Economic and Cultural Offices, or overseas representative offices.

The National Immigration Agency of the Ministry of the Interior is responsible for immigration and naturalization services for foreign nationals, PRC nationals, and citizens of Hong Kong SAR and Macau SAR.

The Workforce Development Agency of the Ministry of Labor of the Executive Yuan is responsible for processing and issuing work permits.

Current Trends

The governments of Taiwan and the PRC executed the Economic Cooperation Framework Agreement ("ECFA") on June 29, 2010. Therefore, exchanges between the Taiwan Strait in many fields are increasing in a speedy manner. On the other hand, despite the turbulence caused by the protest of thousands of demonstrators occupying the Legislative Yuan, Taiwan's Congress, for more than three weeks to protest the Taiwan government's "hastily-passed" Cross-Strait Trade in Services Agreement in mid March 2014, the Taiwan government continues to relax its restrictions on the immigration, short-term visit and relevant procedures applicable to PRC nationals in a steady manner.

Business Travel

Visitor Visas

Foreign nationals who intend to travel to Taiwan for business visits should apply for a Visitor Visa at an overseas ROC (Taiwan) embassy, consulate, or trade office unless they are from countries that participate in Taiwan's visa-exempt program.

Passport holders from certain countries are eligible for a visa waiver for their visits not exceeding 30 days. The visa-exempt program currently includes Malaysia and Singapore.

In addition, passport holders from certain countries are eligible for a visa waiver for visits not exceeding 90 days. The visa-exempt program currently includes Andorra, Australia (effective from January 1, 2015 to June 30, 2016), Austria, Belgium, Bulgaria, Canada, Chile (diplomatic, official/service passports excluded), 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, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the UK, the US, and Vatican City State ("Visa-Exempt Countries").

Travelers entering Taiwan on a Visitor Visa must hold return or onward air tickets. Emergency or temporary passport holders of Visa-Exempt Countries who wish to stay up to 30 days and whose emergency or temporary passport is valid for at least six months may apply for landing visas upon arrival.

Employment Assignments

Intra-Company Transfers

Foreign nationals' intra-company transfers must comply with the same criteria and standards applicable to skilled workers (so-called "white-collar workers"), except in the case of short-term (not exceeding 30 days) contract performance. If the scheduled period of contract performance is between 31 days and 90 days, the foreign national still has to apply for a valid work permit within a period of 30 days after entering Taiwan. If the scheduled period of contract performance exceeds 90 days, the foreign national's work permit application must comply with the same criteria and standards applicable to skilled workers. The Taiwanese legal entity to which the foreign national will be transferred must take the role of an employer in the foreign national's work permit application.

Skilled Workers

Both foreign nationals who wish to work in Taiwan and their employers in Taiwan must meet the qualifications criteria before the foreign nationals will be granted work permits. The Workforce Development Agency ("WDA") serves as the country's one-stop shop for work permits for foreign professionals. The WDA aims to reduce the confusion that existed when different governmental organizations were separately responsible for processing and issuing foreign work permits for professionals in industries under their purview. The WDA processes work permits in the following areas:

- architecture and civil engineering;
- transportation;

- taxation and financial services;
- real estate agencies;
- immigration services;
- attorneys-at-law (legal services);
- technicians;
- medical and/or health care;
- environmental protection;
- cultural, sports and recreation services;
- academic research;
- veterinarians;
- manufacturing;
- wholesaling; and
- other jobs designated by the central governing authorities and central competent authorities as determined after a joint consultation between the 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 an operating capital of at least TWD 5 million; and companies established for more than one year must have annual revenue of TWD 10 million for the most recent year or an average annual revenue of TWD 10 million for the past three years; or with

average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000;

- foreign branch offices established in Taiwan for less than one year must have an operating capital of more than TWD 5 million; and foreign branch offices established for more than one year must have annual revenue of at least TWD 10 million for the most recent year or an average revenue of TWD 10 million for the past three years; or with average import/export transactions of at least USD 1 million or average agent commissions of at least USD 400,000;

- representative offices of foreign companies that have been approved by the competent authorities at the central government level and have an 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; and

- the employer has made a substantial contribution to the domestic economic development. Alternatively, the employer has a special circumstance that is treated as a special case by the central governing authorities and the central competent authorities and, after the joint consultation between the authorities, the authorities have approved the circumstance.

Employment Quotas

There are no established quotas for foreign workers in Taiwan. The Ministry of Labor will, along with specific industry authorities, decide on the number of work permits it will grant each year based on an evaluation of the employment market, the employers' industries, and the social and economic development of the country.

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 a 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 possess more than two years of 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 of work experience in their specialization and have demonstrated creative and outstanding performance.

The abovementioned 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.

Training

Under the current policy, the Taiwan government only permits those Taiwan companies/factories engaged in the businesses of outbound investment and whole plant output to provide training to foreign nationals on behalf of a foreign company. The permitted foreign nationals may obtain a Visitor Visa to undertake training courses in Taiwan. If a foreign company wishes to send its employee for a short-term training course in Taiwan, the foreign employee can only use a visa-exempt program or Visitor Visa for business purpose. The duration of stay allowed under a Visitor Visa could be from 14 to 90

days at the discretion of the visa official in an overseas ROC (Taiwan) embassy, consulate, or trade office.

Resident Visa and Alien Resident Certificate ("ARC")

Resident visas may be granted to foreign nationals who intend to stay in Taiwan for more than six months for the purposes of joining family, pursuing studies, accepting employment, making investments, doing missionary work, or engaging in other activities. A resident visa is valid for three months, covers a single entry or multiple entries, and allows a stay in Taiwan for a period of more than six months.

Applicants coming to Taiwan for employment or investment purposes are required to submit relevant documents to the competent authorities of the central or local government for approval. Resident visa holders for various purposes must apply for an ARC within 15 days of their arrival in Taiwan. A multiple re-entry permit will be automatically included in the ARC so that ARC holders may leave and re-enter the country as many times as they require. The length of residence will depend on the validity date of the ARC.

A foreign national who holds a Visitor Visa that allows a stay in Taiwan for more than 60 days (which is not otherwise annotated by the issuing authority to prohibit extensions) can directly apply to the National Immigration Agency for an ARC, provided that at least one of the following requirements is satisfied:

- is married to an ROC (Taiwan) 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 has immediate relatives who are ROC (Taiwan) citizens who have valid household registrations or are allowed to reside in Taiwan;

- has obtained employment/work permit approvals issued by the Workforce Development Agency or other relevant competent authorities and the remainder of the approved employment/work

permit period is more than six months from the ARC application date; or

- is 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 at least five years of legal and continuous residence, during which period the foreign national must have resided in Taiwan for more than 183 days each year. A waiver of many of the requirements of the APRC may be granted to foreign nationals who have made special contributions to Taiwan or have acquired high technical knowledge, as well as to qualified investors. Citizenship through naturalization is possible.

Hong Kong SAR and Macau SAR Citizens

The Taiwan government does not treat Hong Kong SAR and Macau SAR citizens as PRC nationals or foreign nationals. This special category includes persons who hold permanent Certificates of Identity and passports issued by the governments of Hong Kong SAR or Macau SAR, BNO passports proven to have been acquired before 1997, or Portuguese passports proven to have been acquired before 1999. Citizens of Hong Kong SAR or Macau SAR who visit Taiwan or seek to become residents of Taiwan must apply for Entry and Exit Permits. In Hong Kong SAR, applications can be made at the Taipei Economic and Cultural Office (Hong Kong). In Macau SAR, applications can be made at the Taipei Economic and Cultural Office (Macau).

Citizens of Hong Kong SAR or Macau SAR who were born locally, hold valid Entry and Exit Permits, or have previously been admitted to Taiwan, may apply for a 30-day Temporary Entry and Stay Certificate upon arrival. This Certificate may be extended under certain circumstances.

Since 2005, expedited 30-day Temporary Entry and Stay Certificates have been available online through the website of the National Immigration Agency. Approved applications will automatically generate reference numbers that enable the applicants to pick up their Temporary Entry and Stay Certificates from the Taipei Economic and Cultural Office (Hong Kong) or the Taipei Economic and Cultural Office (Macau) in person. The Certificate covers a single entry within three months from the date of issue and with a duration of stay of 30 days starting from the next day of arrival. Please note that this online application is not applicable to holders of foreign passports, except Hong Kong residents with BNO passports proven to have been acquired before 1997 or Macau residents with Portuguese passports proven to have been acquired before 1999.

Entry and Exit Permit

To qualify for 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, and both an original copy and photocopy of the Hong Kong SAR or Macau SAR permanent identity card.

The processing time at the Taipei Economic and Cultural Office (Hong Kong) in Hong Kong SAR is approximately two weeks. A Taiwan Entry and Exit Permit, valid for six months, is usually granted for an initial period of stay of three months. Thereafter, renewals are granted for various periods.

Planned Legislative Change

To position Taiwan as a more competitive destination for foreign professionals and technical workers, on December 2, 2015, the Executive Yuan approved a proposal from the Ministry of Labor to

ease restrictions on the hiring and retaining of such foreign professionals and workers.

The following are some notable takeaways on white-collar foreign nationals:

- The existing work permit application procedure for white-collar foreign nationals will remain in effect, whereas the existing requirements for employers to meet minimum paid-in capital and annual turnover thresholds to hire foreign nationals will be phased out except in certain industries and lines of business.

- A new points-based scoring system will be instituted by the Ministry of Labor for foreign nationals who do not qualify for a work permit through the current procedure. The new system will calculate an applicant's score by accounting for a range of factors including whether or not the foreign national has met the former experience and monthly salary requirements for a work permit (two years of prior related work experience and an average monthly salary of around TWD 50,000). If his final score is 60 points or more, the foreign national will qualify for a work permit.

Unfortunately, after the Presidential and Legislator elections on January 16, 2016, the Democratic Progressive Party, which is the new ruling party, appears to have moved away from supporting the above proposal. Under such circumstances, no one is certain when the groundbreaking proposal will actually be implemented until after the newly elected legislators form a new consensus. At this moment, it is difficult to predict the possible timeframe of the proposal's implementation.

Thailand

The Thailand 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, he may find himself at risk of a criminal offense, 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 ports of entry 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 at the Ministry of Labor.

Current Trends

Strict enforcement of the immigration and work permit laws is 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 revised immigration rule (No. 327/2557(2014)) was enacted in 2014. The criteria for granting a work permit take into account demand for specific expertise of certain categories of foreign workers.

Business Travel

Non-Immigrant Business Visa (Business Visa/Non-Immigration B visa)

Foreign nationals who wish to work in Thailand are required to apply for a non-immigrant B (Business) visa from a Thai embassy outside Thailand. A non-immigrant B visa is one of the requirements of the work permit application. If a foreign national does not have a non-immigrant B visa, he is not eligible to locally apply for a work permit in the country. The non-immigrant B 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 often mistakenly believe that this business visa granted by a Thai embassy allows them to work when entering the country. Recently, the majority of Thai embassies impose strict requirements on foreign nationals who apply for a non-immigrant B visa to have their local employer also apply for a pre-approval from the Ministry of Labor before granting a visa.

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 not be eligible to extend the visa, even though he may be a qualified person in terms of expertise.

Visa Waiver

There are no visa waivers for any foreign nationals on business to Thailand. All foreign nationals need to apply for a non-Immigrant B visa from a Thai embassy. Otherwise, a foreign national will not be eligible to apply for a work permit in the country.

Consequently, a foreign national cannot legally work in Thailand, although he can easily enter Thailand with a visa exemption for the purpose of tourism, which is permitted for some specific foreign nationals. The length of such a stay is 30 days. At present, the following countries are 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 US, and the UK. The list of qualified countries changes regularly and, unfortunately, there are no official websites that promptly update these changes. The Ministry of Foreign Affairs may be an initial source for searches: http://www.mfa.go.th.

Any foreign nationals who abuse this visa exemption by traveling to the country for business purposes may be deported.

Employment Assignments

Intra-Company 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 B 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 or same sex marriage is not acceptable to the authorities.

Training

Training is considered to be 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 B 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 B 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 will most likely 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, the permit may not be renewed after it expires.

Other Comments

According to the current rules and practice of the authorities, only non-immigrant B visas are issued to businessmen traveling to Thailand. The non-immigrant B visa covers all types of business purposes, e.g., training, employment assignment, doing business, company management, etc. The non-immigrant B visa is a prerequisite for work permit applications for foreign nationals who want to work in Thailand.

The process of applying for a non-immigrant B visa may take around two working days at any Thai embassy after filing a complete set of required documents. Upon the discretion of the embassy, some nationals (e.g., Indians, Pakistanis) may have to apply for a non-immigrant B visa in their home countries. Moreover, the embassy may, in most cases, require an applicant and his sponsor employer to apply for a pre-approval of a work permit at Ministry of Labor before granting a non-immigrant B visa. Unlike the work permit-combined immigration system (e.g., as in the US, Australia, or Canada), the foreign work permit law is independent and separate from the immigration law. 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 to extend foreign nationals' visas.

Therefore, a foreign national 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 and benefits to the country as set out by the Employment Department. A sponsor, as an employer in Thailand, must have paid-up capital of THB 2 million per individual work permit. An applicant applying for a work permit must have sufficient experience and a suitable educational background pertinent to the position.

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 but on a visa exemption (30 days) instead. 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. The process could take a half day for authorities to verify whether an applied work is necessary and urgent.

Foreign nationals are prohibited from applying for a work permit for certain professions (e.g., lawyers, architects).

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 active and genuine business activities and provide an unconditional financial statement and a balance sheet issued by an accredited CPA. In addition, the ratio of employment between Thai 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 present 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 THB 30 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 filing

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, tax payment record paid to the Thai government, and compelling reasons tied to Thailand.

According to the general practice of the authorities, foreign nationals who have been granted permanent residency may be eligible for naturalization to citizenship after holding permanent resident status for at least ten years. An applicant must clearly present his background and the qualifications which would be of benefit to Thailand. Normally, the process may take up to two years after an application is submitted. The final approval is at the sole discretion of the Minister of Interior.

Republic of Turkey

Foreign nationals entering the Republic of Turkey ("Turkey") for employment, regardless of the length of stay, must obtain a work permit ("Work Permit"). Work Permits are granted by the Turkish Ministry of Labor and Social Security ("Ministry").

The employee should initiate the Work Permit application by visiting the nearest Turkish consulate/embassy in person with the requisite supporting documents. An employee who holds a residence permit ("Residence Permit") with a validity period of at least six months in Turkey (for any reason, except education) can directly apply to the Ministry for a Work Permit within this validity period.

Key Government Agencies

Turkish consulates/embassies are responsible for processing visa and Work Permit applications abroad.

The Ministry is responsible for granting Work Permits.

Although the Foreign Nationals and International Protection Code ("Immigration Code") states that Residence Permit applications should be made to the relevant Turkish consulate/embassy, in practice, these applications have been made to the Directorate of Immigration ("DoI") since May 2015. The Regulation on the Implementation of the Immigration Code ("Immigration Regulation"), which entered into force on March 17, 2016, is now the legal basis of this anomalistic practice as it sets forth that this practice will continue until residence permit applications are taken over by the Turkish consulates/embassies.

The DoI does not yet have a settled practice, leaving it open to daily changes.

Census Offices ("*Nüfus Müdürlükleri*") are responsible for address registrations, which is a post-entry procedure.

The Social Security Institution ("SSI") is responsible for the social security registrations of Work Permit holders, which is a post-entry procedure as well.

Current Trends

According to the Law on Work Permits for Foreign Nationals ("Law") and the Regulation on the Implementation of the Law on Work Permits for Foreign Nationals ("Regulation"), business inspectors from the Ministry and insurance inspectors from the SSI conduct audits under the Labor Law to determine whether foreign nationals and their employers have fulfilled their respective obligations under the Law and Regulation.

Department officials authorized by the general budget, officials from administrations with an added budget and law enforcement officers also carry out inspections at workplaces to determine whether employers that employ foreign nationals and the foreign nationals themselves fulfill their obligations arising from the Law. Findings from the inspections are sent to the Ministry.

If a foreign national engages in work while unregistered and without a Work Permit, the circumstances are determined by an official report. In order to implement the administrative penalty outlined in the Law applicable to the foreign national and the employer or employer's representative, the official report is sent to the Ministry's District Offices. During the investigation, matters concerning the unregistered foreign national's entry into Turkey, visa, passport and Residence Permit are investigated, and the foreign national's deportation procedure is initiated.

Under the Immigration Code, a foreign national who works in Turkey without a Work Permit will be deported. According to the Law, administrative fines will be applied to foreign nationals who work without a Work Permit and/or to their employers. If the action is repeated, the administrative fine will be doubled each time.

According to the Law, the employer must not only pay the fines imposed against the employer and foreign national, but also their accommodation costs, travel costs to return to their countries, and the cost of medical treatment, if necessary, for the foreign national and foreign national's spouse and children (if any).

Business Travel

Business visas are not separately regulated under the current legislation. The Immigration Regulation, however, states that tourist visas will be granted to those who would like to come to Turkey for touristic purposes or official meetings, business meetings, conferences, seminars, meetings, festivals, fairs, expositions, sports activities and cultural and art activities.

A foreign national who would like to come to Turkey for business with a tourist visa should, however, not engage in any work-related activity in Turkey.

Foreign nationals wishing to travel to Turkey for tourism or business purposes should apply for an e-visa via www.evisa.gov.tr or apply to Turkish embassies/consulates in person. Only citizens of the countries listed on the e-visa website are eligible for an e-visa. If a foreign national's country is not on the list, they are either exempted from the visa requirement or need to visit the nearest Turkish embassy/consulate for a visa application.

Further information on this application method can be found at www.mfa.gov.tr/consular-info.en.mfa. Visa applications can also be made by mail in exceptional cases, especially in geographically large countries and when the applicant is well known by the Turkish embassy/consulate where the application is lodged.

Visa Exemptions

In principle, foreign nationals travelling to Turkey must obtain a visa. There are, however, some countries whose nationals are exempt from the visa requirement up to a certain period of time. An explanation of

the visa regime to which foreign nationals are subject can be found at http://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa.

In addition, under Article 12 of the Immigration Code and Article 13 of the Immigration Regulation, the following persons are exempt from the visa requirement:

- those exempt from the visa requirement pursuant to agreements to which the Republic of Turkey is a party, or under a Council of Ministers' decree;
- holders of a Residence Permit or Work Permit valid on the date of entry into Turkey;
- holders of certificates which grant exemption from a Residence Permit;
- holders of a "Migrant Certificate"; and holders of a valid "reserved for foreign nationals" passport issued under Article 18 of Passport Law No. 5682; and
- those who fall within Article 28 of Turkish Citizenship Law No. 5901, i.e., those who were Turkish citizens by birth but lost citizenship by obtaining a renunciation permit, along with their lineal kin to the third degree.

Under the same article, a visa may not be sought from foreign nationals who:

- disembark at a port city from a vehicle that was required to use Turkish air or sea ports due to force majeure; and
- arrive at sea ports for touristic visits to the port city or nearby cities, provided their visit does not exceed 72 hours.

Residence Permits

A visa enables the holder to stay in Turkey for the duration stated on the visa, which can be a maximum of 90 days in a 180-day period. If the foreign national intends to or must stay in Turkey for longer than the duration permitted by the visa or for longer than 90 days during a 180-day period, he must obtain a Residence Permit.

Although the Immigration Code states that applications for Residence Permits should be made to the Turkish embassy/consulate, in practice, these applications are made to the DoI. Pursuant to the Immigration Regulation, this practice will continue until Residence Permit applications are taken over by the Turkish consulates/embassies.

Residence Permit applications consist of two phases, namely: (i) completion of an online form and request for an appointment date on the DoI's website; and (ii) visiting the relevant local immigration office or the DoI in person on the scheduled appointment date with the required documents. Applicants are required to be physically present in Turkey when requesting an appointment date on the DoI's website. There is, however, a temporary exemption for foreign nationals who would like to apply for a Residence Permit in Istanbul; these individuals are, for the time being, not required to physically be in Turkey when requesting an appointment date.

In addition, the DoI has recently started requesting certain documents that are required for Residence Permit applications to be apostilled, in addition to being translated into Turkish by a sworn translator. These documents will then need to be notarized by a certified Turkish notary public.

The length of Residence Permits differs depending on the type. Short-Term Residence Permits, for example, are issued and renewed for one-year periods. Family Residence Permits are issued and renewed for two-year periods, and their validity periods cannot exceed the validity period of the dependent's Residence or Work Permit. If, therefore, a foreign national obtains a Residence Permit based on their

spouse's Work Permit, the validity of their Residence Permit will depend on the validity of their spouse's Work Permit.

Once a person is granted a Residence Permit, they can enter Turkey multiple times if the Residence Permit is valid, without a visa requirement. If an extension of the Residence Permit is required, the request for an extension must be made in due time before the expiration date of the existing permit. Extension applications can be made starting from 60 days before the expiration date. It is recommended to extend the validity of the Residence Permit before leaving Turkey if the validity of the Residence Permit is due to expire or has already expired.

Employment Assignments

Conducting business in Turkey requires the establishment of a Turkish entity, and a foreign national employee requires a Work Permit to work for a Turkish entity. During the establishment period, one can argue that the foreign national is traveling back and forth from their country to Turkey (with a tourist visa) to assist with the formation of the Turkish entity.

If the intention is for a foreign company to do business in Turkey prior to the establishment of its Turkish entity, the company may consider entering into a Technical Service Agreement or a Consultancy Agreement, whereby the foreign national provides services to a third-party Turkish entity.

Foreign nationals who have already been granted Residence Permits valid for at least six months (for any reason, except education) in Turkey, can directly apply for a Work Permit at the Ministry from within Turkey with the relevant supporting documents. Otherwise, the employee should initiate the Work Permit application by visiting the nearest Turkish consulate/embassy in person with the requisite supporting documents.

Applications for a Work Permit made outside Turkey through a Turkish consulate may entitle the applicant to a Work Permit for a Definite Period of Time or other types as detailed below.

Work Permit for a Definite Period of Time

Unless otherwise provided in bilateral or multilateral 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 the Work Permit for a Definite Period of Time's validity, the Ministry considers the conditions of the business market and the employment agreement or work.

The Ministry may extend or restrict the geographic area of the Work Permit for a Definite Period of Time's validity based on the city, administrative border or geographical area.

Following the expiration of the legally valid working period of one year, the Work Permit can be extended for up to three years in total, provided the foreign national works in the same workplace or enterprise and in the same job.

At the end of the three-year working period, the term of the Work Permit may be extended further for a maximum period of six years in total in order for the foreign national to work in the same job and with any employer.

A Work Permit for a Definite Period of Time can also be granted to the spouse of the foreign national having come to Turkey to work, and the children under the foreign national's care, provided they have legally resided with the foreign national for a period of at least five years without interruption in Turkey.

Under the Regulation, all required documents must be submitted to the Ministry via an online application made by the employer or a Turkish national proxy by visiting the Turkish government's website www.turkiye.gov.tr within ten business days following the date on

which the foreign national makes the Work Permit application through the Turkish embassy/consulate.

If the foreign national has the right to apply to the Ministry for a Work Permit, an online application should be made by the employer or a Turkish national proxy on the Turkish government's website www.turkiye.gov.tr. All required documents must be submitted to the Ministry within six business days following the online application.

The embassy/consulate then submits the visa application to the Ministry for consideration and a determination. Under the Law, Work Permit applications will be processed in 30 days if all required documents are complete and submitted. In practice, however, it usually takes 30-45 days for the applications to be processed. The Ministry will inform the employer or its Turkish national proxy who has submitted the application documents on its behalf via email upon approval of the Work Permit application.

The Turkish embassy/consulate also typically informs the foreign national either by phone or email after such approval. We therefore recommend that the foreign national contact the Turkish embassy/consulate once the Ministry informs the employer or its proxy that the Work Permit application has been approved. When the Ministry approves the Work Permit, the employee should take their passport, with the applicable visa fees, to the Turkish embassy/consulate where they initiated the Work Permit request to obtain a Work Visa (which is given to Work Permit holders and is issued for a single entry) to facilitate entry into Turkey.

A person must visit the Turkish embassy/consulate to obtain the Work Visa within 90 days after the Ministry informs the employer or its Turkish national proxy of approval of the Work Permit application.

The purpose of the abovementioned single-entry Work Visa is to facilitate the employee's entrance into Turkey upon the approval of their Work Permit application, and enable the employee to pick up

their Work Permit card, which is issued by the Ministry and sent to the Turkish employing entity's headquarters.

Once the employee comes to Turkey with the single-entry Work Visa, they should not leave Turkey before picking up their Work Permit card from the Turkish employer's headquarters. The Work Permit card will give the employee the right to enter and exit Turkey multiple times, as long as it is valid. The employee must carry the Work Permit card at all times and show it to the border police, and other public and private authorities when required.

The Ministry may require additional documents. All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish notary public prior to their submission to the Ministry.

The Ministry evaluates the following criteria for each 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 ("1:5 rule"). If the foreign national requesting a Work Permit is a shareholder in the company, the condition of employing five persons applies for the last six months of the one-year Work Permit to be given by the Ministry. Where Work Permits are requested for more than one foreign national, the 1:5 rule will apply to the second foreign national, not the first.

  The Ministry, however, applies the 1:5 rule differently. Based on our experience and verbal confirmation we received from the authorities, if a company has been newly incorporated, the first Work Permit application made in the first six months starting from the date of incorporation is exempt from the 1:5 rule. The employee's position, i.e., whether the employee is a shareholder or an ordinary employee, makes no difference. If, however, further Work Permit applications will be made within the first six-

month period, the 1:5 rule will be applied separately for each further application.

If the Turkish company would like to file extension applications at the end of the validity periods of the relevant foreign nationals' Work Permits, the Ministry requires five Turkish employees to have been employed for each of the foreign nationals during the last six months of their one-year Work Permits. That is to say, even though it will not be required for a company to satisfy the 1:5 rule while applying for a Work Permit for its first foreign employee during the six-month period starting from its incorporation date, the company must hire an additional five Turkish employees during the last six months of the foreign employee's Work Permit validity period if it wishes to apply for the extension of the foreign national's Work Permit.

- Concerning the prospective Turkish employing entity, the paid-up capital should be at least TRY 100,000, or its gross sales should be at least TRY 800,000, or the exports in the previous year should total at least USD 250,000.

- Article 2 above will not apply where Work Permits are requested for foreign nationals to be employed in associations and foundations. Articles 1 and 2 will not apply for the assessment of Work Permit applications made by foreign nationals who will work for the agencies of airlines owned by foreign states in Turkey, in the education sector, or in home-related services.

- Any Turkish company shareholder who applies for a Work Permit should hold at least 20 percent of the company's share capital, which should be valued at no less than TRY 40,000.

- The declared monthly wage the employer will pay the foreign national should be at a level that will correspond to the foreign national's duties and capabilities. By considering the minimum wage applicable as of the date of application, the monthly wage to be paid to the foreign national should be at least:

    - six-and-a-half times the minimum statutory monthly wage for top-level executives, pilots, and engineers and architects requesting preliminary Work Permits;

    - four times the minimum statutory monthly wage for unit or branch managers, engineers and architects;

    - three times the minimum statutory monthly wage for employees who will work in positions that require specialization and mastery, teachers, psychologists, physiotherapists, musicians and stage performers;

    - two times the minimum statutory monthly wage for foreign nationals who will work as a massage therapist, spa therapist or acrobat at a tourism animation organization;

    - one-and-a-half times the minimum statutory monthly wage for foreign nationals who will work in professions other than those listed above (such as sales persons and marketing-export officers); or

    - minimum statutory monthly wage for foreign nationals who will work in home-related services, i.e., domestic help.

- For foreign nationals to be employed in roles other than as a key employee in enterprises that meet the conditions of a Direct Foreign Investment with Specialty, the criterion in Article 1 will apply, and the number of Turkish nationals working in all workplaces of the enterprise in Turkey will be considered in this regard.

For the final assessment of Work Permit applications, the Ministry will assess the scope and objective of the Turkish entity and the details of the education and profession of every employee to be employed by the Turkish entity. This is because diploma equivalency will also be required for Work Permit applications within professional services (such as engineering, architecture and urban planning), and where the foreign national was educated abroad. According to the Law, the Ministry can grant a Preliminary Work Permit for up to one year to foreign nationals who will work within professional services, pending completion of proceedings regarding the determination of their professional and academic sufficiency.

Finally, the Ministry requests employers wishing to employ a foreign national in relation to engineering, architecture or consultancy services (urban planning) to present a detailed payroll, evidencing that Turkish citizens are employed in the same occupation as engineers, architects or urban planners in their firm.

Work Permit for an Indefinite Period

Unless otherwise provided for in bilateral or multilateral agreements to which Turkey is a party, foreign nationals: (i) having a long-term Residence Permit under the Immigration Code; (ii) residing in Turkey legally and without interruption for at least eight years; (iii) having completed a total eight-year working period in Turkey; or (iv) whose educational status, professional experience, contribution to science and technology, activities or investments in Turkey are important for the economy and employment in Turkey, can be granted a Work Permit for an Indefinite Period without considering the business market conditions, or developments in working life, and without restriction on any particular operation, profession, civil or geographical area.

Independent Work Permit

An Independent Work Permit can 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, and that their activities

create an added value in economic growth and have a positive influence on employment. While evaluating the Independent Work Permit application, the Ministry may request documents evidencing the contribution of the foreign national's activities to the national economy and the sufficiency of their income for the activity to be performed, along with other relevant documents.

Exceptional Cases and Exemptions from Work Permit

In certain exceptional cases provided by the Law, Work Permits can be granted 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: Where applications for Work Permits are received for key personnel to be employed in acquiring goods and services, in performing a task or the operation of a plant, in construction and all kinds of building works done with contracts or tenders by legally authorized ministries, public institutions and establishments, such personnel may be exceptionally granted a Work Permit for the period stated in the contract or tender.

Depending on the surrounding circumstances, the Law and the Regulation also provide for circumstances where foreign nationals will not be required to obtain Work Permits for a Definite Period of Time. Upon request, a "Work Permit Exemption Certificate" will be granted to a foreign national that falls under the exemption. In practice, however, the Ministry does not issue these certificates.

The following foreign nationals are not required to obtain Work Permits (a suitable visa must, however, be obtained):

- Foreign nationals exempt from a Work Permit under bilateral or multilateral treaties to which Turkey is a party.

- 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 sporting activities.

- Those coming to Turkey for the assembly, maintenance and repair works of any machinery or equipment imported to Turkey, to give training about their usage, to take delivery of the equipment or to repair equipment that has broken down in Turkey, for a period not exceeding a total of three months in the one-year period starting from the date of their entry into Turkey on the condition that this is evidenced in documentation to be provided by the applicant.

- Those coming to Turkey for training related to the use of goods and services exported from Turkey or imported to Turkey, for a period not exceeding a total of three months in the one-year period starting from the date of their entry to Turkey on the condition that this is evidenced in documentation to be provided by the applicant.

- Those coming to Turkey for performance shows or similar duties at fairs and circuses operating outside the boundaries of certified tourism operators for a period not exceeding six months on the condition that this is evidenced in documentation to be provided by the applicant.

- Those coming to Turkey to gain knowledge and experience at universities, public institutions and establishments for a period not exceeding two years on the condition that this is evidenced in documentation to be provided by the applicant.

- Those coming to Turkey to educate people in social, cultural and technological fields for less than six months and who are reported to the authorities as considerably contributing to Turkey.

- Foreign nationals who are representatives of foreign tour operators and who come to Turkey for a period of less than eight months.

- Those coming to Turkey under the programs conducted by the Center for European Union Education and Youth Programs

(Turkish National Agency) throughout the schedule of the program.

- Those coming to Turkey for training under student internship programs whose scope and duration have been agreed to by the Ministry, Ministry of Interior, Ministry of Foreign Affairs and Higher Education Board.

- Experts assigned in the financial cooperation programs between Turkey and the European Union.

Foreign nationals mentioned in items 5, 7 and 8 above may benefit from this exemption only once within a calendar year.

Foreign nationals mentioned in items 3 and 4 above can make multiple entries into Turkey provided that the total duration of their stay in Turkey does not exceed three months in the one-year period starting from the date of their entry into Turkey.

If the service periods of foreign architects, engineers and urban planners subject to the exemption provisions in the framework of professional services exceed one month, they must obtain a Work Permit from the Ministry, become a temporary member of the relevant professional chamber, and comply with the practices of national institutions and establishments.

Exemption terms cannot be extended.

The Regulation states that foreign nationals exempted from obtaining a Work Permit must notify the police authorities of their purpose for coming and provide certain information, such as how long and where they intend to stay, and also obtain a Residence Permit, all within one month following the date of their entry into Turkey. The Immigration Regulation, on the other hand, states that until the Ministry starts to issue "Work Permit Exemption Certificates," foreign nationals exempted from obtaining a Work Permit will not be required to apply for a Residence Permit for a period of 90 days provided that their

visas' validity periods are sufficient. At the end of the 90-day period or their visas' validity period, respectively, they will be given Short-Term Residence Permits. The provision in the Regulation should therefore be evaluated by also bearing in mind the relevant provisions of the Immigration Regulation, and the fact that Residence Permit applications are currently managed by the DoI.

Pursuant to the Immigration Regulation, until the Ministry starts to issue "Work Permit Exemption Certificates," foreign nationals who have already obtained a Residence Permit in Turkey and who are at the same time exempted from obtaining a Work Permit pursuant to item 8 above, can work in Turkey with a document that indicates their status. The DoI will decide on the format and content of such document and governorships will issue it.

Intra-Company Transfer

The concept of "intra-company transfer" or "secondment" does not exist under Turkish immigration law. Therefore, foreign national employees transferred or seconded to their employer's Turkish subsidiary must obtain a Work Permit and be fully employed by the Turkish subsidiary to enable the employee to work for the Turkish entity.

The Work Permit itself will be proof that an employment relationship exists between the foreign national and the Turkish company. It will therefore not make a difference if the employee is being sent to Turkey based on an intra-company transfer.

The establishment of an employment relationship between the foreign national and the Turkish company, however, does not mean that continuation of the employment agreement in the foreign company is not allowed. Turkish authorities are not interested in whether the employment agreement is maintained abroad; this will only be important when paying social security premiums. Therefore, it is possible to keep the employment agreement in the foreign country and, at the same time, obtain a Work Permit to work as the Turkish company's employee.

Since a Work Permit will be required in intra-company transfers and secondments, we refer to our explanations above regarding Work Permits.

Skilled Workers

Skilled workers must also obtain a Work Permit to engage in work-related activities in Turkey. We therefore refer to our explanations above regarding Work Permits.

In particular, however, we refer to our explanations above regarding: (i) positions that require specialization and mastery; (ii) positions requiring advanced technology or where there is no Turkish expert with the same qualifications; (iii) Work Permit for an Indefinite Period; and (iv) exceptional cases and exemptions from Work Permits. The foreign national's skills can play a role in the Ministry's consideration of the criteria while assessing Work Permit applications. Also, depending on the specifics, the foreign national may be qualified for a Work Permit for an Indefinite Period or even fall under exceptional cases and exemptions from Work Permits.

Training

Under the current visa regime, there is no type of visa in Turkey designed exclusively for training. For classroom-type training, a foreign national can enter Turkey with a tourist visa. For on-the-job training, the same procedure for employment assignments subject to the Work Permit procedure applies. Each such activity will need to be considered according to its specific term, type of activity, etc.

Post-Entry Procedures

According to the Immigration Code, Work Permits act as a Residence Permit, i.e., the foreign national will not have to obtain a Residence Permit separately.

The Turkish employer must register the foreign national with the SSI within 30 days starting from the start date of the Work Permit validity

period or within 30 days of the communication of the Work Permit to the Turkish employer if these dates are different.

Law No. 5510 on Social Security and General Health Insurance regulates the social security registration of foreign nationals. It states that, save for international agreements on social security, persons sent to Turkey by a corporation established in a foreign country to work on behalf and in the account of the corporation for at no more than three months, and who document that they are covered by social security in this foreign country, do not need to be registered with the SSI in Turkey.

Therefore, if the assignment period will exceed three months, the foreign national will be required to be registered with the SSI unless otherwise agreed in an international agreement on social security signed between Turkey and the foreign national's home country.

The Turkish employer's payroll obligations start on the commencement date of the foreign employee's employment.

Since the concept of intra-company transfer or secondment does not exist under Turkish immigration law, there is a requirement for foreign employees to be employed/paid by the Turkish employer to enable the Turkish entity to make the requisite payments to the authorities.

Also, within no more than 20 business days of entering Turkey, the foreign national must be registered with the Census Office ("*Nüfus Müdürlüğü*"). The Census Office does not accept hotel reservations for this purpose; the foreign national must declare a home address as the residence address. To complete the address registration, along with other documents, the foreign national's foreign national ID number will be required. The foreign national's ID number is usually issued within a month starting from the Work Permit issuance date. We strongly recommend, however, that these registrations are completed as soon as possible as there may be delays due to difficulties with the government's IT system.

Entry Based on International Agreements

Turkey is party to both bilateral and multinational international agreements that contain provisions regarding Work Permits and exchange of workforce between the parties. Below is a brief summary of these provisions.

Agreement on Exchange of Workforce between the Government of the Republic of Turkey and the Government of the State of Kuwait: Article 7 states that the employer in the host country shall give the employee the Work Permit issued by the competent authority along with the documents submitted at the time of seeking approval, as well as a copy of the authenticated employment agreement, within two months of the employee's arrival in the country. Clearly, this agreement does not provide for an easy procedure to obtain Work Permits.

Agreement on Mutual Employment of Workforce between the Government of the Republic of Turkey and the Government of the Republic of Azerbaijan: The agreement does not provide for an easy procedure to obtain Work Permits. It states, however, that Work Permits will first be issued for one year, and will be renewed for periods of not less than one year, and that Residence Permits will be issued within a month. Since, however, Work Permits also act as Residence Permits, an Azerbaijani citizen coming to work in Turkey will not need a separate Residence Permit if they have a valid Work Permit.

Agreement on Workforce between the Government of the Republic of Turkey and the Government of the Kingdom of Jordan: This agreement includes no specific provision regarding the issuance of Work Permits for citizens of the Kingdom of Jordan. These citizens, therefore, need to obtain Work Permits as explained above. Separately, the agreement states that guest employees will benefit from all rights and privileges given to the citizens of the other party under that party's laws.

Agreement on Workforce between the Government of the Republic of Turkey and the Government of the Turkish Republic of Northern Cyprus: This agreement states that the employer must apply for a Work Permit at the latest within ten days starting from the date on which the employee enters the relevant party's country. Under the agreement, the authorities must conclude these applications as soon as possible. Also, the term of the Work Permit cannot be less than the term of the employment agreement.

Turkey and other states, e.g., Germany Australia, Austria, Belgium, Indonesia, France, the Netherlands, Sweden, Qatar and Libya have also signed bilateral agreements on exchange of work force.

Other Comments

In Turkey, rules relating to Work Permit applications are being criticized. For example, the above-mentioned "work permit assessment criteria" are not regulated under the Law or the Regulation, but are rather published on the Ministry's website. The Ministry has set out these criteria at its own discretion and applies them while evaluating Work Permit applications.

The most problematic criterion is the 1:5 rule, i.e., the obligation to employ five Turkish nationals for each foreign national to be employed. In practice, most of the time, the Turkish company has no employees on its payroll and thus registers a sufficient number of Turkish citizens on its payroll to satisfy this criterion. The Ministry has the discretionary power to hold applicants exempt from the 1:5 rule.

Also problematic can be the documents to be provided to the Ministry during Work Permit applications. Although the Regulation outlines the set of required documentation, the Ministry may request additional documents during the application.

The Regulation provides a list of exemptions from Work Permits, however, this list must be regulated and details should be provided regarding the arrival procedure for foreign nationals that fall within the exemptions, especially after entry into force of the Immigration Regulation. For example, to benefit from the Work Permit exemption under item 3 above, foreign nationals used to need a "maintenance and repair visa" to come to Turkey. This visa, however, was not regulated under Turkish visa norms. In addition, the list of documents required to apply for the visa could not be easily accessed online; only certain Turkish embassies/consulates provided a list of these documents, and the documents could sometimes differ from one mission to another. Currently, the Immigration Regulation, however, states that foreign nationals who are exempted from obtaining a Work Permit will be given a so-called "work visa." As the Immigration Regulation has entered into force recently, it will take a while until all Turkish authorities comply with the provisions thereof, and harmonize their immigration practice.

Finally, the main issue regarding Turkish immigration laws is that the laws and regulations and their application do not fully match each other. Authorities might use wide discretionary power, which further causes immigration practice to vary between them.

Recent Regulatory Changes

Two important developments in Turkish immigration law are the entries into force of: (i) the Immigration Regulation; and (ii) the Regulation on the Work Permit of Foreign Nationals Who Were Granted Temporary Protection ("Regulation on Temporary Protection").

The Immigration Regulation was a long-awaited regulation since the Immigration Code was published on April 11, 2013. It entered into force on March 17, 2016 and regulates in detail the visa types, Residence Permit applications and the criteria required for such, as well as interim period practices until Residence Permit applications are, as foreseen under the Immigration Code, taken over by the DoI. It

will hopefully act as a tool to harmonize and stabilize the Turkish immigration practice.

The Regulation on Temporary Protection, on the other hand, entered into force on January 15, 2016 and sets out the principles regarding the employment of foreign nationals who have been granted temporary protection by the Turkish government.

Pursuant to the Immigration Code, "temporary protection" can be granted to foreign nationals who have been forced to leave their country, cannot return to the country they left and have arrived at or crossed Turkish borders in a mass influx, seeking urgent and temporary protection. The Council of Ministers has the authority to determine the period of the temporary protection.

Due to the high number of Syrians in Turkey, the government was pressured to enact a regulation that would set forth the principles on the employment of Syrians. The government thus enacted the Regulation on Temporary Protection.

As a rule, foreign nationals under temporary protection cannot work in Turkey without a Work Permit. These individuals, however, cannot apply for a Work Permit until six months have passed starting from the date they were registered as "an individual under temporary protection." That is to say, the individual must have already been granted temporary protection by the Turkish government in order to apply for a Work Permit; it is not possible to apply for temporary protection and a Work Permit at the same time.

As an exception to the above rule, foreign nationals who are under temporary protection and who will work in seasonal agriculture or animal breeding can work without a Work Permit, but need to apply to the governorship of the city in which they have been granted temporary protection to obtain an exemption certificate. The Ministry has the authority to introduce limitations on the cities and quotas for foreign nationals under temporary protection who will work in seasonal agriculture or animal breeding.

If the relevant foreign national wants to work for an employer, the Work Permit application will be filed by the employer. If, however, the foreign national wants to work independently, they will need to file the Work Permit application themselves.

Pursuant to the Regulation on Temporary Protection, the Ministry will introduce evaluation criteria for the Work Permit applications of foreign nationals under temporary protection. These individuals cannot occupy jobs that are permitted only for Turkish nationals, such as notary public, civil servant, judge, prosecutor, etc.

Foreign nationals who will work in health and education sectors are required to obtain a preliminary permit from the Ministry of Health, Ministry of Education or Higher Education Board, as applicable. The Ministry will cancel Work Permit applications if the preliminary permit has not been obtained.

Foreign nationals under temporary protection will have the right to apply for Work Permits only in the city in which they are allowed to reside.

The Ministry has the authority to stop issuing Work Permits in cities in which the Ministry of Interior has declared it would be inconvenient to issue Work Permits due to public order, public safety or public health. In such cities, Work Permits that have been previously issued will not be extended, but will continue to be valid until their expiration dates if the foreign national still has the right to reside in that city.

The Ministry has the right to apply different quotas for foreign nationals under temporary protection by taking into account the number of Turkish nationals in the workplace, vacant positions and recruitments in the relevant sector in different cities.

The number of foreign nationals under temporary protection working in a workplace cannot be more than 10 percent of the number of Turkish nationals in the workplace. If, however, the total number of

employees in the workplace is less than ten, a maximum of one foreign national under temporary protection can work in that workplace.

The Ministry has the authority not to apply the above-mentioned quota if the employer can document that it was unable to find a Turkish national who has the qualifications necessary for the work the relevant foreign national will carry out from the Turkish Employment Agency within the last four weeks of the Work Permit application.

Associations working for the public benefit and foundations that enjoy tax exemptions can apply directly to the Ministry to employ foreign nationals under temporary protection to work in humanitarian aid activities. Associations other than those working for the public benefit, representative offices or branches of foreign associations or foreign non-profit organizations that have their seat abroad must obtain the Ministry of Interior's approval to employ foreign nationals under temporary protection. If such approval cannot be obtained from the Ministry, the Ministry will cancel the Work Permit application.

Termination or cancellation of temporary protection will lead to the cancellation of the Work Permit.

Ukraine

Ukrainian immigration law requirements applicable to foreign nationals entering Ukraine for business and employment purposes are quite non-restrictive when compared to many other developed or post-Soviet states.

However, in view of the harsh possible consequences of any migration law violations, up to and including deportation of the foreign national and heavy fines for the inviting party, business travelers and their corporate hosts should not rely on past lenient attitudes and enforcement practices of Ukrainian authorities.

Key Government Agencies

The State Migration Service, which was created in December 2010, is a stand-alone state agency subordinate to the Cabinet of Ministers through the Minister of Interior Affairs. In addition to its central headquarters, it also has local offices (the "Local Migration Office") in major cities, regions, and administrative districts and is the key authority with respect to immigration, in particular, regarding combating illegal immigration, issues connected with citizenship, and residency permits.

The Ministry of Social Policy, through its Employment Centers in cities and administrative districts, is the authority responsible for issuing work permits and monitoring compliance with Ukrainian labor law.

The Ministry of Economic Development and Trade is the authority responsible for registration of representative offices of foreign companies in Ukraine and for issuing service cards, which are a substitute for work permits, to foreign nationals employed in representative offices in Ukraine.

The consulates of the Ministry of Foreign Affairs are responsible for the issuance of visas outside Ukraine.

The State Borderguards Service is the authority that admits foreign nationals into Ukraine at the point of entry.

The executive body of the local councils within the territory of the administrative-territorial unit that is under the authority of the local council has been recently entrusted with registration of the place of residence of citizens of Ukraine, foreign nationals and stateless persons.

Current Trends

Since 2005, Ukraine has both liberalized its rules of entry for foreign nationals (cancelling visa requirements for certain travelers entering Ukraine for less than 90 days) and moved towards stricter enforcement of its existing rules (e.g., the requirement to register at the place of residence and the limitation of the allowed length of stay).

Due to certain amendments to the rules for entry and stay of foreign nationals introduced in 2011, foreign nationals employed in Ukrainian branches of foreign companies (rather than in subsidiaries) are not eligible for Ukrainian work permits. However, this does not affect their ability to work and reside in, and travel into and out of, Ukraine, as they are eligible for service cards and Ukrainian temporary residence permits. An extremely important development is that family members of all foreign nationals who have Ukrainian temporary residence permits can now also obtain derivative permits. Children under 16 years old are not required to have a separate permit, and can be included in the permit of one of their parents.

Since 2009, the legislation has allowed a work permit to be obtained for a longer period of time (three years, with an option to obtain an extension for up to two years). Since February 2015, such work permits may be extended an unlimited number of times. However, this benefit is available only for intra-company transferees and the issuance of such work permits has not been widespread. Therefore, the vast majority of work permits are issued for the period of time envisaged in the employment agreement or contract, but not for more than one year. Moreover, there is an option to extend a work permit for an unlimited number of times for the same period of time for which an employment agreement or contract is concluded, but not for

more than one year at a time. If the employment agreement or contract is concluded for an unlimited period, the work permit is issued for one year only.

Since February 2015, the procedure for obtaining a work permit for foreign nationals has been simplified. Now, employing a foreign national will be deemed justified if such person holds a degree from any of the top 100 universities named in one of the recognized world rankings (i.e., Times Higher Education, Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University, QS World University Rankings by Faculty, or Webometrics Ranking of World Universities). In addition, the state authorities are required to make a decision on whether or not to issue or renew a work permit within seven business days (previously 15 business days) and to convey that decision to the employer within two business days.

Since April 2016, the new rules regarding the registration of the place of residence have set the procedure for registering the place of residence and place of stay of individuals in Ukraine. Currently, local councils will carry out registration or deregistration of places of residence or places of stay within the territory of the administrative-territorial unit that is under the authority of the local council. In addition, the new rules extend the period of time within which the registration of the place of residence must be performed (30 calendar days following deregistration at the previous address and arrival at the new place of residence).

Business Travel

Unless a visa waiver is available, foreign business travelers require a visa to enter Ukraine. Since 2011, only three types of visas have been available: (i) a transit “B” visa for a stay of up to five days; (ii) a short-term stay “C” visa for a stay of up to three months; and (iii) an entry “D” visa, valid for up to 45 days (this visa is a pre-requisite for applying for a temporary residence permit).

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 period the temporary residence permit must be applied for and received. Such visas are easily available from any consulate of Ukraine abroad. However, a certified copy of the work permit issued to the Ukrainian corporate host (i.e., the employer) is necessary as part of the visa application package. For those foreign nationals who will be employed in a Ukrainian representative office (branch) of a foreign entity, a service card will be obtained by the branch, which will serve as a substitute for a work permit, for the purpose of a visa application.

Generally, foreign nationals who need a visa to enter may stay in Ukraine during the term of their visa validity. Citizens of the states that are signatories to the agreements on visa-free travel with Ukraine may enter and stay for up to 90 days within a 180-day period, which is calculated retrospectively from the date of their latest entry into Ukraine. These limitations do not apply to holders of temporary residence permits (or permanent residence permits). A temporary residence permit enables the holder to enter and leave Ukraine as desired and to stay in Ukraine for the entire term of the validity of the temporary residence permit (subject to completion of certain registration formalities required by law).

Visa Waiver/Visa Exemptions

Citizens of the states that are members of the European Union, the Swiss Confederation, the Principality of Liechtenstein, the US, Canada or Japan may enter Ukraine without a visa or any invitation letter for business for up 90 days within a 180-day period (retrospectively) from the date of their latest entry into Ukraine.

Visa-free entry for private purposes or tourism is also allowed for citizens of the above-mentioned developed states, which makes it possible for business travelers to take their spouses, children, and other family members along. However, this waiver of visa

requirement is not intended for foreign nationals coming to Ukraine for employment purposes.

In addition, citizens of certain states (including certain states of the former Soviet Union) need to present evidence that they have sufficient means to sustain themselves for the entire period of their visit to Ukraine (e.g., to have money in cash, bank cards, bank account statements, a valid hotel reservation, return tickets with fixed dates, a letter of commitment of the inviting party, etc.). If such evidence is not provided, the person may be denied entry into Ukraine and his visa may be cancelled.

Employment Assignments

The Ukrainian immigration regulations used to contain gaps and were unclear with respect to the procedures and documents necessary to receive certain permits or registrations. That led some foreign nationals to ignore the legislation and to enter Ukraine for employment purposes either on the basis of a short-term stay "C" visa, or on the basis of the "no-visa" entry regime (visa waiver available for business travelers from certain states). However, the loopholes that made such an approach possible in the past (but in no way compliant with the existing law) have been eliminated.

Intra-Company Transfer

Intra-company transferees are entitled to work in Ukraine upon receipt of the work permit by the relevant employer. The procedure for obtaining a work permit is similar to that described below for the skilled workers. However, while applying for a work permit for an intra-company transferee, the employer is not required to inform the Employment Center about the vacancy.

The application for the work permit and the relevant supporting documents are to be submitted by the employer to the local Employment Center. As part of the application, a Ukrainian medical certificate confirming the absence of certain illnesses, plus a clean criminal record certificate issued by the Ministry of Internal Affairs of

Ukraine (if the foreign national is physically in Ukraine already), or by the relevant governmental body of a foreign country (if the foreign national is not physically in Ukraine yet), must be submitted. In addition, the employer must submit the decision of the foreign company regarding transfer of the foreign national to work in Ukraine. In addition, a copy of a contract between the foreign national and the foreign entity regarding the transfer to Ukraine (and indicating the period of work in Ukraine) must also be submitted.

Work permits for intra-company transferees may be obtained for a period of up to three years with an option to be extended an unlimited number of times in two-year increments. However, the issuance of such work permits is not widespread.

Skilled Workers

Skilled workers are entitled to work in Ukraine upon receipt of a work permit by the relevant employer (see sections below). The application for the work permit will be successful if the employer proves that there are no skilled workers in Ukraine (or in the relevant region) who are able to perform the necessary work. Hence, while applying for the work permit, the employer has to inform the Employment Center about the vacancy 15 days prior to the desired application date for the work permit. In turn, the Employment Center may propose relevant Ukrainian candidates, if any, for this vacancy. However, the postings usually list very specific and exclusive skills and education as requirements for the position, making it next to impossible for the Employment Center to find local candidates.

Obtaining Work Permits

Ukrainian legislation has established a number of requirements applicable to all foreign employees of a Ukrainian corporate host. The Ukrainian employer itself must be registered with the Local Migration Office in order to act as a corporate host and to issue the relevant visa invitations to business travelers and foreign employees or to apply for an extension of their stay. The registration of the company with the Local Migration 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 entering into employment relations with a foreign national prior to the company obtaining a work permit for such foreign national.

Numerous documents are required to apply for a work permit, which must be submitted by the company to the relevant Employment Center. The application, among other documents, must include a Ukrainian medical certificate confirming the absence of certain illnesses and a clean criminal record certificate issued by the Ministry of Internal Affairs of Ukraine (if the foreign national is physically in Ukraine), or a clean criminal record issued by the relevant governmental body abroad (if the foreign national is not yet physically in Ukraine), and an advance filing must be made informing the Employment Center regarding the vacancy (15 days prior to the desired application date for the work permit).

Unlike many other jurisdictions, Ukraine has not introduced any quotas for foreign labor, either by type or worker categories or by state of citizenship. Additionally, Ukraine allows the hiring of foreign nationals even if equivalent Ukrainian specialists are available in the locality, provided that the employer is able to demonstrate the 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 must be demonstrated in the form of a university diploma, certificates and résumé.

At the same time, it is necessary to prove that a foreign national's employment is sufficiently justified. Under current legislation, employment of a foreign national is deemed reasonable and justified if: (i) the foreign national's position will be managerial (e.g., a director, a deputy director, or other top managerial position) in the

entity of which this foreign national is a founder; (ii) the foreign national holds some IP or neighboring rights and comes to Ukraine to exercise them; or (iii) the foreign national will occupy a managerial position such as a database administrator, a software development engineer, or a software development assistant engineer with a company in the IT industry.

Moreover, as of February 2015, recruiting foreign labor will be deemed appropriate and justified if such foreign national holds a degree from any of the top 100 universities named in any of the following world rankings: Times Higher Education, Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University, QS World University Rankings by Faculty, or Webometrics Ranking of World Universities.

The relevant Employment Center should make its decision within seven business days from the filing date of the application. Its decision should be both mailed to the applicant via traditional mail and email, as well as posted on the website of the relevant Employment Center within two business days. The employer must pay the fee for issuance of a work permit within ten business days from the date of receiving the decision on the issuance of the work permit, otherwise the decision will be cancelled.

The relevant Employment Center is also obliged to issue the actual work permit within three business days from the date when the fee paid by the employing company for the work permit is credited to the account of the Employment Center. After that the company has to conclude a written employment contract with the foreign national and submit a copy of it to the Employment Center within seven business days.

Work permits are issued for a period for which an employment agreement or contract is concluded but not more than for one year (three years for intra-company transferees). If the employment agreement or contract is concluded for an unlimited period, work permits are issued for one year. This term may be prolonged for the

same period for an unlimited number of times by filing an application that includes all required documents (two photographs and a clean criminal record certificate issued by the Ministry of Internal Affairs of Ukraine) with the relevant Employment Center at least 20 calendar days prior to the expiration of the term of the current work permit.

Obtaining Service Cards

Foreign nationals employed in Ukrainian branches of foreign companies (i.e., representative offices) are not eligible for Ukrainian work permits. However, they are entitled to work in Ukraine as they are eligible for service cards. They are also eligible for Ukrainian temporary residence permits, which allow foreign nationals to reside in, and travel into and out of Ukraine.

Service cards are obtained from the Ministry of Economic Development and Trade before foreign nationals start performing their functions in Ukraine. The procedure for obtaining service cards is less burdensome than obtaining work permits. The documents to be submitted as a part of an application are not so numerous. In particular, the representative office must submit only an application, a copy of the document certifying the registration of the representative office in Ukraine and a list of the foreign employees of the representative office indicating the period of stay of the foreign employees in Ukraine, together with two photos of each relevant foreign national. Service cards are issued for a period of up to three years within 15 business days following the submission of all relevant documents.

Obtaining a Work Visa

After the work permit/service card has been obtained, the foreign employee has to obtain a “D” visa issued by a diplomatic mission or a consulate of Ukraine abroad to be eligible for a Ukrainian temporary residence permit. Generally, it takes a handful of days to obtain the visa after all the documents are submitted, but the relevant consulate of Ukraine has up to 15 calendar days to approve its issue (and this

term may be extended by up to 30 calendar days if further examination of the application and submitted documents is required).

Training

Unpaid trainees can enter Ukraine either without a visa or on the basis of a visa as may be applicable and described in further detail in the "Business Travel" section above.

A trainee who will receive any remuneration from the Ukrainian corporate host and whose functions are akin to those of an employee of the Ukrainian host requires a work permit and a "D" visa together with a temporary residence permit, regardless of the duration of the training. All other requirements applicable to foreign employees of Ukrainian entities including providing a copy of a university diploma and clean criminal record certificate will also apply.

Post-Entry Procedures

Upon obtaining the "D" visa, the foreign national must enter Ukraine on its basis and obtain a stamp on the visa when crossing the border into Ukraine. The "D" visa is issued as a single-entry visa only. It allows the foreign national to stay for 45 days in Ukraine. Therefore, as soon as the foreign national enters Ukraine, he must apply for the temporary residence permit. The residence permit can be obtained within 15 days after the relevant application is submitted to the Local Migration Service.

At the same time, no business trips outside Ukraine should be planned for the period until the foreign employee: (i) receives a temporary residence permit (within 15 calendar days after the relevant application is submitted to the Local Migration Office); (ii) has his passport marked with a stamp that a residence permit was granted by the Local Migration Office; and (iii) has registered at the place of his residence within ten days after the receipt of the temporary residence permit (upon receipt of a relevant stamp in the temporary residence permit). The total length of such period is about 21 to 25 days.

After all these steps are completed, the foreign national may travel in and out of 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).

Other obligations of the employer

A foreign employee must also receive a Ukrainian tax ID before the company can make salary or any other payments to the foreign employee. The company acts as the tax withholding agent with regard to the withholding and remittance into the Ukrainian budget of the foreign employee's taxes and social contributions related to the salary. The employee, if he is a tax resident in Ukraine, is responsible for filing annual tax returns on the employee's worldwide income with the Ukrainian authorities.

If the foreign national has not started his work within the term provided for in the employment agreement, and there is no valid reason for this, the employer is obliged, within five business days, to notify the Local Migration Office in writing. If the employer terminates the employment early, they must notify the relevant Employment Center within three business days, which in turn will cancel the work permit.

Extension of Stay

If a traveler needs to remain in Ukraine beyond the allowed term of stay, he needs to file an application for the extension of stay with a relevant local branch of the Migration Service. The filing must be made at the Local Migration Office no later than within three business days but not earlier than within ten business days before the expiry of the allowed term of stay.

Extensions are normally granted if: (i) there are valid reasons to extend the validity of the stay, including illness precluding travel, very important family events, or unexpected business needs; and (ii) all documents are valid and submitted in a timely manner. Extensions are granted to foreign nationals who arrived on the basis of a visa (or from

a state with which Ukraine has an agreement on visa-free travel) and if the local host supports the application.

It is important to remember that the extension is solely related to permission to remain in Ukraine. Therefore, even if granted for the next several months, it will expire the moment the foreign national leaves Ukraine. As a result, the foreign national (i.e., those from a state with which Ukraine has an agreement on visa-free travel) should be aware that when next entering Ukraine, the relevant State Borderguards Service of Ukraine at the point of entry will review the foreign national's activities in the preceding 180-day period. If, within this 180-day period such foreign national was present in Ukraine for 90 days, he will be denied entry into Ukraine.

Other Comments

Specific considerations apply to the appointment of a foreign national to the position of CEO of a newly established Ukrainian company.

Although there is no express prohibition established in law, as a matter of practice, a foreign national may not be the first director of a newly created Ukrainian legal entity. This is due to the fact that a foreign national may not sign any documents on behalf of the newly created company until the foreign national has obtained a Ukrainian work permit. 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) of foreign employee(s). Therefore, a Ukrainian citizen has to be appointed to temporarily act as the director of the subsidiary until a work permit is obtained for the foreign national appointed to the position of 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 the temporary residence permit for the director evidencing the registration of the director at the place of his residence in Ukraine. The absence of such registration normally occurs only if the director does not physically reside in

Ukraine, but manages the company remotely or through short visits and, as a consequence, does not have any accommodation or a registered address in Ukraine. For that reason it is best not to appoint a foreign national to the position of director if it is clear that this person will not actually reside in Ukraine.

Planned Legislative Change

Currently, a draft law "On Amendments to Certain Legislative Acts of Ukraine Regarding Employment and Migration Rules to Attract Foreign Investment" is being discussed and is strongly supported by the Committee on Industrial Policy and Entrepreneurship and the American Chamber of Commerce in Ukraine. In particular, under the Draft, it is proposed to expand: (i) the list of grounds under which recruiting foreign labor is considered appropriate and justifiable; (ii) the period of time for which the work permit is obtained; and (iii) the list of grounds under which foreign nationals coming to Ukraine could apply for the temporary residence permit.

United Arab Emirates

The United Arab Emirates (the "UAE") is undoubtedly becoming one of the world's biggest business destinations. Since many major multinational companies are setting up their regional headquarters there to take advantage of low taxation, ease of doing business, great transportation facilities (Dubai recently dethroned Heathrow Airport to become the world's busiest airport) and proximity to both the Asian and African business hubs. Employee mobility and immigration to the UAE has become a very important issue for a big number of corporations.

The UAE is also becoming a major tourist attraction with a millions of tourists visiting around the year. In this chapter we will focus on employment of expatriates in the UAE as well as business travels.

Key Government Agencies

Although the UAE is a federation that consists of seven Emirates that each have their own authorities and regulators, employment and visa issues are handled by federal authorities.

With respect to the employment of foreign nationals, the Ministry of Labor is responsible for work permits. The Ministry of the Interior (through the General Directorates of Residency and Foreigners Affairs present in each of the seven Emirates) is responsible for issuing residence permits.

The Ministry of Foreign Affairs through UAE embassies and consulates around the world also play a big role when applying for employment, business, and tourist visas.

Current Trends

The UAE continues to attract a significant number of expatriates, both white- and blue-collar. The UAE authorities have made significant progress by introducing online systems to facilitate the application and approval processes.

*Last edited January 2015

In an non-official statement, a prominent senior Ministry of Labor official declared that more than 1.2 million new applications were processed by the Ministry of Labor in 2014.

Business Travel

Business Visit Visa

A business visit visa may be issued based upon a letter of invitation by a UAE-based company or 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 UAE. The primary purpose of business visit visas is to allow foreign nationals to enter into the UAE for conducting limited business transactions with the sponsor. By way of example, this would include negotiations of agreements, assisting or conducting training, or holding general business meetings. In practice, however, business visit visas are commonly used to facilitate rendering short-term or intermittent contractual services (e.g., managerial, professional, technical, or consultancy services) but this practice, which has historically been tolerated by the UAE authorities, is now becoming less tolerated and might entail some risk mostly related to doing business without proper licensing. Further legal advice should be sought in such occasions.

Beyond this limited scope, business visit visas do not grant foreign nationals the right to work or reside in the UAE.

Visa Waiver

Citizens of the Gulf Cooperation Counsel (Bahrain, Kuwait, Oman, Qatar and Saudi Arabia) are not required to have visas to visit the UAE for either business or tourism, but will be required to obtain a residence permit should they permanently reside for work purposes.

Also, residents of the Gulf Cooperation Counsel who are employed under certain professions (managers, sales, doctors, engineers, pharmacists, auditors, investors, etc.) in such countries are all eligible

*Last edited January 2015

for a 30-day visa on arrival at approved points of entry. However, a valid passport stating GCC residency, along with proof of employment in the country of residence, may be required at the immigration checkpoints.

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 can only undertake work in the UAE if they are employed by an employer/company that has a registered presence in the UAE. Expatriate employees must obtain a work permit, an entry permit and finally a residency permit.

The employer has to apply for a work permit for their foreign national employee and obtain labor approval from the Ministry of Labor. The employer must apply to the Ministry of Labor for one of the following permits which may be suitable for the activities to be conducted (dependent upon the working hours and needs of the employer, such as the intended duration of stay and need for single/multiple entries):

- mission work permit (for specific projects to be declared to the Ministry of Labor and not exceeding 90 days - renewable 1 time);
- temporary work permit (for short terms not exceeding 180 days);
- full time work permit (for full time employment relationships); or
- part time work permit (for part time employment relationships).

Following this approval, the employer would apply for an entry permit from the General Directorates of Residency and Foreigners Affairs in order for the employee to enter the UAE. Following receipt of the

*Last edited January 2015

required work permit and entry permit, the employee may enter the UAE. The employee must then undergo (i) a medical examination, (ii) obtain a health insurance card, (iii) obtain a labor card (in order to apply for this, the employer must submit the signed Ministry of Labor employment contract and medical examination results to the Ministry of Labor) and (iv) obtain an Emirates Identification card in order to apply to the relevant immigration department for a residency permit.

As a prerequisite for obtaining the work permit, the General Directorates of Residency and Foreigners Affairs would also conduct a security check on the candidate.

The prospective employee will often be required to present the educational diplomas or certificates which have to be legalized at the relevant UAE embassy.

*Last edited January 2015

United Kingdom

The United Kingdom completely overhauled its immigration system for employment-related visa applications in 2008. The introduction of a points-based system, sponsorship licenses and compulsory identification cards for foreign nationals were all part of the biggest shake-up to immigration and border security in 45 years.

The UK government also introduced a cap on the number of non-EU migrants coming to the UK. Since April of 2011, there has been an annual limit on the number of non-EU migrants coming to the UK under the Tier 2 (General) category for Skilled Workers.

Key Government Agencies

The UK Border Agency ("UKBA"), which was formed in 2008, was abolished in early 2013 and was split into two new organizations, the Border Force and UK Visas & Immigration.

UK Visas & Immigration is responsible for processing applications for permission to enter and stay in the country. Officials are located in the UK and also at British embassies and consular posts abroad to process visa applications. The Border Force is responsible for enforcement and securing the UK border by carrying out immigration and customs controls.

Current Trends

The points-based system replaced almost all of the different employment- and study-related categories, reducing the previous 83 entry routes to five broad tiers: Tier 1 for high value migrants; Tier 2 for skilled workers with a job offer; Tier 3 for low skilled workers (although this tier was indefinitely suspended); Tier 4 for students; and Tier 5 for temporary workers.

Overview

British citizens, Commonwealth citizens with the right of abode in the UK and Irish citizens are not subject to immigration control and do not require permission to enter or remain in the UK. Their passports

will not be stamped on entry and they are free to return to the UK however long they stay outside.

Nationals of the European Economic Area ("EEA") countries, i.e., nationals of the European Union countries: Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, plus nationals of Iceland, Liechtenstein and Norway, are, in general, free to come to the UK with their dependents to reside and work in the UK without any prior formalities. Swiss nationals also benefit from the same rights as most EEA nationals, although Switzerland is not a member of the EEA.

Certain formalities apply with respect to nationals of Croatia which acceded to the EU on July 1, 2013. Croatian nationals, although free to enter and remain in the UK, are required to obtain authorization and a "purple registration certificate" before commencing work in the UK. Croatian nationals who meet the high value migrant person criteria may be exempt from worker authorization, but they will still need to apply for a "blue registration certificate."

Aliens, Commonwealth citizens without the right of abode in the UK and UK passport holders who are not British citizens (i.e., British Overseas Citizens) are subject to immigration control and must obtain permission to enter or remain in the country. Their passports will normally be stamped to indicate how long they can remain and what conditions are attached to such permission.

Citizens of certain countries are termed "visa nationals" and require mandatory entry clearance before traveling to the UK for any purpose, even as visitors. Other nationals only require entry clearance if they wish to travel to the UK for a particular purpose. Entry clearance is the process by which a person applies to a British diplomatic post in their country of residence for prior permission to enter the UK.

A foreign national who takes up employment in the UK without authorization is liable to removal and under provisions introduced on February 29, 2008, could be barred from re-entering the UK for a period of up to ten years.

Since January 1997, UK employers have 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 had been made and retained on the foreign national's personnel file.

The right to work requirements were replaced by Sections 15 to 25 of the Immigration, Asylum & Nationality Act 2006. Under Section 15 an employer may be liable for a civil penalty of up to GBP 20,000 per illegal worker. These provisions also introduced a criminal penalty for knowingly employing an illegal worker which includes an unlimited fine and/or imprisonment of up to two years.

Business Travel

Business Visitor Category

As of April 24, 2015 the visitor visa categories are consolidated to four new categories with the intention of increasing the flexibility of the visitor route. Foreign nationals coming to the UK under the business visitor route should normally be granted permission to stay for a maximum period of 180 days/six months. As previously mentioned, nationals from certain designated "visa national" countries must apply for a visa before traveling to the UK as visitors.

Persons entering under this category must be based abroad and must not be receiving a salary from a UK source. Foreign nationals will only be allowed to undertake certain permissible activities under this category for example, transacting business (e.g., attending meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). Business visitors must not "intend to produce goods or provide services within the UK, including the selling of goods or services direct to members of the public."

Permitted Paid Engagements

In 2012, the UKBA introduced a list of permitted paid engagements which could be undertaken by visitors, including examiners, lecturers, lawyers, arts entertainers and sporting professionals. This has been further expanded under the rules in place as of April 24, 2015.

Please note that those entering under the visitor category are not otherwise authorized to do paid or unpaid work in the UK.

Employment Assignments

The general rule is that any person who is subject to immigration control cannot take up employment in the UK without a valid work permit or other form of work authorization. The main exceptions to this general rule concern EEA nationals (except Croatians) and Swiss nationals.

Commonwealth Citizens with United Kingdom Ancestry

Upon proof that one grandparent, paternal or maternal, was born in the UK (including the Channel Islands and the Isle of Man), a Commonwealth citizen who wishes to take or seek employment will be granted entry clearance for that purpose and does not require a work permit. Individuals entering under this category will be admitted for an initial period of five years and should be eligible to apply to remain permanently after residing in the UK for five years.

Representative of an Overseas Business

This category allows companies without an existing UK operation to send a senior employee to the UK to establish a presence. This category includes employees of overseas newspapers, news agencies or broadcasting organizations.

Entrants under this category are admitted for an initial period of three years and the visa also leads to indefinite leave to remain (permanent residence) after five years.

Tier 1 High Value Migrants

The Tier 1 category is intended for "high value" migrants. Tier 1 visas are not job-specific and do not require sponsorship from an employer. The main sub-categories are:

Tier 1 (General)

This category allowed highly skilled people to come to the UK to work or for self-employment. This category is closed to new applicants and for extension applications, but applications for permanent residence are permitted until April 6, 2018.

Tier 1 (Investor)

The Tier 1 (Investor) category is designed for high net worth individuals who are able to make a substantial financial investment in the UK. The base entry level requirements are that applicants have to provide evidence that they have capital of GBP 2 million in their own name which can be transferred to the UK. The qualifying investments include UK government bonds, share capital or loan capital in active and trading UK registered companies (with certain restrictions).

Applicants who invest at the GBP 2 million level should qualify for permanent residence after five years in the UK. If the applicant wishes to gain permanent residence more quickly he can invest at the higher investment bands of GBP 10 million or GBP 5 million. An investment of GBP 10 million could mean the applicant qualifies for permanent

residence in just two years. Similarly, those prepared to invest GBP 5 million could qualify after three years. All applicants, regardless of the level of investment, are required to spend just over 50 percent of their time in the UK over their qualifying period. Investors can spend up to 180 days outside of the UK each year and still qualify for permanent residence.

If UK citizenship is the aim, it should be noted that the residence requirements are very different for nationality applications, in particular, far fewer absences are permitted for nationality applications than for permanent residence applications. This should therefore be taken into account from the outset.

Investors are admitted for an initial period of 40 months (36 months if the application is made in the UK).

As of September 1, 2015, Investors are required to provide an overseas criminal record certificate for any country they have resided in continuously for 12 months, in the ten years prior to their application.

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 UK.

Under the current rules, Entrepreneurs are required to show that they are genuine investors who have access to GBP 200,000 in capital to invest in a new or existing business. In April 2011, the government reduced the level of investment required to GBP 50,000 if the applicant can show that he has been promised this level of funds in cash from any of the following:

- one or more registered venture capital firms regulated by the Financial Conduct Authority;

- one or more UK entrepreneurial seeding fund competitions (which has been endorsed by UK Trade & Investment); or

- one or more UK government departments for the specific purpose of establishing and expanding a UK business.

In addition to creating this new investment limb, a faster track towards permanent residence was also introduced. Under the revised rules, permanent residence can be obtained in three years if the applicant can show that the business has created at least ten new jobs during the same period. Alternatively, if the applicant can show that the new business had a turnover of at least GBP 5 million during the three-year period of his visa, or if an existing business saw a net increase in income of GBP 5 million during the same period, then he may qualify for permanent residence at the three-year point. In all other cases the applicant will continue to qualify after five years.

As with the Investor category, Entrepreneurs are permitted to spend up to 180 days outside of the UK each year. Although, it should be noted that if UK citizenship is desired, far fewer absences are permitted for naturalization applications than for permanent residence applications. Additionally, Entrepreneurs are now required to provide an overseas criminal record certificate with their applications.

Tier 1 (Exceptional Talent)

The Tier 1 (Exceptional Talent) category is intended to encourage exceptionally talented leaders in the fields of science, humanities, engineering, medicine, digital technology and the arts to come to the UK. This category is available to those who have already been recognized in their fields and also to those with the potential to become recognized leaders in their respective fields.

Those wishing to apply under the Tier 1 (Exceptional Talent) category do not need to be sponsored by an employer, but will need to be recommended by one of five competent bodies appointed by the government. Each competent body will select those who will qualify for recommendation.

Sponsor License – Tier 2 and Tier 5

Employers are required to have a license in order to employ nationals from outside of the EEA. The so-called "Licensed Sponsor" is then authorized to use the Sponsor Management System. This is an online platform that allows companies to sponsor non-EEA nationals to work in the UK.

Once an employer is registered as a Licensed Sponsor it will be ready to sponsor employees from overseas to work in the UK under the Tier 2 and Tier 5 visa categories. Under this system it is up to the employer to make an assessment as to whether or not an individual meets the published criteria for a Certificate of Sponsorship (a work permit) to be issued. The company will then be able to issue a certificate and send it to the employee to apply for a visa.

In order to apply for a license, each employer will need to appoint an individual to the following prescribed roles: (i) Authorizing Officer ("AO"); (ii) Key Contact; (iii) Level 1 User; and (iv) Level 2 User (not essential). All four roles can be filled by the same person, by four different people or by a combination of the two. The AO role must be undertaken by a permanent member of staff who is based in the UK and at least one Level 1 User must be an employee of the company. 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 key personnel. Each of these roles carries some degree of responsibility for the functioning of the new system.

The "AO" is the most senior role within the Sponsor Management System and is responsible for assigning other key personnel and for supervising their conduct (including both employees and any appointed representatives). However, the AO does not have to be involved in the day-to-day operation of the Sponsor Management System and does not have automatic access to this system, but could also be a Level 1 or Level 2 User, which would give him access, as

the AO is required to carry out regular checks on the sponsor's certificate of sponsorships usage on a monthly basis.

The "Key Contact" acts as the main point of contact with UK Visas & Immigration. This individual may be contacted by UK Visas & Immigration for any queries with applications (e.g., requests for documents or payment enquiries). The Key Contact does not have automatic access to the Sponsor Management System, but can be a Level 1 or Level 2 user as well, which would provide him with access.

The "Level 1 User" deals with the day-to-day administrative activities of the Sponsor Management System (e.g., assigning Certificates of Sponsorship to employees/prospective employees, reporting changes of circumstances). The Level 1 User can also create and remove users from the Sponsor Management System.

"Level 2 Users" undertake the same type of administrative tasks as the Level 1 User, but cannot create and remove users. Any number of Level 2 Users can be appointed.

In return for being granted a license and the ability to issue Certificates of Sponsorship, the employer must agree to undertake a number of duties (e.g., recording certain specified information, reporting certain facts to UK Visas & Immigration, complying with relevant legislation and cooperating with UK Visas & Immigration).

As part of the licensing process, UK Visas & Immigration will make an on-site visit to the employer's business premises to check that it has the systems in place to meet the new obligations that arise from being granted a license. It is therefore recommended that any employer considering applying for a license should undertake a compliance audit before filing a license application.

Licensed employers are required to assess whether an employee meets the minimum points threshold for a certificate to be obtained. Points are allocated for two criteria: "attributes" and "maintenance" with an additional criterion for "English language" where relevant.

"Attributes" includes sponsorship and prospective earnings. The individual must score a minimum of 50 points under the attributes section, an additional 10 points for maintenance and 10 points for English language where applicable.

It is worth noting that, although the company is responsible for issuing Certificates of Sponsorship under the system, UK Visas & Immigration can undertake a review of any decisions made after a certain number of certificates have been issued. If the company is found to have incorrectly issued the certificates or to have been non-compliant with any of the obligations it could have its license downgraded from an "A" rating, or even withdrawn. If its license is withdrawn, any existing employees working under a certificate could be required to leave the UK within 60 days. Therefore, it is important for any company using the system to ensure that it is fully compliant with the requirements.

Tier 2 – Skilled Workers

Tier 2 came into force in 2008 under the Sponsor Management System. Employers are required to have a license in order to employ nationals from outside of the EEA. Most skilled nationals will require a Tier 2 visa. The main sub-categories are:

Tier 2 (General)

As previously described, in order to qualify under the Tier 2 (General) visa category, applicants must score a minimum of 50 points for attributes which includes "prospective earnings" and "sponsorship." In addition, applicants must score 10 points for "financial maintenance" and 10 points for "English language" ability.

In order to achieve 50 points for attributes, employers must (with limited exceptions) carry out a resident labor market test. In general, the post must be advertised on the Universal Jobmatch and on one other relevant medium for a four-week period. The salary offered must also match the appropriate rate in the UK Visas & Immigration's published Standard Occupational Classification Codes. Applicants

must meet the English language requirement either by passing an approved English test, being a national of a majority English-speaking country or by holding a degree that was taught in English (which is equivalent to a UK Bachelor's degree or above). The financial maintenance can be certified by an A-rated employer on the Certificate of Sponsorship.

On April 6, 2011 the government introduced an annual limit on Tier 2 (General) applications from outside of the UK. This means that in most cases an employer must file a request for a restricted Certificate of Sponsorship for each migrant applying from outside the UK under this category. Only if the certificate is granted by UK Visas & Immigration can the visa application be filed. The number of restricted Certificates of Sponsorship is limited to 20,700 globally per year and applications are only considered once a month, meaning this process can be both uncertain and lengthy.

The Tier 2 (General) visa can lead to permanent residence after five years, but an individual cannot stay under this category for more than six years in total, unless they entered the UK before April 2011.

Tier 2 (Intra-Company Transfer)

This category allows multinational companies to transfer employees from their overseas organizations into a UK branch or subsidiary to undertake a skilled job. Applicants must score a minimum of 50 points for attributes (as under the Tier 2 (General) category) and 10 points for maintenance. However, applicants do not have to satisfy the English language requirement under the Tier 2 (Intra-Company Transfer) category.

The Tier 2 (Intra-Company Transfer) category is split into four sub-categories: (i) Short-term Staff; (ii) Long-term Staff; (iii) Graduate Trainee; and (iv) Skills Transfer.

Under the Short-term Staff and the Long-term Staff categories, a sponsoring organization can normally only transfer an overseas

employee to the UK if they have been employed by a related company overseas for 12 months or more.

Intra-Company Transfer Short-term Staff

Employees must earn a minimum of GBP 24,800 per annum and can apply for a maximum visa length of 12 months.

- At the end of the visa (see "Cooling off Period" below) or earlier repatriation, the migrant will receive a 12-month exclusion ("cooling off period") from re-entry to the UK with a Short-term Staff visa or with a Tier 2 (General) visa.
- Visas issued for less than 12 months can be extended up to 12 months.
- Exclusion runs from date of the visa's expiry, unless the individual can produce evidence of an earlier departure from the UK.
- Short-term Staff can re-enter the UK with a Long-term staff visa during the exclusion period but cannot switch categories in-country.

Intra-Company Transfer Long-term Staff

Employees must earn a minimum of GBP 41,500 per annum and can apply for a maximum initial visa of up to three years or five years.

- At the end of the visa (see "Cooling off Period" below) or earlier repatriation, the migrant will receive a 12-month exclusion from re-entry to the UK under any Tier 2 category.
- Visas issued for less than five years can be extended up to five years (or nine years for any migrants earning at least GBP 155,300 a year).

- Exclusion runs from the date of expiry of the visa unless the individual can produce evidence of earlier departure from the UK (see above).

Intra-Company Transfer Graduate 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 at least three months before coming to the UK. The maximum period of leave that can be granted under the Graduate Transfer category is 12 months and switching into other immigration categories is not permitted. An exclusion from returning to the UK in or under the Short-term Staff, Skills Transfer or Tier 2 (General) categories will be effective from the end of the Graduate Transfer visa.

Intra-Company Transfer 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 or impart new skills and knowledge relevant to their new role. The maximum period of leave that can be granted under the Skills Transfer category is six months and, like the Graduate Transfer category, switching into other immigration categories is not permitted. An exclusion from returning to the UK under the Short-term Staff, Graduate Trainee or Tier 2 (General) categories will be effective from the expiry of the visa or earlier repatriation.

Indefinite Leave to Remain

Since April 6, 2010, applicants coming to the UK under the Tier 2 (Intra-Company Transfer) visa have not been eligible to apply for indefinite leave to remain (permanent residence) after five years' residence in the UK. However any foreign national who entered the UK under the rules in place before April 6, 2010, and has extended or will extend his leave under the Intra-Company Transfer category will

still be able to continue on track to be granted indefinite leave to remain.

Tier 2 holders eligible for permanent residence can spend up to 180 days outside of the UK in each year and still qualify for permanent residence. Absences must be connected to the foreign national's sponsored employment. As with Tier 1 high value migrants, it should be noted that the residence requirements are very different for nationality applications, in particular, far fewer absences are permitted for nationality applications than for permanent residence applications, so taking full advantage of the 180-day absence allowance can adversely affect a citizenship application.

Cooling off Period

As of April 2015, the 12-month "cooling off period" has been removed for those individuals whose Certificate of Sponsorship was valid for a period of three months or less, generally increasing the flexibility of this category.

Tier 5

Under the Tier 5 category an applicant can enter the UK for a limited period if, where applicable, he has a job offer from a Licensed Sponsor and meets the eligibility requirements. There are five sub-categories under this route:

Tier 5 (Youth Mobility Scheme)

This replaced the previous Working Holidaymaker Scheme. The Youth Mobility Scheme allows young people from participating countries to experience life in the UK. Currently only the following countries are participating in the scheme: Australia, Canada, Hong Kong, Japan, Monaco, New Zealand, South Korea and Taiwan. British Overseas Citizens, British Overseas Territories Citizens and British National Overseas passport holders are also allowed to apply.

The Tier 5 (Youth Mobility Scheme) category is quota-based. Visa applications from the above listed countries will be accepted until

their country's annual allocation has been reached. However, there is no quota for applications from British Overseas Citizens, British Overseas Territories Citizens and British National Overseas passport holders. Applicants will be able to take up any work in the UK except self-employment (subject to certain exceptions), working as a professional sportsperson or working as a doctor in training. Self-employment will only be permitted if the individual does not own the permanent premises from which he does business, the total value of the equipment he uses does not exceed GBP 5,000 and there are no employees.

Tier 5 (Temporary Worker) Creative and Sporting

This category is granted to creative artists, sports persons and entertainers coming to fulfill short-term contracts/engagements in the UK.

Tier 5 (Temporary Worker) Government Authorized Exchange

This category offers migrants a route to enable a short-term exchange of knowledge and best practice through employment while experiencing the wider social and cultural setting of the UK.

Tier 5 (Temporary Worker) International Agreement

This category authorizes migrants who are legally entitled under international law to come to work in the UK for a limited period of time.

Tier 5 (Temporary Worker) Charity Worker

This category authorizes migrants to do unpaid voluntary work for a charity.

Tier 5 (Temporary Worker) Religious Worker

This category authorizes migrants to do religious work, e.g., preaching or working in a religious order.

Training

The visitor category permits foreign nationals to undertake some limited training in techniques and work practices used in the UK. There are strict limits on the scope of training that can be provided under this category which must normally be restricted to watching demonstrations and classroom instruction only. On-the-job training in a productive work environment is not permitted and visitor visa holders cannot be paid from any UK source, although they can receive reimbursement for certain expenses.

As of April 24, 2015, overseas employees may receive training from UK-based entities on work practices and techniques required for their employment overseas. Additionally, overseas trainers can deliver a short series of training to UK employees of an international corporate group when a global training contract exists.

Post-Entry Procedures

Biometric Residence Permit

From March 18, 2015, biometric residence permits ("BRP") for entry clearance applicants were rolled out over a four-month period. Previously applicants applying for entry clearance (a visa) were issued with a vignette which was placed in their passport and confirmed the full period of leave they had been granted. This has been replaced with a 30-day "short validity travel vignette" to allow employees to enter the UK if coming here for more than six months. However, once such employees have arrived in the UK and before the 30-day period elapses, they must collect their credit card-sized BRP from a designated Post Office, which will confirm their full period of leave, and which they will need to keep with their passports.

For migrant workers (e.g., those coming under the Tier 2 category), after arrival in the UK they may commence work by presenting their "valid" short validity travel vignette to their employer. However, they will need to obtain their new BRP before the vignette expires and

within ten days of arriving in the UK. The BRP will need to be presented to their employer in order to maintain their right to work.

Immigration Health Surcharge

On April 6, 2015, the government introduced an annual immigration health surcharge. Unless exempt, all visa applicants are required to pay an additional fee of GBP 200 per year of visa length for each applicant (GBP 150 for students). The surcharge is in addition to the visa application fee and the total payable surcharge is based on the length of visa requested.

Other Comments

Spouses, civil partners or unmarried partners of entrants under all of the categories reviewed in this article (except the visitor and some Tier 5 categories) must satisfy the following conditions in order to enter as dependents: (i) they must be married, have entered into a civil partnership or be the unmarried partner of the entrant; (ii) they must intend to live with each other during their stay; and (iii) they must obtain entry clearance to enter as a dependent spouse, civil partner or unmarried partner. Dependent children under the age of 18 are also eligible.

In addition, non-EU migrants coming to the UK to join their spouses who are British citizens or who have been granted indefinite leave to remain (permanent residence) are required to pass an English language test and must also meet a financial requirement.

Anyone entering the UK in one of the employment-related categories or as the spouse, civil partner or unmarried partner, with the exception of Tier 5 and the Tier 2 (Intra-Company Transfer) categories, will qualify, along with their dependents, to apply for permanent residence after completing five years of residence in the UK. Upon being granted permanent residence, they will be free to live and work in the UK without any restrictions.

Planned Legislative Changes

Following on from the recommendations by the Migration Advisory Committee, on March 24, 2016, James Brokenshire (the Minister of State for Immigration) announced impending changes to the Tier 2 category. The changes will take place in Autumn 2016 and April 2017. The main changes include:

Autumn 2016

- Tier 2 (Intra-Company Transfer) applicants will be required to pay the Immigration Health Surcharge.
- Tier 2 (Intra-Company Transfer) Skills Transfer will close to new applications.
- Extra weighting will be given to sponsored overseas graduates during the Tier 2 visa application process, and graduates will be allowed to switch roles within the company once they have secured a permanent job at the end of their training programme.
- The Tier 2 minimum salary will increase to GBP 25,000.

April 2017

- The Tier 2 minimum salary will be increased from GBP 25,000 to GBP 30,000.
- Tier 2 (Intra-Company Transfer) Short Term will close to new applications.
- The Tier 2 (Intra-Company Transfer) Graduate Trainee minimum salary will be reduced from GBP 24,800 to GBP 23,000, and the number of trainees an employer may sponsor will be increased from 5 to 20.
- In an attempt to reduce reliance on overseas employees and to invest in training and up-skilling UK workers, a new Immigration

Skills Charge will be levied on Tier 2 employers at a rate of GBP 1,000 per Certificate of Sponsorship per year with a reduced rate of GBP 364 for smaller businesses and charities. PhD level occupations, Tier 2 (Intra-Company Transfer) Graduate Trainees and Tier 4 students switching to Tier 2 will be exempt.

- The minimum salary threshold for Tier 2 (Intra-Company Transfer) individuals working in the UK between five and nine years will be lowered from GBP 155,300 to GBP 120,000.

- The one-year experience requirement for Tier 2 (Intra-Company Transfer) applications will be removed where the employee is paid over GBP 73,900.

On February 9, 2016, proposals were made to close the Tier 1 (Investor) category on January 1, 2017 to new applications and those switching to this category.

As of April 6, 2016, unless exempt, employees under the Tier 2 category will only be eligible to stay in the UK permanently if they are earning at least GBP 35,000. This threshold level will increase to:

- GBP 35,500 on or after April 6, 2018;

- GBP 35,800 on or after April 6, 2019; and

- GBP 36,200 on or after April 6, 2020.

United States of America

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

US immigration laws and policies are implemented and enforced by three key federal agencies: the Department of Homeland Security, the Department of State, and the Department of Labor. The Department of Homeland Security includes US Citizenship and Immigration Services ("USCIS"), US Immigration and Customs Enforcement ("ICE"), and US Customs and Border Protection ("CBP"). USCIS is responsible for adjudicating immigration benefits, such as petitions for work authorization, and applications for permanent resident status or US citizenship among others. ICE is responsible for investigating immigration violations, including those made by US employers, and enforcing the removal of illegal aliens from the United States. CBP is responsible for inspecting and admitting all persons and goods arriving through US ports of entry.

The Department of State is responsible for processing visas at US embassies and consulates outside of the United States.

The Department of Labor is responsible for protecting the US workforce by ensuring that US employers (when required by US immigration law): (i) offer the same wages and working conditions to certain foreign workers as to US workers; and (ii) conduct a fair test of the labor market before sponsoring certain types of foreign workers for permanent residence status.

Current Trends

Worksite enforcement remains a top priority. Under US immigration law, employers are responsible for verifying that all employees are authorized to work in the United States. Employers that hire or

employ persons without authorization to work in the United States can be subject to civil and criminal sanctions. Additionally, employees who work without proper authorization can be subject to removal from the United States.

In recent years, the Department of Homeland Security has focused its immigration law enforcement efforts on employers who violate criminal statutes. While the criminal prosecution of employers is still a priority, the Department of Homeland Security and its enforcement bureau, ICE, are committed to using all civil and administrative tools to penalize and deter the employment of unauthorized workers. Such tools include unannounced worksite inspections and civil fines, and debarment proceedings.

Additionally, the USCIS's Office of Fraud Detection and National Security ("FDNS") is continuing its review of the L-1 (intra-company transfer) and H-1B (specialty occupation) Visa Programs. As part of this initiative, FDNS officers are making unannounced worksite visits to L-1 and H-1B employers to verify the accuracy of the information contained in L-1 and H-1B petitions regarding the terms and conditions of L-1 and H-1B workers' employment.

The heightened scrutiny of business travelers, stricter adjudication of non-immigrant work visa, as well as quota limitations on certain types of non-immigrant and immigrant visas for professionals, make it increasingly important for employers to make immigration planning and compliance a priority.

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 United States on short-term business trips may use the B-1 business visitor visa. The B-1 authorizes a broad range of commercial and professional activity, including consultations, negotiations, business meetings, conferences, and taking orders for goods made abroad. Employment is not authorized. This means that: (i) the services provided while in the United States must be on behalf of a non-US employer; (ii) any profits resulting from those services must accrue to the non-US employer; and (iii) any compensation received for those services must also be paid directly or indirectly by the non-US employer.

B-1 visa applications are processed at US consular posts abroad. When applying for a B-1 visa, the foreign national must establish that he: (i) has a residence in a foreign country which he does not intend to abandon; and (ii) intends to enter the United States for a specific and limited period of time. A letter from the non-US employer confirming: (a) the activities to be performed in the United States; (b) the direct benefit of those activities to the non-US employer; and (c) the continuation of the individual's direct and indirect compensation by the non-US employer is also typically required. B-1 visas are valid for a fixed amount of time – generally ten 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.

B-1 visa holders are normally admitted for up to six months and may be able to extend their stay for an additional six months or change to another visa status. An accompanying spouse and unmarried, minor children under 21 can be admitted under the B-2 tourist visa.

Visa Waiver

The United States has a Visa Waiver Program that allows foreign nationals from certain countries to visit the United States for legitimate business purposes without a B-1 visa. To use the Visa Waiver Program, qualifying foreign nationals must have an e-Passport containing the following symbol:  . Qualifying foreign nationals must also apply for an electronic travel authorization from the Electronic System for Travel Authorization ("ESTA") website (https://esta.cbp.dhs.gov) before traveling to the United States. The ESTA authorization is valid for two years or until the foreign national's passport expires, whichever is first.

If ESTA authorization is not granted, the foreign national must obtain a non-immigrant visa from a US embassy or consulate before traveling to the United States. ESTA authorization will not be granted to foreign nationals from Visa Waiver Program countries who: (i) have traveled to or been present in Iran, Iraq, Libya, Somalia, Sudan, Syria or Yemen on or after March 1, 2011 (with limited exceptions); or (ii) are also dual nationals of Iran, Iraq, Sudan or Syria.

The permitted scope of activity is the same as under the B-1 visa. The length of stay is up to 90 days only, without the possibility of an extension or status change. Foreign nationals who overstay the 90-day period will be permanently barred from using the Visa Waiver Program.

The following countries are presently qualified under this program: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom.

Employment Assignments

Overview

Foreign nationals who are not lawful permanent residents of the United States (i.e. "Green Card" holders) must have authorization to work in the United States before commencing employment. Typically, the US employer must request approval for a particular type of work authorization based on the job offered to the foreign national. In most cases the request is made in the form of a "petition" that is filed with USCIS, and in other cases the request is made in the form of an application that is filed directly with the US embassy or consulate. For some types of work authorization, the Department of Labor must also grant its approval for the employer to sponsor the foreign worker. In those cases, the Department of Labor's approval is needed before the USCIS (or US embassy or consulate) will process the sponsoring employer's petition or application. The complexity of the preliminary approval process, and the time required for the US employer to receive the approval, can vary greatly depending on (i) the particular type of non-immigrant or immigrant status sought, and (ii) quota-based restrictions imposed on certain types of visa classifications. In general, the approval process for a non-immigrant status that includes work authorization takes at least two months.

Once the employer's request for work authorization has been approved, most foreign nationals must also obtain a visa at a US embassy or consulate. Under the US immigration system, visas are travel documents that allow a foreign national to seek admission to the United States in a particular status. The issuance of a visa does not guarantee admission to the United States, and it does not function as the foreign national's work or residence permit after entering the United States. Rather, the documents issued by CBP at the port of entry or by the USCIS after entering the United States serve as the work and residence permit.

Intra-Company Transfer (L-1 Visa)

Multinational companies seeking to temporarily transfer foreign employees for assignment to US operations most often rely on the L-1. This visa is initially valid for assignments of up to three years, and can be extended in two-year increments for a total period of five or seven years, depending upon the nature of the US job duties. Executive and managerial-level employees can hold L-1A status for up to seven years, whereas employees working in a capacity involving specialized knowledge have a maximum stay of five years under L-1B status.

The spouse and unmarried children under the age of 21 of an L-1 visa holder may be issued L-2 status for the same period. The L-2 spouse (but not L-2 children) may apply for employment authorization after arrival.

Qualified foreign nationals must have been outside the United States for at least 12 months during the three years immediately preceding the L-1 visa request and, during that period, employed by the US petitioning employer or a company with a qualifying intra-company relationship. There are a number of relationships that qualify, but all generally rely on common majority control (e.g., parent subsidiary, subsidiaries of a common parent, branch or representative office). The qualifying corporate relationship need not have existed throughout the period of required employment.

Executive and managerial-level employment is generally shown through the management of subordinate employees or through the management of an essential function within the organization. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization's products, services, research, equipment, techniques, management, etc., or an advanced level of expertise in the organization's processes and procedures.

Additional rules apply to companies during the first year of business operations in the United States and to those who intend to place the

foreign employee at a job site not controlled by the sponsoring employer (e.g., outsourcing).

Large multinationals may take advantage of special "blanket" L-1 rules for faster government processing.

Specialty Occupation (H-1B Visa)

US employers of foreign professionals have long relied on the H-1B visa. H-1B status is initially valid for up to three years, with extensions in three-year increments available for up to six years' total stay. Extensions beyond the six-year limit may be granted to foreign professionals for whom employment-based permanent residence applications are pending. The spouse and unmarried children under the age of 21 of an H-1B visa holder may be issued the H-4 visa for the same period.

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. A foreign degree, employment experience, or a combination thereof, 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 similarly employed workers in the United States. A strike or labor dispute at the place of employment may impact eligibility. Detailed recordkeeping requirements apply to employers of H-1B visa holders, and worksite inspects by government agencies to ensure compliance are common.

Only a limited number of new H-1B visa petitions can be granted each fiscal year. Historically, the limited supply has been quickly exhausted. In recent years, the annual quota has been reached within the first five days of the filing period, resulting in a lottery. Generally, this quota applies to first-time H-1B visa holders, with some exceptions for those offered employment by qualified educational

institutions, affiliated research organizations, non-profits and government research organizations.

Training

J-1 Exchange Visitor Visa

The J-1 exchange visitor visa is used for a number of different purposes, including business trainees. The purpose is to allow foreign nationals to receive training that will facilitate their career when they return to their home country. A detailed training program is required.

The J-1 program does not require employers to submit an application through the USCIS, as they would for most employment visas. Rather, the prospective trainee requests training authorization directly from a sponsoring organization that has been authorized by the Department of State to administer J-1 training programs. There are many professional associations and third party organizations authorized as J-1 sponsors. Corporations that routinely use the J-1 visa to accommodate trainees may also register themselves as sponsoring organizations.

The length of stay for such training assignments can be for up to 18 months, including all possible extensions. Compensation for training is permitted. The spouse and minor, unmarried children of a J-1 exchange visitor visa holder may be issued J-2 visas. The J-2 spouse may apply for employment authorization after arrival.

Some, but not all, J-1 and J-2 exchange visitors are subject to a requirement that they return to the home country for at least two years at the end of the J-1 training before being eligible to return to the United States to work under a different type of visa. The country of residence, field of training, and source of any government funding for the training can give rise to this requirement. Waivers of the two-year homestay requirement are available in certain circumstances.

H-3 Trainee Visa

The H-3 visa is designed for foreign nationals coming to the United States for training that is not available in the trainee's home country and that will benefit the trainee's career abroad. H-3 trainees cannot engage in productive employment, unless merely incidental and necessary to the training. Additionally, H-3 trainees cannot be placed in a position that is in the normal operation of the business and in which local workers are regularly employed.

In practice, H-3 visa requests are more readily granted for formal, classroom-type trainings and are more likely to be denied when an on-the-job training element is included, regardless of statements that such work may be incidental and necessary. A detailed training program is required.

The maximum duration of the H-3 visa is two years. The spouse and unmarried children under the age of 21 of an H-3 visa holder may be issued the H-4 dependent visa to accompany the H-3 trainee.

Although the H-3 visa does not impose specific compensation requirements, low salaries are sometimes criticized for the possibility of exploiting foreign labor, while high salaries can be criticized for possibly indicating productive labor.

B-1 Visa in lieu of H-3

Foreign nationals may be admitted to the United States to participate in H-3 type training programs using the B-1 visa, provided that they have been customarily employed by and will continue to receive a salary from the foreign sending company.

Post-Entry Procedures

Individuals who are admitted to the United States with a non-immigrant visa will be issued a Form I-94, Arrival/Departure Record, at the port of entry. The Form I-94 is issued and maintained electronically. In limited cases, the Form I-94 may also be issued in

paper format and stapled onto the passport. Foreign nationals are advised to print their Form I-94 from the CBP website (https://i94.cbp.dhs.gov) after each entry to the United States.

The Form I-94 is the official record of the foreign national's non-immigrant status and the period of stay granted. As such, the printed Form I-94 serves as the individual's temporary work and residence permit. Individuals who are admitted to the United States under a non-immigrant visa are not required to register their residence with local police authorities. However, they are required to notify the USCIS in writing within ten days of any change in address after entering the United States. Failure to do so can result in removal from the United States.

Entry Based on International Agreements

H-1B1 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Singapore and Chile may take advantage of additional quota allocations and more streamlined processing rules. Although limited in number, the supply of these visas is consistently greater than demand making them more readily available. The scope of authorized work is essentially the same as the H-1B. The spouse and unmarried children under the age of 21 of an H-1B1 visa holder may be issued the H-4 for the same period. This visa requires proof of the foreign national's non-immigrant intention to depart the US.

E-3 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Australia can take advantage of similar Free Trade Agreement benefits using the E-3 visa. While subject to an annual quota of 10,500 visas, this quota has never been met and E-3 visas are commonly available. The scope of authorized work is similar to the H-1B, but status is granted for up to 24 months, with extensions in increments of up to 24 months available. The spouse and unmarried children under the age of 21 of an E-3 visa holder may be issued the E-3 for the same

period. The E-3 spouse may apply for employment authorization after arrival. This visa requires proof of the foreign national's non-immigrant intention to depart the country.

TN North American Free Trade Agreement Visa

Employers of foreign professionals who are citizens of Canada and Mexico can take advantage of different Free Trade Agreement benefits using the TN visa. There are no numerical limits, so the supply of these visas is always available. The job offered must be in one of the professions covered by the North American Free Trade Agreement ("NAFTA"), each of which has its own education or experience requirements. TN status is granted for up to three years, with a potentially unlimited number of three-year extensions available. The spouse and unmarried children under the age of 21 of a TN visa holder may be issued the TD for the same period. This visa requires proof of the foreign national's non-immigrant intention to depart.

Some of the more commonly used professions covered by the TN include: computer systems analyst, engineer (all types), economist, lawyer, management consultant, biologist, chemist, industrial designer, accountant, and scientific technician. A complete list of the NAFTA professions can be found at: https://travel.state.gov/content/visas/en/employment/nafta.html.

E-1 and E-2 Treaty Trader and Investor Visas

Foreign-owned companies doing business in the US may temporarily employ qualified foreign workers to facilitate international trade or investment activities. E visa status is granted for up to five years, with a potentially unlimited number of extensions in five-year increments. The spouse and unmarried children under the age of 21 of an E-1 or E-2 visa holder may be issued the E visa for the same period. The spouse may apply for employment authorization after arrival.

The list of countries with E-1 trade and E-2 investment treaties changes often and the government's regularly updated list can be

found at: https://travel.state.gov/content/visas/en/fees/treaty.html. Qualifying companies must be at least 50 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-1 Treaty Trader Visa Eligibility				
Argentina	Australia	Austria	Belgium	Bolivia
Bosnia & Herzegovina	Brunei	Canada	Chile	China, Republic of (Taiwan)
Colombia	Costa Rica	Croatia	Denmark	Estonia
Ethiopia	Finland	France	Germany	Greece
Honduras	Iran	Ireland	Israel	Italy
Japan	Jordan	Korea (South)	Kosovo	Latvia
Liberia	Luxembourg	Macedonia	Mexico	Montenegro
The Netherlands	Norway	Oman	Pakistan	Paraguay
The Philippines	Poland	Serbia	Singapore	Slovenia
Spain	Suriname	Sweden	Switzerland	Thailand
Togo	Turkey	The United Kingdom	Yugoslavia	

Countries with E-2 Treaty Investor Visa Eligibility				
Albania	Argentina	Armenia	Australia	Austria
Azerbaijan	Bahrain	Bangladesh	Belgium	Bolivia

Countries with E-2 Treaty Investor Visa Eligibility				
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
Slovakia	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 United States and the treaty country. The level of trade can be measured by its value, frequency and volume. Only the trade between the United States 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 non-immigrant visas less frequently used for global mobility assignments worth a brief mention. Foreign students with the F-1 visa are often granted authorization for employment related to their studies before and after graduation. The O-1 visa authorizes the employment of foreign nationals of extraordinary ability. Foreign nationals with skills in short supply in the United States may be able to obtain the H-2B visa for temporary, seasonal or peakload type of work.

Immigrant visas generally take longer to obtain, but in some situations compare favorably to non-immigrant visas. Permanent resident status is often a goal for foreign nationals and US employers rely on immigrant visas to continue to have access to their work after the limited duration of non-immigrant visas is exhausted. Selecting a non-immigrant visa that is consistent with a long-term immigrant visa option can be crucial. US employers are well advised to develop policies and practices that recognize the value of the immigration process to recruit and retain skilled foreign professionals, while ensuring corporate compliance with US law.

In addition to employment-based immigrant visas, immigration to the US is possible through family-based immigrant visas by qualified US citizen or permanent resident relatives.

Immigrants are often interested in later becoming US citizens. Naturalization to citizenship generally requires five years of continuous residence after immigrating, 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 permanent residents may be reluctant to accept assignments outside the United States for this reason. It is often possible to address these concerns. The USCIS can issue re-entry permits to help immigrants maintain status while abroad. Further, immigrants working abroad for US-owned companies or their foreign subsidiaries may qualify to protect their eligibility for citizenship. Both requests are time sensitive and should be made before the assignment abroad begins.

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 non-resident tax return is filed or if no US return is filed.

Planned Legislative Change

On December 31, 2015, USCIS published proposed regulations and amendments that are intended to provide various benefits to certain employment-based immigrant and non-immigrant visa programs. The proposal includes improved processes for US employers seeking to sponsor and retain immigrant and non-immigrant workers, greater stability and job flexibility for such workers, and increased transparency and consistency in the application of agency policies.

Venezuela

Venezuelan immigration laws are an increasingly important and sensitive consideration when planning an investment in Venezuela. Careful planning of employees' transfer to Venezuela is a key factor to achieve a successful business venture in Venezuela.

Compliance with Venezuelan immigration laws will safeguard companies from sanctions and penalties. While other applicable provisions exist, immigration laws are primarily in the Law on Foreign Nationals and Migration, which became effective in November of 2004 (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, Justice and Peace (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 the Social Process of Work (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 areas of visa processing at Venezuelan consular posts abroad. The Ministry of Labor, with the purpose of protecting Venezuelan workers, is involved in the process when a work visa (TR-L) is requested. Inspection and admission of travelers is conducted by the Ministry of Internal Relations and Justice's agency at Venezuelan ports of entry.

Current Trends

Under the Migration Law, employers of foreign nationals unauthorized for such employment are currently subject to administrative and criminal penalties. Employers should therefore not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, etc., must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as a result of the risks of penalties provided for in the Migration Law.

Business Travel

Business Visitor Visa ("TR-N")

This type of visa is granted to foreign executives or business persons that wish to enter Venezuela 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, a person may enter and stay for less than 180 days as many times as needed during the effectiveness of the TR-N.

The TR-N is currently granted by the Ministry of Foreign Affairs through the Venezuelan consulates in the country where the person who wishes to obtain the visa resides. Generally, each of the Venezuelan consulates is autonomous in terms of determining the procedure for the issuance of the TR-N, as well as additional documentation required for such purposes. Additionally, the consulate will analyze the purposes for which the company wishes to invite the individual requiring the TR-N visa to come to Venezuela, as well as the nature of the activities to be performed by that individual in Venezuela. Once the consulate has reviewed the relevant documents required, it will authorize the issuance of the TR-N to the person requesting it. Once the TR-N has expired, it may be extended for an equal period as many times as the relevant consulate may decide.

Please note that since the TR-N is not granted by the Ministry of Labor, a work permit is not required and it is not necessary to establish a corporate entity in Venezuela as an in-country sponsor, although an invitation letter from an established Venezuelan company is usually required. Furthermore, since the TR-N is a business visa, the person to whom it is granted cannot be an employee of the company for which services will be performed in Venezuela. In this respect, the person cannot be included on the payroll of, or receive benefits from, such company.

Employment Assignments

Work Visa ("TR-L")

This type of visa is granted to any employee, business executive, or corporate representative that may be performing services in Venezuela for a period of at least one year, under an employment agreement executed with a company in Venezuela, as explained below. It is valid for one year and confers the right to enter and depart from Venezuela without limitation. If the applicant will be accompanied by family (i.e., husband or wife, children, parents, and father or mother-in-law), the TR-L will extend to each family member. It is important to note that even though the Resolution refers to a working period of at least

one year, the TR-L is necessary to legally work in Venezuela even for periods of less than one year.

The procedure to obtain a TR-L is divided into three stages:

- The first stage is before the Ministry of Labor, where the purpose for which the company in Venezuela wishes to hire a foreign employee, as well as the nature of the services to be performed in Venezuela, are analyzed. At this stage, an offer of employment is made by the company before a Notary Public (the "Employment Offer"). This document will then be considered as an employment agreement between the applicant and the company. The Ministry of Labor will review whether or not the company that will employ the services of the foreign employee will be in compliance with the restrictions for the hiring of foreign employees set forth in Article 27 of the Venezuelan Organic Labor and Workers' Law (the "OLWL"). According to this provision, at least 90 percent of the company's workers must be Venezuelans. Consequently, though certain exceptions could be obtained in a few cases, no more than ten percent of the company's workforce may be composed of foreign nationals. If the Ministry of Labor finds that all requirements are met, this first stage finalizes with the issuance of the work permit by the Ministry of Labor.

- The second stage is carried out at the Identification, Migration and Foreign Administrative Service ("SAIME") ("*Servicio Administrativo Identificación, Migración y Extranjería*"), where the aforementioned work permit and some additional documents are analyzed. This stage is finalized with the issuance of the authorization to the Venezuelan consulate to grant the TR-L or work visa.

- During the third stage, the applicant must appear before the Venezuelan consulate of his country of origin or residence. The consulate shall issue and stamp the TR-L in the applicant's passport. Please note that each Venezuelan consulate is autonomous in determining its own procedure for stamping the

visa, as well as in terms of the documentation that must be submitted for such purposes. Generally, the applicant and his family will be subject to medical tests and examinations at the consulate, and a certification of police records and a cash deposit may also be required.

The TR-L may be extended for an equal period once it has expired. In addition, please note that the foreign national could start validly working in Venezuela once the corresponding TR-L has been issued.

As indicated above, any individual who, by virtue of an employment agreement, must enter into Venezuela shall obtain a work permit from the Ministry of Labor and then the TR-L which must be obtained by the employer, who must be domiciled and registered in Venezuela. However, Article 17 of the Migration Law provides that, in the following situations, the respective individual employees are exempt from requesting the work permit:

- scientists; professionals, technicians, experts and specialized personnel who temporarily come to Venezuela to advise, train or provide temporary services for a period not exceeding 90 days;

- technicians and professionals invited by public or private entities to perform academic, scientific or research activities, provided that such activities do not exceed 90 days;

- individuals entering the country to perform activities covered by cooperation and technical assistance agreements;

- employees of mass media from other countries duly credited to carry out journalism activities; and

- members of international scientific missions who perform research work in the country with authorization from the competent Venezuelan authorities.

Training

There is no type of visa designed exclusively for training. For on-the-job training that involves productive work, the same visa used that authorizes employment for most employment assignments is the most likely solution. However, there is a student's visa that, according to the Resolution, would also apply for internships.

Entry Based on International Agreements

Based on certain International Cooperation Agreements or Treaties ("Cooperation Treaties") executed between Venezuela and certain other countries, it would be possible for foreign employees assigned to work in Venezuela under the provisions of said Cooperation Treaties to work in Venezuela without having necessarily obtained a work permit or visa. Among others, Venezuela has signed Cooperation Treaties related with: (i) Agriculture (Vietnam and Uruguay); (ii) Energy (France and Turkey); (iii) Hydrocarbon, Petrochemical and Mining (China); (iv) Hydrological Resources (Sahrawi Arab Democratic Republic); (v) Sport (Argentina); (vi) Iron and Steel (Ecuador); (vii) Technology (Bolivia); (viii) Ground Transportation (Argentina); (ix) Culture (Palestine); and (x) Drugs (Ecuador).

Other Comments

Other types of visas for entry into Venezuela, which were not the focus of this article, could be applied for and obtained (for example, a resident's visa). If you would like to obtain information about those, please contact us.

According to Article 3 of the OLWL, the OLWL applies to services performed or agreed upon in Venezuela, irrespective of the nationality of the employee. Consequently, when a foreign national employee is transferred to work in Venezuela, especially if the work will be performed on a habitual basis in Venezuela, the provisions of the OLWL and the Venezuelan labor and social legislation apply.

In this respect, the OLWL, and the Venezuelan labor and social legislation in general, contain a set of mandatory conditions, contributions, obligations, and labor and severance benefits that must generally be provided, complied with, and paid by the employer in the benefit of its employees. The employer's failure to do so would subject the employer to potential liabilities. It is important to obtain legal advice in connection therewith, preferably well in advance of transferring or hiring the employee to work in Venezuela. Based on recent rulings from the Venezuelan Supreme Court of Justice, there might be other legal options for companies to comply or deal with the Venezuelan labor and social security provisions while reducing the implied risks, and we encourage you to contact Venezuelan legal counsel in order to obtain legal advice on this matter well in advance of transferring or hiring an employee to work in Venezuela.

Socialist Republic of Vietnam

Vietnam has agreements with many countries permitting visa exemption for visitors coming into Vietnam for a short period of time. Other visitors must secure the proper visa before entering the country.

As regulations change frequently, verification of the following information is highly recommended.

Key Government Agencies

The Ministry of Public Security ("MPS") is responsible for the approval of entry visas to most foreign nationals who wish to enter Vietnam. Applications by other individuals, such as state officials and foreign representatives or diplomats, are addressed to the Ministry of Foreign Affairs ("MOFA").

Most foreign nationals who wish to work in Vietnam must obtain a work permit. In general, the Provincial-Level Department of Labor, War Invalids and Social Affairs has the authority to grant work permits to foreign nationals working for a company located outside an industrial zone and an industrial zone authority will issue work permits to foreign nationals working for companies located in an industrial zone ("Local Labor Authority").

Current Trends

The Law on the Entry, Exit, Transit, and Residence of Foreign Nationals in Vietnam came into effect in 2015 and aimed to streamline the immigration process. Various visa types have been introduced to better fit the various purposes of entry.

Business Travel

Visa Types

The visa type is determined by the foreign national's purpose of entry into Vietnam. The many visas include:

- diplomatic visas;

- those for working with state authorities, socio-political organizations, social organizations, and the Vietnam Chamber of Commerce and Industry;
- those for foreign investors and foreign lawyers;
- visas for foreign nationals heading or working with foreign representative offices, branches or projects in Vietnam;
- visas for foreign nationals coming to intern or study;
- visas for foreign nationals attending seminars and conferences; and
- reporters.

Foreign nationals may apply for single- or multiple-entry visas. The majority of visas are valid for no more than 12 months, with the exception of SQ (not more than 30 days), HN and DL (not more than three months), VR (not more than six months), LD (not more than two years), and DT (not more than five years) visas.

To be eligible for the issuance of a visa, among other criteria, the foreign national must either be sponsored by an agency, organization or individual in Vietnam or, in the absence of such sponsorship, must fall under categories of entry.

Individuals that come to Vietnam to engage in religious or cultural activities and members of the media must obtain approval from the relevant authorities of the government for their visit before entry.

Foreign Nationals Sponsored by Non-State Agencies or Individuals Living in Vietnam

Foreign nationals can be sponsored for visas by:

- enterprises established pursuant to Vietnamese laws;

- representative offices of international organizations affiliated to the United Nations or intergovernmental organizations in Vietnam;

- representative offices, branches of foreign traders, or representative offices of other foreign economic, cultural and professional organizations in Vietnam;

- other organizations with legal status as prescribed by Vietnamese laws; or

- Vietnamese citizens residing in Vietnam, or foreign nationals who hold temporary or permanent residence cards.

The head of the host organization or the host citizen must file a request and all the necessary supporting documentation with the immigration authority under the MPS for the issuance of the entry visa. The immigration authority undertakes to make a decision within five days of receiving the request. Upon approving the request, the immigration authority will direct the relevant overseas Vietnamese diplomatic mission to issue the entry visa to the foreign national.

Visa On Arrival

Organizations may request the immigration authority to issue an entry visa at an international point of entry, provided that the name of the point of entry and the time of entry are specified in the application. To be eligible for such issuance, the foreign national must fall under one of the following cases:

- the foreign national departs from a country that does not have any visa-issuing authority of Vietnam;

- the foreign national has to stop by multiple countries before arriving at Vietnam;

- the foreign national comes to Vietnam to take a tour organized by an international tourism company in Vietnam;

- the foreign national is a crewmember of a ship anchoring at a Vietnam port who wishes to leave Vietnam through another border checkpoint;

- the foreign national comes to Vietnam to attend a funeral of his relative, or to visit a gravely ill relative; and

- the foreign national comes to Vietnam to participate in dealing with an emergency, rescue, prevention of natural disasters, epidemics, or for another purpose at the request of a competent authority of Vietnam.

Foreign Nationals Without Sponsorship

Foreign nationals without an invitation letter from a local individual or organization in Vietnam will only be granted visas for the maximum term of 30 days. To be eligible, the foreign national must enter Vietnam for the purpose of market survey, tourism, visiting family members or medical treatment, and fall under one of the following cases:

- a foreign national who has a working relationship with an overseas visa-issuing authority of Vietnam, his spouse and children;

- a foreign national who presents a written request by a competent agency of the MOFA of the host country; and

- a foreign national who presents a diplomatic note of sponsorship by a foreign diplomatic mission or consular office at the host country.

Visa Exemptions

Vietnam grants a visa exemption for the following cases:

- pursuant to a treaty to which Vietnam is a contracting party;
- foreign nationals who hold temporary or permanent residence cards;
- foreign nationals who hold APEC Business Travel Card ("ABTC");
- entry to border economic zones or special administrative-economic units;
- pursuant to a decision of the government to unilaterally grant a visa exemption to citizens of a certain country;
- foreign nationals who are the spouse or children of Vietnamese people residing overseas who hold a passport or a United Nations "laissez-passer" issued by foreign authorities; and
- foreign nationals who are the spouse or children of Vietnamese citizens as prescribed by the government.

Temporary Residence

Foreign nationals who are members of diplomatic missions, consular offices, representative offices of international organizations of the UN, and intergovernmental organizations in Vietnam, as well as their spouses, children under 18 years of age, and domestic staff that accompany them during their term of office shall be issued NG3 temporary residence cards. Otherwise, holders of LV1, LV2, DT, NN1, NN2, DH, PV1, LD and TT visas are eligible for corresponding temporary residence cards.

The term of a temporary residence card does not exceed: (i) five years for NG3, LV1, LV2, DT and DH cases; (ii) three years for NN1, NN2 and TT cases; and (iii) two years for LD and PV1 cases. Upon the expiry of the temporary residence card, foreign nationals can apply for a new temporary residence card.

A holder of a temporary residence card is exempt from visa requirements throughout the term of the card.

Permanent Residence

Under the Law and its implementing regulations, permanent residence cards permit foreign nationals to reside in Vietnam for an unlimited amount of time. Only the following cases may be considered for permanent resident status:

- foreign nationals who have contributed to the development and protection of Vietnam and have been granted medals or honorary titles by the Vietnamese government;

- foreign nationals who are scientists or experts currently residing temporarily in Vietnam;

- foreign nationals who: (i) are sponsored by parents, spouses or children who are Vietnamese citizens, currently residing permanently in Vietnam; and (ii) have continuously resided in Vietnam for at least three years; and

- foreign nationals without nationalities who have continuously resided in Vietnam from 2000 or before.

Foreign nationals who would like to apply for permanent residency may do so with the immigration authority under the MPS. Once given permanent resident status, a permanent residence card will be issued to the concerned person. A person holding a permanent residence card will be exempt from any visa requirements.

Employment Assignments

Acquiring an entry visa and a temporary residence card only addresses the entry, exit and residence rights of foreign nationals in Vietnam. Any foreign national, including overseas Vietnamese individuals, who want to work in Vietnam must obtain work permits unless they qualify for any of the exemptions mentioned below. The Local Labor Authority is responsible for the issuance of work permits to foreign nationals who wish to work for enterprises and organizations in Vietnam.

Foreign nationals working in Vietnam in the following forms are subject to the regulation of foreign labor management:

- pursuant to a labor contract
- in the context of an intra-company transfer;
- performance of any of the following types of contracts: economic, commercial, financial, banking, insurance, scientific and technical, cultural, sporting, educational or medical health contracts;
- service providers pursuant to a contract;
- offering services;
- working for a foreign non-governmental organization, or an international organization in Vietnam which is permitted to operate pursuant to the law of Vietnam;
- volunteers;
- establishing a commercial presence in Vietnam;
- managers, chief executive officers, experts and technicians; and
- implementing a contractor package or project in Vietnam.

In case the foreign nationals are subject to work permits, the sponsor (with the exception of foreign bidders for the foreign national's work permit) must:

- notify the Local Labor Authority about the sponsor's foreign labor usage plan at least 30 days prior to the date the sponsor intends to recruit/use the foreign national;[1]
- obtain an approval of the foreign labor usage plan issued by the Chairman of the People's Committee through the Local Labor Authority; and
- apply for the work permit at least 15 business days prior to the date the foreign national intends to start working.

The sponsor does not need to submit and get approval for a foreign labor usage plan in the following cases:

- foreign students studying in Vietnam who also work in Vietnam;
- foreign students studying at foreign schools/institutions who enter Vietnam pursuant to an internship contract signed with agencies, organizations or enterprises in Vietnam;
- foreign nationals entering Vietnam to work as a manager, executive director, expert or technician for a period of less than 30 days, provided that the accumulative time of working in Vietnam in a year does not exceed 90 days;
- foreign nationals entering Vietnam for a period of less than three months to offer services; and

[1] The timeline to submit the foreign labor usage plan may be changed upon the introduction of an upcoming circular on the management of foreign employees.

- foreign nationals staying in Vietnam for less than three months to deal with complicated technical or technological problems that: (i) adversely impact or are at risk of exerting an adverse impact on production and business activities; and (ii) cannot be handled by Vietnamese and foreign experts who currently reside in Vietnam.

The conditions for work permits vary according to the categories of foreign nationals as mentioned above. However, the general conditions generally required of foreign nationals are that they must have suitable health certified by a health certificate, a clean criminal record, and be "managers, executives, experts or technicians" meeting certain conditions regarding relevant experience or qualifications, as detailed in the "Skilled Labor" section below.

In the case of implementation of a bid won by a contractor, there are certain requirements to be met:

- before recruiting foreign employees, the contractor must declare its foreign labor demand to the People's Committee in the province where the project is being implemented, with such declaration certified by the investor (project owner), and request the People's Committee to approve the recruitment of such foreign employees;

- the People's Committee will assign the labor service providers, among others, to find suitable local employees for the contractor;

- after one to two months, if the demand cannot be satisfied, the People's Committee will consider allowing the contractor to recruit foreign employees.

By law, the approval of the foreign labor usage plan takes place within 15 days from the date of receipt of the notification from the sponsor, while the licensing process of the work permit issuance will take only seven working days from the date of submission of a properly completed application dossier. However, the document preparation may take several months. Therefore, companies planning the intra-

company transfer of an employee to Vietnam or the local recruitment of a foreign employee should prepare the work permit application and apply for the work permit well in advance of the intended date of arrival of the employee to Vietnam.

The application for a work permit must include substantial supporting documents, such as criminal record, health certificate and certificates regarding the skills of the foreign national. Documents that are written or issued in a foreign language must be translated into Vietnamese and the translation must be notarized for submission.

For locally hired employees, the employer and the foreign employee may only enter into an employment contract after a work permit has been issued by the Local Labor Authority.

The term of the work permit will be set as the term of work in Vietnam but shall be no longer than 24 months. Work permits can be extended with the maximum same term, subject to the term of work in Vietnam.

Foreign nationals who work in Vietnam without first obtaining a work permit may face expulsion from Vietnam. Furthermore, employers who recruit foreign nationals who are working without proper work permits or who are barred from working in Vietnam may be subject to a monetary fine. With respect to exemptions and required documents, an employer wishing to apply for a work permit for its foreign employee should seek professional assistance with regard to their particular circumstances, because regulations frequently change and authorities may also change their interpretation of existing regulations.

Work Permit Exemption

Certain professions are exempt from obtaining a work permit, including: (i) capital-contributing members or owners of limited liability companies; (ii) members of the management board of joint-stock companies; (iii) chiefs of representative/project offices of international organizations or non-governmental organizations in Vietnam; (iv) foreign nationals staying in Vietnam for under three

months to offer services for sale; (v) foreign lawyers having a professional practice license in Vietnam in accordance with the Law on Lawyers; and (vi) foreign volunteers certified by diplomatic missions or international organizations in Vietnam.

Each situation would need to be evaluated to determine if the intended activities in Vietnam could be exempt from the work permit requirement.

In most of the above cases, for those foreign nationals who are exempted from work permit requirements, their employer must request the Local Labor Authority in the locality of the foreign national's workplace to issue the work permit exemption certificate and provide supporting documentation.

However, in some particular cases, it is not necessary to obtain work permit exemption certificate, as follows:

- foreign nationals entering Vietnam to work as managers, executives, directors, experts or technicians for a period of less than 30 days, provided that the accumulative time of working in Vietnam in a year does not exceed 90 days;

- foreign nationals entering Vietnam for a period of less than three months to offer services; and

- foreign nationals entering Vietnam for a period of less than three months to deal with complicated technical or technological problems that: (i) adversely impact or are at risk of exerting an adverse impact on production and business activities; and (ii) cannot be handled by Vietnamese or foreign experts who are currently in Vietnam, for a period of less than three months.

Intra-Company Transfer

An intra-company transfer from a foreign enterprise to that enterprise's direct commercial presence in Vietnam is possible after the foreign national has worked at the foreign enterprise for at least 12

months prior to the transfer. Unless the foreign national falls under the categories of work permit exemption, the foreign enterprise's commercial presence in Vietnam must submit an application dossier (which, aside from the generally required documents, must include documents proving that the foreign national has worked at the foreign enterprise for at least 12 months) to obtain a work permit for the foreign national.

In this scenario, the foreign national can still maintain the employment relationship with the parent company, and does not sign any local employment contract. The advantage of this is that, while it is very difficult for an employer to terminate employees under Vietnamese law, the parent company can transfer the foreign national back to their home country and easily terminate him under the foreign law (assuming that termination at will is allowable in foreign countries). Also, the foreign national can maintain their current benefits (such as participation in pension and social security scheme) in their home country.

However, some of the common difficulties in sending a foreign national to Vietnam under an intra-company transfer is that the foreign national is working for an affiliate, rather than the parent company of the commercial presence in Vietnam, or the foreign national has not worked for at least 12 months prior to the submission date of the application for a work permit.

Skilled Workers

The policy of the government is still to limit the use of foreign nationals in positions/jobs which can be handled by Vietnamese persons. As such, foreign nationals cannot take manual jobs. In the past, the government had imposed a cap on foreign employees and required employers to train local employees to gradually replace foreign nationals. Now, in order to prevent low-quality foreign labor, the government asks for the pre-approval of a foreign labor usage plan before the official submission of work permit applications. Therefore, the authorities have a chance to refuse the use of foreign nationals in a

job/position that a Vietnamese person can handle. Contractors are also required to give priority to Vietnamese employees in their projects in Vietnam as described above. In practice, there have been cases where the relevant authority did not allow companies to recruit foreign nationals for certain positions, however, there are no clear criteria on jobs that can be handled by Vietnamese employees.

In addition, among the various criteria for a work permit, a foreign worker must be a manager, executive, expert or technician.

The work permit application for managers and executives must include documents proving that foreign nationals are managers or executives. They can be work permits, or labor contracts, or appointment letters showing that they work or have worked in managerial/executive positions. A "manager" includes: (i) the term "manager", defined by the Law on Enterprises as the manager of a company or manager of a private company, who is either an owner of a private company, a partner of partnership, the chairperson of the board of members, a member of the board of members, the company's president, the chairperson of the board of directors, a member of the board of directors, the director/general director, or a person holding another managerial position who is entitled to enter into the company's transactions on behalf of the company according to the company's charter; or (ii) the head or deputy head of the agency or organization. An "executive" is the head and direct manager of units/departments of organizations or enterprises.

The application for experts must include: (i) documents proving that the foreign national holds the requisite academic qualification and at least three years' experience in the field they have been trained in, which is suitable to the work duties in Vietnam; or (ii) confirmation of being experts issued by relevant organizations or authorities, or foreign companies.

For technicians, the application must include documents proving or certifying that they have been trained on a technical field for a duration of at least one year, as issued by relevant organizations or

authorities or foreign companies, and have three years' of experience in the field in which they have been trained, which shall be suitable to the work duties in Vietnam.

Post-Entry Procedures

Any foreign national that temporarily resides in Vietnam must, via the manager of the lodging establishment, declare his temporary residence status at the local police authority.

The manager of the lodging establishment shall complete the declaration form and submit it to the local police authority within 12 hours (or within 24 hours if the administrative division is in a remote area) of the foreign national's arrival at the lodging establishment. Lodging establishments that are hotels must have internet access or connect to the computer network of the immigration authority affiliated to the provincial police authority to transmit the foreign national's declarations of temporary residence. Other lodging establishments that have internet access may directly send the foreign national's declarations of temporary residence to the email address of the immigration authority affiliated to the provincial police authority.

If the foreign national changes his temporary residence address or resides at a place different from that written on his temporary residence card, he must submit a new declaration of temporary residence.

Entry Based on International Agreements

APEC Business Travel Card Program

By a decision of the Prime Minister in 2006, Vietnam began participation in the ABTC program, for APEC countries. The ABTC is a travel card granted to businessmen of APEC countries that participate in the program to facilitate their business travel among the APEC countries. Under this program, Vietnam committed to grant a visa waiver for ABTC holders. The ABTC is valid for three years from the date of card issuance and cannot be extended. When the

issued card expires, the card holders may apply for a new card, if necessary.

Visa Waiver

Vietnam has a visa waiver program for foreign nationals of many countries, both through unilateral and bilateral commitments. Vietnam has entered into various bilateral visa waiver treaties and agreements with other countries. It should be noted, however, that these commitments vary with regard to length of stay permitted, type of visa, and various other conditions, and so it is advisable to check with your nearest Vietnamese consular office, or visit the website of the Consular Bureau of MOFA for more detailed and current information.

Planned Legislative Change

On a separate topic, upon the establishment of the ASEAN Economic Community in late 2015, skilled labor in eight professions, namely doctors, dentists, nurses, engineers, architects, accountants, surveyors, and professionals in the tourism industry, can freely move within the member countries. However, until now, there has not been any local law detailing this issue.

There will also be further guidance regarding the mobility of skilled labor within the ASEAN Economic Community with the implementation of the new laws.

On February 4, 2016, Vietnam officially signed the Trans Pacific Partnership Agreement ("TPP"). TPP parties ("Parties"), including Vietnam, are encouraged to improve their administrative procedures for the temporary entry of business persons. Specifically, online information and explanatory material should be easily accessible, in addition to ensuring that a reasonable application fee is charged for immigration documents for this purpose of entry. The Parties have also committed to cooperate on temporary entry issues such as visa processing.

More specifically, Vietnam has extended its commitments to all TPP Parties, some of which are more favorable than Vietnam's commitments to the WTO member countries, as follows:

- intra-corporate transferees and their spouses and/or dependents will be granted entry and a residency permit for an initial period of three years subject to extension;

- other personnel (i.e., managers, executives and experts) shall be granted entry and a residency permit according to the term of the employment contract or an initial period of three years, whichever is shorter, subject to further extension;

- service sales persons will have a residency permit limited to a period of six months;

- persons responsible for setting up a commercial presence and their spouses and/or dependents will have a residency permit limited to a period of one year; and

- contractual service suppliers and spouses and/or dependents will be granted entry and residency for a period of six months or for the duration of the contract, whichever is shorter, subject to extension.

There may be a change in immigration and foreign management laws for implementing Vietnam's commitments in TPP.

FOR MORE INFORMATION:

If you would like to receive 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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