# Corporate Immigration

*Contributing editor*
**Julia Onslow-Cole**

2019

GETTING THE DEAL THROUGH

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# Preface

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Eighth edition

**Getting the Deal Through** is delighted to publish the eighth edition of *Corporate Immigration*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Slovenia.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Julia Onslow-Cole of PwC LLP, for her continued assistance with this volume.

GETTING THE DEAL THROUGH

London
August 2018

# Introduction

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**Partner, Legal Markets Leader & Head of Global Immigration**
**PwC LLP**

Welcome to the eighth edition of *Getting the Deal Through – Corporate Immigration*. Immigration continues to dominate global news headlines. Business faces challenges in moving people globally, particularly for short-term assignments.

The immigration debate in Europe has been dominated by Brexit and the uncertainty around EU citizens living in the United Kingdom, as well as British citizens living in Europe. In the United States, the travel ban and tightening of existing immigration policies have impacted business planning.

At PwC, we are very aware of the challenges the increasingly restrictive immigration landscape poses to business – both small and large firms globally. Having access to the most up-to-date information has thus never been more important. *Getting the Deal Through – Corporate Immigration* remains an indispensable guide to immigration for the global mobility sector. We hope that you find this country-by-country and regional overview of immigration rules and changes of interest, and welcome you to this 2019 edition.

# European immigration – time of change?

**Stephanie Odumosu and Stephan Judge**
**PwC LLP**

Immigration matters go to the heart of European politics, with the freedom of movement of European nationals to live and work across the bloc enshrined as a founding pillar of the European project. Though the United Kingdom voted to leave the European Union, and negotiations are well underway, there have been no changes, as yet, with regard to the status of EU nationals in the UK, nor the status of UK membership of the EU at the time of writing. Freedom of movement continues to apply to EU and European Economic Area (EEA) nationals in the UK, as well as UK nationals across the continent. As such, Europe currently remains the only continent that is able to quickly and freely deploy its citizens across most of its mainland and its islands without any restrictions. This chapter has been updated to address the current status of the UK's Brexit negotiations, as well as wider European updates with regards to immigration matters.

**EU freedom of movement**

Full members of the EU, including the 2004 'A8' and the 2007 'A2' countries of eastern Europe (see table below for relevant listings), as well as the EEA, enjoy full freedom of movement of their citizens between each and all member countries. In other words, their citizens can choose to live and work across any of the member states. Switzerland, although not in the EU or EEA, joined this free movement of people through bilateral agreements, and although recent political changes in the country had put a potential question mark over its long-term participation, this seems to have been resolved for the time being.

Below are listed the current member countries of the EU and EEA, plus Switzerland and territories adopting EU principles.

| **European countries** | | | |
|---|---|---|---|
| **Pre-2004 EU/EEA* and Switzerland** | | | |
| Austria | Germany | Luxembourg | Sweden |
| Belgium | Greece | Malta | Switzerland |
| Cyprus | Iceland* | Netherlands | United Kingdom |
| Denmark | Ireland | Norway* | |
| Finland | Italy | Portugal | |
| France | Liechtenstein* | Spain | |
| **A8 nationals (since 2004)** | | | |
| Czech Republic | Hungary | Lithuania | Slovakia |
| Estonia | Latvia | Poland | Slovenia |
| **A2 nationals (since 2007) and Croatia (since 2014)** | | | |
| Bulgaria | Romania | Croatia | |
| **Territories that adopt EU principles** | | | |
| Andorra | Isle of Man | San Marino | |
| Channel Islands | Monaco | | |

**EEA**

The EEA comprises the EU and countries that did not join the union in full, but for all intents and purposes enjoy the same rights and responsibilities as full members. The EEA Agreement was entered into in 1994 and it brings together EU member states and EEA European Free Trade Association (EFTA) states in a single market (generally known as the internal market) that is governed by the same basic rules. These rules aim to enable goods, services, capital and persons to move freely about the EEA in an open and competitive environment. The EEA includes Iceland, Liechtenstein and Norway. Citizens of EEA member states are not required to obtain a work permit to work in the entire EU or EEA area.

**Schengen zone**

Most continental European countries, including some outside the EU, are joined into a common visa and travel area called the Schengen zone. This facilitates borderless travel for tourist and business activities for non-EU nationals across all the Schengen member countries. It also allows a holder of a work and residence permit in one Schengen member state to travel – visa-free – to all other Schengen member states for tourist and business activities.

Non-visa nationals can simply enter the Schengen area with their passports and their Schengen entitlement will be triggered upon entry. Visa nationals and so those requiring a Schengen visa will file for this with the consular post in their home country. Schengen visas typically permit business, transit or tourist activities only and usually allow a maximum duration of 90 days within any 180-day period across the member states. In other words, the traveller may only stay up to 90 cumulative days across the participating countries, and must leave the Schengen zone thereafter until the next 180-day period commences. Note that the duration of stay granted on the visa is discretionary and may be limited to a period shorter than outlined above.

There have been a number of recent challenges to the long-term future of the Schengen zone with many countries imposing some level of security checks at country borders. This has been the result of both the large migrant flows from a few years ago, as well as the recent spate of terror attacks across Europe. Since these attacks, checkpoints have been implemented on major routes between France and Belgium, where individuals are subject to passport checks. This comes after Austria, Denmark, France, Germany, Norway, Poland and Sweden reinstated internal border controls in order to control the flow of migrants in the summer of 2015.

Many believe that Schengen is very much still welcome and that it actively helps to improve Europe's economy by allowing easy border-free travel for over 400 million people. Additionally, both trade and travel have prospered, making long queues at internal European borders a thing of the past. This school of thought believes that it would be just as effective to better police the external borders, rather than to reinstate national borders within Schengen.

The current Schengen Borders Code allows member states the discretion to temporarily introduce border control at internal borders in the event that a serious threat to public policy or internal security has been established. Border control can vary depending on whether the event was foreseeable, such as a large-scale sporting event, or urgent, such as in response to a terror threat. Austria, Denmark, France, Germany, Norway and Sweden are all currently operating under reduced border control under the 'foreseeable events clause' and these are set to run until later this year. To invoke this clause, the reintroduction of border control at the internal borders must remain an exception and must respect the principle of proportionality. The scope and duration of such a temporary reintroduction of border control at the internal borders is limited in time and should be restricted to the bare minimum needed

to respond to the threat in question. Reintroducing border control at the internal border should only ever be used as a measure of last resort.

In January 2018, there was a follow-up meeting at the European Parliament between the EU Civil Liberties, Justice and Home Affairs Committee and various national parliaments to take stock of activity over the past two years, and since the committee confirmed its support for plans to implement an integrated EU border management system in May 2016. Under these plans, there would be the creation of a flagship European Border and Coast Guard Agency. This would be created by bringing together national border management authorities and Frontex – the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

For the time being, it does seem that Schengen border-free travel is here to stay, albeit with some temporary limitations.

**Trends affecting European immigration**

There are many trends affecting immigration policy, not only across Europe, but worldwide. Continued global instability, the increase in movement of people across the European continent and globally, in addition to variable economic growth, are having an effect on further European integration, and with it, on immigration.

These include:

- a greater emphasis on employer accountability;
- increased restrictions on allowable business activities;
- new and increased labour market test requirements;
- stricter interpretation of immigration rules and policies; and
- increases in audit and worksite inspections.

The individual chapters on European countries in this book will address some of these themes in greater detail. We focus on several topical key issues here.

**Switzerland**

Switzerland is not part of either the EU or the EEA, therefore those undertaking work activities in Switzerland will be required to obtain work permission in many instances. Switzerland treats different types of contracts and different EU and EEA nationals slightly differently, and advice should be sought before sending any national to this country. Swiss nationals, on the other hand, enjoy freedom of movement across most of the EU, although in some EU or EEA member states, Swiss nationals may need to obtain a residence permit.

In 2014, a Swiss referendum voted in favour of implementing strict quotas on immigrants; however, this was swiftly rescinded following a backlash from the EU. This was owing to it rupturing a bilateral agreement with the EU – that being freedom of movement. Switzerland was immediately cut-off from academic funding, which greatly diminished the potential for international talent. As a result, the quotas were reconsidered and removed in order to preserve Switzerland's continued amicable status with the EU. The immediate backlash that followed Switzerland's initial quota of immigration numbers could be a sign of what could be to come for the UK as the Brexit negotiations continue.

In June 2016, Swiss restrictions provisionally separating the treatment of Bulgarian and Romanian nationals from other EU and EEA nationals were removed. This legislation was initially enacted on a trial basis so that, if the number of Bulgarian and Romanian nationals increased by more than 10 per cent over the following 12-month period (when compared with the average of the three previous 12-month periods), the Swiss authorities were permitted to reintroduce quotas for a maximum of two years. This is known as the safeguard clause. Interestingly, this is exactly what happened and such quotas were re-introduced. This has been effective since June 2017 and category B EU/EFTA residence permits for Bulgarian and Romanian nationals are now subject to a limit of 996 per annum. This has been extended for a further year, from 1 June 2018 to 31 May 2019. The further extension was imposed as the quota had again been reached. It is worth noting that the Swiss government will not be entitled to further extend quotas for Romanian and Bulgarian nationals beyond 31 May 2019.

**Croatia**

Citizens of Croatia, who have been EU citizens since January 2014, have seen an increasing number of countries lifting the interim restrictions that prevented them from initially enjoying full freedom of movement across the union. In July 2015, eight countries (Belgium, Cyprus, France, Germany, Greece, Italy, Luxembourg and Spain) lifted the work permit restrictions as the first phase of the transitional period – agreed as part of Croatia's membership negotiations – drew to an end. In turn, Croatia has not required nationals of any of these countries to require a work permit to work in Croatia. From 1 July 2018, the UK also lifted the transitional arrangements and Croatian workers are now able to take up any employment in the UK without the need for work authorisation.

After seven years of EU membership, all restrictions will come to an end; in other words, from 2021, Croatian nationals will enjoy full freedom of movement across the whole of the EU and EEA.

**Candidate countries – the next entrants to the EU**

For some time, there have been discussions around Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia joining the EU, and these six countries comprise the candidate countries on the road to eventual EU membership. The negotiations are in differing stages for each of these countries, and there are several criteria that must first be satisfied before they are able to progress to the next stages of the EU membership process.

By all estimations, we are still some way from any of these countries joining the EU and following eventual accession to the union, lengthy interim measures are expected on the freedom of movement.

The president of the European Commission, Jean-Claude Juncker, has announced that some of these countries could achieve membership by 2025 and the frontrunners, Montenegro and Serbia, are to set goals of completing accession talks by even earlier than that date.

Turkey was once discussed as being an upcoming entrant; however, recent developments in the country seem to have halted progress. In April 2018, Johannes Hahn, the European Commissioner who oversees new membership bids, seemed to suggest that Turkey did not, at that time, meet the criteria required for EU candidacy or membership and that they were continuing to take 'huge strides' away from the EU. The focus now appears to be on rekindling cooperation between Turkey and the EU.

**EU Directives**

***EU Blue Card Directive***

The European Commission's EU Blue Card has been implemented in a number of states over the past decade, designed to help bring in highly skilled workers to fill structural working shortages in key sectors within the EU, such as engineering and healthcare.

Formally introduced in 2009, the EU Blue Card is a work permit allowing highly skilled non-EU citizens to work and live in any country within the EU, excluding Denmark, Ireland and the UK. The card is designed for those wishing to reside in a member country for more than three months, and is usually valid for a period of two years, subject to further renewal. It is designed to encourage mobility between different member states.

The Blue Card scheme is still yet to gather momentum, and there remain a number of countries that, in 2017, had still failed to really implement or utilise the card at all, such as Greece, Malta and Slovakia. As is often the case with EU directives, implementation has been quite different across the states and the eligibility criteria and processes vary between countries.

The 2017 statistics indicate that, for the second year running, the card saw most success in Germany, with over 20,000 Blue Cards issued. France followed, with approximately 1,000 Blue Cards issued, and then Poland, with approximately 500 issued. A Blue Card has now become the desired method of entry into Germany, thus accounting for the substantial rise in the number of cards issued. Statistics remain relatively low around the rest of the EU.

Although it offers a flexible long-term solution to highly skilled, non-EU professionals across the EU, there has been discomfort recently with the scheme and discussion around a complete overhaul of the system. There are concerns around the long-term economic consequences, particularly with unemployment levels remaining high in some countries.

Some commentators in the international community have gone as far as saying that the scheme is a new way to steal talent from developing and less developed countries – a 'new form of colonisation'.

In an attempt to increase the attractiveness of the Blue Card, the Commission has put forward a proposal for a new simplified and more harmonised Blue Card Directive, designed to improve clarity and remove some of the bureaucracy. The new Directive proposal presented in 2016 includes a lower general salary threshold, a reduction in the minimum duration of an employment contract from 12 to six months and easier application regulations, with submissions accepted from abroad or within the EU. The maximum processing time is expected to be reduced from 90 days to 60 days, resulting in more applications gaining consideration. The negotiations between the European Parliament and Council started in September 2017 but, at the time of writing, are currently blocked. Such a revised Blue Card Directive looks positive and we await the results it yields, should it be enacted.

***Intra-Corporate Transferees Directive***

In May 2014, the EU adopted the Intra-Corporate Transferees Directive (Directive 2014/66/EU) (ICT Directive), which was designed to introduce a common set of rules to make it easier for companies outside Europe to send key staff to their branches within the EU, as well as making it possible for family members of these individuals to work at the same time, should they wish.

Previously, entry into each member state was governed by a different set of rules, which meant that non-EU nationals generally had to make a separate permit application for each country, even when being transferred within the EU. This was regardless of the duration of the proposed assignment.

Under the new Directive, once a foreign national is granted an ICT permit to a member state, he or she can be transferred almost freely inside the EU, provided the individual is working for the same company or group of companies. The Directive grants the worker the same protection as EU-posted workers and they are required to receive the same remuneration as local hires.

ICT permits are valid for a maximum period of three years for managers and specialists and one year for graduate trainees. The ICT permit allows the worker to then move around to work for entities of the same multinational company in other EU states for up to 90 days within a six-month period. For intra-EU work exceeding the 90-day limit, member states may require a separate ICT permit application.

The Directive improves the treatment of family members of this group, as they will be able to accompany the main applicant from the start of the assignment, and will also be entitled to take up employment or self-employment for the same duration of time as granted to the main applicant. However, the wording around this aspect of the Directive has been ambiguous, and accordingly not all member states have implemented this aspect fully.

Member states had 30 months or until the end of November 2016 to transpose the Directive into their national legislation, but until that point, implementation was relatively slow. Spain was the first country to implement the Directive in September 2015. Implementation has picked up substantially and a much greater number of European countries have now implemented these new procedures into their immigration processes:

| Countries that have implemented the ICT Directive (as at August 2018) | |
|---|---|
| Austria | Lithuania |
| Bulgaria | Luxembourg |
| Croatia | Malta |
| Cyprus | The Netherlands |
| Czech Republic | Poland |
| Estonia | Portugal |
| Finland | Romania |
| France | Slovakia |
| Germany | Slovenia |
| Hungary | Spain |
| Italy | Sweden |
| Latvia | |

As is usual with immigration directives, Denmark, Ireland and the UK have opted out of the ICT Directive and already have their own ICT regulations.

***Posted Workers Directive***

The Posted Workers Directive (Directive 96/71/EC) (PWD) was first introduced in 1996 to guarantee that the rights and working conditions of workers temporarily posted to another EU country are protected throughout the EU and to prevent unfair competition between businesses in European countries with different pricing levels.

Over the past two years, the European Commission has been working through proposed amendments to the Directive, including limiting the length of time an employee can be treated as a posted worker to 12 months, with a potential six-month extension, following which almost all of the employment rights available to local employees in the host country would become applicable to the posted employee. On 11 April 2018, EU ambassadors voted in favour of this draft legislation and the final adoption will come once the legislation has been voted in in parliament. Following this, there will be a two-year implementation period before the rules begin to apply.

In 2016, 2.3 million workers were recorded as posted and the numbers continue to rise. This, along with the current political focus on immigration across the EU, has created the need to update the PWD to strengthen posted workers' employment rights and to ensure fairness for domestic and foreign businesses providing services in an EU country.

**Equivalency of same-sex residency in the EU**

In June 2018, the Court of Justice of the European Union ruled in a landmark case that all EU countries must recognise same-sex marriages when evaluating applications for residence rights for dependent same-sex spouses of EU nationals that have resided in other EU countries.

The obligation for a member state to recognise a same-sex marriage concluded in another member state in accordance with the law of that state, for the sole purpose of granting a derived right of residence to a national of a non-EU state, does not undermine the institution of marriage in the first member state. In particular, that obligation does not require that member state to provide, in its national law, for the institution of homosexual marriage. This is a very welcome step in driving the move towards full reciprocal gay rights across the world.

**United Kingdom**

On 23 June 2016, the UK public voted to leave the EU, following a referendum called by the UK government. As such, there is the possibility that we may see significant changes to immigration law in the UK, as well as potentially across the EU and EEA in regard to UK nationals, in the coming years, depending on the results of the ongoing Brexit negotiations.

The freedom of movement of people – the right for any EU or EEA citizen to live and work in any EU or EEA member state – has been a defining characteristic of the bloc for almost a generation, and is under key scrutiny between EU and UK Brexit negotiators.

There has been much talk around the type of Brexit that the UK may end the negotiations with and a 'hard' Brexit' may mean severing all ties with the Union, thus regaining complete border control, but losing access to the customs union, as well as the single market.

In June 2018, the government released its statement of intent, which provided additional details of the proposed 'EU settlement scheme' to enable the 3.2 million EU citizens resident in the UK and their family members to continue living in the UK permanently. Under the EU settlement scheme:

- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for 'settled status', enabling them to stay indefinitely;
- EU citizens and their family members who arrive by 31 December 2020, but have not yet been continuously resident in the UK for five years, will be eligible for 'pre-settled status', enabling them to stay until they have reached the five-year threshold. They can then also apply for settled status;
- EU citizens and their family members with settled status or pre-settled status will have the same access as they currently do to healthcare, pensions and other benefits in the UK; and

- close family members (a spouse, civil partner, durable partner, dependent child or grandchild and dependent parent or grandparent) living overseas will still be able to join an EU citizen resident in the UK after the end of the implementation period, where the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK. Future children are also protected.

The scheme will be operated on a voluntary basis until 31 December 2020. From 1 January 2021, the scheme will become mandatory with all individuals who were resident in the UK on or before 31 December 2020 required to have submitted an application by 30 June 2021. It should be noted that this does not include nationals of Iceland, Liechtenstein, Norway or Switzerland. However, the government has confirmed that negotiations are ongoing and it is hoped that these arrangements will be replicated for nationals of those countries.

It is particularly encouraging that, in a UK government white paper published in July 2018, there was further renewed commitment to businesses being able to bring skilled workers and students into the UK from the EU post Brexit.

**United States and Canada**

The European Commission believes that there should be full visa waiver reciprocity for citizens of all EU member states when travelling to the US and Canada, so there has been a push for both countries to lift visa requirements for the outstanding EU member states who still require a visa to enter each respective country. This includes Bulgaria, Croatia, Cyprus, Poland and Romania. Initially, the recommendation had been a temporary suspension of visa waiver travel to Canadian and US nationals until visa requirements for all EU member states was lifted; however, in May 2017, the European Commission decided against suspending visa-free travel for US citizens. They felt it would be counter-productive to take such action and they also cited progress, particularly with Canada, over the past two years, with achieving the goal of visa-free travel for all EU citizens. As the situation currently stands, there will be no changes for US and Canadian citizens travelling to the EU for business or tourism while nationals of Bulgaria, Croatia, Cyprus, Poland and Romania must continue to obtain consular visas prior to travelling to the United States.

Generally speaking, there has been a continual drive towards full visa reciprocity in the coming years that would greatly increase the ease and efficacy of transatlantic business and leisure travel.

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# Australia

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Business migration is an essential part of any internationally competitive economy. The Australian Department of Home Affairs (the Department) places high priority on permitting entry to properly skilled and qualified professionals to 'fill the gaps' to address shortages in Australia's labour market.

Government policy strongly favours granting visas to skilled workers and investors who are able to successfully supplement, not substitute, positions available to Australian citizens.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Regardless of how long travellers intend to stay, a valid Australian visa is necessary. There are three visas that are commonly applied for short-term business or tourism visits:

**Temporary work (short stay specialist) visa subclass 400**
This is for people who want to travel to Australia to do short-term, highly specialised, non-ongoing work. It includes multiple streams designed to give flexibility in visa options.

**Visitor visa (subclass 600/601)**
This visa is commonly referred to as an ETA or 'e600' and is for people travelling to Australia as tourists, for business visitor activities, to visit family or those who are on a tour with a registered travel agent from China. The duration of this visa is determined by the Minister for Immigration and Border Protection (the Minister) and it can be applied for online (see www.border.gov.au/Trav/Visa-1/600-/Visitor-e600-visa-online-applications).

**eVisitor visa (subclass 651)**
This visa is for individuals merely intending to visit Australia for up to three months at a time, as a tourist or to participate in business visitor activities. This visa is only available to certain European nationals and can only be lodged online (see www.border.gov.au/Trav/Visa-1/651-).

### 3 What are the main restrictions on a business visitor?

For the short-term subclass 400, most visas are limited to three months, although six months can be granted. The purpose of the visa is for non-ongoing work, so multiple sequential 400 visas are not generally permitted.

'Business visitor activities' for a subclass 600 include making general business and employment enquiries, attending conferences, negotiating and reviewing business contracts, and making official government-to-government visits. The visa holder is not permitted to be paid by organisers for their participation in and attendance of these activities.

The length of stay depends on what visa the individual holds:

- subclass 601 allows the visa holder to stay in Australia for up to three months on each visit within a 12-month period from the date of grant, or for the life of the passport if it is less than 12 months;
- subclass 651 allows the visa holder to stay for up to three months on each visit within a 12-month period from the date of grant; and
- subclass 600 is to be determined by the Minister.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

The training and research (research stream) visa (subclass 402), which was previously for persons seeking to observe or participate in Australian research projects at a sponsoring Australian tertiary or research institute, has been closed to new applications since 19 November 2016. Applicants are encouraged to apply for a training visa (subclass 407), which allows visa holders to take part in workplace-based training or participate in professional development training for a period of up to two years.

On the 600 class visas, a 'no work' condition is currently enforced on all tourist and sponsored family visas, which means work on the visitor visa (subclass 600) is not permitted; however, the visa holder can engage in 'business visitor activities'. Post 23 March 2013, changes to business visitor visas' work rights were removed and introduced to the temporary work (short stay specialist) (subclass 400) visa. This visa allows for the applicant to do short-term, highly specialised, non-ongoing work, and in limited circumstances, to participate in an activity or work relating to Australia's interests. The applicant must be outside Australia when lodging their application for this visa, and up until the point that the application is decided (www.border.gov.au/Trav/Visa-1/400-).

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

If an individual seeks to travel through Australia for 72 hours or less, an application is to be made for a transit visa (subclass 771). Transit visas are free of charge, and commonly applied for when an individual (or their dependent child travelling on the same passport, or both) needs to travel, via aircraft, through Australia, either on their way to another country, or to join a ship as a member of the crew. There is a vast number of nationalities or diplomatic passport holders, however, that are eligible to transit though Australia without applying for a transit visa. Successfully obtaining a transit visa permits an individual to enter and stay within Australia for no more than 72 hours.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The most common visa programme utilised to transfer skilled staff into Australia is the temporary skill shortage visa (subclass 482), which replaced the subclass 457 visa in March 2018. Businesses that sponsor skilled overseas workers under a subclass 482 visa are able to do so for a temporary period of either two or four years. Subclass 482 visa holders are:

- eligible to work in Australia for a period of between one day and four years; and
- entitled to bring any eligible dependants (who are eligible to work and study) with them to Australia.

After successful entry into Australia, subclass 482 visa holders have no limit on their ability to travel into and out of the country.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

There are three processing stages in approving a subclass 482 visa: sponsorship, nomination and visa application.

To obtain sponsorship, an application is made by the company, which must:

- be lawfully operating its business;
- ensure the employment of the nominee will benefit Australia;
- be able to comply with sponsorship obligations;
- be the direct employer, or related to the direct employer, of the nominee;
- not be affiliated with any adverse information; and
- have a strong record of, or commitment to, employing local labour and non-discriminatory employment practices.

In submitting the nomination application, the company must:

- ensure the position of the nominee is on the occupation list;
- ensure the position meets the minimum skills threshold;
- ensure the base salary meets or exceeds the temporary skilled migration income threshold (TSMIT), which is currently A$53,900;
- ensure the terms and conditions of employment for the nominee are the equivalent 'annual market salary rate' (to that of their Australian counterparts);
- provide the details of the nominee; and
- meet the labour market testing (LMT) requirements (unless they are entitled to an exemption).

For nominees to lodge an application, they must:

- demonstrate they have the requisite skills and experience for the position;
- be offered employment at the relevant market salary rate (A$53,900 or above);
- provide evidence that they have a vocational English proficiency (if required);
- provide a skill assessment (if required);
- undertake a health check (if required); and
- provide a police check.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The maximum length of stay depends on the occupation the employee will be engaged in.

If the occupation is on the Short-term Skilled Occupation List, the maximum period of stay is two years. The visa holder may apply for one additional 482, to take the total stay to four years.

If the occupation is on the Medium and Long-term Strategic Skills List, the 482 visa can be granted for a period of four years.

**9 How long does it typically take to process the main categories?**

The Department advertises the typical processing time as being 75 per cent of applications processed within 15 days for occupations on the Medium and Long-term Strategic Skills List and 19 days for occupations on the Short-term Skilled Occupations List, and 90 per cent processed within 28 days for occupations on the Medium and Long-term Strategic Skills List and 40 days for occupations on the Short-term Skilled Occupations List (current as at 1 July 2018).

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is currently not necessary to obtain benefits or facilities for staff to secure a work permit. However, applicants for those under the 482 programme must provide evidence (under condition 8501) that they have made adequate arrangements for health insurance during their intended period of stay within Australia.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

There are strict guidelines concerning the granting of visas. There are numerous criteria for businesses and applicants alike to satisfy in order to be granted a visa – specifically those that allow immigrants to work in Australia. A visa will only be granted if all relevant criteria and procedures are met and undertaken, which leaves little room for subjectivity.

**12 Is there a special route for high net worth individuals or investors?**

The significant investor visa (SIV) is party to the business innovation and investment (subclass 188) and the business innovation and investment (permanent) (subclass 888) stream, and is specifically for high net worth individuals seeking investment migration. Those who hold an SIV have an investment requirement of A$5 million into 'complying significant investments' for a minimum of four years. After this is satisfied, an SIV is eligible to apply for a permanent visa.

High net worth individuals who possess entrepreneurial skill or talent are encouraged to apply for a premium investor visa (PIV), which is in the same stream as the SIV. The PIV requires applicants to invest A$15 million into 'complying investments' for a 12-month period (minimum) before they become eligible to apply for a permanent visa.

The business talent (permanent) visa (subclass 132) allows high-calibre business owners or part-owners who want to establish a new or develop an existing business in Australia to do so. Genuine applicants must have net assets of at least A$1.5 million. Applicants are generally required to be nominated by a state or territory government agency.

High net worth individuals or investors may also establish or invest in a business that can sponsor them for the 482 visa.

**13 Is there a special route for highly skilled individuals?**

The distinguished talent visa (subclass 858) is for individuals who have an internationally recognised record of exception and outstanding achievement in a profession, sport, the arts or academia and research. To apply for this visa, the applicant must be within Australia at the time of application and when the visa is decided. This visa allows the applicant to live permanently in Australia.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

As noted in question 12, the SIV is an appropriate preliminary route to residency for applicants who meet the investment requirement of A$5 million into a complying investment. Once the four-year threshold is met, the SIV holder may apply for permanent residency. This is similar to the PIV, whereby the applicant must invest A$15 million into complying investments for a minimum of 12 months before he or she is eligible to apply for residency.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Visa holders under the subclass 482 programme must receive the same remuneration and terms and conditions as an equivalent Australian worker at the same location – known as the 'annual market salary rate'. This means that a 482 visa holder cannot earn less than A$53,900 (exclusive of superannuation) as per the current TSMIT. If the nominated salary is above the high-income threshold of A$250,000, the equivalent terms and conditions do not apply.

**16 Is there a quota system or resident labour market test?**

LMT was implemented in 2013 under the Migration Amendment (Temporary Sponsored Visas) Act 2013 and the requirements amended in March 2018. The purpose of LMT is to assure the Australian community that those employed pursuant to the 482 programme are supplements and not substitutes. Schedule 2 of this Act outlines the requirements relevant to LMT, with evidence of LMT to include:

- information about the approved sponsor's attempts to recruit suitably qualified and experienced Australian citizens or Australian permanent residents to the position or any similar position;
- copies of job advertisements placed six months prior to submitting an application for a 482 visa together with evidence of paying for that advertising; or
- any other type of evidence determined by the Minister, by legislative instrument.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There is no minimum period of time an employee under the 482 programme must be employed for. All relevant employment details are outlined in the contract of employment, which must comply with the Fair Work Act 2009.

**18 What is the process for third-party contractors to obtain work permission?**

Presently, there is no process for third-party contractors to obtain work permission under the 482 programme. However, individuals who are employed under the On-Hire Labour Agreement are eligible to be on-hired to unrelated businesses.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

A skills assessment may be necessary depending on the nationality and nominated occupation of the applicant, and whether there is doubt concerning the applicant's ability to perform specific skills related to their nominated occupation. However, a skills assessment will be necessary when the applicant is required to obtain a licence or registration for their nominated occupation, or to be a member of a professional organisation.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Generally, a 'substantive' visa is required in order to make a further visa application or extension. The Migration Regulations 1994 (Cth) (the Regulations) provide schedules detailing the requirements that must be satisfied for an extension to be approved or a visa to be granted.

Each visa subclass contains criteria that must be met by the applicant and any dependants or family members. If the criteria are met, the applicant and any dependants or family members are granted the visa.

Importantly, some visas can only be applied for offshore, while some can only be applied for while in Australia and some can be applied for either offshore or in Australia, depending on the relevant rules.

Schedule 2 of the Regulations lists the criteria that must be met for the visa to be granted.

However, there are numerous conditions that may bar a short-term visa holder from making a long-term visa application while the person remains onshore. For example, if a tourist visa (subclass 676 visa) holder's visa was granted subject to condition 8503 of 'no further stay' then this condition will preclude the applicant from applying for most visas while still in Australia unless the condition is waived.

While there are some new limitations on employer nominated permanent residence, there may be a pathway to permanent residence from the 482 through the Employer Nomination Scheme (ENS).

**21 Can long-term immigration permission be extended?**

From 18 April 2017, only occupations on the Medium and Long-term Strategic Skills List are eligible for unlimited extensions.

Occupations on the Short-term Skilled Occupation List are entitled to a 482 with an initial two-year validity plus one onshore renewal. The visa holder will have to depart Australia and make an application from overseas after the end of the second 482. As this has only applied to visas granted since 18 April 2017, it is unclear how the Department will assess these applications, the first of which will not be considered until April 2021.

Once the visa holder ceases employment with the employer, he or she will be expected to depart Australia unless he or she wishes to apply for another visa and is eligible to do so.

**22 What are the rules on and implications of exit and re-entry for work permits?**

A subclass 482 visa is granted on the basis that there is no limit on the amount of times the visa holder can travel into and out of Australia provided they remain in the employ of the sponsor.

Holiday leave of no more than three months may be permissible if the visa holder departs from Australia. Note that more extensive absences may be in breach of condition 8607.

**23 How can immigrants qualify for permanent residency or citizenship?**

Only some subclass 482 visa holders may be sponsored for permanent residency by their employer as per the ENS. Applicants who are not employer sponsors can apply pursuant to the general skilled migration programme if they possess particular skills and experience and an appropriate proficiency in the English language.

A permanent resident of Australia who resides in Australia may apply for Australian citizenship provided that they:

- have lived in Australia on a valid Australian visa for four years immediately prior to applying; and
- have been a permanent resident for at least one year prior to making an application.

Generally, an applicant must satisfy the following criteria in order to be granted Australian citizenship:

- be a permanent resident at the time of application and the time of decision;
- meet the residence requirements;
- be of good character;
- have a basic knowledge of English;
- intend to reside or maintain a close and continuing association with Australia; and
- have an adequate knowledge of the responsibilities and privileges of Australian citizenship.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

The conditions of a subclass 482 visa provide the business sponsor must meet certain sponsorship obligations relating to the visa holder. These obligations include informing the Department of the primary sponsored person's cessation, or expected cessation, of employment within 28 working days of the 482 visa holder ceasing employment with them. Note that the sponsorship obligations extend to providing the 482 visa holder's travel costs of leaving Australia.

If the visa holder changes occupations with the sponsor, by promotion or transfer, a new nomination application may be required.

**25 Are there any specific restrictions on a holder of employment permission?**

Condition 8501 mandates that all 482 visa holders maintain adequate arrangements for health insurance while in Australia. Condition 8607 requires that a primary holder of a subclass 482 visa must:

- work in the occupation for which they were nominated;
- commence that work within 90 days of arrival in Australia, or within 90 days after the visa was granted if they were in Australia when the visa was granted;
- work for the sponsor, or an associated entity of the sponsor, who nominated the position they are working in;
- not cease employment for a period of more than 90 consecutive days;
- hold any mandatory licence, registration or membership while performing the occupation and comply with any provisions; and
- if the visa was granted on or after 1 December 2015, the applicant must:
  - hold the licence, registration or membership within 90 days of arrival in Australia if the visa was granted while they were outside Australia, or within 90 days after the visa was granted if they were in Australia when the visa was granted;
  - not engage in work that is inconsistent with the licence, registration or membership;
  - notify the Department in writing as soon as practicable if the application for the licence, registration or membership is refused; and
  - notify the Department in writing as soon as practicable if the licence, registration or membership ceases to be in force or is revoked or cancelled.

A new nomination is required if the 482 visa holder changes their occupation with the same employer. If the visa holder's new occupation is inconsistent with the nomination approval, then condition 8607 may be breached and consideration may be given to cancellation of the visa.

If the visa holder intends to change sponsors, the 'new' sponsor must be an approved sponsor and must lodge and have approved a new

nomination form prior to the visa holder commencing work for them. If this condition is not complied with, the visa may be cancelled.

## Dependants

### 26 Who qualifies as a dependant?

As per regulation 1.05A of the Regulations, a 'dependant' is defined as a person who is dependent on another person if they are, or have been for a substantial period immediately before the time of making the visa application, wholly or substantially reliant on the other person for financial support to meet their basic needs of food, clothing and shelter.

Regulation 1.03 defines 'dependent child' as a child or step-child who has not yet turned 18 years of age, or who is 18 years of age and is still dependent on the applicant as they are incapacitated for work.

### 27 Are dependants automatically allowed to work or attend school?

Secondary applicants (generally family members of the primary applicant) are permitted to work within Australia upon grant of the visa. Those who have a 'dependent' relationship with the primary visa holder are also eligible to commit to full-time study within Australia.

### 28 What social benefits are dependants entitled to?

Pursuant to the Social Security Act 1991, temporary resident visa holders are not permitted to receive any social benefits; however, temporary workers from certain nations are entitled to receive Medicare under a health agreement between their country and Australia.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

As per section 501 of the Migration Act 1958 (Cth) (the Act), all applicants who wish to enter or stay in Australia must be assessed against the character requirement. This section grants discretion to the Department or the Minister to reject a visa application for those who fail to satisfy the character requirement. The character requirement, or 'test', will subsequently fail if:

- the applicant has a substantial criminal record;
- the Minster reasonably suspects the applicant has been, or is, a member of, or associated with, a group or organisation that has been involved in criminal conduct;
- the applicant has engaged in past or present criminal conduct that indicates they are not of good character;
- the applicant is likely to cause significant risk to the Australian community or a segment of the community;
- the applicant has been convicted of one or more sexually based offences involving a child; or
- if the applicant has committed a war crime.

If an applicant is refused a visa on the basis that he or she has failed the character grounds, or had their visa cancelled, they will be permanently excluded from Australia. However, if the applicant or visa holder is in Australia, he or she will have the right to appeal that decision.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

If a visa holder is found to be in breach of their visa conditions, they could face visa cancellation and an exclusion period. If a sponsor, or a formerly approved sponsor, fails to satisfy their sponsorship obligations, section 140K of the Act provides that the Minister may take action and impose a civil penalty order. Further, if an individual fails to satisfy the sponsorship obligations within the manner or within the period as prescribed in the Regulations, they may face a penalty of A$12,600 for each failure. Sponsors may be barred or their approval may be cancelled under section 140L, commonly if the sponsor has been investigated for a potential breach or has been subject to monitoring. Section 140M permits the Minister to either cancel the approval of person as sponsor for either one or several classes to which the sponsor belongs, to ban the sponsor for a specified period from sponsoring people or to ban the sponsor for a specified period from making future applications for approval as a sponsor.

### 31 Are there any minimum language requirements for migrants?

There are different requirements for English proficiency depending on what subclass of visa the applicant is applying for. The subclass 482 visa requires primary applicants to understand a sufficient level of English while they are in Australia. This can be assessed by the Department with one to five of the nominated English language tests (International English Language Testing System (IELTS), Occupational English Test (OET), Test of English as a Foreign Language internet-based test (TOEFL iBT), Pearson Test of English (PTE) Academic test and Cambridge English: Advanced (CAE) test), with the applicant satisfying a minimum score depending on the test being utilised and which list the nominated occupation is listed on. For occupations on the Medium and Long-term Strategic Skills List, the required English proficiency is:

- IELTS overall band score of at least 5.0 with a score of at least 5 in each of the test components;
- OET score of at least 'B' in each of the four components;
- TOEFL iBT total score of at least 35 with a score of at least 4 for each of the test components of listening and reading, and a score of at least 14 for each of the test components of speaking and writing;
- PTE Academic overall test score of at least 36 with a score of at least 36 in each of the test components; or
- CAE overall test score of at least 154 with a score of at least 154 in each of the test components.

For occupations on the Short-term Skilled Occupation List, the required English proficiency is:

- IELTS overall band score of at least 5.0 with a score of at least 4.5 in each of the test components;
- OET score of at least 'B' in each of the four components;
- TOEFL iBT total score of at least 35 with a score of at least 3 for each of the test components of listening and reading, and a score of at least 12 for each of the test components of speaking and writing;
- PTE Academic overall test score of at least 36 with a score of at least 30 in each of the test components; or
- CAE overall test score of at least 154 with a score of at least 147 in each of the test components.

A primary applicant may be exempt from satisfying the language requirement if he or she:

- is a passport holder from Canada, Ireland, New Zealand, the UK or the US;
- has completed a minimum of five years of full-time study in a secondary or higher education institution where the predominant language of instruction was English;
- for intercompany transfer: is to be paid a salary that exceeds the English language requirement (of A$94,000) and the grant of the visa is within the interests of Australia, and currently works for an overseas business that is an associated business; or
- is nominated for an occupation that will be performed at a diplomatic or consular mission of another country or an office of the authorities of Taiwan located in Australia.

### 32 Is medical screening required to obtain immigration permission?

Under section 60 of the Act, if the health or physical or mental condition of a visa applicant is relevant to the grant of a visa, the Minister may require the applicant to have his or her health status examined. Schedule 2 of the Regulations outlines the independent health requirements for each subclass. Schedule 4 of the Regulations, more specifically Regulations 4005 and 4006A, outlines the requirements relevant to the public interest criteria; meaning they are implemented to act as a further barrier to protect the Australian community from public health risks.

A visa applicant, depending on their subclass, is required to:

- complete the health declaration in the visa application form;
- have a chest X-ray examination, in certain circumstances, if 11 years or older;
- have a medical examination in certain circumstances;
- have an HIV test, hepatitis B or C test or other specific test if necessary or in certain circumstances; and
- undergo other requested tests, as required.

If the health requirements are not satisfied, the application is to be refused under section 65(1) of the Act.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There are no special visa categories for employees on secondment, although there are some exemptions to subclass 482 and subclass 400 requirements for intercompany transfers.

Under the 482 programme, sponsored employees are eligible to engage in short-term work on the premises of, or on the tools of, another business in carrying out the work – notably referred to as a 'business service'. Note that this is only possible if the sponsored employee is doing so in working directly for his or her employer. Under the temporary work (short stay) visa (subclass 400), limited work is able to be undertaken by the visa holder on secondment to a client's site and in specific circumstances. As noted, this visa is for a three-month period only. However, it is possible to reapply after the three-month term has ceased.

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# Austria

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

EU, European Economic Area (EEA) and Swiss nationals are granted freedom of movement for workers and services and are allowed to work in Austria without a work permit as long as they are locally hired by an Austrian entity. However, in the case of an assignment to Austria or in the case of personnel leasing (including intra-company transfers) certain declaration and document-keeping requirements apply to all EU, EEA and Swiss nationals.

Third-country nationals who want to pursue employment in – or who are assigned or leased to – Austria are required to apply for a work permit. This is also true for Croatian nationals, owing to the transition period of seven years after joining the EU on 1 July 2013.

As the previously applicable quota system under Austrian immigration law did not meet the needs of the labour market, a new criteria-led immigration system has entered into force with the amendment of the Austrian Alien Employment Act in 2011. This system enables persons who are qualified and willing to immigrate to Austria the possibility to gain access to the Austrian labour market and to be integrated into Austrian society based on clear and transparent criteria. This change occurred in the course of the implementation of a governmental programme ('Work' and 'Migration and Integration' chapters) and should permit the employment of highly qualified employees, skilled workers in jobs with shortages and other key employees from third countries. Since April 2013, the application procedure for the combined work and residence permit ('settlement permits') has been simplified. Further, access to the labour market has been facilitated for reunited family members, foreign graduates of Austrian universities and foreign pupils and students.

Austria has recently implemented the Intra-Corporate Transferees Directive (Directive 2014/66/EU) (the ICT Directive). The new ICT regime is an important relief for temporary transfers of managers, specialists and trainees to an Austrian group company.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

The law applies the term 'short-term traveller' to business travel for a period of up to six months. A visa and a work permit are necessary for third-country nationals (citizens who are not nationals of the EU, the EEA or Switzerland), who work abroad but who intend to visit Austria for short periods of time in order to transact business on their own (freelancer) or on their employer's behalf.

In Austria, a distinction has to be drawn between business visitors and short-term travellers on assignments (secondment) in general.

While travellers on assignment to Austria usually need a work permit, a 'business visitor' can enter Austria without applying for a work permit or other declaration. However, business visitors can only carry out very short-term activities, such as business meetings and visits to trade fairs and conferences for a very short period of time. The interpretation of the term 'short-term' is still uncertain. General guidelines lead to the assumption that a stay of up to three days can be considered as short-term. Business meetings, trade fairs or conferences are usually scheduled for only a few days (or at maximum up to one week). The same applies to the demonstration of new technology in Austria by an assignee.

On the other hand, it is not considered a 'short-term business visit' if an assignee periodically carries out activities for a few days within a period of weeks or months or if the activities exceed the period of one week. In these cases, all third-country nationals need a business/work visa in combination with a work permit.

If a business/work visa is requested, the individuals must first obtain the respective certificates from the local labour office and then the individuals are required to obtain the business/work visa by filing an application to an Austrian consular office in the individual's country of origin or legal residence.

Nationalities that are subject to increased scrutiny in granting a visa (background checks, visa pre-approval, longer than normal processing times, etc) are Afghanistan, Bangladesh, the Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, Somalia, Sri Lanka and Syria.

### 3 What are the main restrictions on a business visitor?

The general business meeting exemption applies only to very short activities of up to three days (maximum up to one week) and is limited to activities that cannot be carried out by local employees in Austria. Hence, business visitors can only perform certain activities while in Austria without obtaining a work permit. Permissible activities as a business visitor (without obtaining a work permit) are attending meetings, interviews and conferences, conducting site visits and other urgent 'task force' activities (regarding the process, see question 2). However, the law does not provide an exhaustive list.

Therefore, if the scope of the stay exceeds the period of one week, the foreign employee does not qualify as a business visitor any longer, but qualifies as an assigned worker. In such a case, the employee needs a work visa C issued for a period of up to 90 days or a work visa D issued for a period of not less than 91 days and not more than six months.

Individuals receiving their salary from an Austrian entity cannot be qualified as business visitors or employees on assignment as long as they do not qualify as freelancers (self-employed persons). Business visitors can be reimbursed for expenses related to their travel to Austria and accommodation in Austria.

Business visitors and short-term assignees shall, irrespective of the law applicable to the employment relationship, be automatically entitled to at least the remuneration determined by law, ordinance or collective bargaining agreement to which comparable Austrian employees are employed by comparable Austrian employers. The foreign employer thus has to pay the assignee the minimum salary (including also the pro rata holiday and Christmas remuneration) in conformity with Austrian wage and working conditions during the assignment.

Further, any employer established in a foreign country must keep readily available the necessary documents in order to prove the remuneration payable and received by the employee (that must be compliant with the relevant mandatory provisions of Austrian law). These documents must be kept in the German language at the working place in Austria during the assignment period. In addition to the employment agreement (assignment agreement) and the statement of terms and conditions required by law, the required pay documents shall include records of hours worked, pay records or evidence of the employer having paid out the remuneration (eg, remittance receipts issued by a bank).

EU, EEA and Swiss nationals on an assignment have to file a declaration to the Austrian authorities at the latest seven days prior to the start of the assignment. Alongside the obligation to keep a copy of the filed declaration, the employer has to keep the documents about the registration of the assignee with the home country's social insurance (social insurance document A1, former E101) if the assignee is not subject to compulsory social insurance in Austria.

**4 Is work authorisation or immigration permission needed to give or receive short-term training?**

EU, EEA and Swiss nationals do not need immigration permission to receive short-term training. However, Croatian nationals need a training permit to receive training in Austria. In any case, a trainer needs to file a ZKO declaration (the online information filing system for employees of EU, EEA or Swiss-based companies who are assigned to work in Austria) to the Austrian authorities prior to the start of the assignment and keep the social insurance certificate and German language salary documents ready in case of an inspection by the authorities.

Third-country nationals need permission in order to receive short-term training or to act as a trainer, namely a training permit and, depending on the duration of the training, a business or work visa. A training permit is issued in the form of a declaration confirmation for volunteers, internships, training programmes or joint ventures and for the young-executive programme. It applies to the following:

- employees posted in the course of a joint venture cooperation for training purposes for no longer than six months;
- employees of an international group of companies posted to the Austrian headquarters on the basis of a qualified inter-company education programme for no longer than 50 weeks;
- foreign nationals seeking experience in the course of unpaid volunteer work; and
- foreign nationals studying at Austrian universities in the case of a compulsory internship pursuant to the degree programme.

These training or further educational measures involving third-country nationals and Croatian nationals must be notified no later than two weeks prior to the commencement by the owner of the domestic training facility or the headquarters to the responsible local labour authority with proof of the joint venture agreement and the training programme or further educational programme, in which objectives, measures and length of the training or education must be indicated. The regional office shall issue an acknowledgement confirmation within two weeks. The training or education may only commence after the acknowledgement confirmation has been issued. Certain trainings must also be notified to the competent Austrian fiscal authority at least two weeks prior to the start of the training.

After issuance of the training permit, the employee or trainee can apply for the respective visa at the Austrian consular office in his or her country of residence outside Austria. The visa will be issued based on the training permit as received from the local labour office. Some training programmes arranged between certain international universities are exempted from the notification requirements of the above-mentioned labour and fiscal authorities.

Further, the new ICT regime facilitates assignments of third-country nationals to an Austrian group company. Third-country nationals who hold an ICT card of another EU member state can be assigned to an Austrian group company for a period of less than 90 days within a 180-day period. In this case, a ZKO declaration has to be filed with the Austrian authorities prior to the arrival of the trainee in Austria. The Labour Authority will then issue an EU-Secondment Declaration provided that all requirements for the assignment are fulfilled. In this case, no additional Austrian work visa is required.

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

If a third-country national travels from any non-Schengen country via Austria to another non-Schengen country and the third-country national is not visa-exempt under the visa-waiver programme, the third-country national must apply for a transit visa (visa B) only if he or she actually enters Austria by leaving the transit area of the airport (eg, an overnight stay at an airport hotel).

Nationals of the following countries need an airport transit visa for Austria even if they do not enter Austria by leaving the transit area (eg, in the event of an aircraft transfer at the Austrian airport): Afghanistan, Bangladesh, the Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, Somalia, Sri Lanka and Syria. If these nationals are holding valid residence permits of some specific other countries (such as Japan, the United States, etc), they do not need to apply for a transit visa.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

In Austria, a distinction has to be drawn between people – EU, EEA, Swiss nationals or third-country nationals – who relocate to Austria in order to be hired locally (settlement permits), who come to Austria while remaining on a foreign payroll (residence permits, secondments) or who are assigned to Austria based on a staffing agreement.

**EU, EEA and Swiss nationals**

Nationals of the following countries do not need a work and residence permit in the case of local hire: Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

However, if these nationals are assigned (based on either a secondment or a staffing agreement) to Austria, in most circumstances a ZKO declaration has to be filed prior to the commencement of the assignment. Although no residence permit is required, certain registration requirements apply.

Nationals of Croatia need a work permit in the case of local hire. Nationals of Croatia and third-country nationals who are employed with an employer with its seat in the EEA, EU or Switzerland, must file a ZKO declaration if they are assigned to Austria. Subsequently, the local labour authorities will issue a work permit within two weeks. The assignment may start prior to the issuance of the work permit, as long as the ZKO declaration has been filed on time and the EU social security certificate (A1 form) has already been issued. A residence permit is not needed; however, registration requirements apply within certain deadlines.

**Third-country nationals**

For third-country nationals who are to be locally hired in Austria, the following residence permits apply.

***Settlement permit – 'Red-White-Red Card'***

This permit serves as a combined work and residence permit and is issued for an initial period of 24 months. The permit applies to the following four categories of workers:

- very highly qualified workers;
- skilled workers in shortage occupations;
- other key workers; and
- graduates of universities and colleges of higher education in Austria.

The Red-White-Red Card is extendable and when extended, a settlement permit Red-White-Red Card Plus will be issued. Applicants for a Red-White-Red Card are allowed to bring their family members to Austria, if dependants meet certain German language skill requirements or if they have undertaken a high school education, which issues qualifications to enter university. The essential requirements for getting a Red-White-Red Card are qualification, work experience, age, language skills, job offer according to the pre-qualifications and meeting minimum monthly salary requirements (at least €2,565 for employees under the age of 30 and €3,078 for employees aged 30 and above; these figures apply for 2018 and are subject to an increase in 2019).

***Settlement permit – EU Blue Card***

This permit serves as a combined work and residence permit and is issued for an initial period of up to 24 months. The EU Blue Card is also extendable and in such case a Red-White-Red Card Plus will be

issued. Applicants for an EU Blue Card are allowed to bring their family members to Austria, who have to fulfil certain German language skill requirements only after an initial period of two years of stay in Austria. The essential requirements for getting an EU Blue Card are qualification, job offer according to the pre-qualifications and meeting minimum monthly salary requirements (€4,353; this figure applies for 2018 and is subject to an increase in 2019).

***Settlement permit – Red-White-Red Card Plus***

This permit is issued to workers holding a Red-White-Red Card or EU Blue Card and for workers holding other long-term settlement permits, after a certain minimum duration of the initial work and residence permit. It is also issued to dependants of workers who qualify for a Red-White-Red Card or EU Blue Card. The Red-White-Red Card Plus grants unlimited labour market access.

Residence permits for third-country nationals also apply to the following:

- special cases of employment (eg, special executives of internationally active companies whose monthly gross salary amounts to at least €6,156 (this figure applies for 2018 and is subject to an increase in 2019));
- certain scientists and other employees who do not need a work permit pursuant to the Austrian Alien Employment Act;
- self-employed workers (eg, freelancers and start-up founders); and
- researchers.

Austria implemented the ICT Directive in late 2017. The Austrian ICT system created two new residence and work permits for managers, specialists and trainees who are employed with a third-country employer and are assigned to an Austrian group company.

***The ICT Card***

This is a combined residence and work permit and is issued by the Austrian authorities within eight weeks of the filing of the application. It can only be obtained by managers, specialists or trainees who have been employed with a third-country employer for at least six months (for trainees) or nine months (for managers and specialists) and are assigned to an Austrian group company for more than 90 days and up to one year (trainees) or three years (managers and specialists). The assigned candidate is allowed to work for client projects of the Austrian group company.

***The Mobile ICT Card***

This is also a combined residence and work permit that is issued by the Austrian authorities. It can only be obtained by managers, specialists or trainees who have been assigned by a third-country employer to a group company in the EU under the ICT regime and therefore already hold an ICT Card that was issued by another EU member state. Holders of ICT Cards of another EU member state who are subsequently assigned to an Austrian group company for more than 90 days can obtain this permit. As the candidate already went through the application process in another EU member state, the process in Austria is accelerated: the assignee will receive the Mobile ICT residence and work permit within eight weeks of filing the application according to the Austrian rules. However, he or she is allowed to start to work in Austria 20 days after the complete application is filed. Like the ICT Card, the Mobile ICT Card also entitles the assignee to work for client projects of the Austrian group company.

Further, there is a separate process for holders of an ICT card of another EU member state who are assigned to Austria for a period of up to 90 days within a 180-day period: in this case, a ZKO declaration has to be filed with the Austrian authorities prior to the arrival of the candidate in Austria. The Labour Authority will then issue an EU-Secondment Declaration provided that all requirements for the assignment are fulfilled. In this case, no additional Austrian work visa is required.

For third-country nationals who are assigned or leased to Austria (secondment) and do not fall under the ICT regime, the residence permit – assignee applies: this permit is available for third-country nationals who intend to stay temporarily for more than six months on an assignment in Austria. These nationals will not be allowed to bring their family members to Austria under the family reunion category for a period exceeding six months. A family reunion permit is not available for family members of employees on assignment if they do not fall under the ICT categories or are students, pupils, social workers or self-employed persons.

For third-country nationals who are assigned to Austria based on a staffing agreement (leased employees), a special staffing permit has to be obtained from the local trade authority in addition to the residence and work permits. This scenario may also apply to intra-company transfers under certain circumstances.

Special rules apply to Turkish nationals under the EU Accession Treaty.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

All kinds of residence permits (settlement permits or residence permits), valid for a period of stay longer than six months, have to be applied for by the individuals in their respective home country at the consular office after they have received the respective binding job offer from the Austrian employer (local hire) or the respective 'guarantee certificate' – a precondition in order to receive a work permit (assignment). Most consulates require an appointment booked via a service provider or the embassy prior to filing. Such an appointment for the filing may not be immediately available. Red-White-Red Cards can also be applied for by the Austrian employer at the respective competent immigration authority. Further, this simplified application procedure is also possible for the application of an EU Blue Card. Regarding intra-company transfer (ICT) permits, the application can either be filed by the assignee in his or her home country or by the Austrian group company on behalf of the assignee in Austria. The benefit of the employer being able to file the application has not been extended to the filing of residence permit applications for dependants.

The consular office forwards the documents to the Austrian immigration authority in the region of the intended place of residence of the individual after arrival. Subsequently, the documents are forwarded to the local labour office for the execution of a labour market test. Where there is a positive result, the Austrian immigration authority approves the permit and notifies the employee accordingly. Visa-exempted nationals are entitled to travel directly to Austria and will receive the combined work and residence permit after fingerprints have been taken. Third-country nationals who have applied for a residence permit will receive an 'entry and collection visa' in order to enter Austria.

Only settlement permits (including ICT permits) serve as combined work and residence permissions. If a residence permit has been filed, the assignee has to apply for a work permit after collection of the residence permit before he or she can start working. Issuance of the work permit may take five to eight days.

During the application process, neither assigned nor locally hired persons are allowed to work as long as no other work permit or work visa/residence permit has been issued for this time period. The applicants can begin working as soon as all requested permits are issued and handed over to the applicant.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The minimum period of stay is six months. The maximum period for the Red-White-Red Card and the EU Blue Card is 24 months and upon expiry can be extended accordingly. After a stay of two years (for local hires only), the permit can be issued for a period of three years where the employee has fulfilled the language requirement at an A2 level or is exempted from the language requirement, provided their passport has an appropriate duration. After a period of five years, a long-term residence permit can be issued under certain circumstances:

- permanent residence – EU settlement permit and settlement permit permanent residence – family member, which have a validity of five years; and
- residence card, which has a validity of five years.

The new ICT permits have a minimum validity of three months and maximum validity of three years for intra-company transferred managers and specialists. For intra-company transferred trainees, the ICT permits have a maximum validity of up to one year. After this maximum period of stay, the assignee must leave the EU for at least four months before applying for a new ICT permit.

Special rules apply to Turkish nationals under the EU Accession Treaty.

**9 How long does it typically take to process the main categories?**

The processing time varies from immigration office to immigration office. In general, issuance of a settlement permit or residence permit in combination with a work permit requires a period of eight to 16 weeks calculated from the day the respective application is filed either at the Austrian immigration authority or at the respective consular office abroad. This timeline does not include the time required to prepare the application up to the point of submission. There is no priority service available.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

Assigned employees must have a suitable health insurance cover of at least €30,000 during the immigration process. There is a risk that social insurance also has to be activated in Austria where there is no social insurance waiver agreement between Austria and the home country (social insurance waiver agreements are in place with the following countries: EEA member states, Australia, Bosnia, Canada, Chile, India, Israel, Korea, Macedonia, Montenegro, Moldova, the Philippines, Serbia, Switzerland, Tunisia, Turkey, Uruguay and the United States). In addition, the assigned workers must receive a monthly salary that is in accordance with the minimum salary requirements provided under the Austrian collective bargaining agreement. Further, assigned employees have to provide evidence of suitable accommodation.

In the event of local hires, no health insurance has to be submitted since the compulsory health insurance has to be activated only prior to the commencement of work, but employees have to submit a suitable entitlement for accommodation, valid for the entire period of stay. In the case of issuance of an EU Blue Card only, no suitable entitlement for accommodation has to be submitted as it is sufficient to indicate the intended residence address.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

For the most commonly used immigration categories, Red-White-Red Card, EU Blue Card and ICT Card, the authority follows objective criteria since all applications are evaluated based on a transparent and objective evaluation system and no discretion is permitted.

However, there is room for flexibility for some applications, such as the permits for self-employed workers and special cases of employment. Those require special survey reports, which make a respective application complex in nature.

**12 Is there a special route for high net worth individuals or investors?**

Investors can apply for a Red-White-Red Card as self-employed persons or as start-up founders. The investor category is designed for high net worth individuals intending to make a substantial financial investment in Austria. The minimum threshold for such substantial financial investments or valuable contributions to the economy amounts to €100,000. The Red-White-Red Card for start-up founders requires, among other things, the transfer of share capital of at least €50,000.

**13 Is there a special route for highly skilled individuals?**

There is a special route for highly skilled individuals. They can apply for a job-seeker visa (with a validity of 180 days) in their country of residence. They have to submit all their diplomas and qualifications, which are scrutinised according to a points system. A job-seeker visa enables them to travel to Austria and to search for a job. As soon as they find a job they can exchange the visa for a Red-White-Red Card. If the candidate reaches the respective amount of credits (points), the authorities will grant the permit. Candidates who have already found a job while still residing in their home country can directly apply for a Red-White-Red Card.

The new ICT permits facilitate assignments of highly qualified persons as managers and specialists, as described in question 6.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12. Individuals undertaking a notable investment may also receive Austrian citizenship (citizenship by investment programme). However, this route is entirely dependent on the discretion of the Ministry of Internal Affairs and is evaluated and only granted after a deep analysis of the effected – not only the planned – investment.

These types of permits can be obtained only after an exhaustive process and in-depth analysis of the investments into the Austrian economy and the benefits of such investments for the Austrian economy.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Employees, whether locally hired or on assignment, must earn at least the minimum salary according to the applicable collective bargaining agreement, including also (pro rata) holiday and Christmas remuneration (13th and 14th salary). Therefore, the minimum salary requirement cannot be provided in general as it depends on the scope of business of the company involved. The minimum salaries are fixed by collective bargaining agreements and depend on two factors: the job or duty to be performed and length of service.

**16 Is there a quota system or resident labour market test?**

In Austria, there is a labour market test carried out regarding the application of specific permits for locally hired people, such as the Red-White-Red Card for key employees or the EU Blue Card. The same applies to ICT Cards. Employers must demonstrate that they have been unable to fill the vacancy with a suitable settled worker. In order to prove this, the labour market authority advertises the role for a period of 14 days.

The quota system is applicable for the settlement permit without employment, assignment permits, permits for dependants joining the principal during the stay in Austria and permits to work as a seasonal worker.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

In the case of the Red-White-Red Card settlement permit, the candidate must reach the respective amount of credits (points) as required by Austrian immigration law, which are based on their specific job qualification and education, previous work experience, their knowledge of the German or English language, their age and whether they have completed any university studies in Austria.

**18 What is the process for third-party contractors to obtain work permission?**

Third-party contractors can obtain the respective permits in two ways. The general way is where the Austrian business or project partner acts as sponsor and, in this case, the permits are issued in its name. The business partner and employer of the employee can also apply for the permits to be issued in its name as a foreign company.

Where there is an Austrian sponsor, in such circumstances, there is no need to enter into a local employment agreement with the Austrian sponsor as the employee continues to be employed by the foreign contractor.

In the case of a self-employed contractor, the individual must apply for a combined work and residence permit as a freelancer.

It must be taken into consideration that the authorities verify in detail whether the foreign employer is the holder of the contract or whether the employees seconded by the foreign employer to Austria qualify as leasing of personnel for the benefit of an Austrian company.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

In all processes, regardless of whether it is an assignment or a local hire process, the individuals must show that they have suitable qualifications and skills. Academic qualifications are requested for almost all categories of permits. Further, it is necessary that the applicant's diplomas were achieved at academic institutions that are recognised as such in Austria. At present, these qualification assessments are based on the information obtained from a university assessment website (http://anabin.kmk.org/) and in some cases (especially for residence permits of dependants) a special European Network of Information Centres in the European Region – National Academic Recognition Information Centres in the European Union (ENIC-NARIC) confirmation is required. However, it has not been ruled out that the immigration authority may require confirmation issued by the Ministry of

Education. Medical requirements are only necessary in regard to visa applications of nationals of specific countries. Self-employed persons who want to start a business in Austria have to additionally prove they have sufficient funds in order to establish a successful business.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Short-term visas cannot be converted into longer-term authorisations as long as no separate long-term application has been filed independently. The application for the issuance of the long-term permits must be commenced and carried out under the general rules.

The only exception to this rule is the job-seeker visa for highly qualified employees (see question 13).

### 21 Can long-term immigration permission be extended?

A settlement permit and residence permit can be extended before their expiry. There are no restrictions on the number of extensions. However, after a certain duration of stay in Austria, compliance with German language requirements may apply.

After a period of five years, settlement permits can be issued with a validity of five years if the requirements (including German language skill requirements) are met: the years of residence of a settlement permit holder are counted as full years and the years of residence of a temporary residence permit holder are counted as half years.

The new ICT permits are not extendable after a period of three years for managers and specialists and after a period of one year for trainees. After the maximum period of stay, the assignee has to leave the EU for at least four months before applying for a new ICT permit.

### 22 What are the rules on and implications of exit and re-entry for work permits?

As a general rule, individuals are able to exit and re-enter Austria during the validity of their visa, provided that they have a multiple entry visa or a long-term residence permit. However, individuals should note that where settlement in Austria is intended, their absences may have a negative impact on their renewals after a certain period of absence.

Individuals holding a valid work permit must be aware that when the employment relationship is terminated, the labour market authority has to be notified within three days. Hence, in the event that those individuals intend to continue their employment relationship at a later stage, a new work permit must be applied for since the former permit will no longer be valid.

### 23 How can immigrants qualify for permanent residency or citizenship?

Immigrants can apply for permanent residence only after a consecutive period of five years, provided that the individuals have obtained a German language level of at least B1. The respective residence permit will be issued for a period of five years and has to be extended at its expiry.

Generally, individuals have the right to apply for Austrian citizenship if they have been residing in Austria for a period of 30 years and if they meet certain general requirements (eg, clean police records and citizenship exams). If they can prove established personal and professional integration into Austrian society and sufficient German language skills (level B2), they can apply after a period of legal stay in Austria of six years. Further, individuals who are married to an Austrian citizen can apply for citizenship after six years of permanent residence. Equally, EEA citizens, individuals who are born in Austria or who have achieved extraordinary cultural, scientific, economic, artistic or athletic accomplishments in the interests of Austria can apply for citizenship after six years of permanent residence.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

All work and residence permits that are issued for a specific company must be cancelled in the event the employee terminates his or her employment or when he or she returns to his or her home country (assignments or secondments). Settlement permits and residence permits have to be returned to the immigration authority.

When some of the fundamental requirements requested for the issuance of a work permit change, such as the position of the employee, the business premises of the company, the employer or the location of employment, a new work permit has to be applied for accordingly.

### 25 Are there any specific restrictions on a holder of employment permission?

Generally, individuals who hold an EU Blue Card, a Red-White-Red Card or a work permit are only allowed to work for the employer who sponsored the application. Employees who are assigned to Austria under the ICT regime are allowed to work for the Austrian group company and can also work on client projects of the Austrian group company. A promotion is not an obstacle to the validity of the existing permit. Only if a candidate starts to earn less or if he or she changes employer, will he or she have to apply for a new permit.

However, the holder of a Red-White-Red Card Plus or of a Permanent Residence Permit – EU is able to work for any employer, without asking for any further permission.

## Dependants

### 26 Who qualifies as a dependant?

Dependants are the spouse or children under the age of 18, including adopted and stepchildren. The term 'spouses' refers to opposite-sex marriages and same-sex registered partnerships, and they must be at least 21 years old. Cohabitation partners do not qualify as dependants (exemptions apply to EU nationals).

### 27 Are dependants automatically allowed to work or attend school?

All dependants of principals holding a Red-White-Red Card or an EU Blue Card can apply for a family reunion permit, which will be granted in the form of a Red-White-Red Card Plus; in particular, in the case of family reunion applications for Red-White-Red Card holders, it must be taken into consideration that dependants may be required to obtain a German language certificate at level A1 before they can file the family reunion application. Such a permit allows the family member to work for any employer in Austria.

For dependants of ICT permit holders, a family reunion is also possible. The dependants can receive a residence permit – if a dependant has a job offer at the time the ICT permit application is filed, the ICT permit will also serve as a work permit for that specific employer. In the case of an assignee who does not fall under the ICT regime, family reunion is not possible.

Children are obliged by law to attend school in Austria from the age of six until the age of 15. Hence, for children within this age bracket, it is compulsory to attend school while in Austria. Any school can be attended with a residence or a settlement permit.

### 28 What social benefits are dependants entitled to?

Dependants generally have to prove that the applicant provides for their needs during their stay in Austria. In addition, they must show that they will not rely on public funds.

Once settled in Austria, foreign families are entitled to receive family and child allowances. In the case of unemployment, foreign nationals are also entitled to receive unemployment benefits.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

For all long-term processes (all residence permits valid for more than six months), the applicants have to submit a criminal clearance certificate, which must not be older than three months. Where there are criminal convictions, the Austrian immigration authorities may reject issuance of the permits.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Employers are responsible for allowing access to their premises only to employees (whether locally hired or on assignment) holding valid work permits. There are sanctions for work permit-related violations,

violations concerning keeping certain documents on display or not complying with the minimum salary requirements, that range between €1,000 and €80,000 (per case), depending on the number of foreign nationals illegally employed and the recurrence of illegal employment. With regard to document record-keeping requirements, additional financial penalties of up to €70,000 (per case) may be applied. Financial penalties may be imposed on every single managing director of the sending or receiving entity.

Further consequences of non-compliance with immigration rules are that certain violations will be registered in a central register; if an employer has been penalised three times within two years for the illegal employment of foreign nationals, he or she can be prohibited from employing new foreign nationals for a period of up to one year and an employer's trade licence may be revoked for the recurring illegal employment of foreign nationals.

Penalties have been increased in recent years. The authorities strictly monitor compliance with labour and immigration law and impose penalties in the case of violations without hesitation. Currently, if there is suspicion that Austrian provisions have been violated, the immigration police issues 'stop of payments orders' to customers of foreign suppliers and forces such clients to pay a security deposit up to the amount of a potential financial penalty.

**31 Are there any minimum language requirements for migrants?**

In general, all individuals applying for settlement permits have to comply with the integration agreement. Within two years of the issuance of the first permit, immigrants have to present a German language certificate proving they have attained level A2. Dependants of these applicants have to present a German language certificate at the time of the first application proving they have attained level A1. This requirement can be waived where the dependant has completed a high school education qualifying him or her to attend university. The dependants of individuals applying for an EU Blue Card do not need to present a German language certificate upon the first application.

After five years, the integration agreement regarding German language skills has to be fulfilled for all residence permits proving the German language level B1 has been attained.

**32 Is medical screening required to obtain immigration permission?**

Generally, there is no requirement to pass any medical examinations, except in the case of a visa application for some countries. Austrian immigration authorities are, however, entitled to request medical examinations after a long-term residence permit has been obtained.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Secondments to a client site either qualify as a mere assignment or staffing (leasing of personnel). It will be considered staffing (leasing of personnel) if the assigned employee is to only follow the instructions of the Austrian client, will report mainly to the Austrian client and will be fully integrated in the premises of the Austrian client.

In the event of an assignment, the employee has to apply for the guarantee certificate – a precondition in order to receive a work permit – the respective visa or residence permit and the final work permit. If staffing is applicable, the Austrian client additionally has to apply for a staffing permit for the employee.

In the case of an EU country, an EEA country and Switzerland, only declarative requirements apply (see question 6).

Assignees who work in Austria with an ICT permit are allowed to work at the client's premises, which is a significant relief for intra-company assignments.

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# Belgium

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

From an immigration point of view, in Belgium a distinction needs to be made between the possibility of working in Belgium (obtaining a Belgian work permit and an 'authorisation to employ') and the possibility of legally residing in Belgium (requesting an entrance visa or a Belgian residence permit, or both).

First, an authorisation to employ and a work permit should be applied for by or on behalf of the legal (foreign) employer who wishes to employ a non-EEA national on Belgian territory. The authorisation to employ is intended for the employer, the work permit for the employee. Upon delivery of the work permit, the employee can start working in Belgium.

In this chapter, 'work permit' is used as the general term for both documents.

Whether an entrance visa must be applied for depends on the length of stay in Belgium and the nationality of the employee concerned (see question 2). Upon arrival in Belgium, a Belgian residence permit must be applied for in the event of a 'long' stay (see question 6). Every non-Belgian national requires a residence card to stay in Belgium for more than 90 days within any given period of 180 days.

Belgium still generally applies the principle of an immigration stop to protect the local workforce. In practice, however, the government is rather flexible in granting immigration permission for highly skilled persons. For this category of worker, a work permit can be obtained quite easily within a very short time (a maximum of three to four weeks) (see question 6).

Also, for business travel, a more flexible regulation has been implemented into Belgian immigration legislation whereby an exemption of the requirement to have a work permit is granted to business travellers for up to 20 consecutive calendar days, with a maximum of 60 days per calendar year (see also question 3).

It is important to note that, owing to the sixth State Reform in Belgium (which entails the transfer of decision-making power in different fields from the federal government to the regional governments), as from 1 July 2014, the regional governments have full legislative power over labour market policy, including the employment of foreign nationals (eg, work permit regulations). The existing federal legislation remains applicable until the regions put their own regional legislation in place. Further, note that the single permit procedure (combined work and residence permit as single immigration document to legally work and reside) is only foreseen to be implemented in Belgium by the end of 2018 (see 'Update and trends').

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

When a non-EEA national wants to enter Belgium for a short-term stay (ie, a maximum period of 90 days within any given period of 180 days), he or she must possess a Schengen visa, type C.

The need for a type-C visa, however, depends on the nationality of the individual concerned. EU Regulation No. 539/2001 provides a list (Annex 2) of all nationals who are exempted from this obligation for a short stay within the Schengen area (eg, citizens of Australia, Brazil, Canada, Japan, the United States, etc, can enter Belgium on the basis of their national passport in the event of a short stay).

The most common types of short-term Schengen visa are the business visa, the tourist visa and the visa for family visit. A Schengen visa must be obtained at the Belgian embassy or consulate in the country of the applicant's last official residence. The required documents need to be submitted as early as possible, preferably three to four weeks before the actual departure date.

It is important to note that a short-term Schengen visa for business reasons (business visa) does not mean that no work permit would be required (see question 3).

### 3 What are the main restrictions on a business visitor?

Belgian legislation allows for an exemption from the obligation to hold a Belgian work permit for individuals coming on a business trip to Belgium under the condition that the business trip is limited to a maximum of 20 consecutive calendar days with an absolute maximum of 60 working days per calendar year.

When strictly interpreting Belgian immigration legislation, only 'meetings in a closed circle' can be qualified as a business trip. This means that, in Belgium, business visitors may only perform, for example, the following activities:

- attend short business meetings or discussions in small groups;
- attend seminars or fact-finding meetings;
- visit a professional partner or prospective client; and
- have HR interviews or evaluations.

Where the individual's presence in Belgium involves on-the-job work, a work permit will have to be obtained, even for a visit of less than 20 days.

As mentioned above, business visitors who are non-EEA nationals and are not listed in Annex 2 of EU Regulation (EC) No. 539/2001 must apply for a type-C visa at the Belgian embassy or consulate of their last official place of residence in order to legally travel to and stay in Belgium during their short stay.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

In principle, yes. Receiving or giving training in Belgium is considered as working in Belgium and, in principle, requires the employer and employee to apply for the necessary immigration documents.

However, when receiving training in Belgium an exemption could be invoked if it concerns an intra-group classroom training for less than three months. Indeed, if the training in Belgium consists of mainly classroom courses and is held on the premises of a Belgian seat of a multinational group, a work permit exemption can be invoked under certain nationality conditions (limited category of individuals). If the training is exclusively on-the-job training, the work permit exemption is not applicable.

Where the classroom training lasts for more than three months or the individual does not meet the nationality conditions, a B-type work permit for intra-group classroom trainees (privileged category – see question 6) must be applied for. This type of work permit can be obtained quite easily.

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

As a result of the free movement of people that is applicable within the entire European Economic Area (EEA), no transit visa needs to be obtained if an EEA employee wishes to travel via Belgium.

Whether a transit visa is needed for a non-EEA national depends on the nationality, place of residence, type of residence permit the individual possesses and even the destination country.

Third-country nationals who require a transit visa to travel via Belgium are listed in Annex 4 of EU Regulation (EC) No. 810/2009 (eg, Angola, Nepal and Syria). This transit visa is not needed, however, if the individual already possesses a Schengen visa, a long-stay visa or residence permit issued by one of the Schengen states.

The transit visa must be applied for at the Belgian diplomatic post in the country of official residence.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

As mentioned in question 1, as a general rule, Belgium still applies the principle of an immigration stop and a Belgian work permit can only be obtained if the following conditions are met:

- the employer can prove that it cannot find an employee on the EEA labour market with the same qualifications as the foreign employee it wants to hire (labour market criteria);
- the person concerned is a national of a (non-EEA) country with which Belgium has concluded an agreement regarding manpower (Algeria, Bosnia and Herzegovina, Macedonia, Montenegro, Morocco, Serbia, Tunisia and Turkey); and
- a specific employment contract has been concluded, containing very specific provisions (eg, relating to the cost of repatriation and healthcare).

For highly skilled staff, however, the work permit authorities are rather flexible in granting work permits. Indeed, if the employees taking up employment in Belgium belong to one of the privileged categories of employees as stipulated in Belgian immigration legislation (eg, highly qualified employees, managerial employees), more flexible rules are applicable in respect of obtaining a work permit.

We understand 'highly skilled staff' to mean:

- a highly skilled worker holding a university or bachelor's degree and earning at least €40,972 gross per year (as of 2018); and
- a managerial employee, who has a leading function within the company and is earning at least €68,356 gross per year (as of 2018). (These categories of individuals will obtain a type-B work permit.)

Further, a type-B work permit can be obtained quite easily for the following:

- trainees, being individuals (between the ages of 18 and 30) who come to Belgium on a local training agreement immediately following the obtainment of the diploma and earning at least the salary as stipulated in the applicable Belgian collective labour agreements;
- employees receiving classroom training at a Belgian head office of a multinational group; and
- spouses and children of employees already working and residing in Belgium, based upon a valid work permit.

Most companies thus transfer or assign employees to Belgium under one of the above-listed categories so that no labour market research needs to be performed in order to obtain the Belgian work permit. Questions 7 and 13 explore the work permit application procedure more thoroughly.

It should be noted that, in Belgium, for work permit requirements, no distinction is made between intra-company transfers or secondments, local hires or subcontracting employment. The most important thing to note is that the work permit for the above-listed categories of employees must be applied for on behalf of the legal employer and for each particular category other documents might be requested. The procedures are, however, quite similar in all cases.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

The employer must obtain an 'authorisation to employ' the employee and the employee must be in possession of a work permit. These documents have to be delivered prior to the commencement of work in Belgium. In practice, both requests are filed at the same time.

In order to obtain a work permit, an official application form, accompanied by a set of documents (medical certificate, employment or assignment agreement, services agreement, diplomas, curriculum vitae (CV), etc) must be submitted to the competent ministry. Where to send the application depends on the region where the individual will actually work in Belgium (Flemish region, Brussels capital region or the Walloon region).

After treatment of the work permit application file (approximately four weeks), the relevant ministry sends the original work permit to the local town hall, which will actually deliver the work permit. The original employment authorisation will be sent to the employer or his or her proxy holder in Belgium who has filed the work permit application.

Three different types of permit can be granted: work permit A, work permit B and work permit C. The most common work permit, taking into account the employment within multinationals, is work permit B (for highly qualified and managerial employees). This type of work permit is applied for by the employer, as described above.

The employee can only start working in Belgium upon receipt of the work permit and having the necessary entrance documents.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

A Belgian work permit has no minimum validity period but is granted for a maximum of 12 months and is renewable each year.

For highly skilled workers, the maximum employment duration in Belgium on the basis of a type-B work permit is set at two four-year terms. For managerial employees, no maximum duration is applicable.

For a type-B work permit for traineeship following studies, the maximum duration is one year.

Besides the work permit, the employee must be in possession of a separate right of stay in order to be able to legally stay in Belgium. The right of stay can be delivered on the basis of the work permit (and separate visa) and after five years of uninterrupted and legal stay based on employment the residence permit for unlimited duration can be granted. When they have an unlimited right of stay in Belgium, employees can continue working in Belgium without the further obligation to hold a work permit.

**9 How long does it typically take to process the main categories?**

When considering a work permit application for one of the privileged categories of employees (see question 6), a time frame of approximately four weeks must be taken into account from the moment the work permit application is filed. In addition, a set of documents must be gathered by the employee, which might also influence the total processing time.

Entrance visa type C, needed for a short stay (ie, up to 90 days within a given period of 180 days), is generally delivered by the Belgian embassy within three weeks of applying. The long-term type-D visa can be delivered within five working days. The visa process for family reunification can, in some cases (depending on nationality and place of residence), take up to nine months. This is typically the case if the visa application of the family is not filed together with the work permit holder but only after the work permit holder has already resided in Belgium for several months at the time the family submits the visa application.

It is always advisable to get in touch with the competent embassy or consulate before actually applying for the visa as each embassy or consulate may have its own specific requirements in terms of the required documents, processing time and whether a personal appearance is required.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

A work permit will be granted provided that all conditions in respect of qualifications, salary level, employment agreements, etc, are fulfilled.

The work permit authorities are also keen to receive confirmation of the applicable social security scheme for the employee concerned (eg, copy of the certificate of coverage, A1 document, etc).

They will not, however, check whether sufficient medical coverage for the employee is foreseen in Belgium. Further, as the Belgian work permits must be applied for before commencing professional activities in Belgium, most employees will continue to reside abroad. In this case, it is not necessary to provide confirmation on their (future) place of residence in Belgium. It could be that in future, however, after implementation of the single permit procedure, it will be necessary to indicate the (future) place of residence at the same time as the (single) permit procedure.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Belgian immigration authorities (the regional work permit authorities, the Immigration Office, the Belgian diplomatic authorities, etc) all work in a professional way. They do have a business mindset and are open to finding business solutions. However, they always adhere to the strict objective criteria according to immigration legislation (legislation on work permits and residence permits). More specifically, the required minimum salary requirement is checked very strictly, especially when renewing a work permit.

**12 Is there a special route for high net worth individuals or investors?**

In relation to employees, all applications are handled via the same procedure according to objective criteria.

In Belgian immigration legislation, however, an exemption from the requirement to obtain a work permit is foreseen for senior-level managers who have concluded an employment agreement with a Belgian company that is recognised as a European headquarters provided that they earn an annual gross taxable salary of €68,356 (as of 2018).

In the event the senior-level manager has not concluded a local employment contract with a European headquarters in Belgium, a special work permit B for managerial employees can still be applied for. As stated in question 6, managerial employees belong to a privileged category and the authorities will deliver a work permit to their employer without the need for labour market research.

In the case of self-employed investors, the legislation on work permits is no longer applicable. In this case, a self-employed 'professional card' might need to be applied for, which is a more complex and time-consuming procedure.

Where persons of independent means (not having any professional activity) are concerned, a legal stay in Belgium could be granted under certain conditions whereby the proof of having sufficient means to support themselves certainly must be delivered (see question 14).

**13 Is there a special route for highly skilled individuals?**

As mentioned in questions 1 and 6, for a limited number of employee categories, the Belgian legislature has foreseen a less difficult and less time-consuming procedure to obtain a Belgian work permit. The two most common categories are highly skilled persons and managerial employees.

To be qualified as a highly skilled worker, the employee must hold a university or bachelor's degree and earn at least €40,972 (as of 2018) gross per year. To be qualified as a managerial employee, the individual must occupy a leading position within the company and earn at least €68,356 (as of 2018) gross per year.

These privileged categories can obtain a type-B work permit without the need for labour market research within approximately four weeks of applying.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

As mentioned in question 12, for persons of independent means (not having any professional activity), a legal stay (residence permit) in Belgium can be granted under certain conditions whereby proof of having sufficient means to support themselves must be delivered. For EEA nationals, the legal stay on the basis of sufficient means can be obtained rather easily. For non-EEA nationals, however, it should also be proven that the applicant has a special previous link with Belgium (eg, based on previous professional activity, family in Belgium, studies and so on).

In Belgium, it is not possible to obtain Belgian citizenship merely via proof of sufficient means.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Employees employed in Belgium must be paid in accordance with the Belgian Labour Law in respect of minimum salaries.

In order to apply for a Belgian work permit for a non-EEA national, in the capacity of highly qualified or managerial employee, a specific minimum salary floor must be respected as foreseen in the Belgian immigration legislation. The salary does not necessarily have to be paid in Belgium by a Belgian employer, although the employee's (foreign) payslips must prove that the minimum salary has actually been granted during the period of employment in Belgium.

The minimum gross annual salary is indexed annually and, for 2018, the figures are as follows:

- highly qualified employees: €40,972 gross per year; and
- managerial employees: €68,356 gross per year.

Where a work permit is requested for employees that are not highly qualified or do not hold a managerial position (eg, trainees, spouses of an employee already working in Belgium), the minimum gross salary fixed by the collective labour agreement signed within the applicable Belgian joint committee must be paid.

The applicable joint committee for expatriates on temporary assignments to Belgium depends on what activities the individual (or group of individuals) will carry out in Belgium. This may not necessarily be the same one as applies to employees of the host company.

Only gross taxable salary components (basic salary, bonuses, commission, premiums, holiday pay, taxable benefits in kind, etc), explicitly mentioned in the employment or assignment agreement, count in determining an employee's gross salary for work permit purposes. Non-taxable allowances and reimbursements of net expenses do not count.

**16 Is there a quota system or resident labour market test?**

As mentioned in question 1, an immigration stop is applicable in Belgium and in general a work permit can be obtained only after thorough labour market research. However, there are some exceptions to the general rule (the 'list of privileged categories'), which can most often be applied for when it concerns employment within multinationals (eg, highly qualified employees, managerial employees).

A quota system as such is not applicable in Belgium.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

Besides the diploma and salary requirements, Belgian legislation does not foresee any other specific employer-related requirements.

A foreign employer can hire an employee to immediately send him or her to Belgium on a work permit if all other conditions are met.

**18 What is the process for third-party contractors to obtain work permission?**

A Belgian work permit must always be applied for by or on behalf of the legal employer of the individual concerned. If a third-party contractor is seconded to Belgium, the legal (foreign) employer still must take the necessary steps in order to obtain the work permit so that the (non-EEA) employee can legally work in Belgium.

It is thus possible to have a contractor working on another company's premises in Belgium; however, in most cases a work permit will have to be obtained by his or her legal employer. The same conditions apply as for intra-company transfers or assignments, although other documents might be needed (eg, a copy of services agreement).

Only third-country nationals employed by an undertaking established in a member state of the EEA and who travel to Belgium in order to provide services do not require a work permit (the Van-der-Elst exemption).

In this respect, the following conditions have to be met:

- in the member state of the EEA where they stay, the employee has a right of stay for more than three months;

- the employee is in possession of a due and proper employment contract;
- the employee holds a passport and a residence permit valid for a period at least equal to the time for which the services in Belgium are to be provided so as to ensure that they return to their country of origin or sojourn;
- the employee is in possession of work permission in the member state where they normally reside and this permission is valid for at least the duration of the work to be carried out in Belgium; and
- a services agreement has been contracted between the employer and the host undertaking.

This means that all non-EEA workers employed by an employer established in an EEA country can come to Belgium to provide services for a Belgian company.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

In order to obtain a work permit in Belgium, a copy of the employee's diploma and CV must be provided to the authorities. For managerial employees, however, the file can be treated without a diploma.

Where labour market research needs to be done (when a work permit is applied for by a non-privileged employee), the employer must also highlight the competencies of the foreign national it wishes to employ in Belgium so that the local employment offices can look for people on the labour market who meet these same skills.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

As mentioned, a work permit exemption can only be invoked for individuals who come to Belgium to conduct meetings in a closed circle for no more than 20 consecutive calendar days (with an absolute maximum of 60 working days per calendar year). In this case, the employees can come to Belgium on a business visa or national passport. Otherwise, the employees additionally need a work permit from the first day of work in Belgium.

If, during this 20-day period, it seems that a work permit is still needed, this can be applied for while in Belgium, on condition that the employee does not conduct any on-the-job work (other than business meetings) while the application is continuing and on condition that it concerns an employee that belongs to one of the privileged categories. If a work permit, according to the general principle of the labour market research must be applied for, the employee may not be present in Belgium during the work permit application process.

Further, if it is known in advance that the period of stay will exceed 20 calendar days or the individual will do more than only business meetings, a work permit must be applied for from the beginning.

In respect of an individual's right to stay, the possibility exists to convert a type-C visa (business visa) into a Belgian residence permit, which is needed for longer stays.

As mentioned, whenever a non-EEA national intends to stay in Belgium for more than 90 days within any given period of 180 days, he or she needs to apply for a type-D visa prior to arriving in Belgium and upon receipt of the work permit. He or she also needs to apply for a Belgian residence permit (after arrival in Belgium).

In principle, and only on the basis of a type-D visa, the employee can apply for a Belgian residence permit type A, which allows him or her to stay in Belgium for a long-term period and to travel within the Schengen area and between Belgium and his or her home country.

However, non-EEA nationals in possession of a work permit can also apply for a Belgian residence permit on the basis of a short-term type-C visa (business visa) or national passport via an exceptional procedure.

Following this procedure is advisable when an employee is legally allowed to travel to Belgium without a separate visa or is already in possession of a type-C visa and is expected to start working in Belgium at very short notice. We do not recommend applying this exceptional procedure if family members plan to join the employee in Belgium as this procedure might have a negative effect on the right of stay of the family members in Belgium.

**21 Can long-term immigration permission be extended?**

See question 8. A Belgian type-B work permit is only granted for a maximum period of 12 months, but is renewable each year.

Highly skilled foreign nationals can only receive work permits for a maximum duration of eight years. When it concerns managerial employees, no time limit applies.

Further, the Belgian residence card is always linked to the validity of the work permit. After an uninterrupted legal stay of five years on the basis of a work permit, the foreign employee in possession of a type-B work permit can be granted (by the Immigration Office) a Belgian residence permit for unlimited stay (see question 23). This will then automatically exempt the employer and employee from the requirement to hold an authorisation to employ or a work permit.

**22 What are the rules on and implications of exit and re-entry for work permits?**

When an employee ends his or her employment in Belgium while still holding a valid work permit, the employer has the obligation to return the original authorisation to employ and the original work permit to the Belgian work permit authorities. When re-entering Belgium to resume employment or take up new employment, the employer needs to apply for a new Belgian work permit.

**23 How can immigrants qualify for permanent residency or citizenship?**

**Unlimited and permanent stay**

After five years of uninterrupted legal stay in Belgium on the basis of a type-B work permit, the Belgian Immigration Office normally grants a Belgian residence card type B (for unlimited stay) to the foreign employee.

This type of residence card is valid for five years and can be extended by proving the continued residence in Belgium without the need for underlying documents and prior approval of the Immigration Office.

This is all based upon internal practice of the Immigration Office and no legal basis exists.

Employees with five years of legal and uninterrupted stay also have the option of applying for a residence card type D (for durable stay as a 'long-term resident' in Belgium) under the following conditions:

- they must have stayed legally in Belgium for five years without interruption (periods of employment in Belgium under secondment are not taken into account (local employment is required));
- they must produce evidence that they receive an adequate, regular monthly income (the amount depends on the number of family dependants they have);
- they need to be covered by health insurance, including cover for their dependent family members; and
- they may not pose a danger to public order or national safety.

When holding a residence card type B or D, the employer and employee are exempted from the obligation to hold a work permit.

**Citizenship**

The rules governing the procedures to become a Belgian citizen are laid down in the Belgian Nationality Code.

**Naturalisation**

Applications for naturalisation are an exceptional procedure, reserved for those who can demonstrate extraordinary merit of a scientific, sporting or socio-cultural nature and who, therefore, make a special contribution to Belgium's international image.

**Nationality declaration**

There are five possible situations in which adult foreigners can make a nationality declaration:

- they were born in Belgium and have been legally resident there since birth;
- they have been legally resident in Belgium for five years and have proof of social and economic integration;
- they have been legally resident in Belgium for five years and are married to a Belgian or are the parent of a Belgian minor and can prove their integration;

**Update and trends**

Implementation of the EU Single Permit Directive (2011/98/EU), as well as the EU Intra-Corporate Transferees (ICT) Directive (2014/66/EU) on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, is foreseen by the end of 2018.

The upcoming change, as discussed below, will have a huge impact on current procedures, documents required and, most probably, also processing times for non-EEA nationals to obtain legal permission to work and reside in Belgium.

The Single Permit Directive requires EU member states to adopt a single combined work and residence permit application procedure, which needed to be transposed into national legislation by 23 December 2013. The reason for the very late implementation in Belgium is that residence permit-related procedures fall under the legislative power of the federal government, while, since the sixth State Reform, regional governments have decision-making power over work permit procedures (and labour market policy).

The new procedure, which will become applicable later in 2018, will mean that the combined work and residence permit application needs to be submitted to the (current) regional 'work permit' authorities, followed by the decision of the Foreigners Office in respect of the right of stay. Once the latter approves the residence-related part of the application, the regional authorities approve the work authorisation on the basis of which the applicant can apply for the visa at the Belgian consulate or embassy in the home country. Upon arrival in Belgium, the non-EEA employee can obtain the single (work and residence) permit at the town hall of residence.

Taking into account that on both federal and regional levels, several new legislative texts still need to be approved and published in the Official Gazette and that a common electronic platform needs to be developed and made operational, it is foreseen that the new procedure will only become effective by November 2018.

Belgium has also not yet implemented the ICT Directive for which the ultimate date of transposition was 29 November 2016. However, the implementation hereof is foreseen to be at the same time as the implementation of the single permit, by the end of 2018.

- they have been legally resident in Belgium for five years and are unable to exercise an economic activity owing to a disability or have reached pensionable age; and
- they have been legally resident in Belgium for 10 years and participate in the life of the community into which they have settled.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

When employees end their employment in Belgium while still holding a valid work permit, the employer has the obligation to return the original authorisation to employ and the original work permit to the Belgian work permit authorities (see also question 22).

Further, when the foreign national leaves Belgium permanently, he or she must deregister him or herself from the foreigners' register at the town hall of his or her place of residence and return the Belgian residence permit.

### 25 Are there any specific restrictions on a holder of employment permission?

Yes. A type-B work permit is always applied for on behalf of the legal employer and explicitly mentions the name of the foreign employee, the name of the employer, the validity period and the place of employment in Belgium.

The employee can therefore only use the work permit to work on behalf of his or her legal employer at the premises of the company or client indicated on the work permit.

If one of these elements changes (the employee takes up new employment with another employer, the place of employment in Belgium changes, etc), a new work permit needs to be applied for.

For minor changes in the employment contract such as a bonus allocation, promotion or salary increase, no new work permit need be applied for.

The work permit holder can, in addition to working in Belgium, study outside working hours as no separate permission is needed for this.

## Dependants

### 26 Who qualifies as a dependant?

All descendants of the employee who are under the age of 18 and a spouse who does not earn any income in Belgium and for whom the employee oversees housing, education and care, qualify as dependants in Belgium. In some cases, ascendants may also be considered as dependants; however, a separate recognition from the authorities will be required in this respect.

The notion of 'spouse' also includes legal cohabitees, provided certain conditions are fulfilled, although an important distinction must be made between two important categories:

- non-EEA nationals in a 'legally registered partnership' that is considered 'equivalent to marriage in Belgium'. Only registered partnerships entered into in the following countries are accepted as 'equivalent to marriage in Belgium': Denmark, Finland, Germany, Iceland, Norway, Sweden and the United Kingdom. A Belgian declaration of 'legal cohabitation' before the parties' local authority under section 1476 of the Civil Code is not considered as 'equivalent to marriage in Belgium'; and
- non-EEA nationals in a 'legally registered partnership but not equivalent to marriage in Belgium'. This category of foreign nationals can be considered as 'spouses' provided that:
  - the relationship has been continuing for at least two years;
  - its 'permanent and stable' character is duly proved or attested;
  - both cohabiting partners are over 21; and
  - neither cohabiting partner has a permanent relationship with another person.

In this case, it is very important to prove the 'permanent and stable' character of the relationship. This can be done by evidencing that:

- the two partners have lived together for at least two years;
- the two partners have a common child (birth certificate); or
- the partners have known each other for a period of at least two years and have had regular contact (by phone, emails, letters, plane tickets, hotel reservations, original photos (with date on the rear, etc)), and have met at least three times during the two-year period (the meetings should total a duration of at least 45 days).

### 27 Are dependants automatically allowed to work or attend school?

Dependants can attend school; however, they are not automatically allowed to work. Also, non-EEA dependants need to obtain a work permit before taking up employment in Belgium.

Belgian legislation provides for an exemption to this general principle for dependants of EEA nationals (including Belgian nationals) under certain conditions.

Extending the notion of 'spouse' has the important consequence that, provided the conditions in question 26 are fulfilled, the scope of this work permit exemption is also extended to legal cohabitants.

When no work permit exemption can be invoked, Belgian immigration legislation stipulates that non-EEA spouses or legal cohabitants or children of non-EEA nationals who themselves are work permit holders are regarded as a privileged category for work permit purposes. Their legal stay is linked to the residence and work permit of the 'first work permit holder' and they can easily obtain a Belgian type-B work permit without the need for labour market research. Proof of the employment and residence status of the 'first work permit holder' must be given.

A type-B work permit will be delivered and its validity will be limited to the validity of the residence card of the applicant.

However, where the spouse or child him or herself can be qualified as a highly skilled or managerial worker, a type-B work permit can be obtained according to the rules for this privileged category. Then the work permit does not depend on the employment or professional status of the 'first work permit holder'.

**28 What social benefits are dependants entitled to?**

The social benefits that dependants are entitled to depend on their social security status in Belgium (or abroad) and are not directly linked to their immigration status in Belgium. This might have an effect but, in the first instance, one must look at the social security status the employee and his or her dependants have in Belgium.

Where the employee is subject to the Belgian social security scheme, the dependants can also be covered under this scheme for medical care.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

For work permit purposes, no criminal background check will be carried out.

When applying for an entrance visa at the Belgian embassy or consulate, a certificate of good conduct or a police clearance certificate must be presented. Where it seems that the employee has criminal convictions, it is possible that the visa will be refused.

In practice, for residence permit extensions for both employees and their families, a certificate of good conduct is also increasingly being requested as one of the required documents.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

**Individuals**

If a foreign employee stays illegally in Belgium or works in Belgium without an official authorisation, he or she can be deported.

**Companies**

Penalties for hiring an employee who is legally residing in Belgium but without a work permit are as follows:

- a criminal fine ranging from €800 to €8,000, multiplied by the number of employees; and
- an administrative fine ranging from €400 to €4,000, multiplied by the number of employees.

Penalties for hiring an employee who is illegally residing in Belgium and without a work permit are as follows:

- a criminal fine ranging from €4,800 to €48,000, multiplied by the number of employees;
- an administrative fine ranging from €2,400 to €24,000, multiplied by the number of employees; and
- imprisonment for a period of between six months and three years.

Where serious cases of illegal employment have occurred, the Belgian authorities will consider beginning a criminal procedure. This will certainly damage the reputation of the company and its future business in Belgium.

**31 Are there any minimum language requirements for migrants?**

No, only in order to obtain Belgian citizenship.

**32 Is medical screening required to obtain immigration permission?**

When applying for a work permit, a medical certificate issued by any Belgian doctor or foreign doctor recognised by the Belgian embassy or consulate is required (unless the employee has already lived in Belgium for more than two years). In this respect, the doctor declares that nothing in the state of health of the employee indicates that he or she might be unfit to work in the near future.

Also, when applying for a type-D visa, a medical certificate needs to be provided to the embassy or consulate (especially for family of the employee).

The following diseases will be looked for:

- illnesses requiring quarantine as stated by the International Health Regulation dated 23 May 2005;
- pulmonary tuberculosis (active or progressive); and
- other contagious or transmittable diseases or parasites.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

As mentioned, where employees are concerned, all applications are handled via the same procedure according to objective criteria.

Where secondments that are not intra-group are concerned (eg, to clients), the authorities most often request a copy of the service agreement concluded between the employer and the client in order to approve the work permit.

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# Bermuda

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The government of Bermuda allows business immigration. The mission of the Department of Immigration, which operates through the Ministry of Home Affairs, is to 'improve the economy by addressing the needs of the local and international business community and the career aspirations of Bermudians'.

With a change in government in 2017, minor changes have been made to reform immigration. One such change includes an amendment to section 8 of the Bermuda Immigration and Protection Act 1956 (the Act) to provide for provisions to the Act, 'to operate and have effect, notwithstanding the Human Rights Act 1981,' as stated by the Minister of Home Affairs (the Minister). Additionally, the government has appointed a Consultative Immigration Reform Working Group that was 'tasked with recommending the principles by which new immigration policies will effect legislation in relation to: mixed families, permanent resident certificates and Bermudian status'.

Although no new changes have been introduced by the new government to the current Work Permit Policy (the Policy), a more stringent interpretation is being adopted towards the implementation of the Policy.

The Act requires that all non-Bermudians must obtain specific permission (by way of work permits) if they are to engage in gainful occupation in Bermuda. In most cases, the main criterion in assessing whether or not to grant foreign nationals permission to work in Bermuda is whether there is a suitably qualified Bermudian, spouse of a Bermudian or permanent resident certificate (PRC) holder who has applied for the role. Additional guidance regarding the requirements that non-Bermudians must meet in order to obtain permission to work in Bermuda is set out in the Policy. The Policy contains various protections for the Bermudian workforce, including, for example, requirements to ensure that employers have conducted bona fide searches for qualified locals to fill the position.

The Department of Immigration cannot force an employer to hire Bermudians, spouses of Bermudians or PRC holders. It can only prevent the hiring of foreign nationals by refusing to grant a work permit – if the requirements are not met.

Immigration legislation and the Policy are enforced by the government. Amendments to the Act in 2013 provided greater powers to the Chief Immigration Officer to enforce the requirements of the Act and the Policy (eg, the Chief Immigration Officer can now impose civil penalties (up to Bda$10,000) on employers who abuse immigration policy).

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

For the purposes of this chapter, it should be noted that 'visa' is interpreted as work permit permission. See question 5 with respect to formal visa requirements.

Short-term business travellers under the Policy will generally fall into one of three categories:

- a 'business visitor' who is a non-resident, who visits Bermuda to undertake certain limited business purposes;
- a 'short-term work permit' holder, who is employed to work in Bermuda for a period of up to six months; or
- a 'periodic work permit' holder, who is someone engaged by an employer who will make multiple visits to the island (for no more than 30 days per visit, with a maximum of 180 days per year).

Work permits are obtained by application to the Department of Immigration for the permit that best suits the needs and requirements of the traveller.

### 3 What are the main restrictions on a business visitor?

Business visitors do not need work permit permissions if they have a return ticket, their stay does not exceed 21 days and they are undertaking certain types of activities. A full list of such activities is included in the Policy. By way of example, a short-term business traveller visiting Bermuda for less than 21 days is able to do the following without work permit permission:

- attend broker, director or shareholder meetings;
- attend general business meetings with a Bermuda company where the business traveller is not being remunerated by the Bermuda company;
- present at business seminars not open to the general public;
- attend a job interview;
- attend a conference;
- make presentations in response to a request for a proposal if not being remunerated; and
- international dispute resolution work, carried out by lawyers, clients, witnesses, experts and administrative support professionals.

Note that this is not an exhaustive list and advice must be sought to determine if a business traveller can enter Bermuda without work permit permissions. An extension to the 21 days can be obtained under the Policy.

Short-term work permits or periodic work permits are required by those individuals whose activities in Bermuda fall outside the permissible activities for a business visitor (as summarised above) or are required to last more than 21 days, or both.

Short-term work permit applications are accepted for three to six months and may be extended for up to a further six months. The primary obstacle to obtaining a short-term permit is the requirement to advertise and vet qualified Bermudians, spouses of Bermudians and PRC holders. However, employers may be exempted from the requirement to advertise in certain circumstances (eg, where the intended work permit holder works for an overseas subsidiary or affiliate of the Bermuda employer). The Policy should be consulted for further details.

A periodic work permit holder is able to stay in Bermuda to conduct work that he or she is contracted to provide to the employer for a period of no greater than 30 days per visit. Periodic work permit holders are not permitted to be in Bermuda for more than a total of 180 days per calendar year. This type of permit is for individuals who work for an overseas office of the Bermuda company or for an individual who is a service provider contracted to work for the Bermuda company.

There are no restrictions with respect to remuneration for short-term work permit holders. Permissible activities are limited to those duties that the short-term work permit holder is contracted to perform and which were detailed in the work permit application.

**4 Is work authorisation or immigration permission needed to give or receive short-term training?**

An individual can enter Bermuda for up to 21 business days without a work permit for training in techniques and work practices, provided that the training is conducted by a company affiliated by an ownership relationship and that the training is limited to observation, familiarisation and classroom instruction. Training in other circumstances will require immigration permission (either via a short-term work permit or a periodic work permit).

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

As of 1 March 2014, Bermuda entry visas and visa waivers are not required for tourist and business visitors and work permit holders. It should be noted, however, that travellers who require a multi re-entry visa (MRV) for Canada, the UK or the US will need to present the valid MRV upon arrival in Bermuda.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

The three primary, non-temporary business permit categories are as follows:

**Standard work permits**

The purpose of a standard work permit is to allow all organisations in Bermuda to employ foreign nationals provided that they can demonstrate that a Bermudian, spouse of a Bermudian or PRC holder was not suitably qualified or available to be hired. Employers may apply for standard work permits of a one to five-year period.

Employers are permitted to apply for standard work permits for jobs that are in the open, special or restricted category. Applications for standard work permits are not allowed for closed category jobs. Closed category jobs include, but are not limited to, labourers, sales people and receptionists. Restricted category jobs include, but are not limited to, bank tellers, bartenders, administrative assistants, general masons and photographers. These categories are generally designed to protect the local workforce.

**Global work permits**

The global work permit allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position so long as the position being filled is not a pre-existing position. Global work permits are granted for periods of time similar to standard permits (ie, one to five years). However, if an employer wishes for a global work permit holder to continue working in Bermuda after the expiry of the worker's global work permit, they will be required to apply for a standard work permit.

Applications will be automatically approved in respect of individuals who have been employed for longer than one year and who earn a gross salary greater than Bda$125,000 per year. Applications in respect of individuals employed for less than one year or those earning less than Bda$125,000, or both, will be considered on a case-by-case basis and approval will depend substantially on demonstrating that the addition of the global work permit holder will add value to Bermuda. A global work permit is not applicable to positions listed in the closed or restricted categories.

**New business work permit**

A new business work permit allows an exempted company (per the definition in the Companies Act 1981) that is new to Bermuda to receive automatic approval of work permits for the first six months of obtaining the first new business permit. There is no need to advertise the positions (which is the requirement of the standard work permit). New section 114B companies to Bermuda (per the ability to be licensed under section 114B of the Companies Act) will be granted new business work permits; however, these will be limited to five new business work permits within the first six months of obtaining the first new business work permit. New business work permit holders may be employed in any job category provided that their position is not an entry-level position, a graduate position or trainee position or specified in a closed or restricted category. However, if the new business permit holder falls within a job category where a statutory council must be consulted, this must still be done.

**Fintech business work permit**

On 4 May 2018, the Minister announced a new immigration policy for fintech start-up companies. The Minister has stated that the new policy, 'which almost mirrors immigration's new business work permit policy, allows a fintech company that is new to Bermuda to receive immediate approval of five work permits within the first six months of obtaining the first fintech business work permit'. One significant caveat to this new policy is the requirement that 'for a fintech business to be eligible for automatic approvals under this policy they must also present plans for the hiring, training and development of Bermudians in entry level or trainee positions'. Standard work permit policies apply after the initial terms of the fintech business permit expires.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

Standard work permit applications require the employer (who must be a Bermuda-based individual or company) to:

- advertise the vacancy in Bermuda as per the requirements in the Policy;
- properly consider any Bermudian, spouse of Bermudian or PRC holder who meets the minimum qualifications of said advertisement;
- with the assistance of the work permit applicant, complete the relevant work permit application form and submit all necessary and relevant documentation; and
- where necessary, send the application to the relevant statutory body regulating the profession of the applicant (eg, doctors and lawyers).

Work cannot begin until the application has been approved by the Department of Immigration.

With respect to the standard work permit, the global work permit and the new business permit, if employers are able to qualify for the waiver of advertising per the Policy, the first two steps identified above do not need to be followed. The employer need only complete the relevant work permit application form and submit all necessary documentation.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

This is one to five years. Renewal permits can be applied for when standard work permits expire – as long as all the relevant requirements of the Policy continue to be met. The general restriction of work permit holders not working in Bermuda for longer than a six-year period was removed by the government.

**9 How long does it typically take to process the main categories?**

Standard work permits typically take 20 working days to process and global or new business work permits take 10 working days. These periods are subject to change if the Department of Immigration experiences a high volume of submissions.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

Employers and employees have certain obligations with respect to social insurance contributions, payroll tax, pension and medical insurance. Employers must ensure that the employee has the legislative minimum health insurance cover (although it is common for corporate employers to provide enhanced insurance coverage), pension and social insurance. Accommodation is optional for employers to arrange and pay for.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The Policy is fairly detailed and provides certain objective criteria for eligibility for the various applications. However, the Policy cannot be described as entirely objective.

The Policy itself states that the Minister may exercise his or her discretion per the Immigration legislation to waive specific policies

upon written request or justification for the same. This is particularly the case in respect of specialised roles where there is a known shortage of Bermudians, spouses of Bermudians and PRC holders. The Minister has no discretion to waive any fees. In this way, there is flexibility within the Policy to accommodate complicated cases.

In practice, the Minister and the Immigration Board (appointed by the Minister), which reviews the applications, do possess discretion with respect to interpretation of various issues. For example, if a Bermudian, spouse of a Bermudian or PRC holder has applied for the job upon advertising and has been refused the job in favour of the work permit applicant, the Board and the Minister will exercise subjective analysis of whether the consideration of the Bermudian, spouse of Bermudian or PRC holder was fair.

It should also be noted that if an application is refused, the application can be appealed to the Minister.

**12 Is there a special route for high net worth individuals or investors?**

Under the global entrepreneur work permit, the Minister will grant a permit to an individual for a one-year period to work and reside in Bermuda (in respect of an exempted company or a section 114B start-up), if he or she is satisfied that the applicant is a bona fide investor or business person that is likely to domicile a company in Bermuda. The work activities may include business planning, seeking appropriate government or regulatory approval, meeting compliance or financial requirements or raising capital.

High net worth individuals are able to apply for permission to reside on an annual basis but such permission does not permit them to work in Bermuda.

**13 Is there a special route for highly skilled individuals?**

There is no special application for highly skilled individuals. Employers of highly skilled individuals may, however, be able to seek a waiver to the requirement to advertise the position on the following basis:

- that the applicant is uniquely qualified for the position;
- the position would not exist in Bermuda if it were not for the applicant filling the job;
- the success of the business would be detrimentally affected if the person were to leave the business; or
- the employee is integral and key to income generation.

It should be noted that the posts of CEO and other chief officers are automatically granted waivers from advertising.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no special route for high net worth individuals for residence permission for Bermuda.

Economic citizenship and investment visas were initially investigated and discussed by the previous government as an initiative to attract foreign investment in Bermuda but such discussions have not progressed further.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is no minimum salary requirement for the main categories for company transfers. However, if the individual moving to Bermuda wishes to bring dependants to Bermuda, there are minimum salary requirements that must be proven.

Upon application, sponsored dependants of the work permit holder may be given permission to reside with the work permit holder and seek employment provided that the sponsor submits proof of financial support for the sponsored dependants. The following thresholds must be demonstrated:

- a two-person household requires remuneration of Bda$60,000 per annum;
- a three-person household requires remuneration of Bda$100,000 per annum; and
- a household of four or more persons requires remuneration of Bda$125,000 per annum.

**16 Is there a quota system or resident labour market test?**

There is no quota system in Bermuda.

As discussed, all positions (unless the employer is eligible to seek a waiver to the requirement to advertise) must be advertised. If a Bermudian, spouse of a Bermudian or PRC holder applicant meets the requirements of the advertised position, such an applicant should be interviewed. Results of any interviews must be included with the work permit application submission.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

No.

**18 What is the process for third-party contractors to obtain work permission?**

Work permits must be obtained by the Bermuda employer. If someone is required to work as a contractor or consultant for another company or individual, that other company or individual must also apply for the work permit, identifying that the employee will be working as a contractor or consultant.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Formal assessments or testing to confirm skills and qualifications is not required. It is the responsibility of the employer to provide a written declaration in the application form that they have thoroughly screened the applicant and to the best of their knowledge and belief the applicant is of good character, possesses the qualifications purported in the application, is in good health and does not have a criminal record.

The Policy does, however, state that the Minister shall consult with the statutory body that regulates matters dealt with by that profession. A full list can be found in the Policy and includes, but is not limited to, statutory bodies relating to architects, lawyers, dentists, nurses, psychologists, accountants and engineers.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Tourists are unable to apply for a work permit while physically in Bermuda. This does not prevent the tourist visitor from returning to his or her home country and thereafter applying for a Bermuda work permit.

A business visitor can apply for extensions beyond 21 days. This is done by way of application.

A business visitor can apply for a short-term work permit if it becomes obvious that the activities being conducted fall outside the activities permitted under the business visitor policy. It would, however, be advisable for the employer to identify at the outset whether a short-term work permit is needed based on the anticipated activities.

At the conclusion of a short-term work permit for three, four, five or six months, the holder will be expected to leave Bermuda, unless an extension has been sought within the proper processing period. Short-term work permit holders will not normally be granted permission to reside and seek employment.

A short-term work permit holder can, by way of application, seek to obtain a standard work permit. This must be done within 45 days of obtaining the short-term work permit. An explanation must also be provided as to why the standard work permit application was not made at the outset.

**21 Can long-term immigration permission be extended?**

Yes, indefinitely for up to five years with each application. There is no requirement to leave as long as all requirements as to advertising are met upon renewal (or alternatively a waiver is sought).

**22 What are the rules on and implications of exit and re-entry for work permits?**

Persons with permission are required to carry the document granting said permission when they travel. Otherwise they may be subject to fines – they are not at risk of being denied entry into Bermuda.

Dependants must also carry re-entry documents when exiting and re-entering Bermuda.

### 23 How can immigrants qualify for permanent residency or citizenship?

The Incentives for Job Makers Act 2013 and amendments to the Act in 2013 sought to make it easier for companies to obtain work permit exemptions for certain senior executives, and for certain senior executives to be eligible to apply for permanent residency.

The employing company must first obtain designation as a company whose senior executives can apply for exemption. This involves having to show that the company has at least 10 Bermudians on its staff, that Bermudians are employed at all levels of the company and that entry-level positions, development programmes and promotion possibilities are available for Bermudians.

Where a designation is granted to a company, a qualifying senior executive of that company is then eligible to apply for exemption. The exemption application must demonstrate that:

- the applicant is indeed a person in a senior executive position;
- the applicant is responsible for making decisions that are critical to the continuity of the company in Bermuda;
- the continued presence of jobs with the company in Bermuda for Bermudians must be dependent on the applicant remaining in Bermuda;
- the applicant will continue to be employed in the company for the duration of the exemption; and
- the company must continue to meet the requirements of a designated company.

The designation and exemption application costs Bda$20,000. A qualifying exempt senior executive may apply for permanent residency at the appropriate time. Such an application involves having to demonstrate the following:

- the applicant has been eligible for exemption for a period of at least 10 years (this involves showing that the designated employing company was also eligible as a designated company for a period of 10 years);
- the applicant has been ordinarily resident in Bermuda for a period of at least 10 years; and
- the applicant has been ordinarily resident in Bermuda during the two years immediately preceding the application.

The PRC application costs Bda$50,000 for the executive and Bda$3,000 for each qualifying dependant.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Employers are required to submit a written notice of termination to the Department of Immigration within seven working days of the work permit holder's last day of employment. The notice must identify, among other matters, the date on which the employee left, or is planning to leave, the island and the reason for termination.

The employer must also return the work permit paper document and the work permit card to the Department of Immigration.

### 25 Are there any specific restrictions on a holder of employment permission?

A holder of employment permission is restricted from undertaking any duties or responsibilities not expressly approved and noted on his or her work permit. By way of example, an insurance broker cannot start working as a paid photographer for his or her employer.

Work permit holders are able to advance their professional development through further studies without obtaining permission.

Work permit holders can be promoted. The employer must first obtain permission from the Department of Immigration. While the employer is not required to advertise the post externally before applying by letter for permission to promote or otherwise transfer an employee internally, evidence of consideration of internal Bermudian, spouses of Bermudians and PRC holder candidates must be submitted to the Department.

The salary of a work permit holder can be changed. The Policy is silent regarding whether permission must be obtained regarding salary increases. The practical approach is that incremental salary adjustments do not require permission. Significant increases could be seen as a 'promotion' and permission should be obtained.

A work permit holder can work for an additional employer, but each employer must obtain a work permit for the individual. A work permit cannot be transferred to another employer (unless the reason for the transfer relates to a merger, acquisition or amalgamation – in which case permission by way of letter must be obtained). The new employer must apply for a separate work permit.

It should be noted that a work permit holder has the ability to seek alternative employment without permission during the course of the work permit. However, the work permit holder is not normally permitted to change employers during the first two years of employment with an initial employer. Thereafter there is no limitation on the number of job changes.

## Dependants

### 26 Who qualifies as a dependant?

Spouses (same-sex or otherwise), long-term partners (same-sex or otherwise – an affidavit swearing to a genuine and subsisting relationship will be required) and dependent children (under 18 or up to 25 if in full-time education) qualify as dependants.

Extended family applications can be made. However, as they fall outside the immigration policy, they are decided at the Minister's discretion on a case-by-case basis. It will be essential that such dependants demonstrate they can independently financially support themselves or that the work permit holder has sufficient finances to support the additional family member.

### 27 Are dependants automatically allowed to work or attend school?

Spouses and partners of work permit holders who are in receipt of re-entry documents are automatically granted permission to seek employment but are still subject to work permit restrictions.

Dependants are permitted to attend school but permission to seek employment does not extend to children. Child dependants are required to make their own application for permission to seek employment when they turn 18.

### 28 What social benefits are dependants entitled to?

Children get free basic health coverage known as HIP.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

These are decided on a case-by-case basis. Factors considered include the severity and nature of the crime, number of convictions and how recently the offence occurred. Spent convictions such as driving violations will not normally be a barrier to obtaining a work permit.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Employers and employees are subject to fines and cases of non-compliance may jeopardise future work permit applications for the employer.

Individuals may also have their work permits revoked and be subject to deportation.

### 31 Are there any minimum language requirements for migrants?

The Policy states that persons coming to work in Bermuda under the Portuguese Accord, as well as those employed in the construction industry, are required to have a working knowledge of the English language.

### 32 Is medical screening required to obtain immigration permission?

Employers of individuals coming to Bermuda for the first time are required to submit a medical certificate of good health. As referred to in question 19, it is the responsibility of the employer to ensure that the applicant is in good health.

However, individuals who have ever resided for two months or more in a country on the WHO 'High Risk of TB' list must submit a certificate of general good health from a doctor, as well as an original chest X-ray, with the work permit application.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There is no specific procedure. Employees on secondment must obtain a work permit before commencing a secondment in Bermuda. Generally, the company utilising the services of the seconded employee is responsible for obtaining the work permit.

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# Brazil

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Brazil was formed by immigrants and continues to welcome foreign nationals. In view of Brazil's continuous economic growth, an increasing number of foreign citizens are willing to come to Brazil in order to study or work. As a consequence of this phenomenon, in the first quarter of 2017, the Brazilian Ministry of Labour and Employment granted over 6,415 work authorisations to foreigners from all over the world, especially North Americans, Europeans and Asians.

Nonetheless, the granting of Brazilian working visas is on condition of the fulfilment of several requirements established by the Brazilian Immigration Law, and the visa application process is only approved after careful analysis of the relevant documentation by the Ministry of Labour and Employment.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

It is worth noting that there are three situations in which short-term travellers would be required to obtain a Brazilian visa: coming to Brazil as tourists; coming to Brazil for business purposes; and coming to Brazil as technicians required to work on a specific short-term project.

Tourists are foreign citizens who come to Brazil for leisure activities or to visit Brazil with a non-immigration objective. Therefore, tourists are not allowed to perform any working or remunerated activity while in Brazil.

A foreign citizen is allowed to stay in Brazil as a tourist for a maximum of 90 days, which may be extended for an additional term of 90 days, depending on his or her nationality, totalling a maximum of 180 days within a period of 12 months.

Citizens of certain countries are exempted from requiring a tourist visa prior to travelling to Brazil, in view of special agreements entered into by and between the Brazilian government and the government of the foreign national's country of origin. In this case, the foreign national is only required to mention his or her tourist status upon arrival on Brazilian territory.

On the other hand, where the foreign national is required to obtain a tourist visa before travelling to Brazil, he or she must apply for it at the nearest Brazilian consulate abroad.

With regard to foreign nationals travelling for business purposes, a Brazilian business visa is required. This type of visa is applicable to foreign nationals that intend to participate in meetings, seminars, conferences, reunions, meet clients to discuss future projects and negotiate and execute contracts. It is also applicable to foreign nationals who travel to Brazil for house hunting.

Citizens of certain countries are also exempted from requiring a business visa prior to travelling to Brazil, in view of special agreements entered into by and between the Brazilian government and the government of the foreign national's country of origin. In this case, the foreign national is only required to mention his or her business status upon arrival in the country. On the other hand, where the foreign national is required to obtain a business visa before travelling to Brazil, he or she must apply for it at the nearest Brazilian consulate abroad.

Finally, the last visa alternative is the 90-day temporary technical visa. This visa is appropriate for foreign nationals who come to Brazil to render technical services, transfer technology or render technical assistance for a period of no longer than 90 days. The foreign national keeps his or her bond with the foreign employer and is not allowed to receive any remuneration in Brazil.

This visa must be applied directly at the corresponding Brazilian consulate abroad, through the presentation of a set of documents, including an invitation letter issued by the Brazilian company. This visa is not extendable.

### 3 What are the main restrictions on a business visitor?

The business visa is suitable only for foreigners who wish to come to Brazil in order to take part in workshops, meet clients and other non-productive activities. The holder of a business visa is not allowed to have a working routine in Brazil, or have a personal desk, computer or phone line, perform managerial tasks, give or receive training, provide technical assistance or perform any other work-related activities.

The holder of a business visa is only permitted to stay in Brazil for a maximum period of 90 days, renewable for an additional 90 days in a 365-day period, depending on the foreigner's nationality.

The holder of a business visa is not allowed to receive any kind of remuneration in Brazil.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Yes. As explained in question 2, a work permit is required in order for a foreign national to give short-term training in Brazil.

The 90-day temporary technical visa is appropriate for foreign nationals who come to Brazil to render technical services, transfer technology or render technical assistance for a period of no longer than 90 days. The foreigner keeps his or her bond with the foreign company and is not allowed to receive any remuneration in Brazil. This visa must be granted directly at the corresponding Brazilian consulate abroad, and is not extendable.

On the other hand, in order to receive training in Brazil, a foreigner must apply for a long-term visa (the professional training visa), which is valid for one year.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Foreign nationals whose final destination is any country other than Brazil, but who need to pass through Brazil to get a connection without leaving the transit area (eg, port, airport, etc), are not required to obtain a transit visa.

Transit visas are only granted to foreign nationals who need to stay in Brazil for a short period while in transit to another country. Such a visa is granted for a maximum period of 10 days and the foreign national must apply for it directly at a Brazilian consular authority (consulate or embassy) abroad.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main immigration permission categories are:

- business visa;
- temporary working visa under a local labour relationship;
- 90-day temporary technical visa;
- one-year temporary technical visa;
- permanent working visa for individual foreign investors;
- permanent working visa for executive officers or directors; and
- professional exchange visa.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

After gathering all necessary documents to apply for the most suitable working visa, the corresponding visa application is submitted to the Immigration Department of the Brazilian Ministry of Labour and Employment, which takes about 30 to 45 days to grant or deny the request, or even require additional information or documentation, under its sole discretion. The foreigner is only allowed to start working after entering Brazil with the corresponding working visa.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

There are no minimum periods of stay under any Brazilian visa category. The maximum periods of validity of the main Brazilian visa categories are:

- temporary working visa under a local labour relationship: two years, after which conversion to a permanent working visa may be required;
- 90-day temporary technical visa: 90 days, not renewable;
- one-year temporary technical visa: one year, renewable for another period of one year;
- permanent working visa for individual foreign investors: the duration of this work permit's validity is three years and the foreigners' identity card (RNE) can be renewed at the end of such a period;
- permanent working visa for executive officers or directors: granted for five years and the RNE can be renewed at the end of such a period; and
- professional exchange visa: one year, not renewable.

### 9 How long does it typically take to process the main categories?

Applications for the main Brazilian visa categories take from 30 to 45 days to be analysed by the Brazilian Ministry of Labour and Employment.

Requests for visa extensions and conversion of temporary visas into permanent visas usually take from 12 to 18 months to be analysed by the Brazilian Ministry of Justice and the Ministry of Labour and Employment.

As the 90-day temporary technical visa is applied for at the corresponding Brazilian consulate abroad, the time frame for the issuance of the visa will depend on each consulate.

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

No. Such benefits may be defined by the Brazilian company according to its internal policies and market practices. However, when applying for a work permit, the Brazilian company must provide information about the remuneration and the benefits that the foreign employee will receive in Brazil.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The Brazilian immigration authorities follow objective criteria established by the Brazilian Immigration Law. Nevertheless, such authorities are allowed a certain degree of discretion in concrete cases.

With regard to complicated cases, it is possible to submit, along with the officially required documents, other documents or a petition explaining any exceptional situation to the Brazilian immigration authorities.

### 12 Is there a special route for high net worth individuals or investors?

The Brazilian Immigration Law sets forth a specific type of visa for foreign nationals who intend to invest in Brazil: the permanent working visa for individual foreign investors.

This visa is applicable for a foreign national who wishes to invest his or her own funds in a productive activity in Brazil. For the application of this type of permanent working visa, the foreign national shall directly invest into a Brazilian company the minimum amount of 500,000 reais, or the equivalent in any foreign currency.

Exceptionally, the National Immigration Council may authorise, under certain specific and discretionary conditions, the granting of a permanent working visa for a foreign national whose amount of investment is lower than the above-mentioned 500,000 reais, but higher than 150,000 reais, or the equivalent in any foreign currency. According to the Brazilian Immigration Law, 'the investment must result in an increase in the employment and income in Brazil, as well as in the productivity, through the assimilation of technology and fundraising for specific sectors'.

### 13 Is there a special route for highly skilled individuals?

On a general basis, there is no special route for highly skilled individuals. The granting of any Brazilian working visa shall always be preceded by the corresponding visa application process, according to the requirements set forth by the Brazilian Immigration Law.

All foreign nationals are supposed to apply for the most suitable visa, according to the criteria established by Brazilian immigration legislation.

However, as per recent alterations to the immigration legislation, the National Immigration Council is allowed to define simplified conditions for the granting of temporary visas in the case of foreigners who have strategic capabilities for Brazil.

### 14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

No, there is no special route for high net worth individuals for residence visas. As discussed in question 12, the permanent working visa for individual foreign investors is the only type of visa applicable for a foreigner willing to invest his or her own funds in a Brazilian company. Nevertheless, the type of visa referred to is considered a work visa and follows the standard processing path.

### 15 Is there a minimum salary requirement for the main categories for company transfers?

There is a minimum salary requirement for some specific categories. As per Brazilian immigration laws, foreign nationals who hold a temporary or permanent working visa and take part in an intra-company transfer must receive an equal or higher remuneration in Brazil than they received abroad. On the other hand, if the foreign national is hired from the market (not an intra-company transfer), his or her salary must be equal to or higher than the salary paid to a Brazilian employee holding the same position in the Brazilian company.

Additionally, it is important to mention that it is possible for the Brazilian company to choose to split the remuneration to be paid to the foreigner with the company abroad. Nevertheless, for the application for the corresponding temporary or permanent working visas, it is recommendable that the foreigner receives at least 50 per cent of his or her remuneration in Brazil. Also, it is important to emphasise that the total amount to be paid to the foreign national (including the part of the remuneration paid abroad) must be declared to the Brazilian tax authorities.

### 16 Is there a quota system or resident labour market test?

If a Brazilian company wishes to apply for a Brazilian working visa for a certain foreign national, it must justify the hiring of such foreign national by proving that the individual possesses certain skills and knowledge that could not be found in any other potential Brazilian candidate.

Nevertheless, for the purpose of applying for the temporary working visa for a foreign national before the Brazilian immigration authorities, the Brazilian company must provide evidence that at least

two-thirds of its workforce is composed of Brazilian employees and that the same proportion is observed in terms of payroll for Brazilian employees.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There are different eligibility requirements to qualify for work permits in Brazil, depending on the type of visa to be applied for.

With regard to the temporary working visa under an employment relationship, the requirements are the following:

- a minimum of nine years of formal education and two years of professional experience for occupations that do not require a graduate degree;
- a minimum of one year of professional experience and evidence that a bachelor's degree has been completed; or
- evidence of the conclusion of postgraduate studies with a minimum of 360 hours or a master's or PhD degree.

With regard to the one-year temporary technical visa, the foreigner must provide evidence of a minimum of three years of professional experience in the same field of practice that will be developed by him or her in Brazil.

**18 What is the process for third-party contractors to obtain work permission?**

Only the Brazilian company where the foreign national will effectively work can apply for the corresponding working visa in the capacity of sponsor. No third party is entitled to apply for a work permit on behalf of other companies.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Yes, the application for some of the Brazilian working visas requires proof of specific qualifications of the foreign applicant (ie, some years of work experience in the field in which he or she intends to work in Brazil and a minimum degree level), among other requirements, which are analysed on a case-by-case basis, depending on the type of visa that will be applied for.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

As per recent alterations to immigration legislation, the foreign holder of any temporary visa, except for a tourist visa, is now able to request the conversion of his or her immigration status to temporary work status. In addition, a tourist visa holder will be able to request the conversion of his or her visa to a student one. Be aware that the procedures to be followed for this conversion have still to be defined through the issuance of a ruling by the national immigration authorities.

**21 Can long-term immigration permission be extended?**

Yes. Some Brazilian long-term work authorisations may be extended or converted, as follows:

- the temporary working visa under a local labour relationship, after the expiry of the two-year term, may be converted into a permanent working visa, provided that certain conditions are met;
- the one-year temporary technical visa can be renewed once, for one additional year;
- the permanent working visa for individual foreign investors is extended by means of the renewal of the RNE card at the end of the three-year period; and
- the permanent working visa for executive officers and directors is extended by means of the renewal of the RNE card at the end of the five-year period.

**22 What are the rules on and implications of exit and re-entry for work permits?**

The holder of a temporary or a permanent working visa is allowed to exit and re-enter Brazil without limit during the period of validity of the visa. The holder of a temporary visa is not allowed to stay for more than 180 consecutive days outside Brazil, under the risk of the cancellation of his or her visa. Likewise, the holder of a permanent visa is not allowed to stay outside Brazil for more than two consecutive years.

**23 How can immigrants qualify for permanent residency or citizenship?**

An immigrant qualifies for permanent residency if they marry a Brazilian citizen or if they have a child in Brazil. In both cases, the immigrant can request permanent residency from the federal police in Brazil.

To obtain Brazilian citizenship, a foreign national must have lived in Brazil for at least four years under a permanent status. In addition, a foreign national is no longer required to renounce his or her previous nationality in order to obtain Brazilian naturalisation.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Brazilian visas expire automatically once they reach their final validity date; therefore, it is not necessary to apply for their cancellation should the holder of the visa remain in Brazilian territory until the expiry date.

Nevertheless, should the holder of the visa decide to leave the Brazilian territory before the expiry date, the Brazilian company must communicate with the immigration authorities and apply for the cancellation of the visa.

Applying for a new work visa implies the automatic cancellation of the first work visa.

**25 Are there any specific restrictions on a holder of employment permission?**

The holder of a temporary or permanent working visa is allowed to study, to be promoted and to receive a higher remuneration. Notwithstanding this, the holder is not allowed to work for another Brazilian company in addition to, or instead of, the original sponsor unless authorised by the Immigration Department of the Brazilian Ministry of Labour and Employment.

A reduction of salary or of any other benefits is expressly forbidden by Brazilian law.

## Dependants

**26 Who qualifies as a dependant?**

For Brazilian immigration purposes, the following persons are considered dependants:

- single children of 18 years old or younger, or older than 18 if there is evidence that such a person is not able to financially support him or herself;
- parents and grandparents, provided that the need for support is proved;
- a sibling, grandchild or great-grandchild if an orphan, single and younger than 18 years old or of any age, whenever the necessity of support by the applicant is proved;
- the spouse of a Brazilian citizen;
- the spouse of a foreign citizen temporarily or permanently residing in Brazil; and
- a partner in a common-law marriage.

The Brazilian Federal Constitution of 1988 accepts the common-law marriage between man and woman as being a family entity, and the Brazilian infra-constitutional law even attributes the same matrimonial citizenship to couples who are not formally married (article 1723 of the Brazilian Civil Code (Law No. 10406/2002)). From an immigration perspective, the possibility of obtaining a temporary or permanent visa for a partner, without distinction of sex, upon evidencing of common-law marriage and legal dependency was an innovation.

The residence visa based on family reunion used to be processed by the Brazilian Ministry of Labour. However, this type of visa must now be applied for directly at the appropriate Brazilian consulate or embassy abroad.

**27 Are dependants automatically allowed to work or attend school?**

As per recent alterations to Brazilian immigration legislation, family members and dependants over the age of 16 of the foreign national to whom a temporary working visa has been granted, regardless of any

previous job offer, will be granted a visa in his or her own name; a family member or dependant will be allowed to start working as from his or her entry into the country. Dependants of permanent working visa holders were already allowed to work in Brazil. There are no restrictions on a dependant attending school or college, independently of the kind of visa that was applied for by his or her sponsor.

**28 What social benefits are dependants entitled to?**

All foreign residents enjoy the same rights as Brazilian citizens, under the terms of the Constitution and laws.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Brazilian consulates require the presentation of certificates of criminal records in order to issue visas that were approved by the Brazilian Ministry of Labour and Employment. In this sense, criminal convictions may jeopardise the obtaining of immigration permissions, depending on the evaluation of the consulate.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

The penalties applied for companies and foreign nationals for non-compliance with the Brazilian Immigration Law are the following:

- the foreign national may be fined, deported and certainly will have difficulty re-entering Brazil in the future; and
- the company may be fined and will certainly have problems with the Ministry of Labour and Employment when applying for work visas in the future.

**31 Are there any minimum language requirements for migrants?**

There are no minimum language requirements for migrants. It is not mandatory for foreign nationals to speak Portuguese in order to apply for a Brazilian visa.

**32 Is medical screening required to obtain immigration permission?**

No medical tests are required for obtaining immigration permission.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

As regards a temporary working visa under an employment relationship, it is possible for a foreigner to provide services to the Brazilian company's clients on the client's site. However, the visa must be applied for by the Brazilian company that hires such foreigner, and not by the client, and the foreigner will maintain the professional bond with, and will receive the remuneration through, the sponsoring company's payroll.

Be aware, however, that foreign holders of technical working visas are not able to render services to any company other than the one that sponsored the visa.

* *The information in this chapter is accurate as of September 2017. To reflect recent changes a revised version of this chapter is being drafted and will be available at www.gettingthedealthrough.com as soon as practicable.*

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# Canada

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## Overview

**1 In broad terms what is your government's policy towards business immigration?**

Canada offers an expansive immigration framework that allows for the selection of foreign nationals as permanent and temporary residents. Canada's immigration laws, regulations and guidelines are centred on the screening and approval of the admission of temporary foreign workers, students, visitors and immigrants who will enrich Canada's social, cultural and economic growth, while filling gaps in Canada's labour market.

Under Canada's Liberal government, a number of reforms in immigration law have taken place and continue to be underway, starting with the renaming of Citizenship and Immigration Canada to Immigration, Refugees and Citizenship Canada (IRCC) and the appointment of a new IRCC minister, Ahmed Hussen (the Minister). The Liberal government, elected in 2015, has pledged and proved to be facilitative in its immigration mandate, by developing broader opportunities for business immigration while also facilitating personal immigration with a focus on prioritising family reunification. In this respect, the government has carried out the following:

- doubled the cap of parent and grandparent-based sponsorship applications to 10,000;
- provided more opportunities to obtain permanent residence (PR) through the Express Entry system; and
- eased the path to permanent residency for international students and individuals with prior Canadian work experience.

The government has increased the maximum age of dependants to 'under 22' from 'under 19', thereby allowing families to immigrate to Canada together. Children who are 22 years of age or older and who rely on their parents because of a physical or mental health condition also continue to be considered dependent children. Other notable changes include the creation of Canada's new Global Skills Strategy, designed to help employers attract skilled talent to Canada, the signing of the Canada–European Union Comprehensive Economic and Trade Agreement (CETA), which took provisional effect on 21 September 2017, and an agreement in principle regarding the Trans-Pacific Partnership (TPP), which is expected to come into effect in late 2018 or early 2019.

### Employer compliance

To enforce its immigration policy objectives, the government has implemented greater measures surrounding immigration compliance, particularly in the area of temporary residence, to ensure that the employment of foreign workers recruited by Canadian employers is consistent with Canada's goals regarding economic immigration and prosperity. In this regard, the government has imposed additional requirements for all companies seeking to support a work permit application for a foreign national in Canada.

As of February 2015, IRCC requires all employers who support a foreign national to either meet rigorous requirements as part of a Labour Market Impact Assessment (LMIA) or, if applying under an LMIA-exempt work permit category, to register and complete an employer compliance filing. This has provided government with the means to conduct in-depth compliance reviews of all work permits and is designed to strengthen the enforceability mechanism of employer compliance.

## Short-term transfers

**2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?**

### Entry visa requirement

Citizens of certain countries or territories seeking to enter or transit into Canada may require an entry visa, known as a temporary resident visa (TRV). The requirement for a TRV is not based on duration in Canada; rather, the framework is premised on the foreign national's citizenship at the time of entry to Canada. A foreign national who requires an entry visa must apply for a TRV at a visa post abroad before entering Canada. If the foreign national is already a temporary resident in Canada with valid status, and his or her current TRV has or is soon to expire, he or she may apply for a new entry visa to a designated visa office in Canada.

Pursuant to its mandate to facilitate the temporary entry of low-risk travellers, the Canadian government removed the visa requirements for citizens of Bulgaria and Romania as of 1 December 2017 and for citizens of the United Arab Emirates as of June 2018, and has relaxed visa requirements for nationals of certain other countries, including Brazil. With future changes to entry visa requirements expected to be announced in 2018–2019, it is recommended to verify requirements as the need for entry arises. Up-to-date information on TRV requirements can be found at the IRCC website at www.cic.gc.ca/english/visit/visas.asp.

### Electronic travel authorisation (eTA)

From 10 November 2016, foreign nationals from visa-exempt countries who fly to or transit through Canada must obtain an eTA prior to boarding their flight. This requirement, introduced in 2015, is a new pre-screening measure to aid in the identification of high-risk travellers, and prevent their travel to Canada. Certain visa-exempt travellers are, however, exempt from the eTA requirement including, but not limited to, US citizens, the UK royal family and those travelling to Canada by land or sea.

The eTA application is an online-based process, requiring applicants to submit basic information pertaining to their identity, details of their visit to Canada and personal history. Once issued, the eTA is valid for five years or until passport expiry, and is linked to the passport with which the application was submitted. Note that eTA does not replace or supplant existing immigration requirements related to the purpose of the travel (eg, visit, work or study) and is not an immigration status document (eg, TRV, work authorisation, work permit, study permit, etc).

### Biometrics

Since 2013, citizens of approximately 30 countries deemed to be high-risk from a security perspective have been required to provide biometrics (eg, fingerprints and photographs) as part of the immigration process. As of 2018, this requirement is being expanded to apply to most foreign nationals applying for a Canadian TRV, work or study permit, permanent residence or refugee status. Applicants from Europe, the Middle East and Africa will need to give biometrics as part of the application process if they will be filing an immigration application on or after 31 July 2018, while applicants from Asia, the Asia-Pacific region and the Americas will need to give biometrics if they will be filing an immigration application on or after 31 December 2018. Visa-exempt foreign nationals will be able to give biometrics upon arrival in Canada while visa-required foreign nationals will need to provide biometrics in

advance through a Canadian visa application centre abroad. There are certain exemptions to the biometrics requirement, notably for US citizens applying for a work permit or study permit.

**Work permit requirements for short-term transfers**

Under section 2 of the Immigration and Refugee Protection Regulations (the Regulations), 'work' is defined as an activity for which wages are paid or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market. A work permit, an official immigration document to legally authorise a foreign national's work, is generally required for any foreign national seeking to enter and engage in business in Canada, irrespective of the length or duration of stay. In limited circumstances, however, authorisation to work or engage in business in Canada without a work permit may be issued in limited contexts as laid out in section 186 of the Regulations, which include business visitors, foreign representatives and their families, military personnel, foreign government officers, performing artists, athletes and team members, news reporters and crew, public speakers, clergy, convention organisers and crew members, among others. Highly skilled workers in occupations classified as national occupational classification (NOC) 0 or A, who are entering Canada for an initial maximum period of 15 or 30 consecutive days, may also qualify for a work permit exemption under Canada's new Global Skills Strategy.

## 3 What are the main restrictions on a business visitor?

**Business visitor classification**

Under Canada's immigration laws and regulations, a business traveller may enter Canada either as a business visitor or a work permit-required foreign worker. Business visitors are foreign nationals seeking entry to Canada to engage in international temporary business or trade activities in Canada without entering or competing with the Canadian labour market. Minimum criteria for entry as a business visitor are as follows:

- there must be no entry into the Canadian labour market;
- the foreign worker's activity must be international in scope (presumption of an underlying cross-border business activity); and
- there is the presumption that:
  - the primary source of the worker's remuneration remains outside Canada;
  - the principal place of the worker's employer is located outside Canada; and
  - the accrual of profits of the worker's employer remains outside Canada.

Permissible business visitor activities include, but are not limited to, the following:

- attending business meetings;
- attending conferences;
- engaging in consultations or negotiations on behalf of, and for the benefit of, a foreign employer; and
- engaging in general discussions.

A business visitor cannot enter Canada to actively manage a Canadian operation or project, or to provide hands-on production of goods or performance of services. Permissible business visitor activities must be of an international nature – the business visitor enters Canada on behalf of, and is paid by, a non-Canadian employer to undertake activities that do not directly challenge the local labour market. Activities that are deemed to be competitive in the Canadian labour market require a work permit regardless of duration of stay or source of pay. Ultimately, the final determination of whether the activity constitutes work is within the immigration officer's discretion and judgement.

Foreign nationals applying for entry as business visitors may do so on arrival at an airport or border crossing if they are visa-exempt, or as part of their TRV application, if required. Duration may be limited by a notation or stamp in the foreign national's passport or through the issuance of a visitor record. An immigration officer may allow the business visitor to enter Canada for up to six months; however, the officer has the discretion to authorise a longer or shorter entry.

As this area of immigration law can be complex, caution must be exercised to ensure that there is no misrepresentation on the part of the foreign national or the Canadian or foreign employer, or both, as they may face penalties and sanctions.

## 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Generally, the delivery of training is a service for which a work permit is required. There are, however, several exceptions. Specifically, a foreign national may enter Canada as a business visitor to provide or receive short-term training in the following situations:

- provide or receive training to a Canadian parent or subsidiary of the foreign national's foreign-based employer;
- receive training related to goods and services that have been purchased from a Canadian entity; or
- provide training to end users and maintenance personnel in Canada related to goods that have been manufactured and sold outside Canada.

Where a foreign national provides or receives training in Canada as a business visitor under one of the above exceptions, Canadian citizens or permanent residents must not be displaced as a result of the foreign national's activities. Trainers and trainees cannot complete hands-on training or engage in any productive work unless the primary purpose of the activity remains the training.

Training may trigger the requirement for a work permit in certain scenarios such as internships, provision of training services while being employed by a Canadian entity (eg, Canadian company hiring a foreign national to train managers) and where the training involves productive work in Canada.

When evaluating the intended training activities under a purchase contract for after-sales service, the immigration officer will consider whether:

- a valid sales contract for the sale of industrial or commercial equipment or software exists between a Canadian company and the equipment manufacturer outside of Canada;
- the contract of sale contemplates the training and its scope; and
- whether the cost of the training is included in the price of the equipment sold, or is charged separately.

## 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

All individuals who require a TRV to enter Canada also require a transit visa (TV) when passing through Canada, even if they are in Canada for less than 48 hours. The process for obtaining a TV is the same as for obtaining a TRV; however, TV fees are generally waived. Note that certain eligible foreign nationals, either under the Transit without Visa Program (applicable to foreign nationals from Indonesia, the Philippines, Taiwan and Thailand) or the China Transition Program may transit through Canada to and from the US without obtaining a transit visa.

IRCC and Canada Border Services Agency (CBSA) have established programmes that allow certain foreign nationals to transit through Canada on their way to and from the US without a TV or, if a memorandum of understanding exists, provided certain criteria are met.

# Long-term transfers

## 6 What are the main work and business permit categories used by companies to transfer skilled staff?

**Temporary Foreign Worker Program: LMIA-based work permits**

An LMIA is a labour market verification test whereby Employment, Workforce Development and Labour will analyse an offer of employment made to a foreign national to ensure that the employment of the foreign worker will not negatively impact the Canadian labour market. Unless they qualify for variations to minimum advertising, Canadian employers are required to 'test' the labour market by undergoing or conducting minimum advertising and recruitment efforts before making the LMIA application.

In assessing an LMIA application, Employment, Workforce Development and Labour will review the following:

- does the salary offered meet the local prevailing wage for the position?;
- are the working conditions consistent with Canadian labour and employment laws and relevant collective bargaining agreements?;
- is there a labour shortage for that occupation in the local area?;
- are there labour disputes in the particular company and industry?;

- has the employer sufficiently recruited but been unable to find a Canadian to fill the position?;
- will the foreign worker transfer unique skills or expertise to Canadian citizens or permanent residents?; and
- will the hiring of a temporary foreign worker displace or negatively affect the employment of Canadian citizens or permanent residents?

If granted, a temporary LMIA is used by the employer to hire a foreign worker for a finite period. Upon approval of an LMIA, the foreign worker must submit a work permit application in order to obtain a work permit.

**International Mobility Program (IMP): LMIA-exempt work permits**

There are some work permit categories that do not require a company to go through the LMIA process. These exceptions fall under Canada's IMP and can result in both open and employer-specific work permits. Below are the most commonly used exceptions for business immigration:

***Intra-company transfer (C12, T24)***

The criteria below must be met to apply under the intra-company transfer category either as a specialised knowledge worker or as an executive, senior manager or functional manager:

- there must be a qualifying relationship between the foreign national's home employer (outside Canada) and the prospective Canadian employer (ie, affiliate, parent, subsidiary or branch in Canada), both of which must maintain continuous and active operations;
- the employee must be currently employed by the home employer in a specialised knowledge, senior managerial or executive capacity and have worked in that capacity full-time for at least one continuous year during the three years immediately preceding the date of the work permit application;
- the foreign worker must be entering Canada for a temporary period to occupy a similar position with the Canadian entity; and
- the Canadian entity must control the foreign worker's day-to-day activities while in Canada.

*Specialised knowledge workers*

Immigration officers apply a rigorous test in determining whether a foreign national's knowledge is in fact specialised such that they may qualify as an intra-company transferee. The test focuses on the applicant's degree of proprietary knowledge and their advanced expertise within the company and industry. Specialised knowledge workers generally possess:

- abilities that are unusual compared to those generally found in the industry, and cannot be easily transferred;
- knowledge or expertise that is highly unusual both within the industry and host firm;
- proprietary knowledge that is critical to the Canadian company, without which there would be a significant disruption to the company's operations or business;
- a clear employment relationship, with intra-company transferees under the direct and continuous supervision of the host company; and
- experience and knowledge that does not require training at the host company related to the area of expertise.

Specialised knowledge is unique and uncommon, held by only a small number or small percentage of employees within a company. The onus is on the participating entities and the foreign national to demonstrate that they are key personnel, not simply highly skilled. The salary of the specialised knowledge worker must be commensurate with the prevailing wage set by Employment, Workforce Development and Labour for the intended specialist position in the intended work location in Canada.

A mandatory wage floor has also been implemented for most specialised knowledge workers, which is expanded upon in question 15.

*Executives, senior managers and functional managers*

The foreign worker must manage the company or a major component of a department of the company, manage other staff or manage an essential function of the company. The foreign worker may also be a senior executive or manager who manages both the Canadian and home country departments and may need to implement managerial decisions in Canada, despite not residing or working regularly in Canada.

***Reciprocal employment: general guidelines (C20)***

Foreign workers may take up employment in Canada where Canadians have similar reciprocal opportunities abroad. The underlying policy objective is to permit Canadian employees to gain international experience and to allow for cultural exchanges.

The onus is on the companies and foreign national to demonstrate that reciprocity exists between the Canadian company and the home employer, generally through a written formal policy. Entry under these reciprocal provisions should result in a general neutral labour market impact.

There is no maximum duration associated with this type of work permit; however, reciprocity must be met for each work permit renewal.

***Reciprocal employment: International Experience Canada (IEC) (C21)***

IEC manages work permits based on bilateral agreements between Canada and certain countries. The IEC programme may facilitate the entry and work of international youths through a working holiday programme or other streams as per the respective country agreement (such as young professionals, interns or summer students). This programme is generally available to young people aged 18 to 35 (age criteria is dependent on the foreign national's country of citizenship) who are citizens of one of the countries with a bilateral reciprocal youth mobility agreement with Canada. IEC is designed to allow young people of participating countries to gain international work experience to bring back to their country. Depending on the participating country and applicable IEC category, the eligible applicant may participate in IEC only once or twice.

The IEC work permit application is a two-stage process whereby the foreign national must first create an online profile expressing interest in applying for a work permit under the IEC programme. Based on the candidate's eligibility, along with the number of applications received (and the quota for work permits issued under the IEC for that country), candidates are selected and issued an invitation to apply (ITA). With an ITA, applicants may then apply for their work permit at a visa post abroad.

***Student work permit: co-op or internship programme (C30)***

Foreign nationals studying in Canada are authorised to work part-time on the basis of their study permit. However, those seeking to work full-time as part of a co-op or internship programme may apply for a work permit provided the work forms an essential part of an academic, vocational or professional training programme offered by a designated learning institution. To qualify, the student must hold a current valid study permit and the co-op or internship must not form more than 50 per cent of the total programme of study.

Students studying English or French as a second language, or participating in general interest or preparatory courses, will not qualify for this type of work permit.

***Student work permit: off-campus work permit (C25)***

Full-time students pursuing an academic, professional or vocational training programme of at least six months' duration at a designated learning institution are eligible to work off-campus without a work permit for up to 20 hours per week during regular academic sessions, and full-time during scheduled breaks.

***Student work permit: post-graduation work permit (PGWP) (C43)***

This programme allows international students who have graduated from a participating Canadian post-secondary institution to gain Canadian work experience, which may later help them qualify for Canadian PR, through the Canadian Experience Class.

A PGWP may be issued for the length of the study programme, up to a maximum of three years. Educational programmes must be a minimum of eight months in length in order to be eligible for this programme.

To apply, the student must apply within 90 days of receiving written confirmation of eligibility to graduate and must hold a current valid study permit.

***Significant benefit to Canada: general guidelines (C10)***

The foreign national's contribution and proposed benefit to Canada should be significant and of social, cultural or economic importance.

The immigration officer will analyse the proposed benefits, whether the person's presence in Canada is crucial to a high-profile event, and whether circumstances have created urgency surrounding the person's entry. Applicants seeking this type of work permit generally require extensive experience in their field.

Work permit issuance under this category is highly discretionary and will only be granted where benefits to Canada are clear and compelling. In those circumstances where an LMIA is required, the C10 work permit may allow the LMIA obligation to be circumvented, in order for the foreign national to enter on an urgent basis. Extensions under this category are rarely granted.

***International treaty: professional work permits (T23)***

The foreign national must be a citizen of a country that is a signatory to the international treaty agreement forming the basis for applying under this category. The foreign national must work as a professional and must satisfy several prescribed eligibility criteria associated with the specific profession (ie, possess requisite minimum educational credentials associated with the intended profession), in accordance with the respective treaty or free trade agreement. In some cases, it may be possible to substitute extensive work experience in lieu of formal educational credentials.

***Mobilité Francophone (C16)***

The intent of the Mobilité Francophone work permit category is to allow Canada to attract skilled francophone workers to provinces other than Quebec. Under this stream, employers seeking to employ French-speaking foreign nationals in managerial, professional and technical or skilled trade occupations under the NOC skill levels A, B or 0, are not required to seek an LMIA, provided that the foreign national has been recruited through a francophone immigration promotional event coordinated between the federal government and francophone-minority communities. The officer must further be satisfied that the applicant's habitual language of daily use is French. Where the officer is not satisfied that this is the case, either an interview or language test results demonstrating an advanced intermediate level or above in French (eg, Canadian Language Benchmark (CLB) of level 7 or higher in the Test d'évaluation de français (TEF)) may be required.

All work permit applications under this category must be processed by a Canadian visa post outside Canada. Once IRCC approves the work permit application, the applicant will receive a port of entry letter of introduction that may be presented at the border for the issuance of a work permit document.

**Dependent work permit: spouse or common-law partner or child**

These types of work permits are discussed in question 27.

## 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The procedure for obtaining work authorisation in Canada may vary depending on the applicant's circumstances.

For all employer-sponsored, LMIA-exempt work permits, the company in Canada must submit an employer compliance filing before the work permit application may be lodged. The employer compliance filing involves submitting details of the offer of employment (including scope of activities, position, education requirements, hours of work, salary and benefits to be earned while in Canada) via the government's online employer portal. Once filed, a reference number will be generated, which must be included with the foreign national's application. Note that all details of the work and offer of employment must be accurate, as the government relies on this data when conducting subsequent immigration audits and employer-compliance reviews.

If a TRV is required or if the work permit category mandates, the work permit application must be made at the appropriate Canadian visa post abroad. Once approved, a TRV will be affixed to the foreign national's passport and a work permit approval letter will be issued. The foreign national must then travel to the Canadian port of entry where a work permit document will be issued to them. If the foreign worker does not require a TRV, then they may apply for a work permit directly at the Canadian port of entry (provided that the work permit category permits submitting the application upon entering Canada).

If the foreign national requires an immigration medical examination, the work permit application should be made at the appropriate Canadian visa post abroad. The visa post will then issue medical examination instructions unless the examination results are provided upfront.

## 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

The maximum period of authorised work in Canada depends on the work permit category and, in some cases, the type of position in Canada.

**Intra-company transfers**

The maximum periods for which a work permit may be granted under the intra-company transfer work permit category are:

- senior managerial and executive category: seven years; and
- specialised knowledge category: five years.

Initial work permits for intra-company transfers are granted for three years. An initial one-year work permit will be granted to transferees entering Canada to open or work in a new office, as well as those being parachuted into client or project sites. Extensions may be granted for generally up to three years at a time. After intra-company transferees have held a work permit for the maximum time allowed, they must complete one year of full-time employment in the company outside Canada before they may reapply under this category.

There is no set minimum period of stay required under the intra-company transfer provisions. If a foreign worker reaches the maximum period of work permit duration permissible for the specific intra-company transferee category (eg, five or seven years), they may be able to 'recapture' time spent physically outside Canada during the preceding five or seven-year period. Recapture of time will not be permitted for any time periods of less than one month, or for events that are generally anticipated throughout the duration of a work permit, such as holidays or weekends.

## 9 How long does it typically take to process the main categories?

See the table below. All processing times are estimates and subject to change. Note that under Canada's new Global Skills Strategy, 80 per cent of online work permit applications submitted from outside Canada requesting employment in NOC 0 or A occupations will qualify for the two-week processing standard, which will supersede the processing times listed below.

| Typical processing times for work permits (approximate estimates) | |
|---|---|
| LMIAs (required before work permit application can be made at a Canadian visa office or port of entry) | 8 to 12 weeks for standard LMIA |
| LMIAs (highest-demand, highest-paid, or shortest-duration stream only) | 10 business days or less |
| Applications filed at a Canadian visa office (no medical required) | 4 weeks (minimum); certain visa posts have higher processing times |
| Applications filed at a Canadian visa office (medical required) | 8 to 16 weeks (minimum) |
| Applications filed for extension of status in Canada | 8 weeks if filed online*<br>4 to 5 months if filed by courier or mail*<br>*as of July 2018; subject to change |

## 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

There are currently no additional requirements to obtain a Canadian work permit for the categories noted above for highly skilled or high-wage workers; however, provincial employment standards will apply. If the foreign worker's position requires approval for an LMIA under the low-wage category, then the employer is responsible for the following:

- covering the transport costs of foreign workers to the work location in Canada and back to their place of PR;
- for ensuring that the foreign workers have suitable and affordable accommodation available; and
- covering the costs of temporary foreign workers' workplace safety coverage and private health insurance until the appropriate provincial or territorial health insurance plan becomes available.

IEC applicants must provide proof of health insurance when they arrive in Canada.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

All Canadian government departments are given expansive and high-level discretionary authority in interpreting Canadian immigration laws and manuals. The federal Immigration and Refugee Protection Act (IRPA) is the legislative framework governing the general principles, criteria and powers relating to immigration decision-making set by the government. The IRPA allows the Immigration Minister to issue special ministerial instructions to immigration officers who will then implement and enforce the government's immigration mandate. The IRPA is complemented by the Immigration and Refugee Protection Regulations, which comprise the IRPA's definitions and procedural matters, and specify how the IRPA is to be applied. In addition, administrative guidelines assist IRCC and CBSA immigration officers in the immigration decision-making process.

**12 Is there a special route for high net worth individuals or investors?**

The federal immigration investor and entrepreneur programmes have been terminated. However, the Quebec investor programme and Quebec entrepreneur programme are still in place with limited numbers of applications being accepted each year. Many of the provincial nominee programmes (PNPs) also have investor and entrepreneur programmes for individuals who wish to start a Canadian business.

In addition, there is a federal self-employed persons programme (available to those with relevant experience in cultural activities, athletics or farm management) and a start-up visa programme that links entrepreneurs looking to relocate to Canada with private sector companies that are experts in start-ups.

**PNPs**

The majority of provinces or territories can nominate foreign nationals to immigrate to Canada. These individuals must possess the requisite intention, skills, education and work experience to contribute to the economy of that province or territory.

To apply under the PNP, a foreign national must be nominated by a specific Canadian province or territory then apply to IRCC to become a permanent resident.

Provincial objectives are based on labour market needs and skill shortages (among other criteria) and each province and territory has different priorities. Generally, foreign workers may make an application with the support of their employer based on their skills or knowledge in the intended province of residence. In some provinces, individuals who have graduated from a Canadian educational institution may be able to submit an application directly to the PNP for processing, without employer support. Many provinces have specific streams to facilitate the application for PR through entrepreneur or corporate expansion streams. For high net worth individuals seeking to open or expand a business in Canada, the following additional requirements must be met (noting that requirements may vary by province or territory):

- make a minimum investment depending on the stream, location and sector of the proposed business;
- create jobs for Canadian citizens or permanent residents; and
- meet minimum language requirements of CLB 5 or equivalent.

If the PNP approves the application, then a nomination certificate is issued and the foreign national has a limited time to submit their PR application to the federal stage.

It is important to note that once the PNP certificate is obtained, the foreign national may use the document to obtain a temporary work permit to allow the individual to commence work immediately while the PR application is processed.

**Processing PNP applications via the Express Entry system**

Most Canadian provinces have introduced PNP categories that are processed through the Express Entry system. The application process commences with the foreign national submitting an online profile through the Express Entry portal. In the portal, applicants are asked to select the province they would like to immigrate to, or indicate that they do not have a preference. The various PNP programmes will use the Express Entry system to select individuals who meet the provincial criteria and ask them to formally apply. Process and processing time can differ between provinces. Once a provincial nomination certificate is received, an applicant's point score under the Express Entry system is increased to a score that virtually guarantees that they will receive an ITA for PR in the next draw from the Express Entry candidate pool. For more on the Express Entry system, see below.

**Federal start-up visa programme**

To be eligible, a foreign national must:

- prove the business venture or idea is supported by a designated organisation;
- demonstrate that the business meets the ownership requirements;
- meet specific language requirements; and
- have sufficient settlement funds.

**Quebec investor programme**

To be eligible, a foreign national must:

- have sufficient net assets;
- have experience managing a legal farming, commercial or industrial business, or in a legal professional business; and
- intend to settle in Quebec and sign an agreement to invest a specific amount.

Other factors such as the applicant's age, the nature and duration of his or her professional training and language skills are taken into account.

**Quebec entrepreneur programme**

To be eligible, a foreign national must:

- have sufficient net assets; and
- have at least two years' experience running a business in the previous five years.

Applicants must also successfully present a business plan that outlines the feasibility and relevancy of the project to Quebec.

Other factors such as the applicant's age, language skills, the nature and duration of his or her training, personal qualities and knowledge of Quebec, and the steps taken to acquire a business in Quebec or the ability of the applicant to carry out a business project in Quebec, are taken into account.

In addition, upon the foreign national's arrival in Quebec, he or she must comply with certain conditions for at least one year during the three years after obtaining permanent resident status.

**13 Is there a special route for highly skilled individuals?**

The Express Entry programme came into effect on 1 January 2015 and allows IRCC to actively recruit, assess and select skilled immigrants under several federal economic immigration programmes: Federal Skilled Worker Program (FSWP), Federal Skilled Trades Program (FSTP), Canadian Experience Class (CEC) and certain PNPs. Under this system, foreign nationals who meet the criteria for at least one of the economic immigration programmes will be placed into a pool of candidates and ranked according to a comprehensive ranking system (CRS).

Applicants are awarded points, known as a CRS score, to a maximum of 1,200, on the basis of their age, education, work experience and language ability. The highest-scoring applicants will receive an ITA for PR via a federal programme or PNP. An applicant who receives an ITA will have 60 days to submit an online application before the ITA expires. An applicant's ITA will specify which immigration processing stream he or she has qualified under.

Once the applicant has completed the online profile, it is recommended, but no longer required, that they register on the government's 'job bank', which seeks to match employers with candidates who possess the credentials they are seeking. Having a valid, full-time job offer of at least one year in a skilled position, or supported by an LMIA will assist candidates in receiving an ITA for PR as the candidate's points score will be increased by either 200 or 50 points, depending on the foreign national's proposed role in Canada. Those candidates possessing a valid provincial or territorial nomination will receive an extra 600 points.

Express Entry was created to ensure greater flexibility and better responsiveness to deal with regional labour shortages, and to help fill positions for which there are no available Canadian citizens or permanent residents. Express Entry enables the government to select candidates who are most likely to easily integrate into the Canadian labour market, rather than processing applications on a 'first come, first served' basis.

Candidates in the Express Entry pool who do not receive an ITA for PR after 12 months are required to resubmit their profile, provided they still meet the requisite criteria.

To date, there have been 93 rounds of invitations issued, with a total of approximately 190,000 ITAs issued. The number of ITAs issued in each selection round is determined by the government's capacity to process applications in a timely manner of six months or less. To date, approximately 80 per cent of express entry applications have been processed in six months or less. The categories under which one can apply for PR are as follows.

**FSWP**

The foreign national must meet the following criteria:

- at least one year of continuous full-time (or part-time equivalent) work experience in a single occupation within the previous 10 years at NOC skill level 0, A or B;
- minimum language proficiency;
- minimum education credentials;
- plans to live outside Quebec; and
- sufficient funds, if not otherwise exempt.

If the foreign national meets the above-mentioned criteria, the worker will be assessed against six selection factors (age, education, language ability, work experience, adaptability and arranged employment) that form part of a 100-point grid. The current pass mark to qualify is 67 points.

The foreign national must also show that he or she is not inadmissible, based on security, criminal, health, financial or other grounds.

**FSTP**

The foreign national must meet the following criteria:

- at least two years of full-time experience (or part-time equivalent) in a skilled trade within the five years prior to applying;
- minimum language proficiency;
- have a full-time offer of at least one year's employment, or a certificate of qualification in that skilled trade issued by a provincial or territorial body;
- plans to live outside Quebec; and
- apply within a specific skilled trade identified by IRCC.

The foreign national must not be inadmissible based on security, criminal, health, financial or other grounds, and must show that he or she has sufficient funds to support the stay in Canada.

**CEC**

The foreign national must meet the following criteria:

- have one year of full-time, skilled (NOC skill levels 0, A or B) work experience in Canada within the previous three years;
- gained the work experience in Canada with proper authorisation to work;
- plans to live outside Quebec; and
- minimum language proficiency.

The foreign national must not be inadmissible based on security, criminal, health, financial or other grounds.

**Quebec Skilled Worker Program**

Quebec has a special agreement with the Canadian government regarding immigration and has a distinct set of rules for choosing foreign nationals who will sufficiently integrate into Quebec society. Quebec has a points-based system, where a single applicant must score a minimum of 50 points and an applicant with a spouse or common-law partner must score a minimum of 59 points. The foreign national must apply to the Department of Immigration, Diversity and Inclusion for a Certificate of Selection and then apply to IRCC to become a permanent resident. The foreign national also must not be inadmissible to Canada, based on security, criminal, health, financial or other grounds.

**Quebec experience class**

This is an accelerated and simplified immigration programme that will allow temporary foreign workers and foreign students currently in Quebec to apply to immigrate permanently to Quebec.

A foreign national must:

- have gained work experience or studied in Quebec;
- plan to live in Quebec; and
- demonstrate an advanced intermediate level of oral French.

The foreign national also must not be inadmissible to Canada, based on security, criminal, health, financial or other grounds.

**PNPs**

See question 12.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12 regarding the special routes available for high net worth individuals seeking PR. These route options are not fast-tracked in processing.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

In most cases, employers are expected to meet or exceed the listed prevailing wage for similar positions in the intended location of employment. Non-cash per diems cannot be included in the calculation of the overall wage; however, guaranteed monetary allowances paid directly to the foreign worker can be included.

A special exception to prevailing wage requirement has been provided for specialised knowledge intra-company transferees entering Canada pursuant to an international free trade agreement; however, salaries must still be commensurate with their position.

**16 Is there a quota system or resident labour market test?**

There are generally no set quotas on the number of Canadian temporary work permits that may be issued. IEC programmes have quotas based on the terms of their respective reciprocal agreements and are typically set on an annual basis.

LMIA applications, including those supporting temporary work permits and those supporting a PR application, require that the labour market be tested prior to making an LMIA application. Further, employers applying for a low-wage LMIA must generally ensure the number of temporary foreign workers does not exceed 10 per cent of their overall workforce if they hired low-wage foreign workers prior to June 2014.

**Recruitment and advertising requirements**

Before applying for an LMIA, employers must advertise the job vacancy in the Canadian job market for at least four consecutive weeks on the Canadian job bank website, along with two or more additional but distinct recruitment methods consistent with the normal practice for the occupation, one of which must be national in scope. The choice of advertising must be reasonable in light of the position being sought, and at least one job advertisement must remain posted until a final determination has been made regarding the LMIA application. Employers are encouraged and, in the case of low-wage LMIAs, are required to conduct recruitment efforts targeting Canadians who are traditionally underrepresented in the labour market, such as indigenous peoples, new immigrants or persons with disabilities. Employers must be able to demonstrate that they met the advertising requirements by providing proof of their recruitment and advertising efforts to find qualified Canadians and permanent residents. Records of such efforts must be kept for a minimum of six years from the date of the foreign worker's employment, as the documentation may be requested at any time by Employment, Workforce Development and Labour. Failure to provide proof of recruitment and advertising may result in a finding of non-compliance, upon inspection.

Note that depending on the position and work location, limited variations to the minimum advertising requirements may apply.

Accepted variations currently include:

- university professors;
- camp counsellors (Ontario only);
- recipients of Certificate of Selection (Quebec only);
- unionised positions where internal recruitment is stipulated;
- employees of foreign governments;
- entertainment-specific occupations;
- owner-operators;

- religious instructors;
- seasonal agricultural workers;
- specialised service technicians or providers; and
- original equipment manufacturers performing warranty work.

The onus is on the employer to demonstrate eligibility for a variation to advertising.

**Transition plans for high-wage positions**
In the event that employers are applying for LMIAs for high-wage positions, they must (with limited exceptions) submit a transition plan with their LMIA application. The transition plan, which is a requirement over and above the applicable recruitment activities, must indicate how the company plans to reduce its reliance on temporary foreign workers in one of two ways:

- by engaging in at least three distinct activities to recruit, retain and train Canadians or PRs in the occupation specified in the application and one additional distinct activity to serve underrepresented groups; or
- by engaging in one activity that facilitates the permanent residency of the temporary foreign worker.

If the employer is chosen for a compliance review or if it plans to renew its LMIA, it will be required to report on the progress of the transition plan. Failure to abide by the company's commitments in a transition plan may result in a finding of non-compliance and applicable sanctions.

**Global Talent Stream (GTS)**
As of 12 June 2017, employers hiring foreign workers for certain technology-driven occupations, or those referred to the programme by one of IRCC's designated partner organisations, are authorised to submit an LMIA application under the GTS. The GTS facilitates the entry of highly skilled foreign workers by removing the recruitment requirement, reducing the documentation required and significantly improving the processing times for a qualifying LMIA application. The criteria required to qualify for an LMIA under the GTS stream reflect a recognised labour market shortage in the industries and occupations identified and as such, an employer need not demonstrate this.

Employers applying under the GTS must include a Labour Market Benefits Plan in their application, outlining how the foreign national's employment will positively impact the Canadian labour market. In doing so, employers must commit to pursuing either job creation or upskilling for Canadian citizens or permanent residents and an additional two benefits of their choice.

**Dual intent LMIAs**
In addition to the temporary LMIA, employers may apply for a dual intent LMIA, with the intention of utilising the LMIA to support both an application for a temporary work permit as well as for PR. The dual intent LMIA may be utilised to support a foreign national's dual PR application and work permit application. In this case, the standard government processing fee is C$1,000 for each temporary worker position and the application will be subject to the standard processing time as outlined in question 9.

### 17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

Eligibility requirements for a work permit in Canada depend on the type of work permit and the foreign national's particular circumstances, including but not limited to the applicant's nationality, work experience and educational background, as well as the nature of the work and scope of activities to be performed in Canada. Other eligibility requirements apply for intra-company transfers (see question 6) and those entering pursuant to an international treaty.

**International treaties**
In order to qualify for a work permit under an international treaty such as the North American Free Trade Agreement, eligibility criteria such as the employee's citizenship and educational requirements for the specific professional occupation must be adhered to. Canada is currently party to several free trade agreements with countries including Chile, Colombia, Korea and Peru. On 21 September 2017, the CETA came into provisional effect. This free trade agreement facilitates temporary entry for business persons including business visitors, professionals and intra-company transferees. Additionally, the new TPP is expected to come into effect in late 2018 or early 2019.

### 18 What is the process for third-party contractors to obtain work permission?

The key process for third-party contractors is determining the appropriate employer of record for immigration purposes. When making this assessment, the following three-prong test should be applied:

- who will pay the third-party contractor his or her salary while in Canada?;
- who will give the third-party contractor instructions regarding day-to-day activities while in Canada?; and
- who will receive the benefit of the work of the third-party contractor in Canada?

Salary should be given the heaviest consideration, owing to Employment, Workforce Development and Labour compliance requirements. After assessment, the entity that holds the balance of these factors will be deemed to be the appropriate employer. For certain LMIA-exempt work permits, the third-party contractor's employer of record may need to file the employer compliance and remit the employer compliance filing fee.

In light of the determination above, the applicant should be assessed under the appropriate work permit category and the application process completed as normal, with disclosure as to the relationship between the various entities.

### 19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

Generally, no formalised or regulated skill assessment is required by immigration officers in regard to temporary residence. Licensed professionals may be required to provide proof of licensing (either in Canada or abroad, depending on the type of application), but an assessment of the credentials is not required. The CETA includes provisions designed to facilitate the mutual recognition of professional credentials.

Some permanent residency categories do require that credentials be assessed in order to evaluate Canadian equivalency and assign points for length and level of education.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Foreign nationals in Canada as business visitors or tourists are not permitted to obtain work authorisation from within Canada, unless they are accompanying a spouse or common-law partner or parent who is a work or study permit holder. Instead, they will be required to make a work permit application from outside Canada, either at a port of entry or at a visa office abroad, depending on visa and work permit requirements. If processed by a visa office, upon approval of the application, the foreign national will be required to exit and re-enter Canada in order to obtain proper work authorisation by being issued a Canadian work permit.

A visa-exempt business visitor or tourist may also exit and re-enter Canada for the purpose of presenting a work permit application, if the foreign national does not require a TRV and his or her work permit application permits. The immigration officer at the Canadian port of entry will make a final determination as to whether the foreign national will be granted a Canadian work permit.

**Exceptions**
Dependants of foreign nationals working or studying in Canada who wish to also study or work in Canada may be permitted to make an application for an initial study or work permit through Canada's inland processing centre.

In addition, a foreign national who is in Canada as a visitor and wishes to apply for a study permit to attend a designated learning institution may be able to do so from within Canada. Such foreign nationals include:

- minor children studying at the primary or secondary level;
- exchange or visiting students;
- students who have completed a short-term course or programme of study that is a condition for acceptance at a designated institution; and

- family members of a foreign national who holds a study or work permit.

### 21 Can long-term immigration permission be extended?

Long-term immigration permission may be extended for foreign nationals who are visiting, working or studying in Canada. These foreign nationals may make an application to Canada's inland processing centre to extend their visitor status, work or study permit. When applying for an extension, the foreign national must ensure that they continue to meet the requirements of the relevant category under which they are applying.

Foreign nationals who apply under the intra-company transfer category must ensure that they have not reached the maximum allowable duration in Canada, as discussed in question 8. In addition, as outlined in question 20, foreign nationals who are on tourist or business visitor status in Canada cannot submit an extension application from within Canada and, if they require a TRV, must apply to the appropriate visa office outside Canada. If they do not require a TRV, they may generally exit Canada and re-enter at the Canadian port of entry to submit a new application.

### 22 What are the rules on and implications of exit and re-entry for work permits?

The foreign worker may exit and re-enter Canada at any time during the validity of the issued work permit. The foreign worker, however, will still be subject to examination at the port of entry by an immigration officer as to the worker's admissibility and ability to undertake the employment, if there is any issue in this regard.

Visa-required nationals must typically maintain a valid entry visa in addition to the work permit to re-enter Canada. With limited exceptions, visa-exempt nationals returning to Canada by air must hold a valid eTA in order to board a plane to Canada.

### 23 How can immigrants qualify for permanent residency or citizenship?

The rules regarding eligibility for PR are discussed in question 13.

An individual applying for Canadian citizenship must be a Canadian permanent resident. The following criteria must be met in order for an adult applicant to be granted Canadian citizenship:

- meet the residency obligations;
- show proficiency in either English or French; and
- pass a Canadian citizenship examination.

To become a citizen of Canada, applicants must have been physically present in Canada for at least 1,095 days in the five years immediately preceding their application. Applicants may count each day they were physically present in Canada as a temporary resident or protected person before becoming a PR as a half-day towards meeting the physical presence requirement for citizenship, up to a maximum credit of 365 days. Applicants between the ages of 18 and 54 must also meet language and knowledge test requirements. Additionally, applicants must meet all relevant tax filing requirements in three of the five years preceding their application.

An applicant may be ineligible for Canadian citizenship if they have been charged, convicted of or are currently serving a sentence for certain criminal offences.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

The law does not require that a work permit be cancelled with immigration authorities at the end of the employment period. The work permit expires in accordance with the expiry date stated on the work permit.

### 25 Are there any specific restrictions on a holder of employment permission?

Work permit holders face specific restrictions governing the foreign worker's permitted employer, occupation, location of employment and duration of stay in Canada. Generally, the foreign worker will only be allowed to work for the employer stipulated, in the occupation noted and the location as provided on the work permit. Work permits expressly prohibit studying in programmes of study of six months or more in Canada, unless authorised by the issuance of a study permit or by the Regulations.

If any of the conditions stated on the foreign worker's work permit change so as to render the foreign national's employment outside the scope of the issued work permit, then a new work permit must be obtained prior to the foreign worker assuming the new conditions.

For LMIA-based work permits, employers may also be bound by additional, more rigorous restrictions. Specifically, if there is any change in the foreign worker's location, working conditions, job duties, occupation or salary, then a new LMIA may be required, along with requisite advertising requirements. An employer is prohibited from implementing these changes to the foreign national's working conditions until an LMIA approval has been issued.

## Dependants

### 26 Who qualifies as a dependant?

A dependant is an accompanying family member that is a spouse, common-law partner or dependent child. Family members such as parents or grandparents are not considered dependants.

**Spouse or common-law partner**

Both opposite-sex, as well as same-sex spouses and common-law partners, are considered as dependants for Canadian immigration purposes. Common-law partners are defined as those who have been living together in a conjugal relationship for a period of one year or longer.

**Children**

A child, either biological or adopted, is defined as an individual who depends on their parent for financial and other support. Children are considered dependants and may be included in a parent's Canadian immigration application provided that they are under the age of 22 years old and do not have a spouse.

In all cases, a child will continue to be considered a dependant, regardless of age, if they depend on their parents for financial support owing to a mental or physical condition.

### 27 Are dependants automatically allowed to work or attend school?

Dependants are not automatically allowed to work or attend school.

**Spouse or common-law partner**

A dependent spouse or common-law partner of the foreign national may obtain a work permit under certain criteria, as follows:

- the foreign national (principal applicant) must have a work permit valid for six months or longer in a skilled occupation (NOC skill level 0, A or B);
- the foreign national must reside in Canada for the duration of the work permit;
- the foreign national must have a valid work permit for an eligible occupation in a participating province;
- the foreign national must have a valid study permit and be a full-time student at an approved Canadian educational institution; or
- the foreign national must have a valid work permit under the PGWP programme.

If one of the above circumstances applies, then the foreign national's spouse or common-law partner is eligible to apply for an open work permit, which authorises employment for any employer, in any location and in any occupation other than childcare, health services or primary or secondary education. If the spouse or common-law partner wishes to seek employment in any of these three restricted fields, he or she must undergo and pass an immigration medical exam. The spousal work permit will be valid for the same duration as the foreign national's Canadian immigration document. There is a mandatory C$100 privilege fee that applies to all open work permit applications, in addition to the standard government processing fee.

If a spouse or common-law partner is not eligible for an open work permit, he or she may still apply to work in Canada by making an application for a work permit under another category, provided they meet the applicable criteria. The spouse or common-law partner may also apply for a work permit from within Canada if they are currently present and have met all the requirements for temporary residence.

A spouse or common-law partner may also apply for an initial study permit if they meet the standard requirements for studying in Canada. However, a study permit is not required if the spouse or common-law partner plans to take a course or participate in a university exchange programme in Canada that lasts six months or less.

**Children**

Dependent children were previously eligible to apply for work permits under certain criteria through pilot programme schemes in Ontario, Alberta and British Columbia. These programmes closed on 31 July 2014 and have not been extended as at this time. As such, dependent children wishing to work in Canada must apply for their own work permit and meet the requirements of the intended work permit category.

Every minor child in Canada, other than a child of a temporary resident not authorised to work or study, is authorised to study at the preschool, primary or secondary level without having to hold a study permit.

Minor dependent applicants in Quebec will require a Certificate of Acceptance of Québec (CAQ) from the government of Quebec, in addition to meeting the standard requirements for a study permit. Study permits issued to minor dependent children in Quebec are valid for the same length of time as the CAQ.

Children aged 19 or over (even where they are considered to be a dependant for immigration purposes) must meet the standard requirements to obtain a study permit to attend a post-secondary institute. Study permits at this level are normally issued for the full length of the intended period of study in Canada, plus 90 days (maximum four years).

**28 What social benefits are dependants entitled to?**

Social benefits for dependants do not fall under the realm of Canadian corporate immigration.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Under Canada's immigration laws, prior criminal convictions may, depending on the nature of the crime and number of convictions, render a foreign national criminally inadmissible to Canada. The following criteria must be taken into account:

- particular circumstances of the case;
- nature, number, time or date of offences; and
- equivalent offences in Canada.

If the foreign national is considered to be criminally inadmissible, this issue may be resolved by applying for individual rehabilitation or, if a temporary solution is required to facilitate short-term entry, by applying for a temporary resident permit (TRP). On application and approval, a TRP will allow a foreign national to enter Canada if it has been less than five or 10 years since the completion of the sentence, and the foreign national has a compelling reason to enter Canada. An officer will decide if the foreign national's need to enter or stay in Canada outweighs the health or safety risks to Canadian society. Upon issuance of the TRP, the foreign national may enter and reside in Canada temporarily despite his or her inadmissibility.

A foreign national may apply for a TRP at a visa post abroad or at the Canadian port of entry; however, if filed at the port of entry, the immigration officer has the discretion to defer the application to a visa post abroad. A TRP may be issued for any length of time up to three years, and may be extended from within Canada. However, a TRP is generally issued as a single-entry short-term solution.

Most visa-exempt foreign nationals require an eTA in order to board a plane to Canada. A visa-exempt foreign national travelling to Canada by air will be required to disclose any past criminal incidents as part of the eTA application process. The disclosure of a criminal history is likely to delay the processing of an eTA application and may trigger the need to apply for a TRP or rehabilitation through a visa office abroad.

A foreign national will not be considered criminally inadmissible to Canada if they are deemed rehabilitated. Rehabilitation removes the grounds of criminal inadmissibility for immigration purposes. Once granted rehabilitation, the foreign national is no longer inadmissible to Canada and is not required to apply for any further TRPs.

Any foreign national seeking admission to Canada under any immigration category, including as a tourist, has a positive obligation to disclose all criminal charges and convictions to the officer reviewing his or her application for admission. Failure to disclose a previous or pending charge or conviction could result in a finding of material misrepresentation, and a bar to admission to Canada for a specified period of time.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

With effect from 1 December 2015, the Canadian government introduced a system of administrative monetary penalties to impose harsh new fines and penalties on employers who are found to be immigration non-compliant. Penalties can be instigated for non-compliance with LMIA and LMIA-exempt work permit processes, such as not adhering to conditions stated on a work permit.

Possible penalties for non-compliance in these situations include, but are not limited to, the following.

**Employer consequences**

These include:

- imprisonment;
- civil litigation;
- monetary fines;
- company name published on a publicly available blacklist;
- bar from hiring any foreign workers across Canada; and
- subsequent applications could attract greater negative scrutiny from IRCC.

Under this regime, employers who are non-compliant may face penalties of a one, two, five or 10-year ban per violation, the ban length being determined based on the history of violations that occurred previously and the severity of the violation. In the worst-case scenario, employers may receive a permanent ban from hiring temporary foreign workers. In addition, the fines can range from C$500 to C$100,000 per violation, to a maximum of C$1 million.

**Foreign worker consequences**

These include:

- fines;
- arrest and deportation;
- bar from applying for future work permits;
- bar from entering the country for either a set or indefinite period of time; and
- record of non-compliance that would lead to difficulties in entering Canada in the future.

**31 Are there any minimum language requirements for migrants?**

Proof of language ability for English or French is required for most economic-based Canadian PR categories and mandatory for Canadian citizenship. The applicant has the option to decide which one of the two official languages they are most comfortable using. If the applicant wishes to prove language ability in both languages, they may choose which language should be considered their first official language and which one should be considered their second.

The applicant must demonstrate that they meet the required level of language proficiency by completing one of the following third-party language tests designated by IRCC:

- International English Language Testing System;
- Canadian English Language Proficiency Index Program; or
- TEF.

**FSWP**

The applicant's proficiency in English or French is one of six selection factors required for this points-based Canadian PR category. The language proficiency factor comprises a maximum of 28 points that can be awarded to an applicant. The points are awarded based on the applicant's ability to listen, speak, read and write.

A minimum language threshold exists for each of the four language areas and must be met by the applicant in his or her first official language. An applicant may receive points for his or her second official language if they meet the minimum threshold in all four language areas.

**CEC**
The applicant's occupation as classified by the Canadian NOC system will dictate the minimum language ability required to qualify under this category. The applicant must meet the minimum threshold in the four language areas.

**PNPs**
Most PNP applicants for semi and low-skilled occupations must undergo mandatory language testing and achieve a minimum threshold across all four language categories. These requirements vary depending upon the province in which the applicant is nominated.

**FSTP**
In order to be eligible to apply under this programme, an applicant must meet a minimum threshold in all four language areas.

**Express Entry**
Language is also considered at the beginning of the PR process, separate from eligibility within any of the above PR categories, and may affect the foreign national's points score and likelihood of being selected under the Express Entry system. Specifically, language is included in the overall point calculation both as an individual factor as well as in combination with other factors in the skill transferability matrix. Skill transferability is determined by combining language ability and Canadian work experience with both education and foreign work experience. If a person obtains CLB 9 or above in all four categories, his or her points score in the skill transferability matrix may be significantly higher than if even one of the language category scores is below CLB 9.

**Canadian citizenship**
Since the Canadian Citizenship Act of 1947, adult applicants for Canadian citizenship have been required to have an adequate knowledge of English or French. The Citizenship Regulations outline the criteria for determining adequate knowledge of an official language.

### 32 Is medical screening required to obtain immigration permission?

Different criteria govern the requirement to undergo an immigration medical examination, depending on whether the foreign national is entering as a temporary resident or permanent resident.

**Temporary residents**
For temporary residents, an examination is required if the foreign national:
- intends to remain in Canada for more than six months; and
- has resided or sojourned in a medically designated country or territory for six or more consecutive months in the year immediately preceding the date of prospective entry to Canada.

Temporary residents planning to visit Canada for six months or less generally do not require an exam, unless the foreign national plans to work in certain occupations such as the healthcare, childcare or primary or secondary education fields, or the foreign national is an agricultural worker who has visited or lived in a medically designated area for more than six months during the past year.

In addition, foreign nationals who suffer, or have suffered previously, from a chronic or serious medical condition and are seeking to enter Canada as temporary residents, are under an obligation to disclose any medical conditions in their immigration application for admission to Canada. Depending on the circumstances, such foreign nationals may be required to undergo an examination.

**Permanent residents**
Medical examinations are mandatory for all foreign nationals intending to enter Canada as permanent residents. Dependants of the potential permanent resident are also required to undergo medical examinations, even if the dependants themselves do not plan to enter Canada.

**Medical examination**
All medical examinations must be completed by a designated panel physician who has been authorised by the government to complete such examinations. IRCC, and not the panel physician, makes the final decision regarding the applicant's medical exam.

An immigration medical examination is only valid for 12 months from the date the examination is completed.

**Biometric requirements**
Citizens of approximately 30 countries and territories are currently required to provide their biometric data, including fingerprints and photographs, as part of any application for a work, study or visitor visa. Applicants will only be required to give biometrics once every 10 years. See 'Biometrics' in question 2.

**Exemptions**
Biometrics are not required where:
- the individual is a US citizen applying for a work permit or study permit;
- the individual is coming to Canada for tourism purposes and holds a valid eTA;
- the individual is under 14 years or above 79 years of age;
- the individual is a head of state or government, cabinet minister or accredited diplomat on official business in Canada;
- the individual is a US visa holder transiting through Canada;
- the individual is a refugee claimant who has already provided biometrics and is applying for a work permit or study permit; or
- the individual is a Canadian temporary resident who has already provided biometrics in support of a PR application.

### 33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

There are no set immigration laws that pertain to foreign nationals who are seconded to client sites. The foreign national would still be required to obtain a work permit pursuant to one of the existing work permit categories.

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Regardless of secondment, all employer-specific work permits specify the employer and location of employment. If only the client site location is indicated on the work permit, then, by default, the foreign worker may only work at the client site specified on the work permit. It remains the responsibility of the employer, however, to ensure that all conditions associated with the foreign worker's work permit continue to be met, and that they are working in a workplace that is free from harassment or abuse.

* *The authors would like to thank Susan Martyn for her contribution to this chapter.*

# Chile

**Luis Parada**
**DLA Piper**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Chile is open to ordered and safe immigration. In particular, the current migration policy grants special recognition to the following:

- freedom of residence, movement, thought and religion;
- importance of integration to Chilean culture;
- equality of rights and duties;
- access to education, health and employment rights (without any discrimination based on residence);
- non-discrimination;
- promotion of regular immigration; and
- priority of residence for foreign citizens with family ties to Chilean citizens.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Transferees need a visa subject to employment agreement, even for short-term assignments. Exceptionally, executives are allowed to enter Chile as tourists and may later request a special permit from the Chilean Immigration Authority to work as a tourist for a period no longer than 30 calendar days (with the option to apply for renewals for the same period, as long as the tourist authorisation remains valid).

### 3 What are the main restrictions on a business visitor?

Business visitors must enter Chile as tourists. The maximum length of time that a tourist permit is valid for is 90 calendar days. A single renewal is allowed for up to 90 calendar days.

A business visitor shall provide evidence to the immigration officers in the border that he or she has sufficient financial means to exist in Chile during the planned stay. This is usually complemented with a letter of invitation of a Chilean company, if the business visitor has a defined agenda in the country.

Tourists shall be in possession of a valid passport when entering Chile and do not require a consular visa. Citizens from countries with no diplomatic relations with Chile must previously register their passports before the Chilean consulate or whoever represents it, and also hold a return ticket to their home country or to any other country they are permitted to enter, and with that in hand, the consulate will issue a 'tourism visa'. Citizens of certain South American countries are exempt from the requirement of being in possession of a valid passport for entering Chile.

In some exceptional cases and for reciprocity matters, the citizens of certain countries must pay a fee when entering Chile, which varies in every case.

Further, business visitors shall only conduct business meetings, perform visits, negotiations and business arrangements, and may not render services for a Chilean or foreign company for a wage (even if the payment for the service is made abroad) unless a special permit to work as tourist is requested from the Chilean Immigration Authority.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Yes, individuals that give short-term training must have a special permit to work as tourists (for training that will take less than 90 days) or a visa subject to employment agreement. Individuals who will receive short-term training can enter Chile as tourists.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

There is no need to obtain any special permit or transit visa to travel through Chile.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work permit used in Chile is the visa subject to employment agreement. This type of visa allows the foreign worker to render personal services for a company with domicile in Chile.

This visa, as indicated by its name, is subject to the employment agreement that causes it, and therefore the visa holder will only be permitted to render services for the hiring company. The termination of the employment agreement is cause for the termination of the visa.

Members of the family who arrive in the country with the foreign worker are also granted the same visa as dependants of the holder, which prevents them from working in Chile. In order to provide paid services in Chile or start any economic activity, dependants are obliged to change their migratory status to a new condition independent of the visa holder, that suits the intended activity that they plan to carry out.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

In the case of the visa subject to employment agreement, there are two mechanisms for obtaining it.

The first mechanism is to request the visa at any Chilean consulate abroad. The process takes approximately 30 business days to be completed and requires the electronic submission of information and several of the worker's documents (such as health certificates, family ties, etc), plus an employment agreement duly signed by the employer's representatives, which shall be signed by the foreign executive before the Chilean consul. Once the visa is granted, a certification is stamped in the alien's passport by the consul. The document is then delivered solely to the foreign citizen at the consulate. The foreign employee is allowed to start rendering services once the visa has been granted, so this alternative allows entry into the country and work to commence from that moment.

The second mechanism is to apply directly to the Immigration Authority in Chile. The process takes between 90 and 150 calendar days, and requires the employee to submit, by post, personal information and an employment agreement signed by both parties before a Chilean notary. In principle, the employee is allowed to start rendering services once the visa has been granted and it has been stamped in the passport; however, upon filing for the visa, a special permit to work can be requested for the time the visa is being processed (this takes

approximately 60 to 90 calendar days to be approved and the cost is 50 per cent of the visa fee).

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

There is no minimum period of stay under the visa subject to employment agreement; however, if the work period will be less than 90 calendar days, an alternative is to request the visa subject to employment agreement from a Chilean consulate abroad or, alternatively, to enter into the country as a tourist and then file for a special permit to work as a tourist (this permit can only be requested directly in Chile).

Visas subject to employment agreements are granted for a maximum period of two years, and can be renewed for the same maximum period as many times as needed. However, on completion of the first two years (or any of the extension periods), the foreign worker can file for a permanent residence permit that will allow him or her to remain in the country indefinitely and work freely for any employer.

**9 How long does it typically take to process the main categories?**

If the visa subject to employment agreement is requested at a Chilean consulate, the visa process takes approximately 30 business days to complete and, if the submission is made in Chile, it will take 90 to 150 calendar days.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

In broad terms, it is not necessary to grant determined benefits or facilities to secure a work permit, notwithstanding that under the principle of non-discrimination, foreign citizens shall have all the rights and benefits recognised by the Chilean employment law for local employees.

Chilean law provides that, in the case of the visa subject to employment agreement, at the termination of the employment agreement, the employer shall pay the fare of the worker and of any member of his or her family as agreed in the employment contract, to return to his or her country of origin or any third country as agreed by the parties, unless the employee obtains a new visa or is allowed to reside indefinitely in Chile. The employment agreement must contain this obligation in writing, and this is specially supervised by the Chilean Immigration Authority to grant the visa.

Also, in cases of the visa subject to employment agreement, the employment agreement must have a clause indicating that the foreign employee will be affiliated to the Chilean social security system and that the employer will deduct from the salary the social security quotas to finance old age pension fund and health insurance. The only exemption to this is for employees who have a university diploma of a professional career or a superior technician diploma, as long as the employee is also affiliated to a social security system abroad that provides coverage in cases of disease, death, disability and old age, in which case the employee can stipulate in the employment agreement his or her continuity in the foreign social security to which he or she is affiliated (in which case the employee will be exempted from contributing to a health and old age pension system, and if done anyway, will be able to withdraw the money saved in an old age pension fund personal account). This exemption does not extend to unemployment insurance and to insurance for industrial accidents or illness.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Immigration authorities apply objective criteria in the vast majority of cases when approving or denying immigration permits and authorisations. However, a certain amount of flexibility can be applied in exceptional cases (eg, in the case of minor convictions).

**12 Is there a special route for high net worth individuals or investors?**

Yes, high net worth individuals or investors intending to settle in Chile (or who travel for more than 90 calendar days) can apply for a temporary resident visa as rentiers or investors, which is granted for up to one year and at its termination allows the individual to apply for a permanent residence permit.

In the case of high net worth individuals, such persons must provide evidence of the assets that will finance their living expenses in Chile. In the case of investors, the following should be evidenced:

- a description of the business project or evidence of the existence of a company;
- the capital owned by the foreign citizen to be invested or already invested in the company; and
- the means to finance living costs in Chile.

There is no fast track to process the visa request for these kinds of individuals.

**13 Is there a special route for highly skilled individuals?**

Yes, but only for professionals of the technology sector. In 2017, the investment promotion authority (InvestChile) put in place a special immigration programme known as 'Visa Tech', under which a technology company can request a temporary work visa for a candidate, which is processed within 15 business days, provided the completion of the following conditions:

- the foreigner has a professional degree or technician diploma in the areas of science and technology, or the employee is a highlighted individual with experience in innovation;
- both parties have signed an employment agreement; and
- the hiring company has sponsorship from any of the following entities:
  - Start Up Chile or Chiletec (for companies that are members of these entities);
  - InvestChile for foreign companies; or
  - Sub secretary of Economy for Chilean companies.

The temporary work visa associated with the Visa Tech programme can only be requested once the employee has entered the country, through the investment promotion authority.

Regarding citizens of countries that must obtain a visa of tourism in Chilean consulates, in reciprocity of the treatment given to Chilean citizens in those countries (see question 3), the Visa Tech programme allows them to request a special tourism visa for business purposes instead of applying for a regular tourism visa, with the sole aim that the candidate for a work position in a sponsored company under this programme can have an expedited entry to Chile. This visa is granted in three business days by the Chilean consulates.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

This case is the same as explained in question 12, so there is no special treatment for this kind of individual (except the possibility of applying for a permanent residence permit after one year of residence in Chile).

In any case, Chilean law neither outlines a minimum capital to invest in a company nor requires a minimum term to maintain the investment in Chile.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is no minimum salary requirement for transferees; however, companies need to pay at least the legal minimum monthly salary, which is mandatory for any employee working in the country irrespective of nationality. Notwithstanding this, it is important to consider that immigration authorities take a close look at the level of wages in order to determine whether the foreign worker and his or her family would be able to pay their way in Chile, and the legal minimum monthly salary should not be considered as a reasonable standard for such purpose.

**16 Is there a quota system or resident labour market test?**

Even though the law establishes that a condition to consider in order to grant a visa subject to employment agreement is that if the profession, activity or trade of the foreign citizen to be hired is necessary for the development of the country, the authorities do not reject visa applications for not meeting this condition.

There is no obligation to offer the position locally or to test the labour pool first.

**Update and trends**

The Chilean Immigration Authority decided to eliminate the temporary visa for labour purposes, as of April 2018, leaving the visa subject to employment agreement as the main immigration category for transferees.

The Chilean government is soon expected to roll out the following new immigration categories, all of which allow the holder to work or start up a business for a period of 12 months, with one possible renewal:

- temporary opportunity visa: this migratory condition will be granted exclusively by Chilean consulates;
- temporary international orientation visa: this migratory condition will be granted automatically on request and exclusively by Chilean consulates to individuals with a graduate degree from a high-ranking international university; and
- national orientation temporary visa: this migratory condition will be granted automatically on request, in Chile, to individuals with a graduate degree from a Chilean university.

The Chilean government has created a special visa for Venezuelan citizens that wish to leave their country for humanitarian reasons, which requires minimum conditions and that is granted exclusively by Chilean consulates within Venezuela.

Also, during April and May 2018, the Chilean government authorised a special migratory regularisation process that has benefited several thousands of foreign citizens.

Finally, the Chilean president has introduced a Bill to Congress in order to change the current Immigration Law, which was enacted in 1976. This Bill, among other objectives, is intended to:

- create a Council of Immigration Policy, which will enact and will update the national immigration policy and will administer the immigration categories;
- simplify the steps required to validate foreign professional diplomas; and
- cease allowing the conversion of a tourist permit to a temporary residence permit, and centralise the rules surrounding this in Chilean consulates.

This Bill has started the debate on the above topics but there is no clarity if it will eventually become a law.

Nevertheless, Chilean employment law states that the staff of companies with more than 25 workers must be composed of not less than 85 per cent Chilean employees. To determine the proportion, the law does not consider foreign specialist technical workers, among other cases.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

In principle, there are no eligibility requirements to qualify for work permission in Chile; however, in the case of doctors and teachers, medical university studies must be validated by the University of Chile and teaching studies by the Education Secretary, except in the case of those countries that have relevant international treaties with Chile.

In the case of those professions that require a university degree under Chilean law to render services of that profession (ie, physicians, engineers, optometrists, journalists, etc), the foreign workers must validate their university degrees at the University of Chile (this is not required when filing for work permission, but the process must be completed to render the services of such profession). Also in the case of engineers, there is an obligation to register the diploma in a public record of engineers managed by the Chilean Engineers Guild.

**18 What is the process for third-party contractors to obtain work permission?**

In Chile, work permissions must be requested directly by foreign workers and not by companies or other institutions.

On the other hand, there is no problem with an employee hired for a contracting company rendering services in a third company's premises, as long as the employment relationship between the foreign worker and the contracting company is real, and does not become a de facto employment relationship with the third company.

If the contractor's employee works in Chile but is paid abroad, it will be necessary to file for a temporary residence visa specially designed for this purpose. Currently, the only way to obtain this permission is to apply for it directly to the Immigration Authority in Chile; it is not yet possible to apply abroad through a Chilean consulate. The process takes between 90 and 150 calendar days, and requires the Chilean company to submit information regarding the foreign employee and the conditions of employment abroad with the contractor, and a description of the services that the person will render in Chile for the foreign company.

In principle, the employee is allowed to start working once the visa has been granted (see question 7).

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

See question 17.

**Extensions and variations**

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Chilean law allows the conversion of tourist permits into work permissions. In such a case, the foreigner must request a change of migratory status, with the documents that support the request, to one of the following visa types:

- a visa subject to employment agreement;
- a temporary residence visa for professionals and superior level technicians; or
- a temporary residence visa for employees who work in Chile but will be paid abroad.

Also, changes in family status (marriage to a Chilean citizen or birth of a child in Chile) can form the basis for the request for an extension of a residence permit in Chile.

**21 Can long-term immigration permission be extended?**

In the case of a visa subject to employment agreement, the permission can be extended indefinitely for periods of up to two years in each case, with no limitations. After completion of two years of residence in Chile, the foreign worker is allowed to file for a permanent residence permit, if he or she wishes.

Temporary visas are granted for up to one year, and can be renewed once, also for a one-year term. At its termination, the foreign citizen must opt to file for a permanent residence permit or leave the country.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Foreign nationals with working permits do not require an additional authorisation to leave the country at any moment.

Further, re-entry to the country does not affect the visa subject to employment agreement, as long as it remains in force when returning to Chile. The same applies for the temporary residence visa.

The permanent residence permit expires automatically if the foreign citizen remains outside Chile for one full year.

**23 How can immigrants qualify for permanent residency or citizenship?**

The main condition to qualify for permanent residency is the period of residence in the country. Foreign nationals who have been granted a visa subject to employment agreement can file for permanent residency after two years in Chile, and those who have been granted a temporary residence visa can file for permanent residency after one year in Chile. Aliens of 18 years or older and holders of permanent residence permission qualify for citizenship after five years of continuous residence in Chile.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Only in the case of the visa subject to employment agreement does the termination of the employment agreement automatically cancel the visa. In that circumstance, the alien is granted a 30-day term in which to request a new visa or leave the country. It is important to note that the employer must notify the Chilean Immigration Authority of the termination of the employment agreement that the visa was granted for within 15 days of its termination, and shall pay the fare of the foreign employee to return to his or her country of origin or any third country as agreed by the parties, unless the employee acquires a new visa or is allowed to reside indefinitely in Chile.

**25 Are there any specific restrictions on a holder of employment permission?**

Aliens with a visa subject to employment agreement cannot work for an employer other than the sponsor. The alien can change employer after submitting a request to modify the visa subject to employment agreement to the immigration authorities, and in order to work for an additional employer, must change the residence status to a temporary residence visa holder.

Aliens are entitled to study, be promoted and agree changes in salary and working conditions, as long as it does not impair their ability to finance living costs in Chile.

## Dependants

**26 Who qualifies as a dependant?**

In Chile, dependants of holders of visas subject to employment agreement or temporary residence visas, are the spouse, the children of both or either who depend economically on the visa holder and the parents of the visa holder.

There is a migratory category for those foreign individuals whose marriage cannot be recorded before the Chilean Civil Record Authority (eg, same sex marriages) and to the partners of a civil union (whether executed in Chile or abroad), who can directly apply for a temporary residence visa.

**27 Are dependants automatically allowed to work or attend school?**

Dependants can neither work in Chile nor render any paid services. In order to do so, they must change their migratory status, by requesting any of the above-mentioned work permissions.

Dependants can attend school or university with no limitations.

**28 What social benefits are dependants entitled to?**

Dependants are entitled to access the same social security benefits as dependants of Chilean workers, of which the most important is to have access to health services for the spouse and minor children (or children of up to 24 years of age, if studying).

However, if the employee has opted to not be affiliated to the Chilean social security system and does not contribute to it (see question 10), then dependants will not be entitled to social security benefits. In such case, it is recommended to take out private health insurance that provides cover for the whole family.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Prior criminal convictions for crimes punished with at least five years and one day of imprisonment are an impediment to entering Chile (as are the crimes of drug, gun or people trafficking, and smuggling).

If the conviction for crimes or offences has been received in Chile, the Immigration Authority is allowed to decide whether or not to grant residence permission.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Companies are punished with fines that vary depending on the level of non-compliance, and individuals may be punished with penalties that may include a verbal warning, written warning, fines and in the most serious cases, deportation.

**31 Are there any minimum language requirements for migrants?**

There are no minimum language requirements for migrants.

**32 Is medical screening required to obtain immigration permission?**

Chilean law does not require medical screening and Chilean immigration authorities do not require it to grant residence permits; however, Chilean consulates abroad demand it as a condition for granting visas.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There are no specific regulations for secondment in Chile; however, if the seconded employee works in Chile but is paid abroad, it will be necessary to file for a residence visa for this purpose. Currently, the only way to obtain this permission is to apply for it before the Immigration Authority directly in Chile; it is not yet possible to apply abroad through a Chilean consulate. The process takes between 90 and 150 calendar days, and also requires submitting information regarding the employee and the conditions of employment abroad with the company that provides the secondment, and a letter from the Chilean company to which the foreign worker will render services.

In principle, the employee is allowed to start rendering his or her services once the visa has been granted (see question 7).


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# France

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The landscape of current French business immigration regulations reflects, to a large extent, the political and economic history of France: pressure on employment in the unskilled and skilled industrial labour market, increasing in the early 1970s, resulting in successive measures to balance the need to facilitate business growth while protecting the domestic population from excessive non-European competition on the job market. There has thus been a simplification of work authorisation procedures for nationals of non-European Economic Area (EEA) member states, procedures intended to be 'business-friendly' to facilitate certain types of intra-group transfers from countries outside the EU so as to keep France in the race to attract foreign investment from emerging countries.

In parallel, there has been the obligatory alignment with EU directives on the free circulation of nationals of EEA member states.

A major immigration reform was promulgated in 2016, resulting in significantly simplified and expedited procedures for several major categories of business migration. In essence, intra-group assignments and highly skilled local-hire categories of work authorisation are filed directly with the consulate in the assignees country of residence or nationality, and thus no longer with the local labour authorities in France. One of the government's stated objectives in by-passing the local authorities in the procedure is to free up the latter to conduct more inspections in the field so as to police compliance by employers of immigration, social security and labour laws, which has led to a noticeable increase in inspection activity.

Although no significant new categories of work authorisations have been created, a short-term work authorisation exemption has been created for certain types of activities.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Nationals of EEA member states are not required to have a visa to enter France regardless of the type of business activity they will perform. For nationals of other states, short-term travel may be divided into two categories: business trips and short-term work assignments.

**Business trips**

Nationals of many countries need visas to enter France for business trips, unless they have already been admitted to a Schengen area country. The need for a visa should be verified on a case-by-case basis early enough in the planning stage so that the person has the time to obtain a visa as necessary. The process can vary depending on the French consulate having jurisdiction over the person's residence or country of nationality, but there is generally a need for justification of the need for the visa, such as a business meeting invitation letter.

**Short-term work assignments**

To perform 'work' for less than three months, the need for a visa will depend upon the person's nationality (certain nationalities are exempt). For work assignments of three months or more in France, persons of all nationalities (excluding, of course, nationals of EEA member states) require a visa. Applications for both types of visa are made at the French consulate having jurisdiction over the residence of the assignee or his or her country of origin.

### 3 What are the main restrictions on a business visitor?

Whether the person needs a visa or not, there is an absolute limit of three months of presence, consecutive or otherwise, in a six-month period for nationals of non-EEA member states for a business trip.

A business trip is best defined by what it is not. Indeed, a business trip is by implicit definition not 'work' in France (ie, neither work for a French-based entity nor a foreign one) and, thus, is not subject to 'work authorisation'. The notion of 'work' implies a certain regularity and stability of activity in France. Therefore, attending a single business meeting that involves the gathering of information that is preparatory for later work, prospecting for new business on behalf of the foreign employer or even negotiating a business deal for a foreign employer in a way that is peripheral to the business traveller's daily work abroad, would in all likelihood be seen as not consisting of work in France. If attending such meetings constitutes the person's entire work assignment, however, and the person comes back to France one day a week, every two weeks as part of a regular pattern, for example, the risk that the person's activity be seen by the French labour authorities as work increases (subject notably to criminal sanctions and impediments to obtaining future work authorisations and liability for social security). Even one day of activity in France, if the activity can be seen as the person's work (unless subject to an exemption under the new immigration laws such as artistic performers or audit work), could be subject to work authorisation. Payment by the French entity of a salary (anything other than incidental expenses) would also be evidence of work. Therefore, the person's activity in France and his or her work patterns should be analysed together to determine whether the person's intended activity should be considered as work, subject to one of the work authorisations discussed below.

The immigration reforms of 7 March 2016 and 2 November 2016 instituted a short-term exemption, valid for stays of up to 90 days, consecutive or not, over a period of 180 days, from work authorisations for persons performing audit work or providing expertise in one of a number of areas including architecture, computer sciences, engineering and finance. This exemption is valid for both intra-group secondments and service-provider activity, and thus does not apply to work that would be considered as salaried activity for the host entity. If the assignee qualifies for such a short-term work authorisation exemption and also happens to be a national of a country for which no short-term visa to France is required, then the assignee may enter France on his or her passport only. A declaration of secondment must nonetheless be filed by the foreign employer prior to the person starting work. We also recommend that the assignee carry all documents to demonstrate eligibility for this exemption as well as his or her compliance with French social security.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

To receive 'academic training' (ie, not involving production work), a short-term business visitor visa – if the person's nationality requires that he or she obtain such a visa to enter France – is sufficient. No work authorisation is required. To obtain the visa, the training agreement

should normally be shown at the consulate to receive (training for less than three months). For training for more than three months, the training agreement should normally be approved by the French labour authorities prior to requesting the visa at the French consulate.

If the training combines applying the skills learned with trying them out in the workplace, the work authorisation that would be more appropriate is the intra-group temporary assignment (intra-company transfer (ICT) intra-group posted worker; see question 6). For the person who provides intra-group training, many companies treat the activity under a short-term business visitor status. If the person's permanent function for his or her employer is to provide training, then the person should arguably be treated as an ICT intra-group posted worker or as an employee seconded within the context of a commercial agreement (see question 18).

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

Yes, transit visas may be needed, depending on the nationality of the traveller. Transit visas must be requested at the French consulate having jurisdiction over the person's residence or country of origin.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

In 2007, the French legislature created a new category of work authorisation designed to facilitate temporary intra-group transfers of assignees, called intra-group transfer authorisations. There are two subcategories of intra-group transfer authorisation: one where the assignee has only an employment contract with the home employer and one where the assignee has an employment contract with the home employer and the host entity simultaneously.

The reforms of 7 March 2016 and 2 November 2016 modified the nomenclature, but not the basic aspects of these two intra-group work authorisations. The intra-group transfer seconded worker (home employment contract only) category is now called the ICT intra-group posted worker category and the intra-group transfer (simultaneous home and host contract) category is now called the talent passport intra-group salaried worker category.

To qualify for this type of work authorisation, the assignee must:

- be paid a gross monthly salary of no less than one and a half times the minimum wage (sufficient resources or amount of the salary indicated in the collective bargaining agreement for the ICT intra-group posted workers and €2,700 for intra-group salaried workers);
- have at least three months of seniority with an entity of the assigning group (consequently, this category is therefore not appropriate for new hires);
- be performing a function for his or her home employer within a French entity of the same group for a period of no less than three months and no longer than three years for ICT intra-group posted workers; and
- have either a certificate of coverage for social security purposes or an attestation that French social security affiliation will be requested, in the visa application file.

It is also possible for a French employer to hire an individual who has no pre-existing employment relationship with another company of the same group in a salaried employee capacity. This latter category of work authorisation results in the assignee having salaried employment status under an employment contract with the French host entity. It should be noted that a request of this type of authorisation may be refused by the French labour authorities as the future employer should check the employment market to ascertain whether a local person could occupy the job that he or she proposes to his or her candidate. There are several other types of authorisations, notably those for corporate officers (see question 12 for investors) and highly skilled individuals (now called the salaried worker – European Blue Card) (see question 13), and several smaller categories for specific professions.

'Work' in France will trigger French social security liability, unless a treaty exemption applies, and the application of French labour law to a degree that will depend on the structure of the work.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

For the intra-group types of work authorisation, which are the most frequently used categories of business work authorisation, and the salaried worker – European Blue Card category, there has been a significant simplification of procedure aimed at reducing the waiting time and the number of civil servants involved in the process (thus freeing up a certain number of civil servants to carry out file inspections). Instead of filing the application with the French Immigration Office or the Regional Directorates for Enterprise, Competition, Labour and Employment in France (the Direccte) (depending upon the jurisdiction where the work will be carried out), the application is filed directly at the consulate in the assignee's home country. A process that previously took between six and eight weeks at best has been reduced to approximately two to three weeks.

Most often an appointment must be made at the consulate (through the consular website). The availability of a booking date will vary from consulate to consulate and the time of year. Note also that the consulate may keep a passport for visa processing for anywhere from one day to 10 days, depending upon the consulate, which can lead to considerable travel inconvenience unless the person has a second passport.

Upon arrival in France, the assignee will have to request a French residence permit from the competent French police authorities. The assignee may begin work upon his or her arrival in France.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The residence card for the ICT type of work authorisation is capped at three years. The residence card for the salaried worker type of work authorisation is valid for four years, but is renewable for as long as necessary. Note also that a request for change of immigration category to a category with a local employment contract is now possible under the new regulations.

**9 How long does it typically take to process the main categories?**

For ICT and salaried worker categories, which, as mentioned above, are processed directly by the consulate without first filing the application with the local labour authorities in France, the procedure has been reduced from around six to eight weeks to approximately two weeks. For most other main types of work authorisation, the process generally takes between eight and 12 weeks.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

Proof of social security coverage in France is now a prerequisite for obtaining work authorisation in the ICT and salaried worker categories. Proof of such coverage (French or that of another country, depending upon whether the assignee has a certificate of coverage under a multilateral or bilateral social security agreement (ie, a treaty exemption) and the scope of risks that are covered by that agreement) will be required upon renewal of work and residence authorisations.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities do apply objective criteria, notably concerning minimum salary and seniority. More subjective criteria, such as the level of 'assimilation' to French culture and French language ability, only come into play in requests for naturalisation or 10-year card requests.

**12 Is there a special route for high net worth individuals or investors?**

Persons who can demonstrate the ability to offer a direct economic contribution for an amount of €300,000 may be eligible for a talent passport – business investor.

A foreign investor who will also be a corporate officer of the business he or she creates or invests in may solicit a talent passport – new business or talent passport – corporate officer. Indeed, when an assignee is to hold a corporate officer position (chairperson or general manager of a corporation, or representative manager of a branch) in France, the person is not subject to a 'work authorisation' as such (this activity is not analysed as salaried 'work' by the immigration authorities – although it may be considered as salaried work by the social security or labour authorities, depending on the type of post, the type of entity and whether the person will also be on the board of directors, if relevant). Note that if the corporate officer will not reside in France, there is no immigration formality to undertake with the competent authorities in France (the declaration of the activity has been eliminated). If the assignee is to reside in France, the procedure begins with a filing with the French consulate having jurisdiction over his or her country of residence or nationality, although the file is examined and decided upon by the Ministry of Foreign Affairs. Once approved, the assignee obtains a visa on his or her passport and may enter France to obtain a residence card for corporate officers. The card is valid for four years, and is renewable indefinitely for as long as the person holds the corporate position. Note that certain consulates grant a 'high talent and competence' status for such applicants, as opposed to the classic corporate officer status.

The spouse of the assignee obtains a residence card and is thus entitled to work as an accompanying spouse. In practice, this type of application takes between two weeks and three months to be approved, or less if the company has already been set up.

**13 Is there a special route for highly skilled individuals?**

The talent passport EU Blue Card category applies to highly qualified employees (three-year level university diploma or five years of professional experience in the area of the post to be filled) being offered an employment contract with the French host entity, valid for at least one year (a fixed-term contract of at least one year, assuming all other requirements for use of fixed-term contracts are met, or a standard 'indefinite-term contract') with a gross minimum annual salary of €53,840 (as at July 2018).

This category of admission does not require establishing proof that no qualified candidate is available locally (like the former 'high-level salaried executive' category). It can apply regardless of the candidate's seniority in the group or the expected duration of the assignment. This new category also grants the candidate's spouse the right to work in France.

Another type of work authorisation for highly skilled individuals is that known as the talent passport for foreigners with a national or international reputation, designed for persons who have a project involving either economic development or the intellectual, cultural or scientific profile of France and the applicant's home country. No investment is required. The high talent and competence work authorisation may be granted for many types of individuals who might also otherwise qualify for another existing category. The authorisation is valid for up to four years and the accompanying spouse is entitled to work. It is not possible to alter the nature of the project in mid-course.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

No.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Each category of work authorisation has a minimum salary condition. There are often minimum salary conditions additionally imposed by an applicable collective bargaining agreement by job grade and the national minimum wage.

**16 Is there a quota system or resident labour market test?**

The French visa system is not based on quotas. Moreover, there is no need to prove that there are no other candidates available on the local market for applicants under the intra-group transfer or highly skilled individuals categories described above, even though the person has an employment contract with the French entity.

For standard salaried employee applications, the existing requirement to verify that there are no available candidates on the local market except for students who can justify holding a provisional permit to stay thanks to a master's degree, has been essentially maintained. Assignees whose professions are identified as being 'difficult to staff' are looked upon more favourably. The list of professions considered difficult to staff identifies approximately 30 professions by region.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

The intra-group types of work authorisation require a position of seniority of three months within the group (see question 6).

**18 What is the process for third-party contractors to obtain work permission?**

A specific type of work authorisation is appropriate for employees of a foreign entity who are assigned to France in order to perform a service agreement with a client of that employer. This work authorisation is not appropriate for either self-employed persons or persons whose work in France at the host entity would imply either having an employment relationship (subordination and control) with an affiliated entity of the foreign employer in France or with the client host entity. This determination is a matter of analysis of the facts on a case-by-case basis.

To obtain this work authorisation, documents defining the parties involved and the nature of the activity are filed in France with the French labour authorities and the immigration service. Once the request is approved, the file is sent to the consulate having jurisdiction over the person's residence or country of origin. The consulate then issues a visa to the assignee, and family under certain conditions enabling them to enter France. Once in France, the assignee and the spouse will have to undertake a medical examination with the immigration services and register their stay (no residence permit is issued during the first year as the visa is valid for one year).

The assignee receives a temporary worker residence card in the second year and the spouse receives a visitor residence card and thus does not have a right to work. Both the assignee and the spouse obtain a one-year residence card, which is renewable. Since this type of assignment is temporary by definition, it is difficult to obtain a renewal beyond three years, regardless of the length of the assignee's social security certificate of coverage, if any.

As the assignee is considered as being seconded from an employment law perspective (home employment contract only, no host employment contract), the core body of French employment law provisions would apply, notably those relating to health, safety and working time (but not dismissal).

The assignee must also be paid at least the amount that would be due to the employee holding the same position under the applicable French collective bargaining agreement (to avoid social dumping) in order to qualify for this type of work authorisation. A secondment status, which implies work in France, may also result in French social security liability, depending upon whether the assignee benefits from a social security exemption under an applicable social security agreement.

One of the most frequent difficulties encountered by businesses in this case is the complexity of group service contracts. Indeed, where the service agreement is concluded between the parent company of the service provider and the parent company of the beneficiary, the service agreement (one of the key elements of the application file) is often not concluded between the company employing the assignee nor the French beneficiary company. In many cases, there are annexes mentioning the subsidiaries that may be called upon in the context of the execution of the contract, but it is sometimes necessary to draft a specific annex or assignment letter to make clear to the French authorities the commercial service link between the foreign employer and the French beneficiary.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

All work authorisations have either minimum salary or minimum employment seniority requirements, or both. In a sense, therefore, skills and qualifications are proven by these factors. For salaried worker applications, diplomas can also be used to demonstrate the interest of a particular applicant. Moreover, certain professions, such as doctors,

nurses and lawyers, are subject to additional professional guild or bar rules.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

A person who has entered France as a business traveller or a tourist cannot regularise his or her status while remaining in France. Moreover, although a legitimate change of status application to change from one type of work authorisation to another is possible, there is a high risk of refusal, except when changing towards a high-level executive category.

### 21 Can long-term immigration permission be extended?

Each category of work authorisation has its own terms and renewal limits.

### 22 What are the rules on and implications of exit and re-entry for work permits?

There are no exit permits as such required to leave France for a person who is under a valid work and residence permit, and re-entry is permitted for as long as the person's passport and work and residence permit are valid.

Persons under the ICT or intra-group salaried worker status are only allowed to take short, personal trips outside France, failing which their assignment may be deemed 'interrupted', requiring the filing of a request for a new work authorisation.

### 23 How can immigrants qualify for permanent residency or citizenship?

A permanent residence card may be requested after five years of temporary residence depending on the immigration status of the candidate (salaried, corporate officer, EU Blue Card, etc) and his or her nationality. Persons in student, trainee and intra-group transfer categories cannot use this time towards this five-year minimum.

Requests for citizenship by naturalisation (as opposed to acquisition of French nationality by reason of family relationships) may also be filed after five years of residence (this qualification period may be shortened significantly if the applicant holds a French university degree). Applicants for naturalisation must demonstrate sufficient and durable ties with France and a significant level of French, and 'temporary' status, such as being a student or being on secondment status, does not support this. It is expected that a certificate of aptitude will be created for this purpose.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

There is no obligation to cancel or return the residence card at the end of an assignment. However, in practice, it is preferable to notify the administration so as to preserve goodwill with the authorities in case of future transfer of the assignee.

### 25 Are there any specific restrictions on a holder of employment permission?

A person with work authorisation can simultaneously be a student in France. A person with an ICT intra-group posted worker authorisation (secondment and salaried work) cannot engage in activity for an entity other than the one cited in the original application.

A person with a salaried employee authorisation can in principle leave the initial employer and work in the same capacity for another French entity (with exceptions), provided the assignee meets the same salary conditions upon which the initial authorisation was granted after the second renewal of his or her residence permit as an employee.

## Dependants

### 26 Who qualifies as a dependant?

Technically, only legally married spouses and children who are less than 18 years old qualify for accompanying admission. Persons related to an applicant or to a French person by a civil partnership may be admitted as long-term visitors, but for the time being, such admission is highly discretionary.

### 27 Are dependants automatically allowed to work or attend school?

Spouses (through marriage) of intra-group transfer categories, highly skilled individual category (talent passport EU Blue Card) or talent passports for foreigners with a national or international reputation authorisation holders are automatically entitled to work. In practice, spouses (whatever their immigration status) can study.

### 28 What social benefits are dependants entitled to?

Social benefits are determined not on immigration status, but on social security status, which in turn is determined by whether the person is covered only by his or her home country system, pursuant to an exemption under an applicable social security agreement, and the terms of that agreement. The dependant of an assignee covered by French social security (by virtue of working in France, and assuming no such exemption) would be entitled to full French social security benefits regardless of his or her nationality, assuming the person were duly admitted to France as an accompanying dependant.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

Criminal clearance records for the applicant's home country are for corporate officer work authorisations only (ie, not for secondment or salaried work authorisation).

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

The objective of the French administration is to reinforce the sanctions against the use of unauthorised foreign labour. French law provides penalties for the assignee, the employing entity and any person facilitating an immigration violation as follows:

- foreign nationals entering or residing in France without complying with the relevant regulations are subject to imprisonment and fines;
- persons helping or attempting to help foreign nationals circumvent relevant residence regulations are subject to imprisonment and fines;
- the corporate representatives of companies employing foreign nationals who do not have the necessary work authorisation are subject to a potential penalty of five years' imprisonment and a fine, the fine being multiplied by the number of illegally employed individuals. Damages may also be ordered in favour of the employees concerned. The corporation itself would also be subject to additional penalties, including fines, an exclusion from government contract and a suspension of the right to conduct business;
- the employer may be subject to imprisonment and fines for providing false information to obtain work authorisation;
- any person providing false information in order to obtain a government document may be sanctioned by imprisonment and fines;
- in addition to the criminal sanctions above, the employer illegally employing foreign labour may be subject to administrative fines; and
- employers of unauthorised workers may also be liable for unpaid wages and related social charges. Note also that persons using a subcontractor involving labour for a commercial agreement of €5,000 or more are required to carry out periodic verifications of the subcontractor's workers, subject to shared liability for wages, social charges and severance. Moreover, the person who works with an employer whose workers do not have the necessary work authorisation can be sentenced to five years' imprisonment and a fine.

If the employer is found liable through use of undeclared labour, in addition to fines and imprisonment for the corporate offices, it could lose entitlement to public aid or be ordered to reimburse aid already received, be ordered to close its establishment for a term of not more than three months and be excluded from public contracts.

**31 Are there any minimum language requirements for migrants?**

No, there are no language requirements for business-related immigrants. There are assimilation requirements, including French language capacity, for non-EU nationals married to a French national, permanent resident card applicants and naturalisation applicants.

**32 Is medical screening required to obtain immigration permission?**

A medical examination for assignees entering France for working purposes is held upon arrival in France with a doctor authorised for this purpose by the Ministry of Labour. The examination involves X-rays and a general check-up, but no blood test.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

See question 18.

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# Germany

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Since 2005, with the introduction of a new immigration law, the German government has taken the approach to seek the immigration of highly skilled and talented people. Since summer 2011, the immigration requirements for engineers, medical doctors and IT specialists have been lowered. The German government has announced that it will regularly check which industries and practice areas have a lack of skilled workers and will lower immigration requirements accordingly. The EU Directive for the Blue Card, which enables highly skilled third-country nationals to work in EU countries, was implemented into German immigration law in August 2012. The Blue Card facilitates the access of highly skilled employees to the labour markets of the EU member states.

On the other hand, Germany protects its local labour market by setting barriers for the immigration of (unskilled) workers without academic qualifications and sets minimum wage requirements for work authorisations.

Furthermore, new immigration regulations entered into force in Germany in July 2013 in order to sustainably eliminate the lack of qualified personnel. Among other amendments, foreigners with special professional education who do not have a university degree can also receive a German work permit if certain requirements are fulfilled. In the same year, the immigration process in Germany was changed significantly and the role of German embassies and German consulates abroad became more important. German local immigration authorities are no longer involved in the approval process for working visas unless the applicant has previously been to Germany for working purposes, applies for a self-employment visa, or in the case of some family reunion visas.

In the second half of 2017, the intra-corporate transfer (ICT) card for secondments was introduced. This new legal basis replaced some permit types and adds some flexibility for short and long-term working stays in additional EU member states.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

In principle, non-EU nationals need a visa to enter Germany for short-term travel. Visas are required for business trips, transit or to enter Germany for working activities, internships and training.

The visa can be applied for at the German embassy or consulate in the country of the applicant's citizenship or in any other country where the applicant has the legal right to reside (a business visa is not sufficient). Since 2010, the visa application procedure has been standardised for all Schengen countries.

Details can be found on the website of the German Ministry of Foreign Affairs (www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/03_Visabestimmungen/StaatenlisteVisumpflicht_node.html). The Schengen visa for business and tourism purposes is issued as a Type C visa for both single and multiple entries. The length can be from 90 days up to several months, but always restricted to a maximum of 90-day stays within 180 calendar days. The processing time for visa applications can take from two to 10 days and sometimes up to three months, depending on the type of visa. Owing to the high workload at the German embassies and consulates in certain countries, it can take several weeks to get an appointment for a visa application.

Some nationals are exempt from the visa requirement for short-term business travel to Germany (up to 90 days within 180 calendar days). The list of exempt nationals is reviewed on an annual basis and can be checked on the website of the German consulate or embassy.

### 3 What are the main restrictions on a business visitor?

A business visitor is restricted to a stay of a maximum of 90 days within 180 calendar days in Germany. When counting the 90 days, all days spent in other Schengen states and weekends are also taken into consideration. Half days or even a few hours in transit count as one day.

The main restriction on a business visitor is the limited scope of activities one can perform during a business trip. On a business visit, one may attend trade fairs, visit a customer to market a product, to negotiate a contract, conduct meetings, etc. German immigration law does not contain a clear definition of permitted activities during a business trip and, therefore, it is sometimes difficult to determine if certain travel is still allowed on a business visitor status.

Gainful employment, execution of a project and certain forms of training are not allowed on a business visitor status. It is important to note that the duration of stay is not decisive but the nature of the activity determines the correct visa category. Business trips are often mistakenly used for employment activities that legally require work authorisation. This is considered illegal employment in Germany and can have serious legal consequences for both employer and employee. For the employer, this can be exclusion from public procurement procedures, exclusion from obtaining subsidies, limitations on employing foreigners for a certain period of time and, for the employee, the consequences can be deportation, fines and restrictions on re-entering Germany or the Schengen states.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

In principle, immigration permission is required for training. Training regulations apply for employees of international companies coming to Germany to be trained as well as for employees coming to Germany as trainers. Training details and in particular a training plan (among other documents) must be submitted along with the visa application for the stay in Germany.

Some nationals (from Australia, Canada, Israel, Japan, Korea, New Zealand and the US), who travel to Germany to give or receive training, are exempt from obtaining permission if they are employees of an international company and the training does not exceed 90 days within 12 months. All requirements for training must be accounted for in the event of an investigation by the immigration authorities. Therefore, it is recommended to discuss the training requirements up front with the competent immigration authority or German consulate.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

All nationals who need a visa to visit Germany as a tourist or business visitor also need a visa to transit Germany if they are not already in

possession of a valid Schengen visa or hold a valid residence permit from a member state of the Schengen area. The visa can be obtained at the German embassy or consulate in the country where the applicant legally resides. Details regarding how to apply for the visa can be found on the website of the German consulate for the respective country.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main immigration categories are:

- international staff exchange programme within a group of companies;
- ICT;
- mobile ICT card for intra-corporate transfers to Germany of third-country nationals already residing in one EU member state;
- assignments of managerial staff or of employees with special internal knowledge;
- employees that sign a German contract and are paid under German payroll;
- executives;
- EU Blue Card for highly qualified employees;
- internal training; and
- implementation of purchased software or machines.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The process usually begins by filing a work permit pre-approval at the local employment office in Germany. Once this approval has been issued, the foreign employee must take this original document and other supporting documents and apply for a long-term national visa at the German embassy or consulate in order to enter Germany for work purposes. The visa is issued as a Type D visa with multiple entries and usually for a validity period of 90 days (for stays not exceeding 12 months, there is the option of obtaining the visa for the full duration).

In the case of a Blue Card application, the applicant skips the first step of obtaining work permit pre-approval and proceeds straight to the German embassy or consulate that can approve the visa independently from the local German authorities. Before applying for this visa type, in some cases, if the university degree of the applicant is not listed in ANABIN, the degree recognition database, a special recognition process may need to be performed at the Central Education Authority to confirm if the foreign university degree of the applicant is equivalent to a university degree granted in Germany.

Once the foreign employee has entered Germany with the required visa, he or she can immediately start working in Germany, but must complete the post-arrival process within the validity period of the visa. The foreign national must register at the town hall in the city where he or she resides within two weeks of moving into a long-term residence. After registration, the employee must visit the immigration authority to apply for and collect the final residence permit. Since September 2011, this permit is usually issued as an electronic permit, which is a document in a credit card format; however, in some cases, it is stamped directly in the passport.

**Exemption processes**

Some nationals (from Australia, Canada, Israel, Japan, Korea, New Zealand and the US) are considered favoured nationals and a shorter process applies. They do not need to apply for an entry visa before entering Germany for work purposes. These nationals can travel to Germany on a visa waiver status and apply for work authorisation and a residence permit upon arrival. It is recommended for these individuals that a work permit pre-approval be obtained before arrival in Germany. Nevertheless, once they enter Germany they cannot start working immediately as they first need to register their address at the local town hall and apply for the final residence permit. Only after the local immigration office has issued at least a preliminary confirmation is the applicant allowed to start working.

Nationals of EU member states that are subject to the EU freedom of movement regulation do not need a work permit for Germany.

Swiss nationals need a residence card to reside in Germany if their intended duration of stay exceeds 90 days. This can be obtained at the immigration authority in the city where the foreigner resides.

Any individual, regardless of his or her nationality, is subject to the German residence registration regulation.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

Residence permits with work authorisation are usually issued initially for one to two years and can then be extended.

Applicants for a Blue Card who have an unlimited contract can receive the initial permit issued for up to four years.

International staff exchange permits can only be granted for a maximum of three years. Should a foreign employee on an international staff exchange wish to stay longer in Germany, a local German employment contract will be needed and the permit category must be changed.

### 9 How long does it typically take to process the main categories?

The normal process to allow the foreigner to begin working in Germany (work permit and visa application) takes, on average, four to 10 weeks. German immigration law does not provide a maximum timeline and it is not possible to obtain a fast-track procedure by paying an extra governmental fee. The timeline in each individual case depends on the category of the permit, nationality of the employee, workload of the officers involved and time slots available at the German consulates or embassies abroad.

Normally, German immigration specialists supporting the visa application can speed up the process by following each step in the process and clarifying issues with the competent authorities in advance.

The application for permanent residence permit takes longer since authorities must perform a background check (eg, whether the foreign national is listed as a criminal or investigations are ongoing based on criminal activities).

For favoured nationals, namely, nationals who do not need a visa to enter Germany for working purposes, the timeline is usually shorter. Normally, it takes three to six weeks.

The immigration process for the EU Blue Card is usually quicker than a regular work permit process as one can skip the work permit pre-approval step.

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

Foreign employees entering Germany for working purposes need a private residential address in Germany in order to register themselves there. This can be an apartment, house, furnished business apartment or, in some rare cases, a hotel. A company address is not sufficient. Since November 2015, an additional landlord confirmation issued by the landlord must be submitted for this registration. Not all temporary accommodation premises are willing to sign this document, which can cause a delay in the post-arrival immigration process.

Further, sufficient medical insurance is required. This can be German statutory health insurance or, if the requirements are met from a social security point of view, any other German or international private health insurance with a business licence for Germany can be used. However, the international health insurance needs to have the same coverage as German statutory health insurance and very often, German immigration authorities request the insurance companies to issue a confirmation that German statutory minimum requirements are fulfilled.

A further requirement is that the foreign employee's remuneration is equivalent to that of a comparable German employee in the same or in a similar job position.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

German immigration authorities follow the requirements stipulated in the immigration law and the in-house government rules, which aim to provide officers with details on how to apply the various immigration categories. Some terms in German immigration law have not been defined very precisely, which gives certain room for interpretation. Immigration authorities exercise their decisions not only by objective criteria but use their own discretion. In particular, atypical cases allow flexibility and discretion in favour of the applicant and it is always worth discussing a case professionally with the competent authority. The discretion of the authorities is quite often exercised in favour of applicants and employers who are important for the labour market in the region.

Nevertheless, this discretion must always follow justifying arguments based on the immigration regulations and ends when a decision would be unlawful or arbitrary.

**12 Is there a special route for high net worth individuals or investors?**

There are special rules for individuals performing self-employed activities on the German market. When applying for work authorisation, they must regularly submit a business plan and financials. In addition, the authority checks whether the intended activity is important for and has positive effects on the business development of the region. The immigration authority most likely will involve the chamber of commerce for their assessment. Under current German immigration law, there is no provision for fast-track applications in these cases.

Currently there is no special visa category for investors or wealthy retirees who wish to reside in Germany for their own benefit.

**13 Is there a special route for highly skilled individuals?**

Highly skilled scientists or researchers can apply for a permanent residence permit immediately. This permanent residence permit contains unlimited work authorisation.

Since August 2012, a Blue Card can be granted to employees with a local German employment contract, a recognised university degree and a minimum salary level. In 2018, the minimum annual gross salary for a Blue Card application is €52,000. A lower minimum salary (€40,560 in 2018) is sufficient for some specified scarce professions, such as IT specialists, engineers and medical doctors, to compensate for the lack of specialists on the German labour market. The minimum salary requirement is adapted each year by the German government.

A Blue Card holder in Germany qualifies for a German permanent residence permit more quickly than a holder of other German permits.

The German Blue Card does not automatically permit working in other EU countries. The same in reverse applies for a Blue Card issued by another EU country.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is a minimum salary requirement for all work authorisation categories in Germany. In principle, the foreign national must earn a salary that is equivalent to a comparable German local employee in the German company where the foreigner intends to work. Therefore, the minimum salary is determined on a case-by-case basis for each company and position.

The total gross remuneration of the foreign employee can be composed of base salary and assignment benefits (eg, assignment allowance, housing allowance, per diems) in order to achieve the comparable German salary. It is to be noted, however, that only allowances being paid out as a lump sum for the assignee to use as he or she pleases can be considered. For example, per diems paid out upon submission of receipts or housing or car rental paid directly by the company are not accepted.

In some industries (eg, the construction industry, professional cleaning, security), the minimum wage of the German collective bargaining agreements for these industries must sometimes be observed for foreign employees working in Germany even if the employment contracts of the foreign employees are not governed by German law.

**16 Is there a quota system or resident labour market test?**

In some cases, there is a labour market check to find out whether a German or EU national is available for the job. For most German work permit categories, the authorities can make a discretionary decision whether a labour market check is required. A labour market check is not required for international staff exchange, assignment cases and many other immigration categories.

A quota system does not exist in Germany. Only the category of international staff exchange is restricted in number. Under this category, a German company can only apply for as many work authorisations for foreigners as they have German-based employees assigned abroad (in summary: for every German-based employee sent out of Germany, one foreigner is allowed in).

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

If executives and company specialists intend to apply for a German work permit on the basis of an assignment under an ICT card, they must already be employed with the home country company for at least six months in order to qualify.

For many permit types, such as the Blue Card, it is not sufficient to just have a university degree but the university and degree type must be listed in the degree-recognition database.

**18 What is the process for third-party contractors to obtain work permission?**

A contractor can obtain work permission in Germany if the contractor proves that he or she is an independent contractor (no deemed employment or illegal labour lending), and provides the contract regulations and sufficient medical insurance. The immigration authority checks the public interest of the market in the region and additional criteria before granting the permission. Often contractors are not paying taxes in Germany and immigration and tax authorities claim liabilities from the contractors and the companies engaging the contractors in Germany.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

In most cases, an academic background is required to obtain a work permit in Germany and degree certificates from a university are required. Already recognised qualifications can be found at www.anabin.kmk.org. Alternatively, an official recognition process can be initiated, which can take from two weeks to three months. For certain applications, such as the Blue Card, a fully recognised degree is essential.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Apart from a few exceptions, a short-term business or visitor visa cannot be converted in country into a longer-term authorisation to stay in Germany. The foreign national must first leave Germany and apply for a new visa for the longer stay at the German embassy or consulate abroad. In any other cases where conversion into a long-term authorisation is desired (eg, rare emergency or hardship), the competent immigration authorities must be involved and requirements must be discussed individually since these cases are not explicitly foreseen by law and are at the absolute discretion of the immigration authority.

**21 Can long-term immigration permission be extended?**

Yes, it can be extended (see question 8). The extension can be applied for within Germany. The foreign national does not need to leave Germany.

**22 What are the rules on and implications of exit and re-entry for work permits?**

The German residence permit allows exit and re-entry at any time. Once a foreigner has left Germany for more than six months (12 months for the holder of a Blue Card or of an EU residence card), the residence permit and work authorisation automatically expires even if it states a longer expiry date. Sometimes, an agreement can be made with the immigration authority before leaving Germany in order to avoid the expiry of the permit. Additionally, the German work and residence permit immediately expires if the foreigner leaves Germany for a permanent reason. Foreigners have the obligation to notify the immigration authority about the termination of their employment or about any changes in their personal status (eg, divorce if the permit is a dependant permit). This does not apply to foreigners with a permit that allows unlimited working activities.

**23 How can immigrants qualify for permanent residency or citizenship?**

For permanent residency, see also question 13. In principle, after eight years of working and living in Germany, a foreign national can

apply for German citizenship. For permanent residency, the applicant must prove that he or she has sufficient income, has paid social security for a minimum of five years, speaks sufficient German and has knowledge of German society, culture, politics, history and economics. The holders of a Blue Card have quicker access to a permanent residence permit. An application for a permanent residence permit can be made after 33 months of paying into the German social security plan and providing proof of A1 level German skills, or after only 21 months with social security payments and B1 level language skills. Further, foreign nationals who have studied in Germany will also be privileged and can apply for a permanent residence permit after two years of employment in Germany with contributions to German mandatory pension scheme.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

If employment is terminated early, the immigration authority should be notified. In all cases, the foreign national must de-register at the town hall when he or she leaves Germany. The town hall automatically communicates the departure to the immigration office.

**25 Are there any specific restrictions on a holder of employment permission?**

All employment permissions that are issued for the first time are restricted to a certain employer, job position and have a time limitation. Any job change or promotion affects the permission and a change of the employment permission must be applied for at the immigration authority. After two years of employment, a work permit usually ceases to be bound to a certain employer and a change of employer can take place without any additional communication with the authorities.

The permanent residence permit is not bound by restrictions. The foreign national can change employer and jobs without informing the authorities.

## Dependants

**26 Who qualifies as a dependant?**

Immigration regulations for dependants only apply to married spouses, registered same-sex partnerships and children under the age of 18 years.

For all other dependants, namely, children older than 18, parents and unmarried partners, dependant regulations do not apply and visas or residence permits for Germany are only granted in very special circumstances and upon fulfilment of special requirements.

**27 Are dependants automatically allowed to work or attend school?**

Spouses receive the automatic right to work. The residence permits of spouses of non-EU national employees state that they are allowed to work without any limitation. All dependant children over the age of six are allowed to and, in fact, must attend school.

**28 What social benefits are dependants entitled to?**

If the spouse or principal employee pays social security contributions in Germany, the dependants regularly benefit from the German social security system (for instance, medical insurance and pension). In some cases, child allowance can be collected for children registered in Germany.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

A criminal conviction or ongoing investigation can lead to refusal of a visa or residence permit, deportation or restrictions on re-entering Germany. Violation of the Schengen visa rules can also lead to immigration disbenefits.

In December 2011, stricter compliance requirements for employers were implemented into German immigration law. Permission for work can be refused if an employer has violated German immigration and labour secondment rules. Furthermore, a company subcontracting work to a third party is normally liable for the subcontractor's immigration compliance.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

The penalties can be deportation of the employee, restrictions on re-entering Germany and monetary fines. The fines for an employer are up to €500,000 per case and up to €5,000 for the employee. The maximum fines are only imposed in extreme cases. In the event of serious violation, the employer can face consequences such as exclusion from public procurement procedures, exclusion from obtaining subsidies and a prohibition on employing foreigners for a certain period.

**31 Are there any minimum language requirements for migrants?**

There are no language requirements for the employee unless he or she is applying for permanent residency. In some cases, for dependant visas (family reunion), spouses need to speak or understand German and must pass a German test before they are allowed to join their spouse in Germany. This requirement is sometimes made after entry into Germany. Exemptions exist, for example, if the principal employee is an EU national (but not German) or a non-visa national, a holder of an EU Blue Card, the couple plan to stay in Germany for less than one year or the spouse has a university degree.

**32 Is medical screening required to obtain immigration permission?**

No.

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**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There is a specific procedure for purchased software or machine implementation projects that can be used in individual cases for secondments directly to a client site. Also, a Van der Elst visa that applies to third-country nationals who already have a work permit for another EU country can be used for these purposes if the requirements are fulfilled. However, Germany has strict labour secondment rules that must be observed in each case and which make it more difficult to send employees directly to a client site. Therefore, cases such as this should be assessed thoroughly by a German immigration expert beforehand.

# Ghana

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**PricewaterhouseCoopers (Ghana) Limited**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The government of Ghana has an open-door policy on immigration while protecting the Ghanaian workforce through its local content policy framework. In this way, expatriate workers are allowed employment in Ghana subject to the work and residence permit requirements of the Ghana Immigration Service (GIS). This should, however, not deprive local Ghanaians of gaining similar employment as the government will expect that the total workforce will include Ghanaians at all levels of the organisation. Where the skills and expertise of the expatriate workforce are not readily available in Ghana, it is expected that such skills and expertise will be transferred to Ghanaians in course of the employment of the expatriates in Ghana.

Under its motto 'Friendship with Vigilance', the GIS strictly enforces the immigration laws of Ghana. Non-compliance could lead to penalties in accordance with the provisions of the laws.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Generally, visas are required for every visit to Ghana irrespective of the length of stay. However, some nationals are exempt from obtaining a visa when travelling to Ghana. The following nationals, countries and institutions are exempt from visa application:

- members of the Economic Community of West African States (ECOWAS);
- citizens of Egypt (visas to be obtained at the High Commission before embarkation), Trinidad and Tobago and Zimbabwe;
- holders of German, Iranian and Cuban diplomatic or service passports (for a period not exceeding three months); and
- persons in direct airside transit.

Also exempt are holders of passports of the Regional Economic Communities in Africa and the African Economic Community, as well as United Nations and its specialised agencies and officials of the World Bank and the African Development Bank.

Visas and entry permits may be obtained from Ghana missions abroad. Visitors from countries that do not have Ghana missions may obtain an emergency entry visa upon application to the Director of Immigration. Such applicants must receive copies of their visas before embarking on their journey.

### 3 What are the main restrictions on a business visitor?

Visitors travelling on a business visa are generally not allowed to work. However, they are allowed to attend meetings, training and also to perform some forms of activities (ie, assembling of machines, maintenance, etc).

A visitor's permit is granted upon arrival and this allows a traveller to stay in Ghana for a period not exceeding 90 days for ECOWAS nationals, and up to 60 days in the case of other nationals.

A visitor's permit does not permit a foreigner to work during the period of stay in Ghana. A visitor's permit can be extended upon expiry.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

A holder of a business visa can attend or receive short-term training in Ghana without work and residence permits. Upon arrival at the airport, he or she will be granted a visitor's permit for a number of days depending on the nationality of the person.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

A transit visa is available for a person (not an exempt visa applicant) who intends to pass through Ghana in transit. A transit visa shall be for a period determined by the immigration officer but shall not exceed 48 hours. It shall also be subject to the condition that the person shall not undertake or follow any occupation for reward.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

Companies with the intention of employing foreign nationals to work in their organisation are required under the Immigration Act 2000 (Act 573) to obtain work and residence permits for the expatriate. The work permit allows the expatriate to work in Ghana whereas the residence permit allows the expatriate to live in Ghana. A work permit is granted first based on which the expatriate can obtain his or her residence permit. The two permits are linked together and the work permit and residence permits are sponsored by the employing company.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

A work permit can be obtained either from the Ghana Investment Promotion Centre (GIPC) in the form of the Automatic Expatriate Quota (AEQ) or through the GIS or Ministry of Interior, depending on the industry type within which the proposed applicant will be working.

**GIPC**

An AEQ granted by the GIPC is based on the foreign equity capital investment of the company. The foreign equity capital investment bands for the grant of an AEQ are as follows, according to the amount of paid-up foreign capital involved:

- one: between US$50,000 and US$250,000;
- two: between US$250,000 and US$500,000;
- three: between US$500,000 and US$700,000; and
- four: more than US$700,000.

Within the last band, an additional quota can be negotiated with the GIPC.

Additionally, it is provided that an enterprise that intends to employ an expatriate shall apply to the GIPC for facilitation of the employment. The application shall specify the number of expatriates to be employed, in accordance with quotas specified above. The application shall be decided on by the GIPC on the advice of the GIS in consultation with the regulator of the relevant sector. The GIPC has not yet come up with a guideline on how the employment of expatriates via

**Update and trends**

The PC is becoming stricter in recommending applications for the employment of foreign nationals in the upstream oil and gas sector. It is only when the skills required are not otherwise readily available that the PC permits the employment of foreigners. The primary aim is to ensure that more locals are employed as against foreigners and that locals are not disadvantaged when it comes to employment in this sector. The PC therefore requires that the entity makes every effort to satisfy itself that there is no qualified Ghanaian citizen to occupy such position. One of the major requirements is for the entity to advertise any vacant position in designated national newspapers and evidence of such advertisement to be attached to the application for a foreigner should the company fail in recruiting a local person.

In an effort to streamline and regulate the issuance of work and residence permits and also to safeguard public health and security, the GIS has issued a new policy on medical screening. Going forward, all medical screenings are to be undertaken at the GIS medical facility located at their headquarters, and medical certificates are to be obtained from the same facility for purposes of work and residence permit applications.

their outfit will be implemented. We are still awaiting further details on how the rules around the employment of foreign nationals via the GIPC will be implemented in practice.

The AEQ serves an automatic work permit. Expatriates enjoying the AEQ are replaceable once they leave the employment of the applying company.

**GIS**

Before making applications to the GIS for work permits, support should be obtained from the regulatory bodies overseeing the industries concerned in respect of named applicants:

- mining: the Minerals Commission;
- petroleum (upstream): the Petroleum Commission (PC);
- Ghana Free Zones: the Ghana Free Zones Board (GFZB); and
- non-government organisations: the Department of Social Welfare.

An application is thereafter made to the GIS attaching thereto the following:

- a letter of recommendation for the grant of work permit in respect of the named applicant;
- a curriculum vitae of the applicant;
- a contract of employment of the applicant;
- a medical report (to be obtained from the GIS headquarters);
- a police report;
- the registration documents of the company employing the expatriate;
- the educational certificate of the applicant;
- audited financial statements; and
- the tax clearance certificate of the company.

In respect of companies operating in the upstream oil and gas industry and the Ghana Free Zones, applications for work permits are sent to the GIS on their behalf by the PC and the GFZB respectively, whereas with the other sectors, applications are sent to the GIS by the employing companies.

**Residence permit**

The GIS is also responsible for the granting of residence permits. A residence permit can be applied for once the work permit or AEQ has been obtained from the relevant regulatory body. The documentation for the work permit is used in addition to the applicant's passport, two photographs and non-citizen identification card when applying for the residence permit.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

Generally, work and residence permits are granted for one year, subject to annual renewal.

**9 How long does it typically take to process the main categories?**

The time frames are as follows:

- a work permit: two to six weeks; and
- a residence permit: six to eight weeks.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

There is no such prior requirement.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities basically follow objective criteria in accordance with the immigration laws in handling immigration matters. However, they may also exercise discretion as permitted under the said laws.

**12 Is there a special route for high net worth individuals or investors?**

There is no such route.

**13 Is there a special route for highly skilled individuals?**

There is no such route.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no such requirement.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is no such requirement.

**16 Is there a quota system or resident labour market test?**

Yes, there is a quota system. As mentioned, the GIPC has the AEQ system, which is based on foreign equity capital investment in Ghana. The Ministry of Interior in conjunction with the GIS also operates a quota system based on several factors, examples of which are the capital investment of the company, the unavailability of the required skills set on the Ghanaian market and local content, among others.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There is no such requirement.

**18 What is the process for third-party contractors to obtain work permission?**

A contractor can obtain a work permit on behalf of a subcontractor on a sponsorship basis, provided that the subcontractor does not have an entity in Ghana or does not have sufficient quota. In this case, the subcontractor will be deemed to be the employee of the contractor for immigration purposes. The process of obtaining a work permit in this circumstance is similar to that described in question 7. Also, an expatriate on the work permit of a company can work at other companies' premises provided that he or she is performing the work for which he or she has been employed and on behalf of the employing entity on a contract or subcontract arrangement.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Applicants are required to attach an educational certificate to their work permit application; however, the immigration authorities have not insisted on membership of any professional associations or guilds.

**Extensions and variations**

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Yes, the company employing the expatriate must submit an application for the work permit to the relevant authorities with the required documents listed above attached to the application.

**21 Can long-term immigration permission be extended?**

Yes, a work permit is normally granted for a period of one year and is subject to an annual renewal for as long as necessary.

**22 What are the rules on and implications of exit and re-entry for work permits?**

There are no rules or implications; however, should the residence permit of the applicant expire while he or she is out of the country then a re-entry visa will be required prior to re-entering the country.

Also, when an employee is leaving his or her employment or the country, it is required that the company notifies the GIS by writing to them and attaching evidence thereof.

**23 How can immigrants qualify for permanent residency or citizenship?**

A person can apply for permanent residency or citizenship if the following applies:

- they have resided in Ghana for a period amounting in aggregate to not less than five years;
- they are of good character as attested to in writing by two Ghanaians who are notaries public, lawyers, senior public officers or any other class of persons approved of by the minister;
- they have not been sentenced to a period of imprisonment of 12 months or more;
- they have made or are, in the opinion of the minister, capable of making a substantial contribution to the development of Ghana;
- they intend to reside permanently in Ghana on the grant of the status; and
- they possess a valid residence permit at the time of the application.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Yes, a notification letter must be sent to the GIS to inform them that the person is no longer in the employment of the company and has left the country. Evidence of the person leaving the country must be attached to the letter.

**25 Are there any specific restrictions on a holder of employment permission?**

There are no such restrictions. However, the expatriate cannot additionally work for another employer or use the sponsorship for a different employer. There may, however, be a contract or subcontract arrangement between the two resident entities where a work permit holder of one entity may be seconded to another entity.

## Dependants

**26 Who qualifies as a dependant?**

Dependants include a spouse and children under the age of 18 years. Unmarried partners and same-sex partners are not recognised as dependants.

**27 Are dependants automatically allowed to work or attend school?**

Dependants are not allowed to work. However, they are allowed to attend school. Should a dependant decide to work in Ghana, then the employing company must obtain a work permit for that dependant.

**28 What social benefits are dependants entitled to?**

Dependants are required to be granted a residence permit upon application to the GIS. The residence permit will be granted once the principal applicant has obtained his or her work permit.

Dependants are entitled to engage in any lawful activity in the country. However, they are not required to work with their permits.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

This will depend on assessment by the immigration authorities. As part of the work permit application process, an applicant is required to obtain a police clearance report from their home country and attach it to the application. The GIS will carry out their own internal checks and based on the outcome may decide whether to approve the work permit or not.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

A person who commits such an offence is liable on conviction to a fine not exceeding 1,000 penalty units or to a term of imprisonment not exceeding two years, or to both. The penalty for working without a work permit is 5,000 cedis for companies and 2,500 cedis for individuals. At present, one penalty unit equals 12 cedis.

In practice, companies are fined for non-compliance.

**31 Are there any minimum language requirements for migrants?**

No.

**32 Is medical screening required to obtain immigration permission?**

Vaccination against yellow fever is required prior to entering into Ghana and an expatriate applying for a work permit must provide a medical certificate as part of the application process. The requirement now is that the assignee must undergo medical screening at the medical centre located at the GIS headquarters (see 'Update and trends').

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Secondment between two resident entities can be done under a contract or subcontract arrangement, in which case an expatriate with a work permit from one entity can be seconded to another entity. Someone on secondment from a non-resident entity to a resident entity must, however, obtain work and residence permits.

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# Ireland

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The Economic Migration Policy Unit in the Department of Business, Enterprise and Innovation (DBEI) creates and implements labour market policies in Ireland. This body leads the development of economic migration and controls access to employment in Ireland.

Ireland's general policy is to promote the sourcing of labour and skills needs from within the workforce of the European Union and other European Economic Area (EEA) states. However, where specific skills prove difficult to source within the EEA, an employment permit will generally be available to an employer who needs to hire a non-EEA national. Therefore, in times of economic prosperity, the eligible occupation categories for employment permits are generally broadened to provide for an expanding economy, labour market shortages and skills needs. Whereas, during a period of economic decline, the eligible occupation categories are narrowed and other restrictions are applied in line with a decline in employment opportunities and an oversupply of labour. Even during such periods, however, the need to meet certain skills requirements may arise and during such periods, employment permits will still be issued to non-EEA nationals where it can be demonstrated that their expertise is required or would be beneficial to the economy.

In recent years, fundamental changes to the Irish immigration system were introduced, the most significant of which came into effect with the Employment Permits (Amendment) Act 2014. This Act was aimed at providing clarity, transparency and flexibility to potential investors and employers with the creation of nine specific categories of employment permits that will be explored within this chapter. The commencement of the Employment Permit Regulations 2017 (Regulations SI No. 95 of 2017) has also provided further clarity and guidance on the applicability of the Employment Permits (Amendment) Act 2014.

Recently, targeting high-growth emerging companies and start-ups has become a priority for creating new job opportunities in Ireland. The recent reforms tend to encourage these companies to establish deep roots in Ireland while contributing to economic growth.

Arising from this, the Trusted Partner scheme was launched in May 2015 (Regulations 2015, SI No. 172 of 2015). This scheme allows companies registering as frequent users of the DBEI employment permits system to access a fast-track route, leading to a streamlined application process while minimising the administrative burden for the applicant. The initiative is open to both existing users and start-up companies that might require employment permits for non-EEA nationals in the future. It should be noted that the scheme is aimed at, and in practice limited to, companies that have or are likely to have a large volume of employment permit applications.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Nationals from certain countries require a visa to travel to Ireland irrespective of the length of time of the proposed visit, the time the applicant intends to remain in the country and the reason for travelling. The Department of Justice and Equality maintains a list of the countries whose nationals do not require a visa to travel to Ireland. This list is reviewed and updated frequently by the Department of Justice. It should be noted that obtaining a visa is a form of pre-entry clearance only, granting permission to the individual to present themselves at the point of entry into Ireland to seek permission to enter the country.

All visa applications must be made using the online visa application facility. Following submission of the online visa application, the individual will be required to print and sign a summary of the application form. The signed summary together with the specific documentation requested must be submitted in respect of the individual to the local Irish embassy, consulate or visa facilitation services office.

### 3 What are the main restrictions on a business visitor?

An individual travelling to Ireland as a business visitor is entitled to attend business meetings, conferences and orientations, negotiate trade agreements and sign contracts and undertake fact finding missions for example, but is not permitted to undertake productive work in Ireland with the exception of short-term work that does not exceed 14 days. The maximum period of time an individual is permitted to remain in Ireland as a business visitor is 90 days. An individual granted business visitor permission will generally be granted permission to remain in Ireland for the period of time specified on their return travel ticket.

The decision to grant entry to Ireland and the period of time for which permission is granted to business visitors is at the sole discretion of the immigration officer on duty at the point of entry into Ireland. Over the past two years, there has been an increase in the number of inspections on employers for individuals who may be carrying out work duties as business visitors. A visa-required national must obtain a business visa prior to travelling to Ireland. Where the individual is not a visa-required national, it is recommended that the individual carry an invite letter from the host body in Ireland confirming details of the business trip.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Individuals from certain countries require a visa to travel to Ireland to give or receive short-term training. An application for an employment permit may be necessary where an individual is required to provide training in Ireland and intends to spend more than 90 days in the country. There is a specific type of employment permit called the intra-company transfer (ICT) training permit, which facilitates the transfer of non-EEA trainees from an overseas company of a multinational corporation to a subsidiary or group company in Ireland. The Irish company must have a direct link with the overseas company through common corporate ownership (eg, either one company must own the other, or both must be part of a group of companies controlled by the same parent company).

The DBEI's preference is that all employment permit holders are to be employed and salaried under an Irish employment contract and, in the case of the intra-company training category, it applies strict criteria in relation to eligibility requirements for employees remaining employed by a foreign-based employer.

An application for an ICT training permit may be considered for a maximum duration of 12 months, provided it is adequately demonstrated that a detailed training programme will be undertaken and all other conditions pertaining to the ICT training permit are satisfied. Trainees must be employed with the overseas organisation for a period of one month prior to the transfer taking place. ICT training permits are restricted to trainees earning a minimum annual remuneration of

€30,000, a reduction from the usual minimum €40,000 remuneration threshold that applies to standard ICT permits.

Current holders of an intra-company training employment permit undergoing a one-year training programme in Ireland can apply for a critical skills employment permit or general employment permit from within the state, subject to the normal criteria.

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

Nationals of certain countries are required to be in possession of a valid Irish transit visa when arriving at a port in Ireland for the purpose of passing through the port to travel to another country, as per the provisions of the Immigration Act 2004 (Visas) Order 2014 that came into force in 2014.

If the intention is to enter Ireland for the purpose of passing through in order to travel to another state, the individual must apply for the appropriate visit visa and be in possession of a valid visa when arriving at a port in Ireland.

All transit visa applications must be made using the online visa application facility. Following submission of the online visa application, the individual will be required to print and sign a summary of the application form. The signed summary together with the specific documentation requested must be submitted to the local Irish embassy, consulate or visa facilitation services office. The Department of Justice and Equality maintains a list of countries whose nationals require a visa to transit through Ireland. This list is reviewed and updated frequently by the Department of Justice.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

The main type of employment permit used to transfer skilled staff to Ireland is the ICT permit, which facilitates the transfer of senior management, key personnel or trainees from an overseas company of a multinational corporation to a subsidiary or group company in Ireland.

For an individual who will be a local hire in Ireland, the general employment permit or the critical skills employment permit will be the most appropriate, depending on the qualifications of the applicant and the period of employment offered (the permit issued for these employment categories may be valid for up to two years initially).

The critical skills employment permit will be available for non-EEA nationals intending to work in Ireland in sectors where a shortage of skilled workers exists (the job category must be listed on the highly skilled occupations list). Where all the conditions for a critical skills employment permit are not met, a general employment permit might then be considered, as the eligibility criteria and the access to this employment category are slightly less restrictive. A general employment permit application can be submitted if the job category is not on the ineligible occupations list. A labour market test will be required for general employment permit applications, unless exempted.

Contract for services employment permits are available for individuals assigned to work at a client site in Ireland for at least 90 days, where the assignee will remain on home entity payroll and the overseas entity has a contract for services with the Irish entity. Unless the position is on the highly skilled occupation list or the salary is above €60,000, the position needs to be advertised before an application for a permit can be filed.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

An application for an employment permit must be submitted to the DBEI. The application process consists of the following:

- completion of the appropriate online application form. The employee and the employer will normally be required to sign the application form (where the employer is registered as a Trusted Partner, only the employee is required to sign the application form) and upload it to the online system; and
- provision of supporting documents. If the original documentation is not in English, a certified translation must be submitted with the application.

Assuming the application is accepted and all documentation is in order, the DBEI will process the application and issue the original employment permit to the employee and issue a certified copy to the employer. Processing times vary depending on the volume of applications pending within the DBEI at any given time. Trusted Partner applications are prioritised.

An individual is not entitled to commence working in Ireland until the employment permit has been issued and the individual has obtained an employment visa, if applicable. The individual cannot commence working in Ireland prior to the start date stated on the employment permit.

Once the employment permit has been granted and the individual has entered Ireland, the permit holder must register at the Garda National Immigration Bureau (GNIB) or local registration office to obtain an Irish residence permit within the time frame noted in the stamp endorsed in the passport by the relevant authorities at the port of entry. This step is mandatory for compliance with immigration rules and failure to complete this process or to notify any change of address could lead to penalties and sanctions.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

**ICT**

An ICT permit may be granted for an initial period of between three months and two years, with a possible extension for a further three years (maximum stay of five years). After a five-year period as an ICT permit holder, the individual must either leave Ireland or seek alternative immigration permission (eg, a critical skills employment permit or a general employment permit).

**Critical skills employment permit**

Critical skills employment permits are issued for a period of two years. However, an Irish residence permit is generally only issued for a 12-month period and will need to be renewed annually (although upon discretion of authorities, the card might be issued for up to two years). After the initial two-year validity of the critical skills employment permit, the individual may be eligible to apply for a Stamp 4 immigration permission that will allow the individual to work in Ireland without the need to obtain a further employment permit. In order to obtain Stamp 4 immigration permission, a critical skills employment permit holder must first obtain authorisation from the DBEI that all conditions of the employment permit have been met before attending the GNIB to seek Stamp 4 permission.

**General employment permit**

A general employment permit can be obtained for an initial period of from three months to two years and may be further extended up to a maximum period of five years. After this initial five-year period, the individual can seek permission to remain in Ireland without the requirement to hold a further employment permit.

**Residence permission**

If a non-EEA national intends to spend more than 90 days in Ireland, he or she is required to obtain permission to reside legally in Ireland from the Minister for Justice and Equality. This must be done by attending at the local garda (police) station, if residing outside Dublin, or at the GNIB, if residing in Dublin and obtaining an Irish residence permit.

**9 How long does it typically take to process the main categories?**

The current processing time for employment permits is approximately four weeks for those filed under Trusted Partner status and twelve weeks for those filed under the standard route. Note that the processing times can vary depending on the time of year, staffing levels and holiday periods. The DBEI continues to strive to reduce processing times to three weeks for all employment permit applications.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is not necessary to have any benefits or facilities in place to secure an employment permit.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

In Ireland, there are three different government departments with responsibility for immigration (DBEI, Department of Justice and Equality and Department of Foreign Affairs and Trade). The level of discretion afforded varies depending on the particular government department.

While the DBEI follows set procedures for processing employment permits, some flexibility may be allowed (eg, in the case of a start-up).

**12 Is there a special route for high net worth individuals or investors?**

There are two schemes in operation – the immigrant investor programme and the start-up entrepreneur programme – with the purpose of enabling non-EEA nationals and their families, who commit to an approved investment in Ireland, to acquire residency status.

Irish residence permission for successful applicants, and their dependent family members, will be granted initially for two years and may subsequently be renewed for a further three years subject to the applicant continuing to meet the conditions of the relevant scheme. Visa-required nationals will also be issued with a multi-entry visa to facilitate multiple visits to Ireland for the duration of the residence permission. The programmes also facilitate a pathway to long-term residence for successful applicants following the initial five years of residence in Ireland.

Key conditions of both programmes are outlined below and the qualifying criteria have been relaxed to attract more key investors to Ireland.

**The immigrant investor programme**

This is intended for successful business people wishing to invest in and relocate to Ireland. Their investment choices are:

- €500,000 philanthropic endowment to a public project;
- €1 million investment into a new or existing Irish business (or spread over several existing businesses) for three years;
- €2 million investment in an Irish real estate investment trust that is listed on the Irish Stock Exchange; or
- €1 million minimum investment in an approved fund that will invest in Irish business and projects.

**The start-up entrepreneur programme**

This is intended for entrepreneurs with business proposals for a high potential start-up in the innovation economy. The entrepreneur must:

- have at least €50,000 in financial backing for the initial founder. This is reduced to €30,000 for any subsequent founder (from one or a combination of their own resources, a business loan, business angel or venture capital funding);
- have a robust, detailed and innovative business proposal; and
- not be a drain on public funds.

**13 Is there a special route for highly skilled individuals?**

The critical skills employment permit is typically granted to non-EEA nationals intending to work in Ireland in sectors where a shortage of skilled workers exists. A minimum salary requirement of €60,000 gross per annum (excluding allowances) on local payroll must be met, unless the position is listed as strategically important on the highly skilled occupations list, in which case the minimum salary threshold is reduced to €30,000.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There are no schemes in Ireland that allow a fast-track route for high net worth individuals to apply for residence permission.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is a minimum salary requirement of €40,000 for an ICT permit and a contract for services employment permit. For ICT training permit purposes, the minimum annual remuneration is reduced to €30,000. The minimum salary requirement for a general employment permit is €30,000 per annum. For critical skills employment permits, a minimum salary requirement of €60,000 applies, except for positions on the highly skilled occupations list, for which a minimum annual salary of €30,000 must be met.

**16 Is there a quota system or resident labour market test?**

Ireland does not operate an employment permit quota system with the exception of some occupations for which an annual quota has been introduced (certain chefs, horticultural workers, meat processing operatives and farm assistants). However, Irish employers seeking general employment permits or contract for services employment permits for non-EEA nationals are required to advertise the position with the Department of Social Protection Employment Services and the European Employment Services Network employment networks for a minimum period of two weeks and in a national newspaper and either a local newspaper or jobs website for three days, unless exempted. This is to ensure that the vacancy has been advertised in the local and wider EEA labour market and that, in the first instance, a national of the EU or Norway, Iceland, Liechtenstein or Switzerland cannot be found to fill the vacancy. Evidence that this has been done must be included with the employment permit application and the advertisements must include all information as set out in the regulations.

There is no advertising requirement for a critical skills employment permit or ICT employment permit application.

For all employment permits, the ratio of EEA nationals employed must be maintained at a minimum of 50 per cent of the total workforce although exceptions might be recognised in some cases, such as for start-up companies and employers with a sole employee.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

In order to be eligible for an ICT permit, the individual must have been employed by the overseas sending organisation for a minimum period of six months prior to being assigned to Ireland (reduced to one month for trainees).

In the case of an application for a contract for services employment permit, the individual must have been employed by the sending organisation for a minimum period of six months immediately preceding the employment permit application.

**18 What is the process for third-party contractors to obtain work permission?**

The contract for services employment permit is designed for situations where a foreign undertaking (contractor) has a contract to provide services to an Irish entity on a contract for services basis and facilitates the transfer of non-EEA employees to work on the contract in Ireland.

The contract involved must be a one-to-one contract with an Irish entity – documentary evidence of this contract may be requested. Employment permits will not be considered in instances where work is being subcontracted to a third party. Permits can only be considered for the term of the contract. Applications may be granted for a maximum period of up to 24 months in the first instance and may be extended upon application to a maximum stay of five years.

Where an employee is required to work in Ireland for between 15 and 90 days under a contract for services arrangement, the atypical working scheme applies (see question 33).

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

The foreign national concerned must possess the relevant qualifications, skills or experience required for the particular role or job.

Critical skills employment permit applications on behalf of accountants must be accompanied by evidence that the relevant qualification is recognised by the appropriate body in Ireland. Similarly, evidence of registration or recognition by the relevant body must be provided in the case of lawyers and architects wishing to practice in Ireland.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

It is generally not possible to extend a short-term visa while the individual is in Ireland. In addition, it is not possible for an individual to convert a business visa to an employment visa while the individual is

residing in Ireland. The individual must leave Ireland and apply for the relevant employment visa in his or her country of normal residence in order to re-enter Ireland as an employment permit holder. However, a non-EEA national who has been granted permission to enter Ireland to attend an interview under the highly skilled job interview programme, and who is subsequently successful at interview, may apply for an employment permit without the requirement to leave Ireland.

### 21 Can long-term immigration permission be extended?

**Critical skills employment permit holders**
A feature of the critical skills employment permit is that holders whose employment permit and immigration registration card are about to expire will not be required to apply for a renewal permit through the DBEI. Instead, critical skills employment permit holders can apply for a support letter from the DBEI and then present themselves for registration renewal at the GNIB with this support letter, their existing critical skills employment permit, passport and their GNIB card. Upon successful application, the stamp on the Irish residence permit will change from a Stamp 1 to a Stamp 4, which means the card holder can work in Ireland without an employment permit.

**ICT permit holders**
An ICT permit can be issued for a period of up to two years initially and can subsequently be extended for a further three years only (maximum stay in Ireland of five years) after which time the individual must either leave Ireland or seek alternative immigration permission.

**Contract for services employment permit holders**
A contract for services employment permit can be issued for a period of up to two years initially and can subsequently be extended for a further three years only (maximum stay in Ireland of five years) after which time the individual must either leave Ireland or seek alternative immigration permission.

**General employment permit holders**
A general employment permit can be issued for a period of from three months to two years initially and can subsequently be extended for a further three years. After five years, immigration permission can be obtained from the Department of Justice and Equality for the holder to reside and work in Ireland without the requirement to hold a further employment permit. This arrangement applies both to individuals still in employment and to those made redundant after five years employed on a work permit.

### 22 What are the rules on and implications of exit and re-entry for work permits?

An individual who holds an employment permit is expected to work in Ireland for the duration of the employment permit. An individual may leave Ireland for short periods of time, for example, to go on business trips or holidays.

However, if a visa-required national is staying in Ireland with a valid permission to remain, a re-entry visa will be needed to return to the state if the individual leaves for a short period. Although the individual is free to leave the state without a re-entry visa, obtaining a re-entry visa before leaving the country exempts the applicant from the requirement to submit a new visa application in the country of origin in order to return to Ireland. The application must be made by post or in person. If attending in person, an appointment must firstly be made through the online re-entry visa appointments system. Applications filed in person are generally processed on the day of attendance, if possible, while postal applications are usually processed in approximately 10 working days.

### 23 How can immigrants qualify for permanent residency or citizenship?

**Permanent or long-term residency**
In order to be lawfully resident in Ireland, there is a requirement to register with the GNIB as soon as possible after arrival in Ireland, as otherwise this could have an adverse effect on any application for long-term residency or citizenship.

Individuals who have been legally resident in Ireland for a minimum of five years (ie, 60 months) on the basis of general employment permit conditions may apply to the immigration authorities for permission to remain in Ireland without being subject to employment permit conditions (Stamp 4 permission). This permission is generally granted for a 12-month period and will need to be renewed annually.

A general employment permit holder may also apply for long-term residency after five consecutive years of holding valid employment permits (reduced to two years for critical skills employment permit holders). Long-term residency, once granted, is valid for an initial five-year period and may be renewed thereafter. Periods of time for which an individual has not been legally resident in the state (ie, does not have an up-to-date endorsement on the passport) cannot be counted towards an application for long-term residency.

**Citizenship**
A non-Irish national can apply to become an Irish citizen through naturalisation. Applications for citizenship are decided by the Minister for Justice and Equality, who has absolute discretion whether to grant citizenship, even where the applicant meets certain conditions set out in the legislation. The main conditions for naturalisation are that the individual must:

- be 18 years or older (or married, if younger than 18);
- be of good character;
- have had a period of one year's continuous reckonable residence in Ireland immediately preceding the date of the application and, during the eight years preceding that, have had a total reckonable residence in Ireland amounting to four years;
- intend in good faith to continue to reside in the state after naturalisation; and
- make a declaration of fidelity to the nation and loyalty to the state.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Where a non-EEA national holding a valid employment permit ceases to be employed by the employer stated on the permit, for any reason, the employment permit (employee and employer's certified copy) must be returned to the immigration authorities for cancellation within four weeks of the individual ceasing employment. The permits will subsequently be cancelled and will no longer be valid for the purpose of employment. Irish residence permit cards should be returned for cancellation within 90 days of an individual leaving Ireland.

An individual who has held an employment permit for less than five years and has been made redundant is permitted to remain in Ireland for a period of six months from the date of redundancy in order to seek further employment.

### 25 Are there any specific restrictions on a holder of employment permission?

Any change in the circumstances of the individual or the employment must be notified to the immigration authorities. An individual who holds an employment permit is only permitted to work for the employer and in the employment stated on the employment permit.

The holder of an employment permit must be employed on a full-time basis with the employer stated on the employment permit and is therefore not permitted to attend a full-time educational course (student permission required). However, part-time evening study is permitted.

If the individual is on his or her first employment permit in Ireland, then the individual is not permitted to change employment within the first 12 months (except in exceptional circumstances) of the start date of the employment permit. After 12 months, the individual is free to move employer; however, a new employment permit application must be submitted in respect of the new employment. This also applies for critical skills employment permits and the individual would thus be allowed to apply for a position with a different employer after the first 12 months of validity. The change of employer would require a new application and Irish authorities' decision on this would be subject to the policy at the time. Only in exceptional circumstances (holder of the permit is made redundant or unforeseen circumstances that change the employment relationship), can a change of employer be considered before the end of the 12-month period.

An individual who has held a critical skills employment permit for two years may subsequently work without an employment permit subject to obtaining Stamp 4 immigration permission.

**Update and trends**

The Irish government has adhered to its promise to undertake biannual reviews of the employment permits regime in line with changing labour market needs and in conjunction with public consultation. Following a recent review, changes were made to both the Highly Skilled Eligible Occupations List (HSEOL) and the Ineligible Categories of Employments List (ICEL). This saw the inclusion of certain animation occupations on the HSEOL in line with changing skills needs and the removal from the ICEL of certain classes of chef, thereby opening up the general employment permit route for certain chefs, subject to strict quotas. New regulations also came into effect from May 2018 allowing a limited number of general employment permits to be issued in respect of horticultural workers, meat processing operatives and dairy farm assistants, with a reduced salary level of €22,000. These changes came about primarily as a result of collaboration between the authorities and certain industry sectors, namely the hospitality, construction and agricultural sectors where the economy has improved in recent times. Further changes to the employment permit regime are likely as labour market needs fluctuate; however, any changes will be tightly monitored and regulated to ensure skills gaps are filled in the first instance from within the EEA.

The uncertainty surrounding the status of UK nationals in Ireland following Brexit continues to be a hot topic of discussion. When the UK exits the EU, we could possibly see restrictions on the free movement of people and labour between Ireland and the UK; however, this does not seem likely with many believing that a bilateral agreement would be concluded to maintain the travel area. Until such time as Brexit formalities have been finalised, this will remain a matter of concern and uncertainty on both sides of the Irish Sea. One side effect of the uncertainty has resulted in an unprecedented increase in the number of UK nationals of Irish descent applying for Irish passports with a record number of passports issued in 2017.

Other recent changes introduced in line with government commitments to ensure an ongoing review of the Irish immigration system have included the removal of the United Arab Emirates from the visa required list and the phasing out of the old GNIB registration card to be replaced by an Irish residence permit designed to conform to EU standards.

## Dependants

### 26 Who qualifies as a dependant?

The following individuals may qualify as a dependant:

- non-EEA spouse;
- non-EEA partner of an Irish citizen in a long-term bona-fide relationship akin to marriage. Partners that are also parents of children with the main applicant can also apply for family reunification directly;
- non-EEA partner of an EU citizen, in a long-term bona-fide relationship akin to marriage;
- non-EEA partner of a person with an employment permit or person granted long-term residence, in a long-term bona-fide relationship akin to marriage;
- non-EEA civil partner who has contracted a registered partnership, or is a party to a class of legal relationship specified in the Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 as entitled to be recognised as a civil partnership; and
- non-EEA child under 18 years of age (under 21 years if a child of an EU spouse).

### 27 Are dependants automatically allowed to work or attend school?

Dependants are not automatically entitled to work. However, dependants of critical skills employment permit holders may apply to the DBEI for a dependant/partner/spouse employment permit subject to having a valid offer of employment from an employer in Ireland.

**Dependant/partner/spouse employment permit**

The following individuals do not qualify for this permit:

- non-EEA spouse, dependants or civil partner of an Irish national;
- non-EEA civil partner who has contracted a registered partnership, or is a party to a class of legal relationship specified in the Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 as entitled to be recognised as a civil partnership;
- non-EEA partner who has obtained permission from the Department of Justice and Equality to reside in Ireland on the basis of a de facto relationship;
- non-EEA child under 18 years of age who is resident in Ireland as a family member of the employment permit holder;
- non-EEA dependants, civil partners or spouses of EU nationals; and
- non-EEA dependants, civil partners or spouses of non-EEA nationals who hold other classes of employment permits (ie, general employment permit holders and ICT permit holders).

A non-EEA spouse, partner or dependant of an individual who holds one of the employment permits listed below may apply for a dependant/partner/spouse employment permit:

- a valid critical skills employment permit;
- valid Stamp 4 immigration permission granted where the primary person held a previous critical skills permit, green card permit or hosting agreement; and
- a valid employment permit or hosting agreement in respect of a third-country researcher position.

An application may be made in respect of all occupations, including certain carers in the home, and excluding all other occupations in a domestic setting and with a remuneration of less than €30,000 per annum (but not less than the national minimum wage).

Under this scheme, eligible spouses, partners and dependants have greater ease of access to employment in Ireland as they are permitted to apply for an employment permit in respect of most occupations. In addition, the prospective employer is not required to advertise the position and the government processing fee is waived.

All other dependants who do not qualify for a dependant/partner/spouse employment permit must satisfy the criteria applicable to the relevant employment permits in their own right.

Non-EEA nationals who have held valid dependant, partner or spouse employment permits for a consecutive period of five years or more and who have been working lawfully during that time may not require an employment permit to work in the state.

If an applicant does not satisfy the qualifying criteria, he or she is still required to hold an employment permit to work in the state. If he or she has been in continuous employment with his or her current employer for five years or more, he or she may apply for a renewal of the employment permit for an unlimited duration. If, however, he or she has not been with the same employer for five years or more, he or she may apply for a renewal of the employment permit for a maximum duration of three years and the applicable fee for the specific permit type applies.

### 28 What social benefits are dependants entitled to?

The main entitlement to social benefits is linked to the social welfare contribution (PRSI) class and length of time paying social security in Ireland. Certain minimum PRSI contribution conditions must be satisfied in order to be entitled to the main social benefits in Ireland. Child benefit entitlements are linked to habitual residence.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

Prior criminal convictions can be a barrier and the immigration authorities may refuse to grant an employment permit or visa in such cases. Police clearance certificates are required to support visa applications from certain nationalities.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Penalties for breach of Irish immigration rules for employing a non-EEA national without an appropriate employment permit can lead to fines of up to €3,000 or imprisonment of the non-compliant employer (upon summary conviction). Upon conviction or indictment, employers

might be liable to fines of up to €250,000 and imprisonment for a term of up to 10 years.

Inspectors from the Workplace Relations Commission carry out employment permit compliance checks as part of their routine inspections.

**31 Are there any minimum language requirements for migrants?**

There is no minimum language requirement for migrants.

**32 Is medical screening required to obtain immigration permission?**

No medical screening (eg, blood tests, X-rays, screening) is required in order to obtain immigration permission.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Foreign employers requiring an employment permit for employees who will be based at a client site in Ireland may apply for a contract for services employment permit, subject to satisfying all the qualifying criteria.

Non-EEA nationals who are legally residing and employed in another EU member state may apply for permission to work at a client site in Ireland under the Van der Elst Ruling. This allows the individual to carry out short-term project work for a maximum period of 12 months on behalf of his or her EU employer, provided he or she has appropriate permission to return to work and reside in the EU member state upon completion of the project in Ireland.

The atypical working scheme applies to non-EEA nationals who, in certain circumstances, are required by a company or organisation based in Ireland to undertake short-term contract work of between 15 and 90 days. An individual will be considered for this scheme in the following circumstances:

- where a skill shortage has been identified;
- to provide a specialised or high skill to an industry, business or academic institution; and
- to facilitate waged short-term employment, internship or job placement where beneficial or integral to the course being studied in respect of tertiary level students studying outside the state in approved or accredited institutions (medical and unwaged internships are excluded).

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# Israel

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Israel allows the employment of foreigners under B-1 work permits only. There are a few categories under quota for employment including construction, agriculture, nursing, the restaurant business, expert professionals and more. Israeli immigration guidelines are trying to limit and minimise the number of foreigners seeking employment in Israel. This is achieved by limiting the maximum employment time in Israel to five years and three months (on rare occasions, this may be extended if the applicant can demonstrate that he or she makes a significant contribution to the Israeli economy). Also, Israel uses quota systems for the construction and agriculture industries and for nursing.

The expert professionals category does not have a quota or limit; however, the foreigner should meet certain criteria, including, but not limited to, showing that his or her expertise does not exist in Israel.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A visitor or a traveller (B-2) will be issued with a 90-day visa, usually upon entry. Specific nationals (eg, such as those from China, India, Turkey, etc) are required to secure a visitor visa (B-2) in advance of, and prior to, entry to Israel. A visitor is allowed to engage in activities of a visit nature only and the visit must be short. No employment is allowed under this visa.

Employment is available in Israel under a B-1 work permit, which is normally valid for up to one year. The nature, but not the length of the visit, is relevant to the need for an employment visa. A work permit for up to three months is also available; however, it requires the same procedure timelines as a one-year permit.

A procedure launched in January 2014, updated and modified in February 2015 and December 2016, allows for a B-1 work visa for up to 45 days, under an expedited procedure. The 45-day visa approval is available within six business days of filing the application. An additional visa issue process needs to take place after entry into Israel. The 45 days may be accumulated during a full calendar year. The visa cannot be extended beyond 45 days per calendar year. The visa is available for nationals who are exempt from obtaining a type B-2 tourist visa prior to entering Israel (eg, nationals of Australia, Canada, the European Union, the United States, etc).

### 3 What are the main restrictions on a business visitor?

A business visitor (B-2) will be issued with a 90-day visa, usually upon entry. Specific nationals would be required to secure a visitor visa (B-2) in advance of, and prior to, entry to Israel. A business visitor is allowed to engage in activities of a visit nature only and the visit must be short. No employment is allowed under this visa.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Receiving short-term training from an Israeli person or entity does not require a work permit to be issued. However, in some cases, the training schedule and sponsor application should be presented to the authorities explaining the purpose of the visit. Giving short-term training would be considered as work and would require the appropriate employment visa (B-1) to be issued in advance, following the full work permit process. Someone giving short-term training may also use the expedited 45-day B-1 visa procedure mentioned above. The 45-day visa may be accumulated and cannot be extended beyond 45 days per calendar year, per individual. An expert or individual who is arriving in Israel to provide a lecture or a series of lectures may use the B-2 visitor visa as long as he or she will not be paid for his or her services (per diem may be paid) and the entity arranging the lectures will not enjoy a profit.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas are rare in Israel as the country does not serve as a passage for travelling to other countries. Transit visas must be approved by the Ministry of the Interior – the Population, Immigration and Border Control Authority (PIBA) – and may be requested at the Israeli consulate in the applicant's country of residence or at the Israeli Ministry of the Interior in Israel.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main category used by companies to transfer skilled staff is the B-1 expert category. B-1 can also be used for high-level managers of both Israeli and foreign companies. The B-1 expert visa, for those with proven high level of expertise or essential knowledge that is not available in Israel, also includes an 'expert wage' salary obligation (more than double the Israeli average salary as base salary and changing over time). The B-1 expert category is divided into two levels: high-level experts in a field requiring an academic background or experts with no academic background, including, but not limited to, qualified workers such as expert welders, chefs, etc. This subcategory has an additional burden on the employer asking for work permits to be issued. This may include, but is not limited to, the following:

- deposit of a bank guarantee at the airport prior to the visa issue;
- additional affidavits and statements signed by the employee and the applicant company's general manager;
- an Israeli bank account to be opened for the employee having his or her salary transferred to this account; and
- a contract of employment signed by the employer and employee, in English and in a language the employee understands, aligned with Israeli labour laws and including confirmation by an Israeli attorney that the agreement complies with Israeli law.

In May 2018, a new experimental procedure was issued for B-1 work visas for experts in high-tech and cyber companies (high-tech work visa). The procedure allowing an expedited procedure for experts is also available under the existing expedited process and allows:

- extending the 45-day procedure, for high-tech and cyber company experts, to up to 90 days per year;
- an expedited process for work permits for up to one year;
- the issue of work permits to foreign students with Israeli academic qualifications; and
- work permits for the expert's spouse.

A business visa category applicant is issued with a B-2 visitor visa, which covers all manner of visit activities, including tourism.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

The following are the immigration-required procedures that should be addressed for a B-1 expert category work permit:

- step 1: a request must be filed for an 'in-principle working approval' to be examined by a special committee within PIBA. The authorities' processing time is about two to three months from application. If the application is for an expert with no academic background or in a field that does not require an academic background, the authorities may issue a list of additional requirements allowing approval to be issued (see question 6). Approval for a 45-day visa is issued within six working days of submission and approval for a high-tech work visa is issued within six working days of submission;
- step 2: after receiving the in-principle working approval, a request to issue a B-1 work permit will be submitted to the regional PIBA office. Once approved, the ministry will issue and send an 'invitation to enter Israel' to the Israeli consulate in the expert's country. The expedited process for a 45-day visa allows the expert to enter Israel and the work visa is issued after entry to the country;
- step 3: the expert collects his or her invitation at the Israeli consulate. The consulate issues a work permit with a single-entry visa valid for 30 days. After receiving the visa and invitation, the expert can enter Israel, activate the work permit and start working immediately; and
- step 4: upon arrival, a full-year work visa will be issued at the airport. Shortly after entry, a request for a 'multiple-entry visa' should be submitted and issued at the regional office of the Ministry of the Interior that issued the visa and invitation.

The expert may not leave the country until this process is finalised (may be issued within a few days of arrival). Leaving the country prior to the completion of the process may require a new invitation to be issued.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

Each B-1 work permit is valid for up to one year. Extensions are available for up to one year at a time, allowing no more than five years and three months in total.

A procedure launched in January 2014 allows the in-principle approval to be issued for a period of two years, under specific criteria. The B-1 work permit shall be issued for one year at a time under the two-year in-principle approval and shall require an extension after one year within the 'approval' coverage.

Extensions beyond five years and three months are rare and should demonstrate a significant contribution to the Israeli economy. Additional and special procedures and approvals are needed in order to obtain work permits beyond the limit of five years and three months.

The expedited 45-day visa allows a maximum of 45 days in Israel, per calendar year. The high-tech work visa allows a maximum stay of 90 days under the expedited procedure.

**9 How long does it typically take to process the main categories?**

Processing usually takes two to three months from submission for approval and an additional month for the visa issue procedures.

The expedited 45-day visa requires six business days' processing for approval (step 1) and an additional visa issue after entry to Israel.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

The employer is committed to the employee or expert's benefits, including health insurance, suitable housing or residency, compliance with Israeli labour law regulations, etc.

These commitments are part of the employer's undertakings upon the submission of a request to employ a foreign employee or a foreign expert.

Health insurance must cover the employee's entire stay in the country and needs to meet Israeli standard health insurance. Housing requirements are also included in Israeli regulations allowing for living and washroom space.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

There is a list of criteria that the authorities examine upon receiving an application from a skilled worker or expert. The criteria to be considered are whether:

- the expert has special skills that cannot be found in Israel;
- the base salary or wage is more than double the average Israeli salary, to determine the employee is an expert;
- the expert contributes to the Israeli economy and creates a need for new positions to be filled by Israeli employees;
- the expert passes knowledge and experience to the local Israeli employees;
- the expert demonstrates a high level of education and a high level of experience; and
- the expert should have a high managerial position and a high-level position of development in his or her industry.

**12 Is there a special route for high net worth individuals or investors?**

All skilled workers and experts should follow the same B-1 work permit procedures. All applications must be sponsored by an employer – either Israeli or foreign.

A new investor visa (B-5) for US investors in Israel was introduced in 2016. The B-5 Israel investor visa permits the investor and several key workers in the business and their families to work and live in Israel.

The minimum amount of investment required in order to receive the B-5 Israel investor visa is undetermined; however, it must be substantial. In the United States, this is normally considered to be at least US$100,000, but the actual amount required will be determined by the value or cost, or both, of the business. Applications for the Israel investor visa must meet the following conditions:

- the investor must invest a substantial amount of his or her own money into a new or existing Israeli business;
- the investor must own at least 50 per cent of the business;
- the business must be for profit;
- it must be shown that the business will provide income significantly in excess of what is needed for the livelihood of the investor and his or her family; and
- the business must have a plan to hire Israeli workers.

**13 Is there a special route for highly skilled individuals?**

See question 6.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Yes. One of the criteria to determine that a skilled worker is an expert is by paying the foreigner a base salary or wage that should be more than double the average Israeli salary (expert salary).

The employer and signatory are committed to this criterion and an accountant should confirm that the employer met this criterion upon application for a work permit extension.

The authorities may address the employer at any time and request evidence of monthly payslips to meet this criterion.

The expedited 45-day visa does not require the expert salary to be paid during assignment.

**16 Is there a quota system or resident labour market test?**

There is no general quota and there is no need to actually search the market for local skilled workers. The application, however, should explain and demonstrate that such skilled workers cannot be found in Israel. The authorities may ask for an additional explanation on this matter.

There are a few categories under quota for employment including construction, agriculture, nursing and caregivers and the restaurant business.

**Update and trends**

A new experimental procedure for the handling of high-tech and cyber-related applications for the employment and regulation of the status of foreign experts in Israel has been introduced by PIBA.

This procedure relates to three arrangements that benefit high-tech companies, as follows:

- submitting online work permit applications that will be reviewed within a few days, compared to the current longer processing time;
- granting a work permit to the spouses of foreign high-tech employees to work in Israel without the need to meet the minimum salary threshold; and
- a foreign academic graduate will be able to obtain a work permit without the need to meet the minimum salary threshold.

As part of the government's decision to encourage the high-tech and cyber-industry in Israel, and in view of the importance attributed to these sectors to the Israeli economy, the above-mentioned beneficial arrangements have been established in connection with the employment of foreign experts, which will apply to companies that are recognised as technologically advanced corporations by the National Authority for Technological Innovation.

This experimental procedure shall remain valid for a period of 12 months from the date of its publication in February 2018, as long as it is not amended or extended by PIBA.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

An expert category application needs to demonstrate that the expert has unique and special knowledge and experience that is not available in Israel.

Newly hired employees can be issued with Israeli B-1 work permits. The employer–employee relationship history is not needed.

**18 What is the process for third-party contractors to obtain work permission?**

The employer is the entity who should submit the application for a work permit. The employer may be an Israeli entity or a foreign entity. The Israeli authorities examine the application and prefer a direct employer–employee relationship to exist, allowing the work permit to be issued to the entity actually employing the expert.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

There is no assessment, equivalency or recognition of qualifications. However, a diploma, certificate of qualifications or expertise recognition should be provided and presented.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

A change of status from visitor visa to employment visa is not available. The expert should leave the country and return, after invitation, under the appropriate employment visa, if working.

An extension of an employment visa is available. The process should take place prior to the expiry of the work permit to avoid a situation where the expert is in the country with no valid visa in place (waiting for the extension to be approved and issued).

Short-term employment visas (under three months, which do not meet expert salary criteria) cannot be extended. The 45-day visa cannot be extended beyond 45 days during a calendar year, but this term may be accumulated. A full B-1 long-term work permit may be requested and issued after the employee has left the country, after using his or her 45-day visa.

**21 Can long-term immigration permission be extended?**

Each B-1 work permit is valid for up to one year. Extensions are available for up to one year at a time and for no more than five years and three months in total (see question 8).

**22 What are the rules on and implications of exit and re-entry for work permits?**

As long as a multiple-entry visa is issued and stamped on the expert's passport, exit and re-entry is available without influencing the work permit.

Once the multiple-entry has expired and the expert has returned to Israel, he or she will be issued with a B-2 visitor visa and employment will not be covered unless a new work permit is issued or extended.

Multiple-entry permits are available for the B-1 expert category. This is not usually available for other categories, such as construction, agriculture, nursing, etc.

**23 How can immigrants qualify for permanent residency or citizenship?**

The ways to become 'Israeli' are either to marry or to live with an Israeli citizen who will serve as the sponsor of the application until the residency process is completed and an Israeli ID or passport is issued, or to be eligible under the Law of Return allowing Jewish-origin nationals to apply for residency or citizenship. This may also be achieved by converting to Judaism, which is a very demanding process requiring deep sincerity and acknowledgment by the Rabbinical authorities.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

A work permit does not have to be cancelled upon the termination of employment. In the event of early termination, it would be necessary to report to the authorities that the expert has left the country with no intention of returning as an employee. It would be preferable to cancel the visa and the multiple-entry visa prior to the expert's departure.

**25 Are there any specific restrictions on a holder of employment permission?**

The work permit is issued per employer and per specific employee. Any change with the employer or employee reflected on the expert's visa should be reported, including the position, as this is part of the approval issued to the employer and employee. The employer may change or replace the employee as long as the former employee has left the country and his or her visa has been cancelled.

The new employee must be issued with a new visa if he or she intends to replace the former employee.

A change of salary need not be reported to the immigration authorities as long as the minimum expert base salary is maintained (tax authorities should be informed).

The employee is allowed to conduct work only in accordance with the work permit issued.

## Dependants

**26 Who qualifies as a dependant?**

The immediate family to be considered as dependants are a spouse and children up to the age of 18. High-level experts may be accompanied by their family on assignment to Israel. The following experts may not be accompanied by dependants:

- under an approval in a field not requiring an academic background;
- under approval of up to three months; or
- under approval for 45 days.

**27 Are dependants automatically allowed to work or attend school?**

Dependants may attend school but are not automatically allowed to work in Israel. A dependant may be issued with a B-1 work permit, if he or she meets the expert's criteria and is sponsored by a company under a full B-1 expert category application.

The high-tech work visa allows spouses to apply for employment authorisation.

**28 What social benefits are dependants entitled to?**

A work permit holder will pay either full social security contributions, or limited social security contributions if the salary is paid in the expert's home country. Social insurance will include coverage for injury at work to the employee and his or her family members and the employer's bankruptcy (this does not waive the need for full medical

coverage according to the Israeli Health Basket requested by law for the employee and his or her family during the entire Israeli employment term).

**Other matters**

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Prior criminal records may cause the rejection of a work permit application.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

There is an increasing trend to initiate criminal proceedings against employers and their managers (who are liable for full responsibility) that unlawfully employ foreign employees. The penalties involved with unlawful employment are as follows:

- according to the Law of Entry into Israel 1952, a person entering Israel without a permit, or committing a breach of one of the conditions of his or her entry permit, is committing an offence and the punishment is one year's imprisonment. Such a person can be deported;
- according to the Foreign Workers Law (unlawful employment) 1991, an employer who employs a foreign worker who does not hold a work permit shall pay a fine defined in the Criminal Law 1977 of approximately 104,400 New Israeli shekels and an additional 5,200 New Israeli shekels for each worker for every day that the offence continues; and
- if the offence was committed by a corporation, any person who was responsible for the matter shall be charged with the offence, unless it is proven that the offence was committed without his or her knowledge or that he or she has taken all the necessary measures to prevent its occurrence.

The above procedure is relevant to all sectors requiring work visas in Israel, including work visas for the oil and gas industry.

The Ministry of Interior has enforcement units occasionally checking employers and work sites.

**31 Are there any minimum language requirements for migrants?**

No.

**32 Is medical screening required to obtain immigration permission?**

Yes. The Israeli consulates request that medical screening takes place and is presented upon the visa issue at the worker's home country.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There is no specific procedure for secondments. All employers and employees must go through full Israeli B-1 work permit procedures.

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# Italy

**Davide Marco Mangano and Paolo Lucarini**

**PwC**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The fast growth in business development of the past 40 years has transformed Italy from an 'emigration' country to a 'destination' country and immigration law is trying to follow this socio-economic trend – however, with some difficulties.

The Italian immigration system is based on the principle of 'self-sufficiency' allowing non-EU citizens to enter and stay in Italy only if they are able to maintain themselves.

Based on this principle, the Italian immigration system first makes a distinction between EU and non-EU citizens. The former can enter and work in Italy with few specific procedures; the latter are subject to a strict system of control, as outlined below.

The immigration system for non-EU citizens can be divided into two broad categories: quota and extra-quota.

Every year the Italian government issues a fixed number of work permits (quota) based on the nationality of the worker and work categories.

In contrast with the quota system, the extra-quota procedure allows specific categories of workers (specialised and non-specialised) to enter Italy for a limited period of time, but only if specific requirements are met.

The immigration procedures must be filed at the municipality of the city in which the employee will perform his or her work activity, and these offices can have different approaches to the same matters.

Immigration law in Italy is based on the following laws:

- Law Decree No. 286 of 25 July 1998 (the Immigration Law);
- Law 189 of 30 July 2002 (Law Bossi-Fini); and
- Decree of the President of Italian Republic No. 30 of 6 February 2007.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Italian immigration law provides that it is always necessary to obtain a short-term visa to enter the country. The foreign national must apply for a Schengen visa to the competent Italian consulate in his or her residence country. Citizens of some countries listed by the Italian Ministry of the Interior can enter Italy without a visa for a period up to 90 days only for business or tourism reasons.

If non-EU citizens enter Italy for business reasons, even for a short-term period, they need a visa.

### 3 What are the main restrictions on a business visitor?

Business visitors are allowed to stay in Italy for a maximum of 90 days within a period of 180 days. They must limit their activity to 'economic or commercial reasons, making contacts or conducting negotiations, learning the use and operation of capital goods purchased or sold under industrial cooperation', which normally includes attending business meetings and making sales calls to clients. It is not necessary that business visitors are remunerated for their business trip in Italy.

With this type of visa, business visitors are not allowed to work. If the visitors wish to perform an activity not mentioned above, it is necessary to obtain the corresponding visa.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

In Italy it is always necessary to obtain a visa to enter the country and it is mandatory to obtain a permit to stay to perform an activity even for short-term training. If the short-term training is 'on the job', it will be necessary to apply for a training visa. If the training concerns the learning of the use and operation of capital goods purchased or sold under industrial cooperation, a Schengen visa can be used. For training exceeding a three-month period, a training visa will be necessary.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Italian immigration law provides two types of transit visa: a transit visa and an airport transit visa.

The transit visa allows the passage through the territory of one or more states belonging to the Schengen area to reach the territory of a third state. It has a maximum validity of five days and allows a maximum of two entries. The individual must also be in possession of a visa to enter the country to which they are headed, and their licence is subject to verification of the possession of the same requirements for the granting of a tourist visa (valid passport, ticket or seat reservation, means of subsistence, etc).

The airport transit visa does not authorise entry into Italy, but allows the foreigner to enter the international transit area of an airport during a stop for international flights. Its validity depends on the time required to perform the exchange as it appears on the ticket (or the reservation) submitted by the applicant together with a passport or valid travel document and may be equipped with an entry visa for the country of final destination.

In the absence of the above, the traveller will be forced to interrupt their journey and return to their country of origin.

This visa is necessary for citizens of the following countries: Afghanistan, Bangladesh, the Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, Senegal, Somalia and Sri Lanka.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

Section 27 of the Immigration Law provides that the main immigration categories used by companies to transfer skilled staff are the following:

- executives or highly specialised personnel employed by companies with headquarters or branch offices in Italy, or by the representative offices of foreign companies whose main sites of activity fall in the territory of one of the member nations of the World Trade Organization, or executives of a major Italian office of an Italian company or a company from another state of the European Union;
- directors, highly specialised workers and trainees who will be assigned to a parent company in Italy: intra-company transfer (ICT) work permit; and
- salaried employees who are regularly paid by employers (either individuals or organisations) that reside or are headquartered abroad, and from whom they received their salary directly and in cases where the employees are temporally transferred from foreign

countries to work with individuals or organisations, be they Italian or foreign, residing in Italy, for the purposes of performing, in Italian territory, specific services stipulated under a contract executed between the aforementioned individuals or organisations residing abroad in accordance with the provisions of section 1655 of the Italian Civil Code and with Law No. 1369 of 23 October 1960 as well as international norms and those of the European Union.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

If the foreign employer has a branch or subsidiary in Italy, the employees can work in Italy through an 'intra-group assignment' from the foreign company to the Italian entity.

To allow foreign employees to work in Italy, the Italian entity must apply for a work permit, via the internet, from the Italian immigration office of the municipality where the foreign employee will perform his or her activity or where the Italian entity has its legal office.

Having received the work permit, the foreign employee will be able to apply for the work visa at the competent Italian consulate in their country or city of residence (the procedures to be followed and the documents to be submitted vary in every single country and must be verified from time to time).

Having received the work visa, the foreign employee can enter Italy and, within eight days of arriving in Italy, must sign a contract of stay with the Italian entity, which makes their entry official and marks the start of their assignment to the entity. The assignee can start to work from the day in which he or she signs the contract of stay even if he or she has not yet received the permit of stay.

After signing the contract of stay, the foreign employee must apply for an official permit to stay for work reasons via the post office, addressed to the police office (the entity that will issue the permit to stay) of the municipality where they are going to carry out their work.

In order to be eligible to apply for an ICT work permit, it is mandatory that the employee has worked for the sending company for more than three months.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

Italian immigration law states that it is always necessary to obtain a visa and a permit to stay in order to work in Italy. The maximum period of stay in Italy for directors and highly specialised workers falling within the ICT category is three years. It is one year for trainees. Highly skilled employees, managers and directors can stay in Italy on assignment for a maximum period of five years.

**9 How long does it typically take to process the main categories?**

Italian immigration law provides that the work authorisation must be issued within 40 days of the initial request. This time frame is generally not strictly adhered to by the Italian Immigration Office.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

The main condition to obtaining a work permit is to have an Italian employer who sponsors the foreign citizen. To be a sponsor means to guarantee that the foreign worker has the same treatment as an Italian worker (in terms of insurance and remuneration). In addition, it is necessary to demonstrate that the worker has a place of residence in Italy. If the worker cannot demonstrate evidence of accommodation, the Italian Immigration Authority will reject the request for work authorisation.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Immigration authorities usually follow objective criteria in issuing a work authorisation. This means that if a company cannot file all the mandatory documents, the sponsored workers will not able to enter Italy for work reasons. In principle, the Immigration Authority can exercise discretion, but usually it does not exercise this right.

**12 Is there a special route for high net worth individuals or investors?**

High net worth individuals are permitted to enter Italy without completing the quota procedure.

They can directly ask for a visa called an 'elected domicile visa' from the competent Italian consulate. This type of visa is issued when a foreign national intends to establish residence in Italy without carrying out any kind of work activity.

In order to obtain an elected domicile visa, it is mandatory for the foreign national to demonstrate to the consulate that they can live in Italy without working. It is necessary for applicants to produce evidence of documented and detailed guarantees regarding their commercial and financial status. These financial resources must be regular and constantly generated from the activity of the applicant. The income can be generated from real estate properties, regular economic and commercial activities, pensions or trusts in which the applicant is the beneficiary, as well as any other legal sources. It is mandatory that these sources of income do not arise from an activity carried out in Italy. This type of visa is also issued for the family members.

Non-EU citizens who wish to perform an industrial or professional activity, set up a joint-stock company in Italy or be a member of a company board (to be exercised primarily in Italy), must demonstrate that:

- they have adequate resources for the activity that will take place in Italy;
- they possess the requirements under Italian law for the exercise of individual activities;
- they are in possession of a certificate, of not more than three months old, from the competent authority stating that there are no impediments to the issuance of the authorisation or licence provided for the activity that he or she intends to perform;
- they have suitable lodgings; and
- they have an annual income from legitimate sources.

The Italian Budget Law 2017 introduced a new category of visa called the 'investment visa' for foreign investors who meet one of the following criteria:

- invest at least €1 million in a company with a legal seat in Italy;
- invest €2 million in Italian government bonds; or
- donate €1 million to an immigration or research organisation.

These investments must all be granted for a minimum period of two years.

The investment visa will allow the foreign citizen to obtain an Italian resident permit for two years, with the possibility to extend it for an additional three years. The dependants will be allowed to join the investor in Italy and receive a family permit of stay.

The investors must file a list of specific documents to demonstrate the investments in Italy, after which the Italian immigration offices will evaluate them and if all the requirements are met they will issue the authorisation to obtain the proper visa.

A specific decree will establish the procedures to obtain the visa and it will also indicate all the required documents.

**13 Is there a special route for highly skilled individuals?**

Usually, highly skilled individuals do not have a special route to enter and work in Italy. In some immigration law decrees, when the government establishes the annual quota, the Immigration Authority includes a limited number of quotas for highly skilled individuals, so in this case they could be hired by an Italian company if they win a quota.

If highly skilled individuals need to enter Italy and work in an 'assignment' position and the criteria are met, they have a special route to obtain an extra-quota work authorisation. For the procedure to obtain extra-quota immigration permission, see question 7.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Unfortunately, there is no special route, including fast track, in Italy. The only new possibility of entering Italy and working here is the EU Blue Card, which allows an Italian employer to hire a non-EU citizen in Italy without passing through the quota system.

Italy has recognised Directive 2009/50/EC, published in the Official Gazette on 8 August 2012 as Legislative Decree 108/2012,

regarding the conditions of entry and residence in Italy for work reasons in favour of non-EU nationals who intend to perform skilled work. The Decree states that non-EU workers can enter Italy and perform high-level professional activities outside the system of quotas. This means that they can be employed by Italian employers during the whole year, provided that all the requirements laid down in the Decree are met. The Decree states that:

- the scope of application is limited only to employment, and is not applicable to the self-employed or to positions in assignment;
- non-EU workers are considered 'skilled' if they have completed a higher course of studies lasting at least three years in their home country. The educational institution must necessarily be recognised as a member of an institute of higher education in that specific country. For this reason, it will be necessary to provide the Immigration Authority with the 'declaration of value' issued by the competent Italian consulate;
- the title of bachelor studies must give the worker a qualification included in categories one, two and three of the National Institute for Statistics classification of professions, namely business managers, engineers, computer specialists and workers belonging to the technical professions (the complete list of activities is available on www.istat.it); and
- the employer shall provide a binding contract with a minimum wage of at least €25,500 per year.

Foreigners residing in Italy pursuant to permission under article 27 of the Italian Immigration Law cannot request the EU Blue Card (ie, seconded workers).

The operating procedure provides that an employer may send the employment request electronically to the unified immigration desk for immigration, attaching all the required documentation, including the title of studies translated and legalised by the competent Italian consulate.

The unified immigration desk must release the authorisation for employment within 90 days of the request. Having obtained the work authorisation, the foreign worker must apply for an entry visa at the Italian consulate, which will allow entry into Italy. Once in Italy, the worker is required to sign a residence contract and apply for a residence permit with local immigration authorities and these requirements must be completed in the presence of the employer.

The police administrative headquarters will issue a residence permit for two years if the employment contract is for an indefinite period or for the duration of the work contract plus three months in other cases.

The EU Blue Card holder may, for the first two years, apply exclusively to work in accordance with the conditions of admission on Italian territory; a change of employer during the first two years will have to be endorsed by the positive opinion of the competent territorial directorates labour authority.

Since this procedure was introduced relatively recently, it is not possible to provide a complete and comprehensive list of documents necessary to obtain authorisation; in any case, it has been established that the principal document for this purpose is the title of studies obtained in the country of origin. It is also a requirement to provide the Immigration Authority with documentation concerning the Italian employer company.

In addition, non-EU workers are allowed to bring family members with them, regardless of the duration of their Blue Card.

### 15 Is there a minimum salary requirement for the main categories for company transfers?

Yes, there is a minimum salary requirement and it depends on the national contract applicable to the sponsor company and the role of the worker.

### 16 Is there a quota system or resident labour market test?

Yes, the quota system applies for the employment of non-EU citizens. Usually, the quotas are issued on a yearly basis.

The main categories usually included in the quota system are:

- workers of some specific countries that have signed an agreement with Italy;
- workers coming from all other countries;
- highly skilled workers and directors; and
- foreign nationals wishing to convert a permit to stay for study or training purposes to a permit to stay for work reasons.

In addition to the above quotas, the Italian government issues specific quotas for seasonal employees working in the tourism and agriculture sectors.

The Italian government can decide to add or exclude the above categories from the yearly quotas at its discretion.

The Italian company must file an application online for the request of a quota through the completion of a specific form that contains information on the employer, the non-EU employee and the employment conditions.

Once the quota has been attributed, the non-EU citizen will be able to apply for the work visa at the competent Italian consulate in the country of their origin or residence.

Upon the receipt of the visa, they are allowed to enter Italy for work reasons. Within eight days of arriving they are required to sign a contract of stay with the Italian employer and apply for the permit to stay.

### 17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

In order to apply for an ICT, it is necessary that the assignee has worked for the previous six months in the same economic area. This does not mean that he or she must be employed by a foreign company for more than six months. If the transfer is referred to a director it is necessary to file with the authority his or her degree certificate duly translated and legalised by the competent Italian consulate or via apostille.

### 18 What is the process for third-party contractors to obtain work permission?

If a foreign supplier has signed a service agreement with an Italian company (client) with the object of providing services, the foreign employees can work in Italy through an assignment from the foreign supplier to the Italian client.

In order to allow an employee to work in Italy, the client has to apply for a work permit at the Italian immigration office of the municipality where the client has its legal office.

Having received the work permit, the foreign employee will be able to apply for the work visa at the competent Italian consulate in the country or city of residence (the procedures to be followed and the documents to be submitted vary in every single country and must be verified from time to time).

Having received the work visa, the foreign employee can enter Italy and, within eight days of arriving in Italy, must sign a contract of stay with the client, which makes their entry official and marks the start of the assignment for the Italian entity.

Following Law Decree No. 10 of 15 February 2007, a new immigration provision was introduced into the Italian immigration system. This Decree states that in the case of a service agreement signed between two companies that are resident in two different countries of the EU, an extra-EU employee of the service provider, temporarily resident (with a resident permit) in the EU country of the employer, can be assigned to the client office located in Italy without applying for a work authorisation. Instead of work authorisation, the client and the employer must send a communication to the Immigration Authority concerning the labour contract applicable to the employee. These communications will be used in order to obtain a permit to stay for work reasons.

### 19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

The recognition of skills and qualifications could be required in the following cases:

- for foreign highly specialised personnel; and
- for a foreign national who applies for a self-employment immigration permission.

If a non-EU citizen intends to carry out an activity for which authorisation, a licence or signing special registers is required, it is necessary to request the recognition of these skills from the competent authority, which could be the Ministry of Justice for lawyers, accountants and engineers, or the Ministry of Health for healthcare professionals.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Italian immigration law does not allow the converting or extending of a tourist or business visa into a work permit. A business visitor can stay in Italy for a maximum of 90 days within a period of 180 days. Once they have spent this period of time in Italy, the visitor must stay outside the Schengen area for 90 days, and then, if required, they can apply for another Schengen visa.

### 21 Can long-term immigration permission be extended?

Long-term immigration permission issued under the quota system can be extended if the foreign worker continues to be employed by an Italian company. The Immigration Authority usually issues a permit to stay for employment or work reasons for a period of two years, so one month before the expiry date the non-EU citizen must apply for its renewal, demonstrating to the authorities that they still have work in Italy. The renewal can be made directly in Italy without having to leave the country, owing to the fact that it is mandatory to renew the immigration permission and not the visa.

In addition, it is possible to extend an immigration permission issued on the basis of an assignment according to the limitations provided in question 8. Also, in this case, it is not necessary to leave Italy to complete the procedure as the foreign national can apply for the renewal in Italy.

### 22 What are the rules on and implications of exit and re-entry for work permits?

If a worker has a valid permit to stay, he or she can exit and re-enter Italy without restriction.

Otherwise, for non-EU citizens already in possession of a valid visa who are still waiting for their first residence permit to be issued for work or family reasons, travel is permitted back to their home country and any other non-EU country, and it is important to travel with the postal receipts as evidence that the application was filed. For dependants in Italy, following the family cohesion residence permit procedure (which only requires a tourism visa and not a family visa in the passport), all travel is prohibited and the family members must await the issuance of the actual permit in order to leave Italy.

Non-EU citizens, during the renewal of their residence permit, can return to their home countries or other non-EU countries but are strictly forbidden from passing through any other Schengen countries, even if only a short airport transit. It is important to travel with the postal receipts as evidence that the application was filed.

In addition, an EU regulation permits travel throughout the Schengen area for certain visa holders. Before this regulation came into effect, those who entered Italy with a long-term (over three months) visa for work or family and applied for a residence permit at the post office were not able to go to other Schengen countries with the postal receipt. They had to wait until the residence permit was issued, which could take a long time. With the new EU rule, travel in the Schengen area is now permitted, relieving the problem of not being able to leave Italy and being without the legal possibility of travelling to nearby countries, or even being allowed to have a stopover in a Schengen country if a person wanted to go back to their home country. Now residence permit applicants can go to any other Schengen country for up to 90 days in each 180-day period. Family members who have entered Italy as tourists and are completing their immigration formalities in the country cannot leave Italy at all until the residence permit is issued.

### 23 How can immigrants qualify for permanent residency or citizenship?

A foreign national can apply for a long-term permit to stay once they have held the permit to stay for at least five years.

If the foreign national has a permit to stay that grants an indeterminate number of renewals (employment, self-employment, family reasons), they can apply for a long-term permit to stay that will not expire but must be renewed after five years in order to verify that all the issuing conditions are still met.

In addition, foreign nationals can apply for Italian citizenship if they have legally resided in Italy for 10 years. At the end of this period, they have to file an application with the Italian Immigration Authority.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Italian immigration law states that foreign nationals, before leaving Italy, must deregister their family and themselves from the municipality of the city where they reside. In addition, they must give the immigration permit to the police at the Italian border from which they leave the country. The police will then remove them from the list of the people who live in Italy with a permit to stay.

Usually, foreign citizens keep the permit to stay with them without giving it to the police and it should be noted that there is no penalty if the above regulation has not been observed.

### 25 Are there any specific restrictions on a holder of employment permission?

A holder of employment permission is allowed to carry out work in Italy. They can also study and if their work conditions (including salary) change, they must inform the Italian Immigration Authority about these changes.

They can also change the employer or work for an additional employer if they have obtained an employment permission on the basis of a quota. In this case the procedure is the same as described above.

If they have employment permission on the basis of an assignment, they cannot change the employer or sponsor. In this situation, if they have to change the employer or sponsor, they must leave Italy and the new sponsor has to apply for a new work authorisation.

## Dependants

### 26 Who qualifies as a dependant?

Italian immigration law states that the following persons qualify as dependants:

- a spouse who is not legally separated;
- unmarried minor children (under 18 years of age);
- adult dependent children, when, for objective reasons, they cannot provide for their essential life needs because of their health status; and
- dependent parents, if they have no other children in their country of origin or residence, or if they are over 65, and their other children are unable to support them for health reasons.

### 27 Are dependants automatically allowed to work or attend school?

If dependants have obtained a visa and an Italian permit to stay for family reasons, they are allowed to perform any kind of work activity. It is not necessary to obtain a visa and a permit to stay for work reasons. They can also attend school.

### 28 What social benefits are dependants entitled to?

Dependants, once in Italy and if they have a regular permit to stay, are allowed to register themselves with the municipality and benefit from any social relief benefits applicable to Italian citizens.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

Yes, prior criminal convictions are a barrier to obtaining immigration permission in Italy.

When a work permit application has been filed, all of the worker's data will be sent to the Italian Central Police Office in order to check whether the foreign national has any criminal convictions and, if a negative opinion is given to the Immigration Authority, it will deny the work permit.

If the Immigration Authority denies the permit to stay, the foreign national will be expelled from Italy.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

If companies hire or have employees who do not have a permit to stay, or who entered Italy illegally, their legal representative may have to pay a sanction of €5,000 per employee and may face imprisonment for a

period of from three months to five years. The workers in question will be expelled from Italy.

**31 Are there any minimum language requirements for migrants?**

Italian immigration law does not require any particular language proficiency for immigrants.

In December 2010, the Italian Immigration Authority introduced a new regulation for non-EU nationals who want to obtain a long-term residence permit. In order to obtain this type of immigration permission, they must pass a test in Italian. The applicant must complete a test with 80 per cent success in order to pass. The test will be quite basic and should not pose any difficulties to those who take it, considering the applicant must already have five years of legal residency in Italy.

The following are exempt from taking the test:

- children under 14;
- non-EU citizens with a doctor's certificate declaring it is not possible to pass the test because of medically diagnosed linguistic problems;
- holders of an A2 certificate of language sufficiency;
- anyone who obtained a diploma in middle or high school in Italy or is enrolled in an Italian university; and
- managers, university professors, translators, interpreters and journalists who entered Italy with a work clearance.

**32 Is medical screening required to obtain immigration permission?**

Medical screening is not required for obtaining immigration permission to enter Italy and work or stay in the country.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

See question 18.

In addition, it is possible to second an employee to a client site if it can be shown that the home company and the client have signed a joint venture agreement. This agreement must be translated into Italian and be legalised by the competent Italian consulate abroad in order to prove this relationship to the Italian Immigration Authority.

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# Japan

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## Overview

**1 In broad terms what is your government's policy towards business immigration?**

The Japanese government has been open to the internationalisation and globalisation of Japan by accepting foreign nationals in professional and technical fields in the hope of bringing vigour and vitality to domestic industry. In recent years, against the background of a serious decline in the population as a result of the declining birth rate and the ageing demographic in Japan, it has been viewed as a necessity to proactively accept foreign talent that can bring value to the Japanese labour market and society. The Japanese government is taking the following measures and coordinating a strategy to create a system of integrating foreign talent into society and views this as a key issue in future policy making:

- the acceptance of a foreign workforce that would contribute to economic growth in Japan; and
- on 7 May 2012, a preferential system was introduced, which adopts a points-based system for highly qualified labour, such as:
  - researchers, scientists and college professors in the academic research field;
  - doctors and lawyers possessing advanced qualifications, specialised knowledge and skills in highly professional, highly technical fields, and engineers in the information technology field; and
  - business investors and senior executives in the management and supervision field.

Points shall be awarded for each of the categories and various preferential immigration control measures aimed at guaranteeing a smooth entry into and stay in Japan will be taken for those persons who have accumulated a certain number of points. Two years after the initial implementation of this preferential system, the Japanese government reviewed the status and decided to make some amendments to open this preferential system to more foreign nationals as from 1 April 2015. The Japanese government has been promoting the further acceptance of highly skilled professionals who they hope will contribute to Japan's economic growth by creating jobs and generating new demand. In this regard, one of the policies of the 'Japan Revitalisation Strategy' is the implementation of cross-agency efforts aimed at the improvement of living and working environments for highly skilled professionals, with the ultimate goal of promoting overall acceptance.

Additional measures being taken by the Japanese government in terms of attracting foreign talent include the following:

- promotion of the acceptance of foreign nationals in professional or technical fields in response to the movement of economic markets;
- acceptance of foreign nationals possessing nationally recognised Japanese qualifications in the medical and nursing care fields;
- acceptance of foreign nationals of Japanese descent;
- further promotion of an international exchange programme;
- efforts to achieve the recognition of Japan as a tourism-orientated country;
- expansion of youth exchanges through the working holiday programme and internship programme for students of foreign colleges;
- further mobilisation of business people to promote economic growth;
- promotion of the further acceptance of foreign students;
- expansion of the number of resident foreign students to 300,000 as a target from 1 April 2015, in which primary school students and guardians would be included;
- simplification of the process to apply to schools involved in foreign exchange programmes, as well as increased efforts to facilitate the process of foreign students applying for permission to work in Japan after graduation;
- efforts to ensure appropriate training and technical internship programmes. These programmes are intended to contribute internationally in supporting the training of the talent pool in developing countries. While the scheme is being utilised mainly by small and medium-sized business enterprises, issues have been identified in the past that exposed misuse of the programme as a means of acquiring low-wage labour. In order to deal with this situation, measures were taken to reinforce protection of the trainees and technical interns through the amendment of the Immigration Control Act in 2009;
- measures pertaining to the protection of technical interns. The practical trainees who were not previously recognised as workers will become eligible as 'workers' under the Labour Standards Act, the Minimum Wages Act and other labour-related regulations;
- strengthening supervision by associations and strict measures against organisations committing misconduct;
- ensuring the propriety of the sending organisations and reinforcement of efforts to work on the sending countries to carry out measures against brokers; and
- activation of a national debate on the acceptance of foreign nationals. Based on the population decline in Japan, it is important to find effective solutions, such as utilising the potential workforce of young people, women and elderly people to increase productivity. A wide-ranging debate on the future ideal image of Japan is required.

The Japanese government made public its plans to maintain social order and to protect national security; it will act to prevent the entry of terrorists and criminals into the country. In addition, aggressive implementation of measures targeting illegal foreign residents and illegal periods of residency under the guise of permitted activities will be introduced.

The current system of residence management was introduced on 9 July 2012 and applies to medium to long-term foreign residents. The residence card has improved tracking capabilities and employees will be required to report their immigration activity to the authorities within a specific time frame. The government will require companies to have policies in place to capture the required information in a timely fashion in order to accurately monitor the domiciles and residence of foreign nationals living in Japan. The provision of information is necessary in facilitating the implementation of the administrative services offered by the local authorities and in striving for enhanced convenience for foreign nationals.

The number of foreign nationals coming to Japan increased in 2017, compared with 2016, for both short-term visitors (up by 15.6 per cent) and medium to long-term foreign residents (up by 7.5 per cent). In order to accommodate the increase and anticipated further increase of foreign nationals, the Japanese government plans to implement the following new policies by the end of 2018:

- integrated countermeasures for foreign acceptance and symbiosis, which will enable foreign nationals to work in a range of disciplines, such as teaching languages, translating or individual sports instruction; and
- enhancement of Japanese language education for foreign nationals both prior to, and post, entry to Japan.

Additionally, the Japanese government hopes to implement a new resident status for industrial labourers from April 2019.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Foreign nationals from countries other than those included within the visa exemption arrangement with Japan need to apply for a temporary visitor visa prior to arrival in Japan. An application for a temporary visitor visa should be submitted to the local Japanese consulate. The required documents and period to obtain the visa will vary depending on each consulate or embassy. Landing permission will be granted upon arrival in Japan by the immigration inspector, which is normally valid for 90 days. However, this may vary according to nationality and purpose of travel.

### 3 What are the main restrictions on a business visitor?

Foreign nationals can enter Japan as a temporary visitor provided the scope of their business activities is limited to meetings, negotiations, fact-finding missions and exploring business opportunities.

The immigration authorities may question the purpose of entry and stay in Japan of a foreign national who frequently travels in and out of Japan on business as a temporary visitor. If the individual is not able to provide satisfactory reasons to support entry under the temporary visitor status, landing permission may not be granted. In cases where the individual performs any project work generating revenue in Japan, regardless of duration of stay, the activities may be recognised as work. In such a case, a three-month work permit should be obtained prior to entry into Japan.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Foreign nationals who conduct training, as well as participate in training, for a short period of time can enter Japan as a temporary visitor. If the individual is a national of a country participating in a visa exemption agreement with Japan, a temporary visitor visa would not be required. In the case of individuals from non-participating countries, a temporary visitor visa would be required.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Foreign nationals who wish to land and stay temporarily in the vicinity of the port of call and those who wish to land for transfer to another aircraft in Japan are permitted to land in Japan under certain conditions. When this special landing permission is granted, certain restrictions on the period of landing and the permitted area of movement will be imposed as a condition of this permission. Applications for special landing permission must be filed by the airlines that have brought such foreign nationals to Japan.

Permission for landing in transit is given when a foreign passenger aboard an aircraft wishes to land and stay for a period of no more than three days and to move from the port of entry to a neighbouring port. To ensure a smooth transit, it is recommended for those from countries who do not have visa exemption agreements with Japan to obtain a valid visa in advance.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

'Intra-company transferee' status is the main permission that is granted for individuals who are being transferred by their employers to Japan and have been employed by the overseas entity for a period of at least one year prior to applying for a Japanese certificate of eligibility (CoE). This status is valid for the international transfer of staff between related organisations.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

International assignees are required to obtain a CoE through their host office in Japan prior to applying for the work visa at the local consulate general of Japan. The international assignee is required to apply for a visa with the CoE in person at the consulate. As the CoE is valid for three months from the date of issuance, they are required to enter Japan with a valid visa and CoE within that time period. An individual can begin working upon being granted landing permission along with appropriate immigration status to work.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

The maximum period of stay granted under the intra-company transferee status is five years under the current immigration law, while the minimum period is three months, and it is possible to be extended according to the period of assignment.

### 9 How long does it typically take to process the main categories?

It may take three to 10 weeks, depending on the location and size of operations of the host company in Japan.

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

The provision of benefits or facilities is not required to obtain a work permit at the time of application for the CoE.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The immigration authorities in Japan follow objective criteria for most applications. In unusual cases, they will review the applications in detail and exercise the discretion of the Minister of Justice. In that case, the period for application may take longer.

### 12 Is there a special route for high net worth individuals or investors?

There is no special route for them. All applications will be examined based on the objective criteria for each category of immigration status.

### 13 Is there a special route for highly skilled individuals?

A preferential immigration system adopts a points-based system for highly skilled foreign professionals if they accumulate enough points based on their educational and occupational background, annual income, position, Japanese language ability, etc. Individuals who meet the point threshold will benefit from expedited application procedures, broader work authorisation rights, expanded spousal work benefits, a shorter path to permanent residence, sponsoring a foreign national domestic helper and the ability to bring accompanying parents under certain circumstances.

### 14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

There is no special route for high net worth individuals.

### 15 Is there a minimum salary requirement for the main categories for company transfers?

Salary information is required to show that the level of pay is sufficient to live in Japan and the amount should be equivalent to that of local Japanese national employees who assume the same roles and responsibilities in the company. There are no guidelines in place that set minimum salary thresholds from an immigration prospective.

### 16 Is there a quota system or resident labour market test?

There is no quota system, nor is there a resident labour market test in Japan.

**Update and trends**

The Japanese government has been following-up on and enforcing the requirement for a medium to long-term foreign resident holding a Japanese residence card to notify the Ministry of Justice of his or her residence address in Japan. This is required to be completed at the local ward office within 14 days of establishing the residence address but no later than 90 days from the date of landing permission. This is a separate notification from the resident registration to be maintained at the local ward office for the administrative services. However, the local authority will accept both notifications at the same time to alleviate the administration for the individual.

The Japanese government has taken a welcoming approach to highly skilled and educated professionals and has recently updated its immigration policy to make it even easier for such foreign nationals to become permanent residents in Japan. Previous rules required a minimum of five years of residence in Japan to qualify for permanent resident status with a highly skilled professional status, but since April 2017, this has been shortened to a minimum of one year with highly skilled professional status. A points-based system is utilised to evaluate an applicant's eligibility towards the highly skilled professional status, with educational and occupational background, expected annual income, position, Japanese language ability, research performance, awards granted, compliance with Japan income tax, social insurance tax and other laws, and other criteria counting towards the accumulation of points. Changes to the score chart have been made over the years with the most recent revisions, in April 2017, awarding bonus points to individuals with exceptional academic background, such as possessing multiple degrees or having graduated from a top 300-ranked university, or completion of an educational course that uses official development assistance, etc. A minimum of 70 points is required for individuals to qualify for the status. In addition, the Japanese government has eased the restrictions to allow for permanent residency application for qualified applicants to as short as just one year of residence in Japan. One of the main conditions is that these applicants need to score 80 points or more under the points-based system. For those individuals who cannot score 80 points, but score 70 points, they can apply for permanent residence status after three consecutive three years of stay in Japan.

While such moves to ease requirements for foreign nationals gaining permanent residency are welcome, as they come with various living advantages, such as having no restrictions on the type of activities that one can engage in, ease of obtaining loans from Japanese banks, etc, there are potential increased tax implications that accompany these advantages, especially compared with other foreign nationals under work permit statuses in Japan.

The updated immigration laws may be good news for foreign nationals who are planning to stay in Japan for the long-term and seeking permanent residency. However, the tax implications for permanent residents are increasingly similar to Japanese nationals. It is recommended that individuals weigh the pros and cons and seek professional advice before deciding whether to apply for permanent resident status to avoid being inadvertently exposed to increased personal taxes. Businesses with employees who currently hold a work permit and are intending to apply for highly skilled professional status or permanent residency status should be aware of the potential additional tax implications and review their tax equalisation policies and clarify with their employees as to who will be responsible for any additional taxes that may arise.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

A college or university degree, or at least 10 years' work experience, in the same field as the applicant is planning to work in within Japan, would be required.

**18 What is the process for third-party contractors to obtain work permission?**

Third-party contractors should apply for a CoE through the recipient company where they actually work in Japan. Under the circumstances, it would be required to explain the relationship between the applicant, the recipient and the home companies. The recipient company in Japan needs to be responsible for the contractor in their company. An agreement between the recipient company and the contractor would be required, including information such as the period of contract; role and job title to be assumed; and amount of remuneration that the contractor may receive. Once the CoE is issued for the contractor, the individual will apply for the visa at the Japanese consulate with the CoE. With the CoE and a valid visa in their passport, landing permission will be granted by the immigration inspector at the airport, and at the same time working status will be granted.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Most of the working statuses require academic qualifications from a university or college, of which the field of major should relate to the business field the applicant is being sent to Japan to work in. A copy of the diploma issued by the academic institution they attended is required at the time of application. In the event such academic qualifications are not met, the applicant will need to show proof of professional experience in the field in question for a period of 10 years or more. However, where the applicant is an investor in the business or assumes the role of a registered director of the local corporation, proof of educational background is not required. For those who apply for 'intra-company transferee' status, it is not necessary to show proof of academic qualifications; however, an unbroken employment period with the overseas organisation in excess of one year should be verified.

For individuals with special skills, such as aircraft pilots, lawyers, doctors, nurses, etc, certain other qualifications would be required.

**Extensions and variations**

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

It is not permitted to convert short-term status to long-term status while remaining in Japan. Foreign nationals are required to apply for a CoE first before applying for long-term status. With a CoE, it might be possible to apply for a change of status from temporary visitor to work permit without applying for a visa at a Japanese consulate in the event a CoE is issued while staying in Japan as a temporary visitor.

**21 Can long-term immigration permission be extended?**

It is possible to apply for an extension of period of stay under the same employment conditions. In the event that the employment conditions change, it may be required to apply for a change of status to other categories.

**22 What are the rules on and implications of exit and re-entry for work permits?**

If an individual re-enters Japan with a residence card within one year under the same category and employment conditions, a re-entry permission is not required, as long as an intention of re-entry is notified by filling out an embarkation card at exit. A valid re-entry permit is required in an individual's passport if an individual is going to be absent from Japan for a period of more than one year and within the remaining period of the work permit. For those who are granted a three-month period of stay under the work permit, it is recommendable to obtain a re-entry permission in the passport after entry to Japan.

**23 How can immigrants qualify for permanent residency or citizenship?**

Individuals who have lived in Japan with a valid working status for five or more consecutive years out of the previous 10 years are eligible to apply for permanent residency. Individuals who have a 'spouse or child of Japanese national' residency permission for three-year or five-year periods are eligible to apply for permanent residency after a one-year stay in Japan. Individuals who have lived in Japan under the points-based system for one year with accumulated points of 80 and for three years with accumulated points of 70 are eligible to apply for permanent residency. Certain guidelines may be required based on the background of each applicant going through the examination process. The expected period of the examination process is approximately six months or longer.

For citizenship, the application process and the government agencies are entirely different to those for permanent residency. Eligibility for citizenship is through legal acknowledgement by a parent or through naturalisation. For naturalisation, the candidate must:

- have been domiciled in Japan for five consecutive years;
- be aged 20 or over;
- have abided by Japanese laws, including tax compliance;
- have a clean financial background;
- lose foreign nationality;
- have complied with the constitution of Japan; and
- have a certain level of proficiency in the Japanese language.

The processing for naturalisation generally takes 10 to 12 months.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Immigration permission will be cancelled when the assignee departs Japan by surrendering the residence card to the immigration inspector at the airport at the time of repatriation. In the event the assignee changes their employer in Japan, they would be required to review the new role to determine whether the current immigration status would fit the new job description. If the job is very similar to the previous job and the immigration permission would still be valid, it may be renewed at the time of expiry of the current visa. Such applications can be submitted to the immigration authorities three months prior to the expiry date. The individual is, however, required to submit a notification to the immigration authorities declaring that there has been a change in his or her employer within 14 days of the date of the change. If the new job is different from the previous job, they may be required to apply for a change of status on a priority basis. For individuals who remain with the same organisation but assume new roles or employment titles, his or her immigration status may need to be updated to the extent the current status is no longer in line with the designated job responsibilities. The employer is required to report to the authorities the status of employment within 14 days.

**25 Are there any specific restrictions on a holder of employment permission?**

The employment status will be granted based on the information provided to the immigration authorities. If any changes are expected regarding the employment (such as entering a different business field, promotion to director, etc), the individual needs to update the immigration status to meet the immigration criteria. As another example, if the individual wishes to work for another employer in addition to his or her current employer, he or she would be required to inform the immigration authorities of such employment changes by applying for the authorised employment permission.

## Dependants

**26 Who qualifies as a dependant?**

In Japan, only the spouse and children can apply for dependent family status. This relationship would be verified by submitting a copy of a marriage certificate for the spouse and birth certificates for the children. In the case of a child from a spouse's previous marriage, there will be an immigration status for designated activities issued, which will be approved by the Minister of Justice based on the specific circumstances.

**27 Are dependants automatically allowed to work or attend school?**

Spouses and children with dependent family status may be authorised to work less than 28 hours per week by applying for work permission. If the spouse wishes to work in excess of 28 hours per week, he or she would be required to apply for their own independent employment permission from the immigration authorities.

**28 What social benefits are dependants entitled to?**

The majority of expatriate employees in Japan are covered by their home country social insurance systems or international health coverage plans. Therefore, to the extent an expatriate does not participate in the local Japanese social insurance system, both the expatriate and their dependants are not entitled to Japanese social benefits. If an individual participates in the social insurance system, his or her dependants would be entitled to the same benefits as the primary participant.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Depending on the circumstances of the criminal convictions, it will be determined whether the permission will be granted. To go through the application process smoothly, certain documents pertaining to the applicant's criminal record would facilitate the process.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Non-compliance or falsely declaring salary, academic qualifications or submitting forged documents with the application is an offence. Upon conviction, the individual or, in relevant cases, the company, may be liable to revocation of status of residence, deportation, a fine or a jail term, or both, and it could be a basis for denial of any future entry to Japan.

**31 Are there any minimum language requirements for migrants?**

There are no clear guidelines for language requirements to apply for long-term resident status, including permanent resident status. However, minimum conversational ability in Japanese required to function in everyday life would be expected, in the event the immigration authorities request an interview.

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**32 Is medical screening required to obtain immigration permission?**

Medical screenings are not required to obtain permission to enter and stay in Japan.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

In general, an acceptance of secondment needs to be verified in documentation by the recipient organisation in Japan. A statement between the client and individual would be required providing an explanation of the background and purpose of the secondment. As there could be various types of secondments under this situation, it is recommended to check with the immigration authority to seek their advice in advance.

# Kenya

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Kenya remains a strategic location and entry point for many business entities that seek to have a presence in Africa. The government policies have and continue to be favourable to business establishments in Kenya. As in previous years, the government of Kenya is prioritising interests that have a foreign investment connotation. To this extent, global mobility packages that favour international assignments have been undertaken by companies on the grounds of the technical skills and experience that expatriates bring to the country. A smart balance must be attained so that global mobility becomes mutually beneficial. In Kenya, the government ensures that companies balance the skills and experiences brought from abroad with the galaxy of talents locally available. It is not unusual that the government would ordinarily encourage companies to hire a Kenyan citizen if a job or service can be competently delivered by a Kenyan citizen. In a sense, therefore, the decision to issue a work permit is based on a balance that takes into consideration technical skills and investor interests, as well as special projects.

Any application for a work permit must be accompanied by an Employment Report, which is in a prescribed form. This report gives summary information about which locals and non-citizens an organisation has employed. The report forms a good reference point for determining whether an organisation has adopted a human resources strategy that protects the local workforce. Employers are also required to show the steps they have taken to employ a Kenyan citizen before engaging a non-citizen. It is important to prove that the job was advertised and no Kenyan qualified or applied for the given position. The immigration policy envisages benefits accruing from the presence of a foreign national to include the sharing of skills within a reasonable period before a formal handover is undertaken. This handover is technically referred to as a phaseout. Only top positions in the organisational structure are exempted from the requirement to have an understudy. The government is currently very keen to actualise the principles laid out in the localisation policy. All holders of work permits have recently been required to verify the authenticity of their permits, with the aim of singling out permits issued for jobs that Kenyans could easily undertake.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A visa is required for nationals seeking entry into or transit through Kenya. Immigration law prescribes visa regimes that spell out which nationals require a visa to gain entry into Kenya. Visas are issued on arrival for nationals whose countries are allowed entry on arrival. The government still maintains the referral visa regime for select nationals, where their applications are referred to the Department of Immigration headquarters in Nairobi for approval. It is important to note that the following jurisdictions will require their nationals to apply and secure an approval before they arrive in the country: Afghanistan, Armenia, Azerbaijan, Eritrea, Iraq, Jordan, Korea, Kosovo, Lebanon, Palestine, Somalia, Syria and Tajikistan. It is important to note that even where an expert is coming into the country for hours and the purpose of the visit is work, such an expert requires the requisite work authorisation. A visa is not authority to work. In fact, it is illegal to engage in any kind of work – whether paid or not – on an entry visa.

### 3 What are the main restrictions on a business visitor?

A visitor on a business visa is allowed to engage in business meetings or attend training sessions. Any engagement beyond training and meetings will require that such a person applies for a special pass. The special pass can be issued for a period not exceeding six months. This means that you are only allowed two special passes within 12 months. Any engagement beyond six months requires a long-term work permit. A special pass also allows multiple entries without the need for a visa.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

There is no special permission required. Such a person is required to apply for a visitor's pass. However, if the engagement is income-generating, the foreign national is required to apply for a special pass. A visitor's pass does not allow a foreign national to engage in any form of employment or income-generating activity.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Kenya has visa regimes that classify different nationals and attach different visa requirements thereto. Some nationals require a visa to enter or transit Kenya, whereas others do not. Transit visas are issued for a maximum period of 72 hours. The person seeking a transit visa should ordinarily be headed to a third destination and must carry an onward ticket to this third destination. Kenya does not have an airside visa for passengers who opt to remain in the precincts of the airport before connecting with their flights.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work and business permits are a special pass and a class D work permit.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

**Special pass**

An applicant is required to complete an application in the prescribed form. The employer should then prepare a letter to sponsor the application and attach it to the form. Two passport photos, the potential employee's curriculum vitae and copies of academic and professional certificates should be attached to the application. The employer is also required to pay the requisite government fee upon approval. The law provides that a foreign national entering Kenya for the purpose of employment for a period not exceeding three months can acquire the special pass at the port of entry. However, this has not been implemented. The foreign national is allowed to begin working after the special pass has been issued.

**Class D work permit**

An applicant is required to complete an application in the prescribed form. The employer should then prepare a letter to sponsor the application and attach it to the form. Two passport photos, the potential employee's curriculum vitae, copies of academic and professional certificates and the Employment Report should be attached to the application. The employer is also required to identify a suitable Kenyan citizen to train under the foreign national for the purpose of passing on skills. Details of the Kenyan citizen identified should be provided (ie, academic and professional certificates and an identification document). A non-refundable processing fee of 10,000 Kenya shillings is paid at the point of lodging the application. When the application is approved, the employer is required to furnish the government with a financial security bond of 100,000 Kenya shillings. This may be in the form of a bank or insurance guarantee. The employer is also required to pay the requisite government fee. For applications to renew a work permit, a new requirement has been added: the sponsoring company has to attach a tax compliance certificate, in addition to the other requirements.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The maximum period of stay granted for a special pass is six months. There is no minimum period of stay prescribed but, administratively, special passes are issued for a minimum period of one month. The maximum period for a class D permit is determined by the Work Permits Determination Committee, but a permit cannot be issued and renewed for a period exceeding five years. In practice, a work permit cannot be issued for a period of less than one year and they are usually issued for an initial period of one to two years, with the possibility of renewal.

**9 How long does it typically take to process the main categories?**

A special pass takes between three and four weeks to process. A class D work permit takes about four months. The period may be longer for some nationalities that are subject to stricter security clearance. Once a work permit application is approved, paid and issued, the assignee has 90 days to enter Kenya and have the work permit endorsed in their passport.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is not necessary to obtain any benefits or facilities for staff before securing a work permit.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The Immigration Regulations do follow some criteria, such as regarding:

- the reputation of the sponsoring company or employer;
- the skill set of the foreign national;
- whether the role has a regional remit to it;
- the position and qualification of the Kenyan understudy; and
- concrete evidence to show that the skills are not locally available.

However, there is flexibility and the success of any immigration application is sometimes dependent on the discretion of the Work Permits Determination Committee.

**12 Is there a special route for high net worth individuals or investors?**

High net worth individuals may lodge an application for a class G permit, which is issued for a specific trade (investors), business or consultancy. The minimum threshold for investing is set at US$100,000, and applicants must additionally obtain licences from the relevant regulators. Like any other permit, the issuance of a class G work permit is subject to whether the issuance of such a permit will be to the benefit of Kenyans.

**13 Is there a special route for highly skilled individuals?**

There is no special route for highly skilled individuals.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no established special route for high net worth individuals. As mentioned in question 12, high net worth individuals may lodge an application for a class G permit and these are processed on merit.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There are no minimum salary requirements for the main categories for company transfers.

**16 Is there a quota system or resident labour market test?**

An employer is required to show the steps it has taken to employ a Kenyan citizen before engaging a non-citizen. If the employer has advertised the position, it is required to attach a copy of the advertisement to the application. The employer is also required to explain the reason behind engaging a non-citizen for the position rather than a local citizen. Even where these reasons justify the hiring of a foreign national, the company must develop a programme that ensures phaseout of the foreign national through transfer of skills. The employer is also required to submit an Employment Report (see question 1).

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

None is prescribed. The employer is only required to justify the need for the non-citizen. If the non-citizen has the requisite qualifications and the skills are not readily available locally, increasingly there is a requirement that the application for a work permit must be recommended by the regulatory body that oversees the particular industry.

**18 What is the process for third-party contractors to obtain work permission?**

Class D work permits are intended for foreign national employees who are working at a local employer's premises. The permits are employer-specific and cannot be extended to other employers. Where third-party contractors do not have a registered entity in Kenya, in practice they use the main contractor as the sponsoring employer for purposes of work permit applications.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Skills and qualifications form a key basis when building a case for the issue of a class D work permit (for inbound foreign nationals). There are no equivalency assessments of recognition of skills and qualifications.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

A fresh application has to be lodged for every immigration permission. There is no mechanism to convert short-term visas into long-term authorisations. It is possible to lodge the application while the foreign national is in the country. The process is discussed above.

**21 Can long-term immigration permission be extended?**

A work permit may be extended on application. When the work permit relates to employment (class D permit), there is an obligation on the part of the employer to show that the foreign national's position or skill is key and strategic to the employer's organisation and cannot be locally sourced.

**22 What are the rules on and implications of exit and re-entry for work permits?**

A foreign national who successfully secures a work permit or a special pass is automatically allowed to move in and out of Kenya during the period in which the work permit or special pass is valid.

**23 How can immigrants qualify for permanent residency or citizenship?**

**Permanent residency**

Section 37 of the Kenyan Citizenship and Immigration Act provides that the following persons, their children and spouses shall be eligible upon application in the prescribed manner for grant of permanent residence status in Kenya:

- persons who were citizens by birth but have since renounced or otherwise lost their citizenship status and are precluded by the laws of the countries of their acquired domicile from holding dual citizenship;
- persons who have held work permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the application;
- children of citizens who were born outside Kenya and have acquired citizenship of the domicile; and
- spouses of Kenyan citizens who have been married for at least three years.

**Citizenship**

A person can acquire Kenyan citizenship by birth, marriage and lawful residence in Kenya, subject to some conditions or through presumption in the case of foundlings.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

The immigration permission (class D permit) must be cancelled at the end of employment if the duration of employment is shorter than the duration of the class D permit. The cancellation should be made within 15 days of the date of cessation of employment. To cancel a work permission, the employer needs to notify the Department of Immigration, furnish officials with the original work permit and the passport that bears the endorsement. Where the assignee has already left the country, a copy of their air ticket must be provided, in order to prove that they have left the country.

**25 Are there any specific restrictions on a holder of employment permission?**

The holder of a class D work permit is prohibited from engaging in other employment that is not specifically stated in the permit.

## Dependants

**26 Who qualifies as a dependant?**

Children, spouses and persons being maintained by a person who has secured a work permit qualify as dependants. In practice, this normally applies to married spouses and their children. It is important to have a document that legally establishes the dependency, such as a marriage or birth certificate, etc. The children must be under 21 years old to qualify.

**27 Are dependants automatically allowed to work or attend school?**

Dependants are not automatically allowed to work. Where the dependant engages in employment or other income-generating activity, the dependant pass is deemed to have expired. Dependants must lodge an application for a class D work permit, which must be approved by the Department of Immigration for them to start working. The application is determined on merit. Children attending school are required to acquire a student's pass. It is the responsibility of the school to ensure that the child has a student's pass before admission.

**28 What social benefits are dependants entitled to?**

There are no social benefits that dependants are automatically entitled to.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Criminal convictions may be a barrier to obtaining immigration permission and especially a work permit. The Kenyan immigration procedures require that any applicant for a work permit must be cleared by the National Intelligence Service.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Failure to comply with the immigration laws will trigger criminal liability. Section 60 of the Kenya Citizenship and Immigration Act provides for a general penalty of a fine not exceeding 1 million Kenya shillings or imprisonment for a term not exceeding five years, or both, for any person convicted under the Act. The Immigration Regulations also provide for a general penalty of 200,000 Kenya shillings or imprisonment for a term not exceeding one year, or both, for any person convicted under the Regulations.

In practice, persons who flout the immigration laws are arraigned in court on criminal charges. A series of other charges can be preferred against the individual as well as against the company they work for.

**31 Are there any minimum language requirements for migrants?**

There are no minimum language requirements for migrants. Migrants are also not required to sit any tests. In practice, any documents – academic or professional certificates – ought to be in English or translated into English by a recognised translator.

**32 Is medical screening required to obtain immigration permission?**

In practice, medical screening is not required to obtain immigration permission. Port health officials are, however, positioned at ports of entry and, where the country of origin poses a threat of contagious

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disease, officials may require a medical certificate to show that the visitor has been immunised against the contagious disease. If a certificate is not available, medical screening can be demanded in such a scenario.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Once a permit has been issued, the employer can second a foreign national to a client site. It is important to have the secondment documents shared with the client for purposes of confirming the arrangement in the event that the foreign national is found working at the client's site.

# Malaysia

**Tan Su Ning and Lee Mei Hooi**
Skrine

## Overview

**1 In broad terms what is your government's policy towards business immigration?**

As a developing country, Malaysia seeks to limit the inflow of migrant workers in order to protect the interests of its people. This is clearly reflected in the government-implemented policies that promote training and employment for all levels of the local workforce. Companies and employers are therefore encouraged to prioritise the employment of locals and only employ foreign talent where there is no suitable local talent to take up the particular position.

The main source of immigration law in Malaysia is the Immigration Act 1959/63, which has the objective of regulating and controlling the import of foreign employees, as well as matters pertaining to their hiring, employment and repatriation. With its objective of achieving a high-income nation status, the Malaysian government is proactively taking steps to prevent an influx of foreign employees from jeopardising the security and sovereignty of the country.

## Short-term transfers

**2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?**

Short-term travellers must enter Malaysia with a valid and applicable visa. A single-entry visa known as the social visit pass is issued to foreign citizens for social and business visits in Malaysia, but this does not extend to employment in Malaysia.

Applicants must apply for the pass in person by filling in the relevant form and producing the required documents at the entry point. A short-term traveller may also be relieved of the need for a visa when entering Malaysia for short-stay business visits with the Asia-Pacific Economic Cooperation Business Travel Card (ABTC). However, the ABTC is limited to citizens of the following countries: Australia, Brunei, Chile, China, Hong Kong, Indonesia, Japan, Korea, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taiwan, Thailand and Vietnam.

**3 What are the main restrictions on a business visitor?**

A social visit pass is normally valid for a single entry and for a period of 30 days from the date of issuance. However, the validity period may differ according to the country of origin. The limited business activities permitted under a social visit pass include the following:

- attending meetings, conferences, business discussions or seminars;
- inspecting factories;
- auditing a company's accounts;
- signing an agreement;
- carrying out a survey on investment opportunities; and
- setting up a factory.

**4 Is work authorisation or immigration permission needed to give or receive short-term training?**

Yes, a professional visit pass is required for giving or receiving short-term training.

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

A transit visa is issued upon arrival to applicants who intend to enter Malaysia on transit to other countries, and is valid for a maximum of five days with no extensions allowed. The issuance of the transit visa is solely at the discretion of the immigration authorities. Foreign nationals on transit without leaving the airport premises and who continue their journey to the next destination with the same flight do not require a transit visa.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

Subject to the nature of work in Malaysia, companies and employers who employ skilled staff will need to obtain an employment pass or professional visit pass. Employment passes are issued to foreign citizens who enter Malaysia for purposes of paid employment under a contract of service with a Malaysian entity and are divided into three categories, namely:

- category I: the position applied for pays a minimum salary of 10,000 ringgit per month and is for a foreign employee with a contract of employment for up to five years;
- category II: the position applied for pays a salary of between 5,000 and 9,999 ringgit per month and is for a foreign employee with a contract of employment for up to two years; and
- category III: the position applied for pays a salary of between 3,000 and 4,999 ringgit per month and is for a foreign employee with a contract of employment for less than 12 months. A foreign employee under this category may renew the pass twice.

The professional visit pass is issued to foreign citizens who are engaged in temporary or short-term business or contracted activity for a Malaysian entity. Note that holders of all passes may only work in West Malaysia.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

Applications for employment passes and professional visit passes must be submitted online to the Immigration Department through its Expatriate Services Department (ESD) portal, unless the companies are under the purview of a specific approving agency or regulatory body. Briefly, there are four stages in the applications for these visas, namely:

- company registration on the ESD portal: the Malaysian entity sponsoring the foreign employee's visa must create an account and company profile in the ESD portal. This is a one-off registration and the company will be required to submit all related company information and documents in support of the registration;
- company activation process: upon successful registration of the company on the ESD portal, the company will be required to schedule an appointment via the ESD online system for its director to be present at the immigration office to sign the letter of undertaking in the presence of the immigration officer;
- application for visa: the registered company may then proceed to apply for the requisite visa for its foreign employee. All supporting

documents must be submitted through the ESD portal and the status notification of the application will be sent via the ESD system to inform the company of whether the visa application is approved or rejected. Foreign employees shall not work in Malaysia until a valid visa is issued to them; and
- endorsement: once the visa application has been approved, the foreign employee must endorse the visa on his or her passport. Foreign employees who have entered Malaysia will have 30 days from the date of entry to pay visa fees and endorse the relevant passes.

The application process may commence three months prior to the scheduled arrival of the foreign employee in Malaysia.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

For foreign employees under an employment pass, the period of stay is dependent on the length of his or her employment as provided in his or her contract of employment according to the category applied for, with a maximum period of five years. Foreign employees under a professional visit pass can stay in Malaysia for a maximum of 12 months.

**9 How long does it typically take to process the main categories?**

Following the submission of all required documents, it takes 14 working days for the process to be completed. The 14 working days may be extended because of incomplete applications, insufficient supporting documents, queries by the authorities or additional inspection requirements. In practice, there are often delays in the processing time. It is therefore recommended to allow at least one and a half months for the process to be completed.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is not necessary to obtain any benefits or facilities for skilled workers. For low-level foreign workers, the Ministry of Health implemented the Foreign Workers Health Insurance Protection Scheme in 2011, wherein sits the mandatory Foreign Workers Hospitalisation and Surgical Scheme. All low-level foreign workers in Malaysia are required to be insured for an annual premium of 120 ringgit. An employer is also required to take out insurance for foreign workers falling under the Workmen's Compensation Act 1952, which, in practice, is generally limited to manual labourers.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities generally follow objective criteria in granting the relevant visas to foreign employees. However, they may also exercise their discretionary powers if they are of the opinion that the work may be done by a Malaysian citizen since the underlying principle is to protect and prioritise the rights and interests of local workers.

There is generally no flexibility to accommodate complex circumstances within the rules. ESD-registered companies are required to strictly comply with the rules and requirements for the employment of foreign employees set out by the immigration authorities. Applications with incomplete or insufficient details will be returned.

**12 Is there a special route for high net worth individuals or investors?**

No.

**13 Is there a special route for highly skilled individuals?**

No, highly skilled individuals are still required to obtain employment passes or professional visit passes through the ESD portal. However, the residence pass – talent is available to foreign citizens considered to be high-achieving individuals with the capacity to drive business results that will contribute towards the national key economic areas.

The residence pass – talent allows the individual to work and live in Malaysia for up to 10 years, and applicants are required to:
- have worked in Malaysia for a minimum of three continuous years prior to applying;
- hold a valid employment pass with more than three months' validity at the time of application;
- earn a minimum basic monthly salary of 15,000 ringgit;
- possess a Malaysian income tax file number and have paid income tax for at least two years;
- hold a PhD, master's or bachelor's degree or a diploma in any discipline from a recognised university, or a professional or competency certificate from a recognised professional institute; and
- possess a minimum of five years' work experience.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Individuals with a high net worth may apply for an entry permit in accordance with section 10 of the Immigration Act and Regulation 4 of the Immigration Regulations 1963 to enter and reside in Malaysia as a permanent resident. See question 23 for further details.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

See question 6.

**16 Is there a quota system or resident labour market test?**

There is no quota system or resident labour market testing required. However, as part of the application process for obtaining low-level foreign workers, employers are required to first advertise the position locally. The companies intending to hire foreign employees may also be required to prove to the immigration authorities that there are no suitably qualified Malaysian nationals to undertake the work. The decision is at the Immigration Department's discretion. Companies intending to employ foreign citizens are also required to provide projections to the immigration authorities on how many foreign employees they intend to employ for the year.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There is a minimum education requirement of eligibility, with applicants requiring the following:
- a degree or above, with at least three years' experience in the relevant field;
- a diploma, with at least five years' experience in the relevant field; or
- a technical certificate or equivalent, with at least seven years' experience in the relevant field.

**18 What is the process for third-party contractors to obtain work permission?**

The immigration authorities require that employers apply for and obtain visas on behalf of the foreign employees whom they wish to employ. While authorised third parties are able to assist with the submission process and the collection of the visa on behalf of the employer, the documents for submission must be prepared or endorsed, or both, by the employer seeking to obtain the visa.

A foreign employee on a visa is required to comply with the conditions contained in the permit. Generally, such permits would include details on the place of employment of the foreign employee, and he or she may not work on other premises, otherwise this would be considered a breach of the conditions of the visa.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Generally no, provided that the conditions discussed in question 17 are complied with.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Generally, no. Foreign nationals who are in Malaysia while their visa applications are pending will usually be required to leave the country, comply with the visa requirements and re-enter the country after being granted the final visa, in order to start work officially.

**Update and trends**

The Malaysian government is currently cracking down on illegal immigrants and low-level foreign workers, and is also seeking to limit the import of foreign employees in certain sectors, in order to protect the local workforce. It is therefore possible that, in future, further requirements or preconditions may be imposed on those seeking to hire foreign employees in Malaysia.

**21 Can long-term immigration permission be extended?**

This depends on the type of permission or permit obtained. While employment passes, dependant passes and long-term social visit passes may be renewed or extended (subject to the fulfilment of the requisite conditions and at the discretion of the immigration authorities), a professional visit pass may not be extended past a period of 12 months.

**22 What are the rules on and implications of exit and re-entry for work permits?**

As stated above, foreign nationals who are already in Malaysia pending approval of their visa are required to leave the country, comply with the visa requirements and re-enter the country. This may lead to potential difficulties, such as disruption of travel plans that may only be finalised on the approval of the relevant visa, and the incurrence of additional costs and delays.

A foreign employee with a valid visa endorsed on his or her passport is generally not restricted from further exit or re-entry.

**23 How can immigrants qualify for permanent residency or citizenship?**

A foreign national who is not a Malaysian citizen may apply for an entry permit. There are four eligible categories of foreign nationals who may apply for permanent residency if the following requirements are satisfied:

- to qualify as an investor:
  - the applicant must have a minimum fixed deposit of US$2 million at any bank in Malaysia. The individual will only be allowed to withdraw the funds after five years;
  - one Malaysian sponsor is required; and
  - the individual's spouse and children under 18 years of age are eligible for permanent residency after five years' residency in Malaysia;
- to qualify as an expert:
  - the applicant must have expertise, talent and skill that is recognised as 'world class' by any international organisation;
  - a recommendation by the relevant Malaysian agency (depending on the applicant's field of expertise) is required;
  - a certificate of good conduct from the expert's country of origin is required; and
  - one Malaysian sponsor is required;
- to qualify as a professional:
  - the applicant must be an individual with outstanding skills in a particular field;
  - a recommendation by the relevant Malaysian agency (depending on the applicant's field of expertise) is required;
  - a certificate of good conduct from the professional's country of origin is required;
  - one Malaysian sponsor is required; and
  - the applicant must have worked in any government agency or private company in Malaysia for a minimum of three years and must be certified by the relevant Malaysian agencies; and
- to qualify as a spouse or child of a Malaysian citizen:
  - a spouse must:
    - be married to a Malaysian citizen;
    - be issued with a long-term visit pass and have stayed continuously in Malaysia for a period of five years;
    - submit a marriage certificate; and
    - be sponsored by his or her Malaysian spouse; and
  - a child under six years old must be sponsored by his or her parents.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Yes, if the employment ends before the visa expires.

**25 Are there any specific restrictions on a holder of employment permission?**

A foreign employee may only work for the company or employer named in his or her visa. Additionally, those who obtain visas may not breach the terms and conditions of the relevant visa, including in relation to the place of work. As a promotion would result in a different job title for which the visa has been approved, the company would generally be required to cancel and re-apply for a visa for a foreign employee who has been promoted.

Holders of a visa may study without having to apply for a student pass, provided there is an offer from the respective institution of higher learning, but permission must be obtained from the immigration authorities.

## Dependants

**26 Who qualifies as a dependant?**

Legal spouses and children under 18 years old qualify as dependants. However, unmarried couples, civil partners (same-sex partners) and cohabiting partners do not qualify as dependants.

Holders of an employment pass (categories I and II) are allowed to bring in their spouses and children under 18 years of age as dependants and may obtain long-term social visit passes for their parents, parents-in-law or children over the age of 18. Holders of an employment pass (category III) or a professional visit pass may not bring in dependants.

**27 Are dependants automatically allowed to work or attend school?**

Dependants are not allowed to work unless the dependant pass is converted into an employment pass in the usual manner.

Dependants under 18 years of age need not apply for a student pass for study in Malaysia, but permission must be obtained from the immigration authorities. However, dependants over 18 years of age must apply to convert their dependant pass to a student pass before they are allowed to undertake studies in Malaysia.

**28 What social benefits are dependants entitled to?**

Dependants are not entitled to any social benefits.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

There is no law in Malaysia that requires foreign employees to declare their past criminal convictions. However, the immigration authorities retain the discretion to accept or reject any foreign employee from commencing work in Malaysia.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

The penalties imposed on individuals and companies for non-compliance of immigration laws in Malaysia are laid down under the Immigration Act, and differ according to the offence committed, as follows:

- under section 6, any non-citizen who enters Malaysia without being in possession of a valid pass or a valid entry permit on which his or her name is endorsed shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding five years, or to both, and shall also be liable to a whipping of not more than six strokes. Under section 32(1), any individual who contravenes section 6 shall be liable to be removed from Malaysia by order of the Director General of Immigration;
- under section 15, an individual who remains in Malaysia following the cancellation or expiry of any permit or pass shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than 10,000 ringgit or to imprisonment for a term not

exceeding five years, or to both. Such person may also be removed from Malaysia by order of the Director General of Immigration and may be detained in custody for such period as may be necessary for arrangements to be made for his or her removal;

- under section 55B, any individual who employs one or more persons who is not in possession of a valid permit shall be guilty of an offence and shall, on conviction, be liable to a fine of between 10,000 and 50,000 ringgit or to imprisonment for a term not exceeding 12 months, or to both, for each such employee. However, if it is proved that five or more such employees are employed at the same time, that individual shall, upon conviction, be liable to imprisonment for a term of between six months and five years and shall also be liable to a whipping of not more than six strokes. If the offence has been committed by a body corporate, any person who at the time of the commission of the offence was a member of the board of directors, a manager, a secretary or a person holding an office or a position similar to that of a manager or secretary of the body corporate shall be guilty of the offence;
- an occupier who permits any illegal immigrant to enter or remain at any premises shall be guilty of an offence and shall, on conviction, be liable to a fine of between 5,000 and 30,000 ringgit or to imprisonment for a term not exceeding 12 months, or to both for each illegal immigrant found at the premises and, in the case of a second or subsequent conviction, to a fine of between 10,000 and 60,000 ringgit or to imprisonment for a term not exceeding two years, or to both, for each illegal immigrant found at the premises;
- under section 55E, any individual who harbours any person whom he or she knows, or has reasonable grounds to believe, that has acted in contravention of the Immigration Act shall be guilty of an offence and may be liable to a fine of between 10,000 and 50,000 ringgit for each person harboured. Where it is proved to the satisfaction of the court that five or more such persons are harboured, that individual shall be liable to imprisonment for a term of between six months and five years and shall also be liable to a whipping of not more than six strokes; and
- section 57 also provides for a general penalty wherein any individual found to have committed any offence under the Immigration Act where no special penalty is provided shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding five years, or to both.

The enforcement of such penalties is carried out by the immigration authorities, which, among other things:

- perform operations and inspections to ensure compliance with immigration laws;
- carry out arrests and rescues;
- conduct investigations and prosecutions; and
- manage the compounding of offences and deportation or repatriation of detainees.

**31 Are there any minimum language requirements for migrants?**

No.

**32 Is medical screening required to obtain immigration permission?**

Foreign employees are not required by the immigration authorities to undergo medical screening, but employers may require them to undergo certain medical examinations before commencing employment.

However, the immigration authorities require low-level foreign workers to undergo medical screening to qualify for employment, including those who are applying for an employment pass (category III).

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

A foreign employee is only allowed to work for the employer stated on his or her employment pass and at the address of the office stated on the same, and may not undertake other work. As such, there is no procedure for secondment.

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# Mexico

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**Sánchez Devanny**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

In general terms, Mexico is friendly and open to business immigration. To facilitate the entrance to foreign investors, business people, officials, professionals and technicians involved in any activity in Mexico, authorities in Mexican embassies and consulates abroad are empowered to issue visas for certain cases.

Article 7 of the Federal Labour Law establishes that in all companies, 90 per cent of the workforce must be Mexican nationals. Such percentage is not applicable in the case of directors, managers and general managers.

The government agency that manages and enforces the Immigration Law is the National Immigration Institute (the Institute), which sits within the Ministry of the Interior.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

All travellers must have an immigration visa; however, depending on their nationality, not all travellers require a previously authorised visa. Certain nationalities can obtain a multipurpose visa (FMM), directly from immigration personnel at any port of entry in Mexico, upon presentation of their passport. Nationals of certain countries are not permitted to obtain an FMM at the port of entry and must request this directly through a Mexican consulate abroad. The following can obtain an FMM at the Mexican port of entry:

- citizens holding a valid US visa (stamped in passport) or permanent US resident card (green card); and
- citizens who are permanent residents of Canada, Japan, the UK or any countries of the Schengen Area.

Tourist, business and transit visas are all comprised within the FMM, and these are granted for a maximum of 180 days.

### 3 What are the main restrictions on a business visitor?

A business visitor who has no intention of performing paid activities can stay in Mexico for a maximum of 180 days. Commonly, business visitors only engage in negotiations, meetings and in supervising the installation of machinery and equipment. The only restriction, other than nationality, is that their activities in Mexico cannot be remunerated.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

A work permit is always associated with the payment of salary by a Mexican entity or branch. If the training is done by a visitor whose salary comes from abroad, then an FMM will suffice.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Yes, transit visas are required to travel through Mexico. The way in which they can be obtained depends on the traveller's nationality; however, in general terms, FMM visas can be obtained at the port of entry. Certain nationals (restricted nationalities) will require to request such visa at any Mexican embassy or consulate abroad, in cases where they do not meet the requirements outlined in question 2.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work permit used by companies to transfer skilled staff is the temporary resident visa, which can be used either for non-profit or paid activities.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

**Temporary resident visa, with no authorisation for paid activities**

This visa is obtained directly at a Mexican embassy or consulate abroad. The foreign national must visit the embassy or consulate with certain personal documentation and information, as well as with an invitation letter issued by the Mexican sponsor to enter the country. The embassy or consulate stamps a provisional pre-approved visa in the foreign national's passport. The foreign national has up to six months to enter Mexico. Once in Mexico, the foreign national has 30 days to exchange the provisional pre-approved visa for a temporary resident visa (in the form of a photo credential) at the Institute. Once the foreign national obtains the temporary resident visa, he or she is legally authorised to work without remuneration.

**Temporary resident visa, with authorisation for paid activities**

The entity that is willing to hire the foreign national must request this visa directly at the Institute, which will issue an official permission so that the foreign national is allowed to visit any Mexican embassy or consulate abroad and obtain a provisional pre-approved visa stamped in his or her passport. The foreign national has up to six months to enter Mexico. Once in Mexico, the foreign national has 30 days to exchange the provisional pre-approved visa for a temporary resident visa (in the form of a photo credential) at the Institute. Once the foreign national obtains the temporary resident visa, he or she is legally authorised to work with remuneration.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

With an FMM, foreign nationals can stay for up to 180 days, which can be renewed for another 180 days. For such purpose, the foreign national should leave Mexico and return requesting another FMM. The temporary resident visa is initially valid for only one year, but can be renewed for up to three years. After such period, the foreign national can request a permanent resident visa, which is granted on a permanent basis.

### 9 How long does it typically take to process the main categories?

Given that for a temporary resident visa with authorisation for paid activities, there is a previous requirement that the employer is registered at the Institute, the full process can take as long as three months. For temporary resident visas without authorisation for paid activities, it can take up to two months.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

No, although it is advisable to insure the foreign national against occupational risks, especially those that visit without authorisation for paid activities (those with authorisation for paid activities should be enrolled at the Mexican Social Security Institute, which covers occupational risks).

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

There should be objective criteria in each and all processes, except for certain nationalities that have unofficial priority (Canadian, EU, Japanese and US). However, from our experience, certain officers exercise discretion according to subjective criteria.

**12 Is there a special route for high net worth individuals or investors?**

No.

**13 Is there a special route for highly skilled individuals?**

No; however, the Institute requests that the invitation letter to the employee notes, and it can be proven, that the foreign national has the correct qualifications and skills for the position.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

No.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

No, although salaries must comply with the minimum wage established by the Federal Labour Law (it is unlikely that a foreign national would have such level of salary).

**16 Is there a quota system or resident labour market test?**

No, under the immigration laws, it is not necessary to have a resident labour market test. However, the Federal Labour Law establishes that technical and professional activities should be done by Mexican employees; however, if there are no Mexican employees available, then those positions can temporarily be rendered by foreign nationals. The employer and the foreign nationals are obliged to train Mexican employees to fill such position.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

The employee must demonstrate his or her capacity to perform the job that he or she was hired to do.

**18 What is the process for third-party contractors to obtain work permission?**

Contractors act as employers of record. If those contractors pay the foreign national directly, they can obtain work permits for their employees.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Yes; commonly, the request for an immigration procedure (temporary resident visa) is accompanied by a professional or academic qualification.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

No. FMM visas are only granted for 180 days and do not allow foreign nationals to request or convert this to a work permit.

**21 Can long-term immigration permission be extended?**

Yes, visas can be renewed for up to four years. That is, a foreign national can have temporary resident status for four years and then apply for permanent residency. After obtaining temporary residency for one year (with or without permission to work), the foreign national will have the opportunity to renew this for one, two or three years. The above, owing to the maximum period that a foreigner can have temporary residency, is four years maximum. The only requirement that will change when the foreign national starts the renewal process is the amount of the fee for renewal.

**22 What are the rules on and implications of exit and re-entry for work permits?**

An exit permit is the document that allows a foreign national to leave Mexican territory while their renewal process is pending resolution. This document allows the process to continue in analysis on their return, rather than the Institute terminating the process (ie, without this permit, the authority would automatically deny a pending renewal request and the foreign national would have to leave Mexican territory). Holders of visas are able to enter and exit at will, if they have no renewal pending.

**23 How can immigrants qualify for permanent residency or citizenship?**

It is necessary to distinguish between permanent residency and citizenship.

**Permanent residency**

After four years of temporary residency, a foreign national can apply for permanent residency. To obtain the status of permanent resident, it is necessary to comply with the requirement of four years of legal domicile in Mexico as a temporary resident and comply with the documents and information requested by the Institute.

**Citizenship and naturalisation letter**

According to article 30 of the Mexican Constitution, Mexican nationality is granted by birth or naturalisation (naturalisation letter).

Section B of article 30 states that Mexicans by naturalisation are:

- foreign nationals who obtain a naturalisation letter from the Ministry of Relations; or
- foreign nationals who marry a Mexican, who have, or who establish their domicile within the national territory and comply with the other requirements established by law for that purpose.

The naturalisation letter is issued to foreign nationals who prove their residence in Mexican territory with a card that certifies their status of temporary resident, or with a card that proves their permanent resident status, at least during the five years prior to the date of the request.

To obtain naturalisation, it is important that the foreign national proves that he or she speaks Spanish, knows the history of the country and is integrated into the national culture. In order to prove the above, the foreign national interested in obtaining Mexican nationality by naturalisation will be given a questionnaire on the culture and general history of Mexico.

In addition to the above, those interested in obtaining Mexican nationality must comply with the documents and information requested by the authorities, as follows:

- original and copy of the DNN-3 application form;
- original and copy of the temporary resident card or permanent resident card;
- submit a letter, under oath, indicating the number of exits and entries made to and from the country in the two years prior to the submission of the application;
- original and copy of their foreign passport;
- original and copy of a certificate of non-criminal record issued by the competent authority;
- two colour photographs (passport size with white background);
- original fee payment receipt; and
- certified copy and photocopies of their foreign birth certificate, duly legalised by the Mexican diplomatic or consular representative of the place of issuance or, if applicable, apostilled by the competent authority, and translated into Spanish by an expert translator authorised by the judicial power of Mexico.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

No, there is no obligation to cancel the permission granted by the immigration authority. In a scenario where the foreign national decides to change his or her work, he or she is obliged to notify the change of employer to the Institute.

**25 Are there any specific restrictions on a holder of employment permission?**

No, there are no restrictions for a holder of employment permission. Once they obtain their employment permission (work visa), they can be promoted, their salary can change and they can even work for another employer once they leave the original sponsor. If the foreign national decides to work in another company, he or she is obliged to report the change of employer within 90 days of the date that they start working for the new company.

## Dependants

**26 Who qualifies as a dependant?**

The following qualify as dependants:

- children of the resident and of the partner of the resident, as long as they are under 18 years and not married;
- spouse or cohabitation partner of the resident as long as it fits with the Mexican legal requirements for that status; and
- parents of the foreign holder of a resident card.

In the case of a holder of a permanent residency card, his or her siblings can qualify as dependants as long as they are under 18 years of age and are not married.

**27 Are dependants automatically allowed to work or attend school?**

If a dependant wants to work, he or she must receive a job offer from a registered employer and request a work permit from the Institute.

Dependants (children under 18 years) that will attend school must have a resident card issued by the Institute. This document validates the legal stay of children in Mexico and proves that they are dependants of their mother or father. This is the only case in which a tourist visa can be exchanged for a dependant's visa.

**28 What social benefits are dependants entitled to?**

Dependants are entitled to public education and medical and health services, through the Mexican Social Security Institute, as the foreign national will be enrolled through his or her employment.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Yes. As mentioned in the Immigration Law, Mexican immigration authorities can deny a visa to a foreign national with a criminal conviction. If the foreign national is in criminal proceedings or has been convicted of a serious crime under national criminal laws or the provisions contained in international treaties and conventions to which the Mexican state is a party, or if his or her background in Mexico or abroad could compromise national security or public safety, he or she may be denied immigrant status.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

The Immigration Law states several penalties for non-compliance, for example:

- if the foreign national does not notify the Institute of his or her change of marital status, address, nationality or workplace, or if they delay notification, they will be subject to a fine of 20 to 100 measurement and update units (UMA). One UMA is currently equal to 80.60 Mexican pesos; or
- a foreign national that requests the regularisation of his or her immigration status, because he or she failed to notify the authorities of his or her marriage to, or becoming a cohabitant of, a Mexican national or a foreign national with a residence card, will be subject to a fine of 20 to 40 UMAs.

**31 Are there any minimum language requirements for migrants?**

No level of language proficiency is required, except in situations where a foreign national requests naturalisation, in which case he or she must prove that he or she can speak Spanish.

**32 Is medical screening required to obtain immigration permission?**

No, medical screening is not required.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

No. The Immigration Law does not state a procedure for this situation. In cases of secondment, the employer is obliged to have the employer certificate duly renewed in order to comply with immigration law and enable them to hire foreign nationals.

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# Netherlands

**Yvette van Gemerden and Hugo Vijge**

**PwC**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Dutch migration policy has been aiming to protect the Dutch labour market for decades. Over the past few years, the Dutch government has introduced less restrictive admission policies for talented employees or employees of multinational companies who meet specific criteria.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

The Netherlands is part of the Schengen area. On the basis of the Schengen Agreement, most nationalities require a Schengen visa to enter the Netherlands (or any of the other Schengen countries) for a stay of less than 90 days within a period of 180 days. Employees who do not require a (Schengen) visa are allowed to enter the Netherlands on the basis of their valid passport. A short-term visa needs to be applied for at the Dutch embassy or consulate abroad located in the country of origin or legal residence of the applicant. In general, an application form needs to be filled out by the applicant indicating the main purpose of stay.

### 3 What are the main restrictions on a business visitor?

A short-term Schengen visa allows the business traveller to enter and stay within the Schengen area for a maximum duration of 90 days starting from the first day of entering the Schengen area, within a period of 180 days.

A Schengen visa issued for business does not allow the business visitor to work in the Netherlands. The applicant can only perform employment activities if the employer is in possession of a valid Dutch work permit on behalf of the employee. However, foreigners who reside abroad and who are in the Netherlands to attend meetings and close (business) contracts do not need a work permit, provided that the employee stays in the Netherlands for a total period of no longer than 13 weeks within a period of 52 weeks.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

A Dutch work permit is required in order to give or receive short-term 'on-the-job' training. However, the employer can be exempted from having a valid work permit for foreign employees who reside abroad and who come to the Netherlands to receive training or instructions within an international company in an instruction environment under the guidance of a trainer. The maximum duration for this exemption is 12 consecutive weeks within a time frame of 36 weeks.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Citizens of the following countries are, in principle, required to possess an airport transit visa when they are in the international transit area of airports in Dutch territory: Afghanistan, Bangladesh, the Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Guinea, Guinea-Bissau, Iran, Iraq, Nepal, Nigeria, Pakistan, Sierra Leone, Somalia, Sri Lanka, South Sudan, Sudan and Syria.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

**Intra-company transfer (ICT) programme**

When a non-EEA national who is a manager, specialist or trainee, who has his or her main residence outside the EU and an employment contract with a company based outside the EU, is temporarily transferred to an entity based in the Netherlands, the ICT programme needs to be used. Under the ICT programme, residence permits are granted allowing migrants to reside and work in the Netherlands. No separate work permit is required. It will not be permitted to apply for any other residence permit in cases where the ICT criteria are applicable.

**Highly skilled migrant (HSM) programme**

When a non-EEA national is employed on the basis of a local contract in the Netherlands, the most commonly used category is the HSM programme. Under the HSM programme, residence permits are granted allowing migrants to reside and work in the Netherlands. No separate work permit is required.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

**ICT programme**

An application can be filed under the ICT programme if the employee meets the monthly gross salary threshold, which is indexed annually. The individual also needs to be employed by the company group for at least three consecutive months immediately prior to the transfer. An application can be filed while the foreign national is still abroad. Depending on the employee's nationality, a long-term entry visa (MVV) may be required before entering the Netherlands. If this is the case, a combined application can be filed for the MVV and residence permit as an ICT, in order to achieve the required positive outcome. Once the Dutch Immigration and Naturalisation Service (IND) has approved the application, the MVV can be collected at the consulate or embassy in the country of origin or the country where the applicant has a legal residence status. An MVV is a visa sticker that is placed in the passport. The foreign national can travel to the Netherlands on the basis of the MVV. The MVV visa sticker indicates that the ICT may work in the Netherlands as an ICT. Once in the Netherlands, the residence permit card must be collected.

**HSM programme**

In order to make use of the HSM programme, Dutch companies must have the status of recognised sponsor with the IND before they can file applications under the HSM programme. Once this status has been obtained, an application can be filed under the HSM programme if the employee meets the monthly gross salary threshold, which is indexed annually. An application can be filed while the foreign national is still abroad.

Depending on the employee's nationality, an MVV may be required before entering the Netherlands. If this is the case, a combined application can be filed for the MVV and residence permit as an HSM, in order to achieve the required positive outcome. Once the IND has approved the application, the MVV can be collected at the consulate or embassy in the country of origin or the country where the applicant has a legal

**Update and trends**

There has been a recent increase in collaboration of supervision and enforcement between the different Dutch authorities (ie, the UWV (the Dutch labour authorities), the IND, municipalities and tax authorities).

residence status. An MVV is a visa sticker that is placed in the passport. The foreign national can travel to the Netherlands on the basis of the MVV. The MVV visa sticker indicates that the HSM may work in the Netherlands as an HSM. Once in the Netherlands, the residence permit card must be collected.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

**ICT**

In general, an ICT residence permit will have the same end date as stated in the assignment letter of the assignee. However, the ICT residence permit will be issued for a maximum duration of three years for managers and specialists, or a maximum of one year for trainees, and cannot be renewed. The individual must reside outside the Netherlands for at least six months before a new ICT residence permit can be applied for in the Netherlands. Alternatively, the individual will need to apply for a different residence status in the Netherlands.

**HSM**

In general, an HSM residence permit will have the same end date as the employment contract of the employee. Where the employee has a contract for an indefinite period of time, the HSM residence permit will be issued for a maximum duration of five years per issuance and can be renewed.

**9 How long does it typically take to process the main categories?**

The processing time for the main immigration categories are as follows:

- ICT via recognised sponsor: four weeks;
- ICT not via recognised sponsor: three months; and
- HSM: four weeks.

If an MVV entry visa is required, an additional processing time of two weeks will apply.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

For a work permit application, the employer is required to guarantee that a decent place of residence has been arranged.

Valid health insurance is required upon arrival in the Netherlands. Only after the foreign national is in possession of a valid Dutch residence permit card can a Dutch health insurance policy be obtained.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

In general, the Dutch immigration authorities follow objective criteria when processing a Dutch immigration procedure. However, they are willing to issue work permits in special circumstances on a discretionary basis. In this case, the necessity of the work permit must be explained in detail and it is not possible to guarantee that the application will be successful.

**12 Is there a special route for high net worth individuals or investors?**

A non-EEA national who wants to obtain a residence permit as a wealthy foreign investor must invest at least €1.25 million directly in a Dutch company or indirectly via an investment fund. The requirement is that the investment must be innovative or must increase employment in the Netherlands. The residence permit will be granted for a period of three years and can be renewed.

**13 Is there a special route for highly skilled individuals?**

See 'HSM programme' in question 7.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12. There is no fast-track route available.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

**ICT**

The gross monthly salary should be in line with Dutch market standards. The following amounts will be deemed to meet such market standards:

- €4,404 gross per month for employees of 30 years and older (excluding 8 per cent holiday allowance); and
- €3,229 gross per month for employees younger than 30 (excluding 8 per cent holiday allowance).

The salary must be paid directly to the bank account of the intra-company transferee. If the salary does not meet these amounts, the Dutch labour authorities will assess whether the salary is in line with Dutch market standards.

**HSM**

For an HSM residence permit, the following minimum gross monthly guaranteed salary thresholds apply:

- €4,404 for employees of 30 years and older (excluding 8 per cent holiday allowance); and
- €3,229 for employees younger than 30 (excluding 8 per cent holiday allowance).

For foreign students who have recently graduated, it is also possible to obtain a residence permit as an HSM if they meet the gross monthly salary threshold of €2,314 (excluding 8 per cent holiday allowance).

The salary must be paid directly to the bank account of the HSM. These amounts will next be indexed on 1 January 2019.

**16 Is there a quota system or resident labour market test?**

For a standard work permit application, the Dutch employer must prove that there are no suitable candidates on the Dutch or European labour market for the vacancy. For this purpose, proof must be submitted of various recruitment efforts in the Netherlands and Europe (eg, placing advertisements in the Netherlands and Europe).

A quota may be applied in the case of Korean and Argentinian nationals who apply for the working holiday programme.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

No. Exact requirements depend on the immigration procedure to be followed.

**18 What is the process for third-party contractors to obtain work permission?**

In general, a work permit can be obtained by third-party contractors in specific cases. This is reviewed by the Dutch authorities on a case-by-case basis.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Depending on the immigration procedure, an assessment of professional or academic qualifications is necessary. For the ICT programme, the salary threshold must be met and the employee needs to be temporarily transferred to one or several entities of the same company group within the EU. For the HSM programme, the salary threshold must be met and the salary level of the employee must conform to Dutch market standards for similar positions.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Converting a short-term visa into a long-term visa is, in principle, not possible. Many individuals require an MVV to enter the Netherlands as a prerequisite for a residence permit. These nationals must return to their home country to file an application for an MVV. After the MVV

has been issued, the employee is allowed to re-enter the Netherlands to seek residency.

For individuals who do not require an MVV to enter the Netherlands, a Dutch residence permit needs to be applied for at the IND. The residence permit will, in general, be issued once an extension of the work permit is granted, or if the employee meets the criteria for a residence permit with work authorisation.

**21 Can long-term immigration permission be extended?**

As long as an individual meets the requirements for a residence permit in the Netherlands, the residence permit can be extended.

**22 What are the rules on and implications of exit and re-entry for work permits?**

As long as the residence permit is valid, the foreign national is allowed to leave and re-enter the country on the basis of the residence permit card. Pending the approval of an application to renew a residence permit, a re-entry visa may be required depending on the nationality of the applicant if the residence permit card has expired.

For some work permit categories, the employee must leave the Netherlands for a certain period before a new work permit on the same basis can be issued.

Depending on the type of visa, it is possible to be outside the Netherlands for up to eight months (eg, for an HSM).

**23 How can immigrants qualify for permanent residency or citizenship?**

After five years of continuous legal residence in the Netherlands, a foreign national qualifies for a permanent residence permit or Dutch citizenship. The main requirements for permanent residence or Dutch citizenship are that the applicant has no criminal record, has successfully completed the Dutch integration exams and, in the case of a naturalisation application, will renounce any previous nationalities upon receipt of the Dutch passport.

The duration of continuous legal residence in the Netherlands is to be extended from five years to seven years for those seeking to apply for Dutch nationality through naturalisation. The new requirement is expected to take effect after the amendment bill has passed both houses of Parliament, has received royal assent and has been published in the Dutch official state journal.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

The Dutch immigration authorities must be notified in writing if the assignment or employment has ended (before the end date of the immigration paperwork). The original residence permit card must be returned to the Dutch immigration authorities in all cases. The employer has the duty to keep a copy of the residence permit card and the original work permit in the personnel file of the employee for five years following the year the employment or assignment ended.

**25 Are there any specific restrictions on a holder of employment permission?**

A holder of a residence permit as an ICT must always meet the salary threshold. In the event the salary of the ICT no longer meets the threshold or the employee obtains a local contract with the EU-based company, the residence permit will be revoked. A holder of a residence permit as an HSM must always meet the salary threshold. In the event the salary of the HSM no longer meets the threshold, the residence permit will be revoked.

On the basis of both an ICT and an HSM residence permit, it is generally not possible to work for another company or additionally work for another employer unless the employment activities are part of the employee's normal work activities (eg, in the case of consultants). The same applies with regard to work permits. An exception is made for employment activities that are part of the job and other places of work are indicated when filing the work permit application. In addition, holders of an HSM residence permit are allowed to perform work activities as self-employed persons alongside their HSM work activities.

Moreover, highly skilled migrants can easily change employers while their residence permit is still valid. Conditions are that their new employer also has the status of recognised sponsor with the IND and that their salary meets the relevant threshold. The new and old employers are obliged to notify the IND about the respective departure and hiring of the employee.

## Dependants

**26 Who qualifies as a dependant?**

Spouses, unmarried partners and children under the age of 18 are considered dependants. For the application, the relationship must be proved by submitting the legalised and translated documents proving the relationship (marriage certificate, birth certificate, unmarried certificates or single status certificates of both partners).

**27 Are dependants automatically allowed to work or attend school?**

Spouses and partners of employees holding an HSM or ICT residence permit automatically receive the annotation on their residence permit that they are allowed to work without a separate work permit. Where the employee holds a residence permit for paid employment with a separate work permit, the dependent spouse or partner will require a work permit in order to work in the Netherlands. Children can attend school on the basis of their residence permit.

**28 What social benefits are dependants entitled to?**

The social benefits depend on the social security status of the employee and the spouse or partner and not purely on their immigration position. Spouses or partners (and employees) can be entitled to child benefits for children under the age of 18. This entitlement depends on the social security position of both the employee and the spouse. If the spouse

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also works, there can be an entitlement to an allowance for the cost of childcare.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

Yes. The immigration application may not be granted if the applicant has a criminal record.

### 30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

High penalties are imposed for illegal employment and non-compliance. The penalties for illegal employment vary and can be upwards of €8,000 per illegal employee. In the event of repetition of the offence, the fines can be doubled or tripled. In this respect, we would like to emphasise that it is not only the formal employer that runs a serious risk of fines and damage to its reputation, but also the employer where the activities are performed (eg, the client) on the basis of 'chain liability'. Additionally, in the event of non-compliance, there may be a risk of preventive suspension of work as well as withdrawal of existing permits.

If the recognised sponsor does not comply with its obligations under the current migration policy, the penalty for the employer is a maximum fine of €3,000. In the event of repetition of the offence within 24 months, the fines can increase by 50 per cent. The Dutch immigration authorities can suspend or withdraw the recognised sponsorship if the company repeatedly fails to comply with the obligations.

### 31 Are there any minimum language requirements for migrants?

In principle, no. Only when migrants apply for a permanent residence permit or Dutch citizenship, or when family members of a Dutch national seek residency in the Netherlands, is successful completion of a Dutch language test required as part of the integration exam.

### 32 Is medical screening required to obtain immigration permission?

Yes, certain nationals are required to undergo a tuberculosis test in the Netherlands in order to obtain a Dutch residence permit.

### 33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

On the basis of an ICT residence permit, it is not possible to work for another company or additionally work for another employer.

On the basis of an HSM residence permit, it is generally not possible to work for another company or additionally work for another employer unless these employment activities are part of the employee's normal work activities (such as in the case of consultants).

The same applies with regard to work permits. An exception is made for employment activities that are part of the job and other places of work are indicated when filing the work permit application.

# Nigeria

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The federal government of Nigeria is generally keen to encourage the immigration of skilled foreign nationals who intend to take up employment or do business in Nigeria. The cardinal focus of the policy of the government is to attract foreign investment, boost tourism, increase employment opportunities and better secure Nigeria's borders. Notwithstanding its general stance, the Nigerian government recently invoked the Nigerian Oil and Gas Content Development Act 2010 (the Nigerian Local Content Act), with the aim of allowing more Nigerians to occupy managerial, professional and supervisory roles in companies participating within the oil and gas industry.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Depending on the purpose of travel, an individual may require either a temporary work permit (TWP) or a business visitor's visa. In the first instance, a TWP is necessary where a company in Nigeria intends to bring in an individual to undertake short-term technical assignments for no more than 60 days. In the second instance, the business visitor's visa is necessary where a foreign individual intends on visiting Nigeria for the purpose of attending meetings and interviews and not for employment purposes. The process of obtaining a TWP is initiated through an application to the Comptroller General of Immigration (CGI) of the Nigerian Immigration Service (NIS) and ultimately ends with the issuance of the visa by the Nigerian diplomatic mission in the individual's country of residence. As regards obtaining a business visitor's visa, this can be obtained from the Nigerian diplomatic mission in the individual's country of residence or, for convenience, the alternative of a business visa on arrival in the country.

### 3 What are the main restrictions on a business visitor?

A business visitor is restricted from taking up employment or undertaking any form of work while he or she is in the country. He or she can, however, participate in meetings and interviews. With regard to length of stay, the business visa guarantees an individual unrestricted leave to remain for a period of no more than 90 days at a time. Permissible business activities include the following:

- visiting local offices or subsidiaries;
- holding and attending business meetings, lectures, programmes and round-table discussions;
- attending seminars and administrative training;
- attending information-gathering sessions for corporate decision-making;
- participating in exhibitions, shows and concerts; and
- invitations by a state government, ministry or any agency of government for meetings and consultations.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Yes, immigration permission will be needed in both instances. An individual would require a TWP, which is a short-term work authorisation for the purpose of giving short-term training. Conversely, where he or she intends to receive training, either a business visitor's visa or a student visa would be necessary, depending on the nature and duration of the training.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas are required. This class of visa can be obtained from Nigerian diplomatic missions overseas following the submission of an application and the fulfilment of other requirements. Economic Community of West African States (ECOWAS) nationals are exempted from procuring a transit visa.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

Companies that wish to hire skilled staff can do so via a TWP, a combined expatriate residence permit and aliens card (CERPAC) and an ECOWAS card. These are the three modes of transferring skilled staff.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The TWP is initiated through an application to the CGI and ultimately ends with the issuance of the visa by the Nigerian diplomatic mission in the assignee's country of residence. The CERPAC begins with the grant of a subject to regularisation (STR) visa in the assignee's country of residence. On arrival in Nigeria, the assignee would need to regularise the work visa by applying for the CERPAC.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

A TWP is necessary where a company in Nigeria intends to assign an individual to undertake a short-term assignment. It is imperative to note that the TWP visa is valid for 90 days. The CERPAC allows expatriate employees to live and work in Nigeria for 12 months. The assignee may also apply for a renewal of his or her resident permit for a further period provided the quota position remains valid.

### 9 How long does it typically take to process the main categories?

The application process for both categories usually takes eight to 10 weeks.

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

Under Nigerian immigration laws, the CGI may require provision to be made for repatriation or bond payment into the consolidated revenue fund by way of deposit of an amount as prescribed by the Minister of Interior before a work authorisation may be secured.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The Nigerian immigration authorities follow both objective and discretionary criteria as provided for under relevant laws and regulations and policy directives of the government.

**Update and trends**

In Nigeria presently, the 'standard' TWP process for companies in the oil and gas sector requires an additional pre-approval, which is to be obtained from the Nigerian Oil and Gas Industry Content Development Monitoring Board. It is important to state that this new requirement is still in the process of being implemented and is not yet mandatory for all companies.

**12 Is there a special route for high net worth individuals or investors?**

Yes, the federal government of Nigeria has introduced a policy that would encourage foreign investment in Nigeria. Although the policy does not state the minimum investment required to benefit from this development, the discretion for this special route has been delegated to the NIS.

**13 Is there a special route for highly skilled individuals?**

There is no special route for highly skilled individuals.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no special route or provision for fast-track visas for high net worth individuals.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Nigerian immigration laws do not make provision for a minimum salary. The issue of (minimum) salaries is typically determined based on existing collective bargaining agreements or individual contracts.

**16 Is there a quota system or resident labour market test?**

There are no broad-based standards in this regard. However, in respect of the Nigerian oil and gas industry, the Nigerian Local Content Act details a standard for employment of individuals, giving priority to the employment of Nigerians and also identifying an employment and training programme for Nigerians as a necessary ingredient on any project. This Act further states that, where Nigerians considered for employment lack the necessary training, all endeavours must be made to provide this training within or outside Nigeria. The foregoing applies to both TWP and CERPAC.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

No.

**18 What is the process for third-party contractors to obtain work permission?**

Typically, work permission is tied to the companies that obtain this permission on behalf of the expatriate employee. Consequently, third-party contractors must also apply for work permits for their employees.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Yes, the skills and qualifications of immigrants are assessed before immigration permission is granted.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

There is no procedure that allows for immediate conversion of short-term visas into longer-term authorisation. Current procedure dictates that a holder of a short-term visa who wishes to obtain a long-term authorisation (ie, work permit permission) makes an application for the same to the Nigerian diplomatic mission in his or her country of residence. His or her application should typically be supported by the relevant documentation necessary for the application.

**21 Can long-term immigration permission be extended?**

Work or resident permits are typically valid for 12 months and can thereafter be renewed for a further period of 12 months, provided the expatriate quota grant of a company remains valid.

As regards requirements for exit, with specific reference to the oil and gas industry, the Nigerian Local Content Act provides that an industry operator is required to submit a succession plan covering any position not held by Nigerians with a provision for Nigerians to understudy each incumbent expatriate for a maximum period of four years, after which the position shall become 'Nigerianised' (except for the retention of a maximum of 5 per cent of management positions to take care of the interests of investors).

**22 What are the rules on and implications of exit and re-entry for work permits?**

Work permits are categorised as follows:

- TWP (short-term): a TWP is a single-entry visa, which allows a holder to work and reside in Nigeria for a maximum period of 90 days or, alternatively, until he or she exits Nigeria at any given time before the expiry of the permit; and
- CERPAC (long-term): a CERPAC is valid for 12 months and is renewable thereafter provided the expatriate quota grant is not exceeded. A holder of a CERPAC can exit and re-enter the country during the time span of the CERPAC or the expatriate quota with which the CERPAC renewal is granted.

**23 How can immigrants qualify for permanent residency or citizenship?**

Immigrants can qualify for permanent residency or citizenship by registration or naturalisation. The process of registration can be achieved either by the conferring of special immigration or 'Niger wives' status. The special immigration status is granted to an immigrant who is married to a female Nigerian citizen, while 'Niger wives' status is conferred on an immigrant who is married to a male citizen of Nigeria. In regard to naturalisation, it is required that an individual must be at least 17 years of age and have resided in Nigeria for at least 15 years, is of good character and plans to remain in Nigeria, is familiar with any of the Nigerian languages and customs, has a viable means of support and has renounced any previous citizenship.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Yes. On termination of employment of an expatriate employee who possesses a CERPAC permit, his or her employer is required to notify the NIS of the immigrant's disengagement and also further apply that the immigrant be deleted from the position occupied on the employer's expatriate quota grant.

**25 Are there any specific restrictions on a holder of employment permission?**

The holder of employment is restricted to working and residing in Nigeria based on a contract of employment with the employer who procured the immigration permission on his or her behalf.

## Dependants

**26 Who qualifies as a dependant?**

Nigerian immigration law does not expressly prescribe who qualifies as a dependant. However, it is safe to assume that a dependant is an individual under the age of 18 years or a minor who is under the guidance of an adult. This assumption is based on the fact that an application for STR visas follows the mode of applying for a foreigner, his or her spouse and dependants.

Also, the Immigration Act provides that a person under the age of 18 years, who has in his or her possession a valid passport or is unaccompanied by an adult, is prohibited from entering into the country on his or her arrival at a port of entry.

**27 Are dependants automatically allowed to work or attend school?**

No, dependants are absolutely barred from working owing to the classification of permit granted to them; they are, however, allowed to attend any school of their choice.

**28 What social benefits are dependants entitled to?**

Dependants are not entitled to any specific social benefits in accordance with Nigerian immigration law or any other law. However, it is often the case that provision is made for these dependants under the contract of employment entered into by the employee, parent or guardian and his or her employer.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Yes, criminal convictions are a barrier to obtaining immigration permission.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Penalties for non-compliance with immigration law include the payment of fines, imprisonment, deportation for individuals and in respect of companies, and could range from payment of fines to an application for winding up the entity. Pursuant to the provisions of the Immigration Act, an individual can be summarily convicted for an offence under the Act by any competent court. The penalty may be either the payment of a reasonable fine or term of imprisonment as stipulated by immigration law. Also, where it appears to the CGI that the business owned by a deported immigrant should be wound up, he or she may make the necessary application to a competent high court.

**31 Are there any minimum language requirements for migrants?**

Nigerian immigration laws are silent as regards any minimum language requirements for immigrants.

**32 Is medical screening required to obtain immigration permission?**

No. However, some Nigerian diplomatic missions insist upon proof that an immigrant has been immunised against certain communicable diseases (yellow fever, smallpox, etc).

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

No.


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# Norway

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

For many years, there has been a lack of highly skilled workers in specific sectors in Norway and therefore the intention of the Norwegian immigration authorities is to make business immigration a smooth process. In some main cities, there are specific service centres for foreign workers where the immigration authorities, the tax authorities and the labour inspection authority are located to provide a holistic service to foreign employees on arrival in Norway. Residence permit applications for skilled workers and their families are priorities and processing times are shorter than for other applicants.

Even though Norway is not a part of the EU, immigration law has special rules for citizens of EU and EEA countries. EU and EEA citizens (including Switzerland) have the right to live, work, study and start a private business in Norway for up to three months. Within three months of arrival, the person must register with the immigration authorities to receive an EU registration certificate. Normally it will only be necessary to do this once as long as the grounds for the registration are still present.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

As a general rule, all non-EU citizens require a visa when visiting Norway. However, some countries have a visa exemption agreement with Norway and citizens of these countries do not require a visa to travel to Norway. This also applies if the person holds a residence permit in an EU or EEA country. Special regulations apply for diplomats.

For citizens not mentioned above, a visa will be required when travelling to Norway. The most relevant basis to apply for a visa for these short-term travellers is using the following categories: business traveller, technical expert and inter-company training.

In order to be included in one of the three categories, the traveller cannot have a Norwegian employer and the traveller must stay in Norway no more than 90 days during any 180-day period. The stay of 90 days can be used as 90 consecutive days or divided into several shorter stays, but the stay cannot exceed 90 days during any 180-day period.

In addition to these two general conditions, each category has additional requirements and in specific cases there are strict limitations to activities that can be performed. An evaluation must be made in each specific case.

Citizens who do not need a visa to travel to Norway can stay in the country and the Schengen area for 90 days in total during any 180-day period. However, an evaluation should be made to what kind of activities the traveller can undertake in Norway. A residence permit (which includes the right to work) might be necessary.

A short-term visa is obtained at the local Norwegian embassy where the traveller is residing. The requirements when applying for a visa may vary from location to location and we advise consulting with the local embassy before submitting an application. Processing times also vary, from two weeks to two months.

### 3 What are the main restrictions on a business visitor?

The main restrictions for a business visitor are related to the length of stay and the type of activities the visitor can perform.

The maximum number of days the employee can stay will be limited to 90 days in any 180-day period. However, for persons who must apply for a visa before entering Norway, the visa will be granted based on the information provided in the application. For example, if the employee needs to be in Norway for two weeks, the visa will be granted for this period only.

There are restrictions as to what type of activities a business visitor can perform without having to apply for a residence permit. The business visitor category is intended for persons travelling to Norway typically to participate in meetings, conferences, contractual negotiations and similar activities.

Project management or performance of work on an ongoing project is not included in the business visitor category.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

To give training to others in a business setting is regarded as work by the immigration authorities and a residence permit will be required. This requirement will apply from day one in Norway. There is an exemption from this requirement if the person giving the training is considered a lecturer.

When receiving short-term training, the traveller might be exempted from applying for a residence permit if he or she qualifies under the 'inter-company training' category. He or she can then stay in Norway as visa-exempted or based on a C-visa. There are some criteria that must be met in order to qualify under this category. First of all, the exemption applies only to employees of international companies and the person concerned must be employed by the company's foreign branch and sent to Norway to the Norwegian branch to undergo training. The purpose of the stay in Norway should be to post the person in the Norwegian business to undergo an established training programme. The training should be done first and foremost via work; however, theoretical education can also be included in the training.

A stay under the inter-company training category can be used for two times 90 days or several times for a period shorter than 90 days, but limited to 180 days in total. In addition to this limit, the periods of stay are limited according to the Schengen visa regulations, meaning that the stay within the Schengen area cannot exceed 90 days within any 180-day period.

Each situation must be individually evaluated. If the traveller does not fulfil the requirements a residence permit will be required.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

All nationals who require a visa to enter Norway will, as a general rule, also require a visa for transit, unless an exemption exists according to an agreement between Norway and the relevant country. In general, an application should be submitted to the authorities representing the country that is the final destination. However, an application can be submitted to the Norwegian embassy or consulate in the country where the applicant resides if the final destination is uncertain. In

some countries where Norway does not have a diplomatic presence, the authority to process visa applications might have been delegated to another country's embassy or consulate.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

In Norway, the legal term 'work permit' does not exist. There is only a residence permit, but the residence permit includes the right to work. The two main categories are:

- seconded employment/service providers; and
- local employment.

Both categories require a residence permit from the first day of work. Non-EU visa-free nationals can stay in Norway for up to 90 days without a residence permit, but they cannot work.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The process starts by completing an online application to the Norwegian Directorate of Immigration (UDI). This is required for both categories. An application fee to the UDI is required at the time of online submission.

Thereafter one needs to book an appointment with the UDI in order to submit all required application documents in person or by the employer or other representative with power of attorney. Skilled workers on seconded agreements need to complete an offer of assignment form and skilled workers on local agreements need to complete an offer of employment form. In addition, diplomas, certificates and other personal documents are required.

If all educational, salary, work and personal requirements are met the applicant will receive a granted permit letter.

The applicant now needs to book a new appointment with the UDI in Norway to identify themselves in person with their passport and to complete a biometric print for a residence card.

Applicants from countries that require an entry visa (D-visa) to travel to Norway must visit their closest embassy or consulate in order to obtain their entry visa before travelling to Norway. When they arrive in Norway, they must complete the ID check and order their residence card with the UDI within seven days.

It is crucial for all non-EU nationals to book an appointment with the UDI as soon as possible after arriving in Norway, in order to be able to work as soon as possible after arrival. Work cannot legally be performed before this ID check is done.

The residence permit cards – allowing the applicant to stay and work – will arrive in the post within 10 working days of meeting the UDI.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

Seconded employees may be granted a permit for up to two years at a time (or a shorter period if the assignment contract indicates so), with a maximum of six years. This implies that they may apply for a renewal of their permit after the first period until they reach the six-year limit. After that, they must stay outside Norway for a period of two years, before they can commence a new six-year period.

Locally hired employees are, in essence, on permanent contracts. However, the UDI regulates their stay by granting them temporary permits to stay and work for up to maximum of three years at a time. After three years, the applicant may apply for a renewal of permit for another three years, or they may apply for a permanent residence permit.

### 9 How long does it typically take to process the main categories?

The processing time for both categories, seconded and local employment, is estimated to be two to three weeks from the time a complete application is submitted if the application is submitted to a service centre for foreign workers in Norway, and four to five weeks if the application is submitted to the Norwegian embassy or consulate in the country where the applicant resides. Applications that are incomplete, or require additional research or a request for documentation from the UDI, may take longer than the standard estimated processing times.

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

The applicant needs to have a work contract that meets the salary, educational and other terms of employment set by Norwegian collective agreements and industry standards for that specific occupation. The employee also needs to document that he or she has accommodation in Norway or that the employer will arrange accommodation.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The UDI follows objective criteria stipulated in immigration law. Certain applications that are not of a standard format may require additional research and documentation in order for the UDI to reach a decision. In such cases, subjective criteria may need to be considered in order to reach a decision.

### 12 Is there a special route for high net worth individuals or investors?

There is no special route for high net worth individuals or investors as such. They may apply for a permit as a self-employed individual, or as a researcher with own funds if they qualify in either of the two categories.

### 13 Is there a special route for highly skilled individuals?

There is no special route for highly skilled individuals. They must apply as a skilled worker either in the seconded or local category. Skilled workers with a bachelor's degree or a master's degree will respectively have different salary requirements.

### 14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

There is no special route for high net worth individuals for a residence permission into Norway (see question 13).

### 15 Is there a minimum salary requirement for the main categories for company transfers?

In Norway, there is no general rule regarding minimum salary in the labour or immigration laws. Minimum salary requirements are generally regulated in collective agreements between employer organisations and employee organisations. For this reason, the minimum salary requirement will vary from industry to industry.

The UDI guidelines operate with three levels of salary requirements. The main rule is that the salary must be in accordance with the relevant collective agreement. If no collective agreement is applicable the salary must be in line with the 'normal' salary for the industry and place of work. If no normal salary can be documented and the person concerned has a bachelor's or master's degree, the salary must be at least level 42 (391,800 kroner for persons holding a bachelor's degree, at 1 May 2018) and level 47 (421,700 kroner for persons holding a master's degree, at 1 May 2018) of the government main pay scale. These levels are adjusted every year on 1 May.

Note that not all kinds of remuneration are accepted as part of the minimum salary. As a rule, the UDI considers only the base cash salary. Benefits in kind are not accepted. Also, cash benefits in the form of allowances, per diems, bonuses and overtime payment are not accepted when the UDI evaluates whether the minimum salary requirement has been met.

### 16 Is there a quota system or resident labour market test?

For local hires, there is both a quota system and a resident labour market test. For secondments and service providers, there is only the resident labour market test. To our knowledge, the quota system has, up to now, never been a hindrance. Neither has the resident labour market test. For foreign workers covered by international agreements and for seamen working on foreign-registered ships, there is no resident labour market test.

### 17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

For most types of work permits, one needs to be considered a 'skilled worker'. Skilled workers are typically persons with an academic degree

**Update and trends**

The authorities have circulated a suggestion to abandon a long-held principle in Norwegian legislation regarding not allowing dual citizenship. If the suggestion is approved, it will mean that foreigners applying for Norwegian citizenship will not have to abandon their original citizenship in order to obtain Norwegian citizenship.

or a specific profession. Persons without an education or profession can qualify for a work permit if they have 'special qualifications'. A special qualification case is quite difficult to argue.

An applicant must be over the age of 18 and be able to document that he or she has a concrete job or assignment offer. The job offered must be in accordance with rules stipulated in the Labour Act (working hours, working environment, etc).

For local hires, the main rule is that it should be a full-time job. It is also a requirement for both local hires and secondments that the employee spends at least 50 per cent of his or her time in Norway during the permit period.

**18 What is the process for third-party contractors to obtain work permission?**

The UDI does not accept chain contracts. The employee concerned must be hired either directly by the Norwegian company or by a foreign employer who has a contract with a Norwegian client.

A self-employed person can get a residence (work permit) if he or she can document an economic basis for the business.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

It is sufficient for a person to document an academic degree.

A person who does not have an academic degree must apply under the 'special qualifications' category. The immigration authorities will evaluate if the experience that the person has is equivalent to a similar kind of education in Norway. In addition, in some professions, it will be necessary to obtain authorisation from the competent Norwegian authority.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

There is no arrangement in immigration law for converting a short-term visa into a longer-term authorisation. One would need to apply for a residence permit and the main rule is that an application for a residence permit should be submitted from the applicant's home country. A person staying in Norway on a business visa (valid for months) can, in principle, submit an application for a residence permit (with a right to work) in Norway since he or she is legally staying here. However, such a method is not recommended. A family member staying in Norway on a visitor's visa cannot submit an application from Norway for a residence permit based on a family reunion.

**21 Can long-term immigration permission be extended?**

A residence permit can be extended by applying for a renewal of the permit. A permit based on secondment will normally be granted in accordance with the time frame of the assignment contract or a maximum of two years at a time. In total, a permit based on secondment can be granted for a maximum of six years. After six years, the person must reside outside Norway for two years before he or she can re-enter on the same kind of permit. A permit based on local hire has no maximum limit. It will normally be granted for two or three years at a time or for a shorter period if the employment contract is time-limited.

A condition for extension is that the conditions of the permit have been fulfilled during the initial period and that they are proven to continue to be fulfilled. Payslips must be enclosed so that the immigration authorities can check that the salary requirement has been fulfilled. Also, travel outside Norway must be stated.

If the application for renewal is submitted at least one month before the current permit expires, the person has the right to stay and work in Norway while the application is processed. If the renewal application is submitted later than one month before expiry, it is up to the immigration authorities to decide if the person can work during the processing time.

**22 What are the rules on and implications of exit and re-entry for work permits?**

A residence permit in Norway includes a Schengen visa and gives the person the right to travel freely up to 90 days in the Schengen area. There are no limits on the number of exits and entries to Norway. However, as mentioned above, the person should not stay outside Norway for more than 50 per cent of the time that the permit is valid for.

**23 How can immigrants qualify for permanent residency or citizenship?**

Several conditions must be met in order to qualify for permanent residency and Norwegian citizenship.

The main condition for getting a permanent residence permit in Norway is that the person has had the type of residence permit that qualifies for a permanent residence permit for the previous three years. A permit based on secondment in Norway does not form the basis for permanent residency. The permit should be based on local hire (and family reunion with a local hire). Furthermore, the person must not have stayed outside Norway for more than seven months in the three-year period. If the person has a permit based on local hire, he or she is allowed to stay outside Norway for 15 months in the three-year period. The person must also fulfil a language training and social studies requirement, not have committed a criminal offence and have been financially self-supported for the previous 12 months.

The main conditions for getting Norwegian citizenship by application is that the applicant has stayed in Norway for seven out of the past 10 years with a valid residence permit, fulfils the requirements for permanent residency and resides in Norway at the time the application is processed and plans to reside there in the future. The applicant must also be over the age of 12, have proved his or her identity, not be charged with a criminal offence, fulfilled a Norwegian language training requirement and, as a general rule, abandon current citizenship.

Special rules can be applicable for spouses of Norwegian citizens and EU or EEA citizens.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

There is no formal cancellation requirement in immigration law. However, there is a general obligation to inform the authorities if the conditions of the permit are no longer met. It is advisable to inform the authorities if a person leaves Norway long before the permit expires and he or she does not intend to return during the permit period. Upon notification, the immigration authorities can decide to cancel the permit. In addition, the residence card should be returned to the immigration authorities.

**25 Are there any specific restrictions on a holder of employment permission?**

A permit based on secondment or assignment will be limited to the actual assignment (ie, the person can only perform the job as described in the application and only for that employer or client). A permit based on local hire will be limited to a specific employer or job title, or both. For all permits there is a general rule that the person holding the permit should stay at least 50 per cent of the time in Norway.

## Dependants

**26 Who qualifies as a dependant?**

According to the Immigration Act, dependants can be the following groups of family members:

- spouses, cohabitees who can document that they have been living together for the past two years and registered partners;
- children under the age of 18;
- children over the age of 18 provided that certain conditions are met (financially dependent, no close family member in home country, not married); and
- other groups of close family members provided that special circumstances are present.

**27 Are dependants automatically allowed to work or attend school?**

A residence permit based on family reunion will give the person the right to attend school and work.

**28 What social benefits are dependants entitled to?**

Normally all persons who are either resident or working as employees in Norway are compulsorily insured under the Norwegian National Insurance Scheme (provided legally in Norway and not exempted under a social security agreement). In order to be considered as resident in Norway, the person has to stay there for at least 12 months.

Compulsory contributors to the Norwegian social security scheme might be entitled to old age, survivors' and disability pensions, basic benefit and attendance benefit in cases of disablement, work assessment allowance, occupational injury benefits, benefits to single parents, cash benefits in cases of sickness, maternity, adoption and unemployment, medical benefits in cases of sickness and maternity, and funeral grants. Some benefits are residence-based and some are employment-based.

Persons covered by the Norwegian social security system receive free healthcare (ie, free accommodation and treatment, including medicine in hospital). The personal doctor system gives all residents of Norway the right to have their personal doctor. However, patients under this system need to be registered at a Norwegian address with the national register.

If a permit is granted for less than 12 months, the person is not eligible for Norwegian social security benefits. It is therefore important that they have sufficient insurance cover.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

A prior criminal conviction can be a barrier to obtaining a residence permit. The applicant will be asked if he or she has been convicted when applying for the permit and the immigration authorities may reject the application based on this.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

If the employee has been working in Norway without a permit, he or she can be expelled from the country and denied re-entry for a certain number of years. The expulsion option is used quite often and, according to guidelines, an illegal stay of 30 days or more should result in expulsion.

If an employer has been using the services of an employee who has not had a valid permit the employer may be fined and sent to prison. If the employer has not paid the employee according to the minimum requirement or been in breach of other labour regulations, the immigration authorities may decide that the employer will not be allowed to use foreign labour for a period of two years.

In our experience, there is an increased focus on social dumping in Norway, and the option of refusing employers who are in breach of immigration regulations permission to use foreign labour is very likely to happen on a more frequent basis.

**31 Are there any minimum language requirements for migrants?**

There is no minimum language requirement for persons applying for an ordinary residence (work) permit. However, if applying for a permanent residence permit or citizenship, there are language requirements.

**32 Is medical screening required to obtain immigration permission?**

No medical screening is required prior to obtaining a permit. However, persons from certain countries are required to undergo a tuberculosis test after the permit has been granted and he or she arrives in Norway,

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Normal rules regarding obtaining a permit apply unless the activities can be covered by the exemption for business travellers.

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# Panama

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Traditionally, Panamanian labour and immigration legislation has allowed the employment of foreign personnel, provided quotas for the employment of local personnel are observed. The unrivalled and steady growth experienced by the Panamanian economy during the past several years has created a shortage of skilled labour. To compensate for the shortage, immigration policies of recent governments and the current government have begun to loosen employment quotas and have favoured more flexible rules for hiring foreign personnel.

In 2008, immigration legislation was adopted to facilitate large infrastructure projects, including the Panama Canal expansion and the construction of the capital city's metro system. Recent administrations have also inserted their favourable views on the local employment of foreign personnel in their treaty and foreign trade negotiating agenda. Various international trade and investment agreements negotiated in recent years include provisions that facilitate business immigration for certain foreigners and business professionals.

Immigration legislation adopted by the previous government administration (2009 to 2014) relaxed the immigration and work permits criteria, particularly for foreigners from countries that maintain good diplomatic and commercial relationships with Panama.

The current administration, that took over four years ago, has maintained the foreigner-friendly immigration and work permit environment, with some changes mostly to protect certain professions that by law are reserved for Panamanians.

Immigration authorities follow immigration laws strictly, enforcing them at all ports of entry and through impromptu business inspections throughout the country.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Every foreigner who comes to Panama to work is required to have a visa and a work permit, even if the employment arrangement is for a short period of time. Short-term travellers may apply for visas and work permits to reside and work in Panama for short stays of up to 15 days or for three or nine months. Short-term travellers must be sponsored by a Panama-based licensed business.

The short-term traveller will have to submit an application for a work permit to the Ministry of Labour (ML) and for a visa to the National Immigration Service (NIS). Once the ML approves the work permit, the short-term traveller must submit the resolution approving the work permit to the NIS to apply for the visa. Short-stay work permits and visas are generally processed faster than other immigrant visas.

### 3 What are the main restrictions on a business visitor?

The main restrictions on business visitors include the following.

**Length of stay**

Short-stay visas are granted for a maximum period of nine months and are not renewable. Long-term visas are granted for two-year periods. After the initial period, the long-term visa may be renewed for an indefinite term.

**Special approval requirements, restricted nationalities and citizenship**

On the immigration front, Panama imposes special approval requirements on foreigners from Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Burkina Faso, Burundi, Chad, the Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Indonesia, Iran, Iraq, the Ivory Coast, Jordan, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Mali, Mauritania, Morocco, Mozambique, Myanmar, Nepal, Niger, Nigeria, Oman, Pakistan, Palestine, Rwanda, Senegal, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Syria, Tajikistan, Tanzania, Tunisia, Turkmenistan, Uganda, Uzbekistan, Yemen and Zambia. In cases involving foreign business people with restricted nationalities, the visa application must be also reviewed and approved by the National Security Council. On the labour side, Panamanian legislation governs the licensing and practice of various professional activities, and imposes Panamanian citizenship for licensees. Panamanian citizenship is statutorily required for accountants, agronomists, architects, chemists, chiropractors, cosmetologists, dentists and dental assistants, doctors, economists, engineers, insurance brokers, journalists, laboratory technicians, lawyers, nurses, nutritionists, pharmacists, physician's assistants, physiotherapists, psychologists, public relations professionals, radiologists, social workers, sociologists, speech therapists and veterinarians.

**Work permit approval**

Panamanian labour laws expressly provide that a foreign employee is only authorised to work once the corresponding work permit is approved. However, the process to obtain a work permit requires foreigners to visit Panama and may take from four to six months to be completed.

Other requirements, however, create some level of discomfort to business visitors applying for a short-term visa in Panama. These include having to file with the application evidence of a clean criminal record (except for visas for fewer than 15 days) and supporting documents with less than three months of issuance, counted from the day of filing the visa application with the NIS.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Every foreigner who will give or receive short-term training is required to have a valid visa and work permit. Depending on the length of the stay, the foreigner may apply for a visa and work permit for up to 15 days, three months or nine months.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

If the transit is for less than 12 hours, and provided the foreigner stays within airport grounds during transit, a transit visa is not required. In the event that the transit period exceeds a 12-hour period as a result of force majeure or acts of God, transit may be extended for up to 72 hours, with the authorisation of the general director of NIS or the corresponding authority in the port of entry. Any other entry must be based on a tourist, immigrant or permanent residency visa, except in the case of

foreigners from countries that have been exempted from the requirement of a tourist visa.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The general work permit rule creates a 10 per cent quota system: salary amounts within the resident company payroll and the number of foreign employees within the resident company workforce must not exceed 10 per cent of Panamanian employee salaries and workforce (10 per cent visa or permit). Skilled personnel, executive personnel and technicians may be transferred to Panama under any of the following options.

**Technicians, experts or employees of trust**
This category allows foreign specialised or technical personnel, experts, management and executives or what immigration legislation labels as 'employees of trust' to apply for a visa and work permit, provided they are sponsored by a resident corporation. Salary amounts within the resident company payroll, and the number of foreign employees within the resident company workforce must not exceed 15 per cent of Panamanian employee salaries and workforce (15 per cent visa or permit).

**Companies with fewer than 10 Panamanian employees**
This option is also dubbed the 'Marrakesh visa', because it was adopted in accordance with provisions within the Marrakesh Agreement. It allows a small business to hire one foreign employee in a company with fewer than 10 employees, provided the company hires a minimum of three Panamanian employees.

**Employees whose work product materialises outside Panama**
This category allows a resident corporation to hire foreign employees provided the employees' services are effective outside Panama and the employee is hired to work in the local branch, subsidiary or affiliate of a foreign company or business group.

**Employees who work for companies with a government contract**
This category allows a resident corporation that has been awarded government contracts to hire foreign employees to meet the labour requirements under the government contract. Terms and conditions for the visa and work permits will usually vary and will be set taking into account applicable regulations and the profile of the project and contractor.

**Employees who work for companies established in the Panama–Pacifico Area (PPA)**
Under this alternative, a corporation licensed and operating within the Panama–Pacifico business park may hire foreign employees.

**Employees who work for companies established in the City of Knowledge (CK)**
This category allows corporations licensed and operating within the CK business park to hire foreign employees to perform technical, research and development and management activities.

**Employees who work for companies established in the Colón Free Zone (CFZ)**
This category allows corporations licensed and operating within the CFZ to hire foreign employees.

**Employees of multinational companies (MC)**
This visa category allows corporations operating under a special business licence designed for multinational corporations to sponsor foreign employees.

**Employees of free-zone (FZ) designated areas**
This category allows corporations licensed and operating within any designated FZ business parks to hire foreign employees to render technical or management services.

**The 'friendly nations visa'**
This visa is for employees who come from countries that maintain good diplomatic and commercial relationships with Panama and that are part of a list of countries published by the Panamanian government. It has become very popular, because it does not have any major additional requirements to meet, other than being a national from one of the countries published in the list of friendly countries. The friendly nations visa allows foreigners from friendly countries to apply for a permanent residency on economic or professional grounds, provided they demonstrate having an economic or professional reason to immigrate to Panama and a minimum solvency of US$5,000. The list of friendly countries has been modified a few times, always to include additional countries.

The listed countries currently are Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Ireland, Israel, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, the Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, San Marino, Serbia, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, Taiwan, the United Kingdom, the United States and Uruguay.

**Recommended by the president of Panama**
This category is for employees who, for reasons of national interest or the provision of services to Panama, are recommended by the president and merely requires that the visa and work permit be previously approved by the president of Panama.

**Professional foreigner**
This category allows visas and work permits to foreigners who have a bachelor's, master's or doctoral degree, as long as the profession is not restricted to foreigners. The degree must be approved by a Panamanian state university, prior to requesting the visa and work permit. For details of restricted professions, see question 3.

**Temporary technical work permit and visa**
Skilled personnel and technicians immigrating to Panama for periods of 15 days to nine months may apply for a temporary technical work permit and visa. This temporary work permit and visa allows for short-term transfers of personnel to provide training or specific work assignments within Panama.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

Visas and work permits are intrinsically related, and depend on each other. Procedures to obtain the majority of the permits listed in question 6 are the following:

- preregistration: the foreign national must preregister their general information online with the NIS;
- registration: the foreign employee must register with the NIS;
- visa application: the foreign employee must file for a visa application with the NIS;
- immigration status: once the visa application is filed, the foreigner receives a provisional status under his or her visa category. The NIS issues a certification with the immigration status of the foreigner (immigration status);
- work permit application: the work permit application is filed before the ML. The work permit application must include the immigration status;
- work permit review: the ML reviews the work permit. If the work permit is approved, the applicant must file a copy of the resolution approving the work permit and the employment ID card issued by the ML with the NIS; and
- visa approval: after submitting the work permit resolution issued by the ML, the NIS will review the applicant's file and, if found compliant, will approve and issue the visa.

All documents that are issued outside of Panama and are submitted to the NIS in support of the visa and work permit application, must be in Spanish and legalised by the consular system or the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

The MC visa has a shorter procedure, because it does not require the applicant to apply separately for a work permit. Once the MC visa application is filed, the NIS reviews the application. If the application is found to be compliant with the regulations, the NIS will approve the MC

visa. The MC visa approval will also provide the foreign employee with permission to work in Panama.

Labour legislation in Panama forbids foreigners from commencing any work activity while the work permit application is in progress. The ML must have effectively issued the work permit before the foreigner may begin working.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The NIS generally grants stays for one year, renewable for up to five additional one-year periods. Nevertheless, under the most recent amendments to immigration law, certain categories of work-related visas confer the applicant a permanent status within the territory of Panama, after the second year of renewal. For details of the visas that confer permanent residency status from the second year, see question 23.

**9 How long does it typically take to process the main categories?**

For all the main categories, the NIS usually takes from four to five months to process a visa application, and the ML may take two to three additional months to approve or reject a work permit. However, these time frames may vary depending on backlogs and other factors.

Visas and work permits for employees who work for companies with a government contract, are licensed within the PPA or within the CK and licensed as MC, or applying under the friendly nation criteria, in most cases are processed in half the time it takes for other visas or work permits.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

As a general rule, employees must be enrolled with the Panamanian social security system (SSS). Social security benefits including medical care and retirement benefits are provided by the SSS. Housing and other benefits are not a requirement to secure an immigration permit.

A foreign employee working under an MC visa is an exception. Employees working under an MC visa must show they have private health insurance coverage to secure their immigration and work permit. The private health insurance coverage is secured by the MC.

Panamanian legislation does not require any additional benefits or facilities to hire foreigners.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Immigration authorities generally follow objective criteria. Visas are usually granted or rejected based on technical criteria and requirements. However, the NIS frequently follows principles and guidelines that are not listed within the law or any issued NIS regulation, in essence adding subjectivity to the process and sometimes making it hard to follow and complete.

NIS authorities, however, do allow applicants some flexibility in complex and unusual cases.

**12 Is there a special route for high net worth individuals or investors?**

Panamanian immigration legislation does contain special visas for investors and high net worth individuals. These visas vary according to the type of investment, as follows:

- investment in real estate: permanent residency in Panama may be obtained by individuals personally investing a minimum of US$300,000 in any type of real property located within Panama. The property must be directly owned by the foreign investor;
- investment in time deposits: permanent residency in Panama may be afforded to individuals opening a time deposit in Panama with a minimum value of US$300,000 and a minimum duration of three years. The time deposit must be maintained in the name of the investor;
- investment in real estate and time deposit: permanent residency in Panama may be granted to individuals investing a minimum of US$300,000 in a combination of real property and a bank time deposit. Both must be held in the name of the foreign investor;
- investment in forestry: permanent residency in Panama may be issued to individuals investing a minimum of US$80,000 in reforestation or forestry plantations that have a minimum area of 20 hectares. Personal investment is not required and may be channelled through reforestation companies licensed by the National Environment Authority;
- investment in companies: permanent residency in Panama may be obtained by individuals investing US$160,000 or more in the capital of a corporation in Panama; and
- investment in companies licensed to do business within an FZ: permanent residency in Panama may be issued to individuals investing a minimum of US$250,000 in companies licensed to operate within an FZ-designated area.

Unlike the visa categories listed in question 6, investor visas do not grant the option of applying for a work permit. Accordingly, these visas do not allow investors to work in Panama.

**13 Is there a special route for highly skilled individuals?**

There is no specific route for highly skilled individuals. However, some immigration permits have a shorter term of approval including friendly nation visas, MC visas, visas and work permits for employees that work for companies licensed within the PPA and visas and work permits for employees that work for companies established in the CK.

Panama also has a 'professional visa and work permit' that allows individuals with very specific educational backgrounds to apply for a permanent residency and work permit, provided their main profession is not restricted to Panamanians. For a list of professional activities whose practice is restricted to Panamanians, see question 3.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no special route for high net worth individuals in Panama. The applicant must complete the application in accordance with the procedures outlined in question 7.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Yes, there is a minimum salary requirement for the majority of the main categories. The following main categories have a minimum monthly salary requirement, as follows:

- visas for technicians, experts, management and executives or employees of trust: US$850;
- visas for companies with less than 10 Panamanian employees: US$1,000;
- visas for employees whose employment is supervised outside Panama: US$2,000;
- visas for employees that work for companies licensed in the PPA: US$1,000 in the case of employees of trust; and
- visas and work permits for employees that work for companies licensed in the CFZ: US$2,000 for executives and managers, technical personnel and employees of trust.

Salary requirements may increase depending on the type of visa and the number of dependants.

**16 Is there a quota system or resident labour market test?**

Panama does have a local employee quota system. The general work permit rule creates a 10 per cent quota system (see question 6).

Foreign specialised or technical personnel, experts, management and executives enjoy a slightly higher quota of 15 per cent (see question 6).

However, various types of visa categories create exceptions to the 10 per cent and 15 per cent quotas, always provided the number of foreign employees does not exceed the number of local employees on the payroll of the company. See question 6 for a list of exceptions.

Despite the local employee quota requirement, there is no need to advertise locally or perform any local labour search before hiring a foreigner. However, work permits for technicians and experts require the resident corporation to train a Panamanian employee for the same position.

Additionally, labour laws require the replacement of the foreign technician or expert with a trained Panamanian employee within a five-year term, counted from the day the ML first issues the work permit.

Employers that sponsor a technician or expert file a commitment letter with the ML, listing the name and ID number of the Panamanian technician or expert that will replace the foreign employee.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

Technicians and experts applying for a visa and work permit based on their skills must provide evidence of having acquired the skills or expertise that is the basis of employment. Proof of skills or expertise must be demonstrated by producing certificates, diplomas, licences or degrees issued by educational institutions or foreign authorities, or reference letters issued by previous employers.

**18 What is the process for third-party contractors to obtain work permission?**

Third-party contractors cannot obtain a work permit on behalf of other companies. However, it is not uncommon for human resources and employment companies to sponsor foreigners, file their visa and work permit application and outsource the foreigner to a local company.

Additionally, Panamanian immigration legislation does not expressly limit or prevent employees from working within the premises of another company. However, working in another company's premises may create liability to the other company for unpaid salary and benefits or any other breaches of employee rights under the labour code and labour agreement.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

An assessment or recognition of skills and qualifications is required to obtain certain immigration permissions such as the visas and work permits for technicians and experts.

**Technicians**

To gain approval of the visa and work permit, technical personnel must obtain and file with the ML academic letters, diplomas, certificates or similar documents certifying their technical capacity.

**Experts**

To obtain approval of a visa and work permit, expert personnel must obtain and file a reference, professional or business letter certifying their expertise with the ML.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Short-term visas can be converted into longer-term authorisations by cancelling the short-term visa and work permit issued by the NIS and ML respectively, and applying for the longer-term authorisation with the NIS and ML. The process to convert short-term into long-term visas is the same as has been outlined in question 7.

Where the foreigner enters Panama as a tourist and decides subsequently to convert his or her status, the foreigner must also follow the steps outlined in question 7.

**21 Can long-term immigration permission be extended?**

Long-term permission in some migratory categories is initially issued for a two-year period. After two years, a permanent residency permit must be requested.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Once the visa and work permit are granted, exiting and re-entering the country does not create any issues in Panama. However, because the approval of a visa application may take several months, after the visa application is filed and while the visa application is under review, the NIS must also issue to the applicant a provisional ID and an entry and exit permit to exit and re-enter the country.

Once the visa application is approved, there is no need to apply for an entry and exit permit.

**Update and trends**

Following recent diplomatic policies and decisions, Panama has removed nationals of China and India from the list of restricted nationalities. As a result, nationals of these countries can apply for a visa to enter Panama at Panamanian consulates in their respective countries, instead of requesting authorisation in Panama before the National Security Council.

Also, as a result of Law 59 of 12 September 2017, the ML is tightening control of employment of foreigners without a proper work permit and is increasing inspections to detect non-compliance with regulations and applying new penalties enacted under said legislation (listed in question 7).

**23 How can immigrants qualify for permanent residency or citizenship?**

**Permanent residency**

Foreigners who come to Panama for labour purposes are not granted permanent residency or citizenship unless they fall into one of the following special visa and work permit categories:

- married to a Panamanian national;
- have a Panamanian child with a Panamanian national;
- receiving a recommendation or permit authorised by the president of Panama;
- pastor from a religion recognised by Panamanian authorities;
- employed with a PPA-licensed business operation;
- employed by an MC-licensed business operation; or
- holds an immigration or work permit under the 10 per cent and 15 per cent visa or permit criteria.

The ML usually takes from two to three months to approve or reject a work permit. There are specific investor or business visa categories that allow foreign employees to apply for permanent residence in Panama. These are:

- real estate;
- time deposits;
- forestry;
- corporate capital contribution in a local business or FZ-operating business;
- visas for permanent personnel working for a licensed operation within the PPA; and
- visas for individuals of countries with friendly, professional, economical and investment relations with Panama (friendly nation visa).

Once the applications for the visas listed above are filed and reviewed, the NIS grants a provisional residence permit to the foreign employee. After the provisional residence permit is approved, the foreign employee is able to apply for permanent residency in Panama.

**Citizenship**

Foreigners may apply for citizenship after spending five consecutive years in Panama with an immigration visa that confers permanent residency. Also, if the foreigner has three years of permanent residence, with Panamanian children, with a Panamanian spouse, he or she can obtain Panamanian citizenship. Citizens of Spain or Latin American countries may also obtain Panamanian citizenship, provided said countries afford Panamanian citizens reciprocal benefits.

The application for citizenship must be filed with the NIS, but addressed to the president of Panama. Once the application is admitted, the NIS will issue a report of the immigration status of the foreigner. If the report shows that the foreigner has complied with the immigration laws, the NIS will request the Electoral Tribunal to test the applicant's knowledge of the Spanish language, Panamanian history, Panamanian geography and the Panamanian political and administrative structure. After the foreigner passes the test, the NIS will send all the documentation to the Ministry of Public Security and the National Security Council for a final review on national security grounds. Upon the favourable review and opinion of the National Security Council, the president of Panama will issue a nationalisation letter conferring Panamanian citizenship. Finally, the applicant will be sworn in as a Panamanian by the governor of the province of Panama.

After this process is completed, the foreigner will be considered a Panamanian national and will be entitled to a Panamanian ID card and a Panamanian passport.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Immigration and work permission must be cancelled at the end of the employment relationship. Employers must notify the NIS of the termination of employment, and foreigners must return their visa for cancellation. The same procedure is applicable to work permits, although work permits must be cancelled with the ML.

If the employee has been promoted to a new or better job and must remain in Panama, the immigration permission will not need to be cancelled, provided the new post meets the extant visa and work permit criteria. The new job title or employment description will then be updated at the time the employee applies for a renewal of the visa and work permit.

Executives with a SEM visa must notify the NIS and the SEM secretary of the termination within 20 working days following the termination, or they have the option of applying for a stay permit for up to six months. The executive with the SEM visa must make a change of immigration status or return his or her card to carry out the definitive closing of the visa. A SEM visa is a permit that may be requested by any foreigner hired as an executive or director in a company licensed as a multinational headquarters company (MHQ- SEM).

**25 Are there any specific restrictions on a holder of employment permission?**

A holder of employment permission can work for the company that sponsored the permission and visa under the specific terms of the work permit and visa. Any work outside what is included in the work permit and visa is considered unauthorised. Hence, an employee cannot work for an employer other than the one that sponsored the visa and work permit.

There is no specific restriction providing that a holder of employment permission can study simultaneously. However, if the purpose to stay in Panama changes and focuses exclusively on education, the employment permission will have to be cancelled. A new study visa application will have to be filed with the NIS.

Also, employees working under a Panamanian work permit and visa are entitled to all the employment benefits and rights established by Panamanian labour laws for all employees.

## Dependants

**26 Who qualifies as a dependant?**

According to immigration laws, only the following persons qualify as dependants:

- parents;
- a spouse with a valid marriage certificate;
- children under 18 years of age; or
- children older than 18, but under 25 years of age, when studying and economically dependent on the holder of the visa.

**27 Are dependants automatically allowed to work or attend school?**

To meet immigration requirements, dependants must apply and gain immigration status as dependants.

Dependants are not allowed to work when holding a dependant visa. To work in Panama, dependants need to resign their dependant visa status and apply for an immigrant visa and correspondent work permit. Dependants may apply for any of the visas and work permits outlined in question 6 and meet the procedures discussed in question 7.

The public education system does not incorporate any visa or immigration requirement for dependants. Private schools may require the child or his or her parents to demonstrate that they have obtained immigration status before admitting the child. College education systems apply the same standards as described above.

**28 What social benefits are dependants entitled to?**

Foreign employees are required to pay employee premiums to the SSS. Accordingly, dependants of foreign employees are entitled to social security benefits in Panama, including medical care from the SSS. The following visas require employees to pay SSS premiums and will allow SSS medical care for dependants:

- technicians, experts, manages and executives, or employees of trust;
- companies with fewer than 10 Panamanian employees;
- employees who work for companies with a government contract;
- employees who work for companies licensed within the PPA;
- employees who work for companies licensed by the CK; and
- employees who work for companies within any FZ-designated area.

However, dependants of foreign personnel who hold MC visas will not have SSS benefits. MC visa employees are not required to participate in the SSS, and must retain private medical insurance.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Usually this is the case. A clean criminal record is normally a requirement to obtain an immigration permit. Foreigners with prior criminal convictions are usually denied immigration status in Panama based on security concerns.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Companies that do not comply with immigration laws can be subject to fines, imposed by the NIS, ranging from US$1,000 to US$25,000.

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Also, companies with foreign employees working without an approved work permit are subject to penalties, imposed by the ML, that range from US$500 for a first-time offence to US$25,000, and cancellation of the notice of operation after the fourth offence; and double the amount if there are more than 10 foreign employees working without work permits.

Individuals that do not comply with immigration laws may be subject to the following NIS fines:

- a one-off fine of US$1,000 to US$5,000 for working without a visa and work permit. In the case of recurrence, the NIS will cancel the visa;
- an additional fine of US$50 per month applicable to foreign employees found working without a visa and work permit;
- US$50 per month for expired visas (or US$100 per month in the case the foreigner held a residence permit as married to a Panamanian national or with a Panamanian child with a Panamanian national);
- US$2,000 to US$5,000 for travelling without a valid entry and exit permit. In the event of recurrence, the NIS may cancel the visa;
- US$10 per event for foreigners who do not carry their documentation that identifies them as such; or
- US$100 per event for foreigners who do not report changes in the information provided to the NIS (in the case of recurrence, the NIS may cancel the visa).

**31 Are there any minimum language requirements for migrants?**

Panama does not impose language tests or minimum language requirements upon immigrants.

**32 Is medical screening required to obtain immigration permission?**

A general and broad medical certification proving the health status of the foreign applicant is required when applying for a visa in Panama. The medical certificate must be issued by a licensed Panamanian doctor. There is no specific requirement for HIV or other specific screenings or tests.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There are no specific provisions governing secondments in Panama. A foreigner may be seconded by his or her employer to work for a client at the client's site. Employee transfers through secondments to a resident company must meet the visa and work permit requirements outlined in question 6 and follow the application procedures described in question 7.

# Peru

**Jaime Zegarra Aliaga***

Dentons

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Owing to the growing number of foreign executives that apply for visas, in recent years, the Peruvian government has introduced some amendments to its regulations to facilitate immigration procedures, especially for citizens from certain countries with which Peru has signed international treaties (eg, members of Mercosur, the EU or Pacific Alliance). In 2017, a new foreigner's law was published.

Although the Law on Hiring Foreign Employees of 1991 maintains the quota of foreigners versus nationals, there are some exempted personnel, such as managers of new companies or highly skilled individuals.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Transferees need a visa for employment purposes to work in Peru, even for short-term assignments. A business visa does not allow the holder to work within Peruvian territory.

Short-term travellers who want work in Peru, such as a worker on a Peruvian payroll or a seconded worker, must obtain a worker visa or assigned worker visa respectively.

In the first case, the foreign citizen signs an employment contract with a Peruvian company. If the contract lasts up to one year, the visa is a temporary one and it is stamped on the passport. If the contract lasts from one year to three years – the maximum period for non-exempt foreigners – the immigration authority will grant a residence card. Prior to the visa application, the foreign citizen must submit the employment contract to the Peruvian Labour Ministry for its approval or registry (see question 7). After the approval or registration of the contract, he or she may apply for a worker visa at the Peruvian Immigration Office directly or through a Peruvian consulate abroad.

The applicant for an assigned worker visa comes to Peru to work for a Peruvian company by virtue of the technical assistance agreement (or service agreement) executed between the Peruvian company and the non-domiciled company (the employer). This means that the applicant will not be registered on the Peruvian company's payroll during their stay in Peru, since the non-domiciled employer will pay the salary abroad. The assigned worker visa can be requested at the Peruvian Immigration Office or through a Peruvian consulate abroad. As to requirements, the applicant must submit the agreement between the companies, correspondence that describes the service to be rendered in Peru, and personal and professional information about the applicant.

### 3 What are the main restrictions on a business visitor?

Business visitors must not work, develop any profitable activity or receive any remuneration or income, unless they act as directors of domiciled companies or international lecturers or consultants subject to a service agreement that lasts 30 days, at most, within a year. The maximum length of a business visa is 183 calendar days per calendar year.

Permissible activities include, among others:

- undertaking business or similar arrangements;
- attending business or academic events;
- signing or negotiating contracts;
- acting as an international lecturer or consultant; and
- supervising investments.

Applicants must request a business visa at a Peruvian consulate abroad, unless they are citizens from countries such as Brazil, Colombia, Chile, Mexico and EU countries. They should demonstrate a business relationship with a Peruvian company and financial capacity (each Peruvian consulate determines the precise requirements for application). Exempted citizens may apply for the visa as soon as they arrive in Peru, without submitting anything more than their passport. The immigration authority at the airport stamps the visa in the passport.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

This is not expressly included in Peruvian legislation. However, it could be considered that the work visa is necessary to give or receive short-term training in Peru.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas were eliminated years ago. If foreign citizens arrive in Peru and do not exit the airport, they do not need a visa. If the transit involves travelling through Peru, citizens of restricted countries – African countries (except South Africa) and most Asian ones – must obtain a tourist visa for this purpose at the Peruvian consulate in their country.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work permit categories are the worker and assigned worker visas, as well as residence visas granted to Mercosur citizens.

Holders of assigned worker visas may apply for residence visas, which allows them to work in Peru, after obtaining approval or registration of their employment contracts.

The business permit category most used is the general business visa. It is a short-term permit to undertake certain activities. Bear in mind that business visitors are not allowed to work in Peru, but they can convert their business visa into a work visa by following the procedure described in question 7.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The procedure for a worker visa (temporary worker, resident worker and residence visa for Mercosur citizens) has two main parts: to obtain approval or registration of the employment contract at the Peruvian Labour Ministry, and to apply for the worker visa at the Immigration Office. Once the foreign citizen has concluded both parts, he or she can start working.

The employment contract needs approval or registration by the Peruvian Labour Ministry. It depends on the citizenship of the applicant. Unless the foreign worker is exempt (eg, foreign citizens married to a Peruvian citizen, having Peruvian ancestors, descendants or siblings, citizens of countries with which Peru has executed an agreement

on labour reciprocity or double nationality, or foreign investors with a permanent minimum investment), he or she should submit the degree certificate or professional diploma or work certificate, in order to demonstrate broad knowledge or international experience in a position similar to the one the applicant will occupy in Peru. Exempt applicants do not require approval, but must register their employment contract at the Peruvian Labour Ministry.

The second part of the procedure depends on the type of visa. The temporary worker visa is stamped on the passport, while the resident worker visa is granted through the issuance of a residence card.

To obtain a temporary worker visa, there are two mechanisms: applying directly to the Immigration Office in Peru and requesting the visa at any Peruvian consulate abroad. Once the resident worker visa has been approved, the applicant should attend in person at the Immigration Office in order to sign the national registry of foreign residents and pick up the residence card.

Mercosur citizens, who can apply for a residence card, do not need prior approval of their employment contracts for starting the immigration procedure. They can apply for the visa and register their employment contracts simultaneously. As described above, after approval of the residence visa, applicants should attend in person at the Immigration Office in order to sign the national registry of foreign residents and pick up the residence card.

As explained in question 2, the assigned worker visa can be requested at the Peruvian Immigration Office or through a Peruvian consulate abroad. After the visa stamp is received, work can begin.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

In the case of a temporary worker visa, its length is equal to the length of the employment contract and its maximum is one year. The resident worker visa is granted for at least one year, but can be extended annually while the employment contract is in force.

The period of validity of an assigned worker visa is 90 calendar days. One visa extension is allowed, for 270 days at most.

Residence visas for citizens from Mercosur member countries are granted for two years.

**9 How long does it typically take to process the main categories?**

When an applicant requests the visa directly from the Immigration Office, it takes between two and three months for temporary and resident worker visas as well as for assigned worker visas. Sometimes a visa requested at a Peruvian consulate abroad takes less time (it varies from one consulate to another).

The process of obtaining residence visas for citizens from Mercosur member countries takes approximately two months.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

In broad terms, it is not necessary to grant benefits or facilities for staff as a visa requirement.

However, since Peruvian labour law operates according to the territoriality principle, foreign workers subject to Peruvian employment contracts must be enrolled in the social security system and receive all the benefits established by Peruvian law.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Peruvian authorities normally follow objective criteria, even though there are some oral rules that vary without prior notice.

**12 Is there a special route for high net worth individuals or investors?**

Foreigners planning to be shareholders of a Peruvian company can apply for a resident investor visa. The main requirements are the documents that certify a minimum investment of US$150,000 in capital subscribed and paid and a feasibility project for running or increasing the business that includes the creation of five jobs within a two-year period.

There is no special route to process the visa request for these individuals.

**13 Is there a special route for highly skilled individuals?**

Yes, highly skilled individuals are exempt from limitations for hiring foreign workers (see question 16). For this purpose, when they request the approval of their contracts at the Labour Ministry, they must submit their professional diplomas and a work certificate to demonstrate their broad knowledge and international expertise.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Peru has a specific residence permit for investors (see question 12).

Furthermore, foreign citizens who have investments in Peru consisting of a minimum of five tax units (approximately US$ 6,100) do not need approval of their employment contracts by the Labour Ministry. Their contracts must be registered at the Ministry. There is no fast track to obtain a worker visa.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is no special rule regarding the amount of salary that foreign workers must receive in Peru, since they are entitled to receive the same benefits as nationals. In this sense, foreign citizens who are employed directly by Peruvian companies must receive at least the minimum wage (approximately US$270 per month) plus mandatory benefits. In addition, their salaries must be reasonable in accordance with the organisation chart of the Peruvian company (they should not receive less than their peers and subordinates).

**16 Is there a quota system or resident labour market test?**

Yes, there is a quota system, but many foreign workers are exempt. It applies to the worker visa (temporary or residence visas), and is assessed when starting the immigration procedure at the Labour Ministry.

In order to obtain approval of the employment contract executed with a foreign worker, a Peruvian company must demonstrate compliance with restrictions on hiring foreign personnel: the total number of foreign personnel may not exceed 20 per cent of the total number on the local payroll and salaries of foreign personnel may not exceed 30 per cent of the payroll.

Exempt foreign workers include those described in question 7, highly skilled individuals, managers of new companies and foreign citizens who have an immigrant visa.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

As indicated in question 7, non-exempt foreign workers must demonstrate their knowledge and international experience (at least two years in a similar position) at the Peruvian Labour Ministry. There are no other eligibility requirements to qualify for work permission in Peru.

However, foreigners planning to work in regulated professions in Peru such us engineering, accounting, law and medicine, among others, must validate their degree certificates or professional diplomas at a Peruvian university or directly at the National Superintendency of Higher University Education – a public entity – and obtain their registration at the corresponding guild. This validation and registration are not required to obtain a visa, but to render services in Peru.

**18 What is the process for third-party contractors to obtain work permission?**

The foreign applicant must request the visa directly.

Notwithstanding the above, foreign workers hired for a contracting company may render services in a third company's premises, if the employment relationship between the foreign worker and the contracting company is real, and does not become a de facto employment relationship with this third company.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Equivalency assessment or recognition are not necessary to obtain immigration permission, but to secure approval of the employment contract and to render services in regulated professions (see questions 7 and 17).

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

It is possible to convert tourist and business visas into resident worker visas if the applicant meets the requirements and follows the procedure.

**21 Can long-term immigration permission be extended?**

Holders of resident worker visas can extend their permission indefinitely for periods of up to one year in each case, with no limitations. After completion of three years of residence in Peru, the foreign worker may request an immigrant visa (or permanent residence permit).

Furthermore, holders of residence visas based on the Mercosur Residence Treaty can convert their visas into immigrant visas.

In order to leave the country, all holders of the above-mentioned visas must show their visas (the visa stamp or the foreign card) and the corresponding tax form.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Residence visas expire when foreign citizens have been abroad for more than 183 days within a 12-month period. If they lose their visa, they must initiate the application procedure from the beginning.

When foreign citizens become immigrants, there is no minimum period of stay in Peru.

If holders of a residence visa leave the country permanently, they should obtain an exit permit in exchange for the residence card.

**23 How can immigrants qualify for permanent residency or citizenship?**

A foreigner who is 18 years old or more and holds a residence visa qualifies for permanent residency (immigrant visa) or citizenship after staying two or more years in Peru and demonstrating economic self-sufficiency.

In both cases, other requirements are linked to previous migratory status (eg, if the applicant has worked for a Peruvian company, the employment contracts and payslips should be submitted).

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Yes, see question 22.

**25 Are there any specific restrictions on a holder of employment permission?**

Any amendment of the employment contract of the said holder (promotion, salary change, etc) must be agreed in writing and approved or registered at the Labour Ministry. If the visa holder changes employer, this information must be changed at the national registry of foreign residents.

A work visa holder can study and work simultaneously in Peru.

## Dependants

**26 Who qualifies as a dependant?**

The visa holder's spouse or husband, children of both or either who are under 18 years old and parents qualify as dependants. Foreign dependants must apply for family visas once the foreign worker has obtained the worker visa.

**27 Are dependants automatically allowed to work or attend school?**

Spouses of Peruvian citizens may work with a family visa. Spouses of foreign citizens must change the category of visa into a work visa. The procedure is described in question 7. If they want to attend university or an educational institute, they must convert the visa into a student visa. For this purpose, they must demonstrate the payment of tuition fees and official recognition of the career by the Peruvian Ministry of Education.

Minor children with family visas may study in Peru without limitation. When they become adults (at the age of 18), they must obtain a student visa, requesting it at the Immigration Office.

Some foreign citizens are exempt from the temporary study visa (eg, EU, Norwegian and Swiss citizens).

**28 What social benefits are dependants entitled to?**

Dependants are entitled to access the same social security benefits as dependants of Peruvian workers.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Foreign adults who apply for residence visas must attend an interview at Interpol to check their criminal records or submit them directly to the Immigration Office. On addition, assigned worker visa holders who want to obtain a visa extension must attend an interview at Interpol. Those who have a criminal conviction will not obtain a Peruvian visa.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Companies can be fined depending on the type of non-compliance. If the Labour Ministry detects an infringement of employment law, it will start a procedure to sanction the company.

With regards to serious non-compliance with immigration law, the immigration police may punish individuals with fines and, in the most serious cases, with deportation.

**31 Are there any minimum language requirements for migrants?**

There are no minimum language requirements for migrants.

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**32 Is medical screening required to obtain immigration permission?**

Medical screening is not required to obtain temporary or residence visas. Sometimes Peruvian consulates or the Immigration Office request an affidavit about the applicant's medical condition.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

The assigned worker visa applies in this case.

* *The information in this chapter is accurate as of September 2017.*

# Slovenia

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

A new government is currently in formation, since the mandate of the previous government was terminated following the resignation of the prime minister, Miro Cerar; therefore, it is difficult to discuss the government's policy on the employment of foreigners. Slovenian companies are keen to employ foreigners, especially in areas where there is lack of local workforce, and where there is a high demand for highly educated personnel.

The government monitors trends in the labour market and can either determine a quota of consent to be granted with regard to single permits and a quota of seasonal worker permits to be issued with a view to limiting the number of foreigners in the labour market. Additionally, an Order determining the occupations in which the employment of aliens is not tied to the labour market has been adopted and this currently includes 12 professions.

Slovenia is a member of the European Union and the European Economic Area (EEA). Citizens of member states of the EEA and Switzerland do not need work permits to work in Slovenia, which enables them to have free access to the labour market. These citizens are treated as equal to Slovenian workers when it comes to job seeking and employment.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

As Slovenia is a member of the EU and the EEA, citizens of member states of the EEA and Switzerland can enter Slovenia with an identity card (EU citizens) or with a passport, and do not require an entry permit (visa), regardless of the purpose of entering and residing in Slovenia. A national of a third country should obtain a visa at a diplomatic mission or consular post of Slovenia prior to entering the country. The visa regime in Slovenia is in accordance with EU legislation. It separates visa countries, which require a permission (visa) to enter and non-visa countries, which do not require a visa to enter.

A uniform visa (type C) is a permission to enter the country and is issued to a third-country national for a short-term stay (up to 90 days). The applicant should submit the application in person at a diplomatic mission or consular post or through an external service provider. Third-country nationals residing in countries where Slovenia has a diplomatic mission or a consular post authorised to issue visas, or where Slovenia has concluded a representation agreement with another Schengen state, need to apply for a visa at those representations. In principle, a visa application should be lodged at least 15 calendar days before the intended visit and cannot be lodged earlier than three months before the start of the intended visit.

### 3 What are the main restrictions on a business visitor?

In accordance with the Employment, Self-employment and Work of Foreigners Act (ZZSDT), a business visitor is a foreigner who is not generating income in Slovenia and is not carrying out direct sales or providing services. A business visitor can only participate in business meetings and in the establishment of business contracts, including negotiations regarding the provision of services and similar activities and those services and activities that relate to a foreign employer's preparation for establishing a market presence in Slovenia. These activities are limited to 90 days within the six-month period following the alien's first entry into Slovenia.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

ZZSDT stipulates some exceptions in which the single permit for residence and work is not necessary; for example:

- if a foreigner is carrying out work on the basis of relevant agreements with international organisations, agreements between competent institutions or within international projects relating to expert technical assistance, education, training or research; or
- if an alien is engaged under a contract with the ministry responsible for defence, or the ministry responsible for internal affairs, to provide services required for the defence and security of the state and persons in professional training in these areas.

Otherwise, ZZSDT stipulates a special category of single permit, which is obtained based on the consent of the Employment Service of Slovenia for the purpose of the training or further training of foreigners. The Employment Service grants consent to the issuance of a single permit if the following conditions are met:

- an employment contract concluded for the purpose of training or further training signed by the employer or a civil law contract exists;
- a positive opinion on the training or further training programme given by an economic association, the competent chamber or the ministry responsible for the relevant area of activity is submitted;
- the foreigner has hitherto not attended a training or further training programme with similar content; and
- the employer filed withholding tax returns for income from the employment relationship, or payslips if the employer employed workers, over the six months prior to the month in which the application was submitted or during the period of operation, if shorter than six months, and had no outstanding tax liabilities as of the date of the submission of the application.

A training or further training programme for foreigners shall not exceed one year, and may be extended for a maximum of six months.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Slovenian state authorities may issue an airport transit visa that allows the holder to transit through the international transit areas of airports in the member states of the EU, but not to enter into their territory. A special decree defines the countries whose nationals need an airport transit visa for transit through airports in Slovenia: Afghanistan, Bangladesh, Eritrea, Ethiopia, Ghana, Iraq, Iran, the Democratic Republic of the Congo, Nigeria, Pakistan, Somalia and Sri Lanka; however, there are some exceptions (eg, nationals of the above-stated countries do not need an airport transit visa if they have the permission for residence or work that ensures them unimpeded return to one of the following countries: EU member states, Andorra, Canada, Iceland, Japan, Liechtenstein, Monaco, Norway, San Marino, Switzerland or the

United States). The applicants should submit the application in person at a diplomatic mission or consular post or through an external service provider. Third-country nationals residing in countries where Slovenia has a diplomatic mission or a consular post authorised to issue visas, or where Slovenia has concluded a representation agreement with another Schengen state, need to apply for a visa at those representations. Persons residing in countries without a diplomatic mission or a consular post of Slovenia or a mission of another Schengen state that represents Slovenia in visa operations, may apply for a visa at Slovenia's mission in another country if their stay in that country is legal.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main category for transfering skilled staff is the EU Blue Card, which is a temporary residence permit for the purpose of highly qualified employment issued in accordance with the law governing the entry and residence of aliens that allows holders to enter, reside and take up employment in Slovenia.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

In the procedure for issuing an EU Blue Card, the Employment Service shall grant a consent at the request of the administrative unit, provided that the following conditions are met:

- the foreigner concerned holds at least a higher education degree;
- an employment contract of at least one year is signed by the employer ensuring a salary of at least one and a half times the average gross salary in Slovenia; and
- if the following general conditions are met:
  - there are no suitable unemployed persons for that particular post in the register of unemployed persons;
  - the employer has been appropriately registered or entered in the Register of Agricultural Holdings or in the Business Register to pursue the activity in which the alien concerned is to carry out work;
  - the employer is not in a winding-up or bankruptcy procedure;
  - the employer filed monthly withholding tax returns for income from the employment relationship, or payslips if the employer employed workers, over the six months prior to the month in which the application was submitted or during the period of operation, if shorter than six months, and had no outstanding tax liabilities as of the date of the submission of the application; and
  - the foreigner fulfils the conditions required by the employer.

Foreigners can start performing work after the single permit is issued, but no later than 10 days from the issue of the single permit or the EU Blue Card. A foreigner served with a single permit or an EU Blue Card outside Slovenia shall commence work not later than 15 days from the issue of the single permit or the EU Blue Card.

### 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

In accordance with the Foreigners Act, the first single permit for residence and work is issued for the duration of the employment contract or the contract concluded for the performance of the work, but not longer than one year. The single permit can be extended.

The EU Blue Card is issued for two years. If the employment contract is to be concluded within a shorter period than this, the EU Blue Card is issued for a period of three months longer than the contract period, up to a maximum of two years. The EU Blue Card can be extended for an additional three years.

The first single permit for posted workers is issued for a maximum period of one year. In the case of the applicant performing services that have special importance for Slovenia, the single permit can be issued for a longer period.

The first single permit for persons who are transferred within companies is issued for the period of transfer, but no longer than one year. In certain cases stipulated in the Foreigners Act, the single permit can be extended. There are no minimum periods stipulated in the legislation.

### 9 How long does it typically take to process the main categories?

In general, a single permit should be issued within 30 days; however, the duration of the process depends on which administrative office is competent for issuing the single permit (some administrative unit offices are preoccupied, therefore it can take much longer for them to issue the permit).

### 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

Upon the establishment of the employment relationship (which must be in accordance with the Slovenian law governing labour relationships and potential collective agreements binding on the employer), an employer is obliged to register foreigners in social insurance schemes (health insurance, pension and disability insurance, parental protection and unemployment insurance). The employer is not obliged to provide accommodation to foreigners; however, if the employer provides accommodation, it must comply with the minimum housing and hygiene standards that are specified in an implementing regulation issued jointly by the minister responsible for labour, the minister responsible for spatial planning and the minister responsible for health.

### 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

There are specified conditions stipulated in ZZSDT and in the Foreigners Act, which have to be met in order to issue a certain type of single permit. There are different objective conditions stipulated for granting a consent of the Employment Service to different types of single permit, which have to be met. Since the conditions are defined very clearly, there is not much space for flexibility of competent authorities.

### 12 Is there a special route for high net worth individuals or investors?

Yes. In accordance with ZZSDT, there are some simplifications stipulated for companies that are in accordance with the Investment Promotion Act, and registered in the register of high-value companies or in the register of innovative start-up companies. With such companies, the Employment Service shall not verify some conditions in the process of issuing or renewing a single permit and written approval issued for the purpose of employment if the company is registered in one of the above-mentioned registers and the employee is guaranteed a monthly salary at least equal to the average monthly gross salary in Slovenia.

### 13 Is there a special route for highly skilled individuals?

There is a special category of single permit stipulated in ZZSDT, that is the EU Blue Card. See question 7 for conditions for granting consent to the EU Blue Card.

### 14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

In accordance with the Foreigners Act, a long-stay visa may be issued to a foreigner if there is an economic interest for Slovenia, which the foreigner proves by submitting an opinion issued by the ministry responsible for the economy. In accordance with the Rules on criteria for establishing the economic interest of Slovenia in issuing long-stay visas to foreigners, the economic interest is proven in the following cases:

- if the foreigner has specialised knowledge and special experience that are useful for the Slovenian economy;
- if the foreigner can enable the increase of the Slovenian economy's business connections with foreign countries; or
- if the foreigner can enable the introduction and use of new technologies, business models or knowledge or the investment of capital in Slovenia, or the expansion and opening of new markets for Slovenian products.

### 15 Is there a minimum salary requirement for the main categories for company transfers?

A foreigner employed in Slovenia has equal rights to those of Slovenian citizens. That means that the foreigner is at least entitled to the minimum wage. In 2018, the minimum monthly wage is €842.79. The

foreigner is entitled to a higher amount if so stipulated in the collective agreement, which is binding the employer.

If a company wishes to obtain the single permit in a simplified process (see question 12), the employee is entitled to a monthly salary at least equal to the average monthly gross salary in Slovenia.

In the case of the EU Blue Card, the employee is entitled to a wage of at least one and a half times the average gross salary in Slovenia.

**16 Is there a quota system or resident labour market test?**

Given the situation and the projected labour market developments, the government may determine a quota of consent to be granted with regard to single permits and a quota of seasonal worker permits to be issued with a view to limiting the number of foreigners in the labour market. In addition to determining the quota, the government may also limit or prohibit the employment, self-employment or work of foreigners in terms of regions, industries, undertakings and occupations and can also limit or prohibit new foreigners from entering for the purpose of employment or work in full or in part or with regard to particular regions when justified on grounds of public policy, public security or public health, general economic interest or the situation and projected developments in the labour market.

One of the conditions for granting a consent for employment, consent for seasonal work or consent for an EU Blue Card is that there are no suitable unemployed persons in the register of unemployed persons that could take that particular position. The Employment Service shall check if there are any suitable unemployed persons in the register of unemployed persons when the application for issuing a single permit is submitted; however, a prior labour market test is also possible. In accordance with ZZSDT, the employer may obtain a depersonalised notice from the Employment Service indicating whether there are any suitable unemployed persons registered, prior to submitting an application for a single permit, an EU Blue Card, a written authorisation or a seasonal worker permit.

The obligation of the employer who recruits new employees to publicly advertise vacancies or types of work is stipulated in the Employment Relationship Act.

Since it is possible to acquire the information on suitable unemployed persons prior to submitting the application for a single permit, it is reasonable to do so. The Employment Service will then, in accordance with work conditions set by the employer, check if there are any unemployed persons who meet all the criteria.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There are special conditions stipulated for different types of single permits. For example, one of the conditions for granting a consent to employment, self-employment or work is that the foreigner was employed or self-employed in Slovenia for at least 20 months during the 24 months preceding the submission of the application, and was registered in the compulsory social insurance scheme on such basis.

A consent to posted workers may only be granted for those workers already employed for at least nine consecutive months or, in certain cases, for at least six consecutive months, by the foreign employer or by a company established in a third country and linked by capital ties.

**18 What is the process for third-party contractors to obtain work permission?**

Generally, the application for a single permit is submitted by the worker him or herself, by the employer with whom the worker will be employed or by an authorised person. Also, a single permit that is issued or extended on the basis of a consent to employment and a written authorisation granted on the basis of a consent to employment shall be connected to the employment needs of an employer. If the foreigner wants to change the employer, he or she will have to receive a written authorisation issued by a competent authority.

In some cases, it is possible that the employee will not perform work directly by the employer. Such situation is possible with employers involved in the supply of temporary agency work in accordance with the Labour Market Regulation Act. However, such employers may, within the scope of this activity, only conclude employment contracts with foreigners residing in Slovenia on the basis of an EU Blue Card, with foreigners for whom a consent to employment, self-employment or work was granted in the procedure for issuing or extending a single permit or a written authorisation, or with foreigners with free access to the labour market in accordance with ZZSDT.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

A foreigner seeking employment in Slovenia will have to meet all the criteria that are demanded by the employer. When the foreigner submits the application, he or she will have to enclose proof of adequate education or professional qualification and proof of the fulfilment of other conditions required by the employer. If professional or academic qualifications, membership of professional associations or guilds, or tests on medical knowledge, etc, are required by the employer, or if certain professions can only be performed if a person has such skills and qualifications, the foreigner will have to prove that he or she meets all the criteria.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Changing types of visa or residence permit is only possible when a foreigner complies with the conditions for a certain type of visa or permit. A foreigner must have a valid temporary residence permit throughout. The foreigner must lodge an adequate application in order to receive the visa or permit.

**21 Can long-term immigration permission be extended?**

This depends on the type of permission – whether the foreigner enters Slovenia to reside in Slovenia or whether he or she comes to Slovenia to work.

A foreigner may enter and reside in Slovenia for the period of time specified in his or her visa or residence permit, or agreed through a decision of the government of Slovenia, law or international agreement.

A temporary residence permit shall be issued for a specific purpose and for a specific period of time (the first temporary residence permit shall generally be valid for a period of one year). A foreigner who possesses a temporary residence permit may reside in Slovenia until the expiry of the validity of the issued permit. A temporary residence permit may be extended under the same conditions it was issued. A foreigner must lodge an application for the extension of a permit with the competent authority in Slovenia prior to the expiry of the validity of the permit. The competent authority shall issue a certificate attesting to the prompt filing of the application, which shall serve as a temporary residence permit until a final decision is taken regarding the application.

A permanent residence permit shall be issued without any limitations as to the duration and purpose of stay in Slovenia. A foreigner must meet all the conditions in accordance with valid legislation to obtain a permanent residence permit.

A foreigner who wishes to reside in Slovenia for employment or other work purposes may be granted a single permit for residence and work, which enables the foreigner to enter, reside and work in Slovenia. The first single permit is valid for a maximum of one year, and can be extended in cases stipulated by valid legislation, but for a maximum of two years.

There are special provisions that determine how long other special types of single permits are valid for (eg, for seasonal work, EU Blue Card, etc).

**22 What are the rules on and implications of exit and re-entry for work permits?**

During the validity period of his or her single permit, a foreigner may exit and enter the country in accordance with the Foreigners Act. A foreigner who has lodged an application for an extension of his or her residence permit in due time shall be permitted to remain in the country until his or her application has been decided upon and shall be issued with a special certificate that shall serve as a temporary residence permit until the application has been determined. This certificate allows the foreigner to leave, but not re-enter the country, until he or she has been issued with a new permit or unless he or she applied for an extension of a single permit or daily migrant worker permit.

### 23 How can immigrants qualify for permanent residency or citizenship?

**Permanent residence**

The conditions for obtaining a permanent residence permit are:

- five years of continuous legal stay in Slovenia on the basis of a temporary residence permit; or
- a certificate attesting to the submission of an application for an extension or the issue of a renewed temporary residence permit and that the conditions that apply for the first residence permit have been fulfilled.

The application for a permanent residence permit must be submitted by a foreigner or his or her legal representative or assignee at the administrative unit in the area of his or her residence. While the application is being processed, a foreigner is required to reside in Slovenia on the basis of a temporary residence permit.

The condition of five years of continuous legal stay is also fulfilled if, during this period, a foreigner was not in Slovenia and was not issued with a temporary residence permit or a certificate attesting to the submission of an application for the extension or renewal of a temporary residence permit, if his or her absences were shorter than six consecutive months and, if combined, they do not exceed 10 months in a five-year period.

The duration of a foreigner's stay on the basis of a long-stay visa is considered part of the period of the issue of a permanent residence permit if he or she applied for a temporary residence permit before the expiry of his or her visa and was issued a residence permit as a holder of a long-stay visa.

Only half of the duration of an alien's stay on the basis of a temporary residence permit for education and vocational training purposes is considered part of the period of the issue of a permanent residence permit.

Time spent in Slovenia on the basis of a temporary residence permit for the purposes of seasonal work, as a posted worker or a daily commuter, or as a person under temporary protection is, however, not considered part of the period that counts towards the issue of a permanent residence permit.

**Citizenship**

The conditions for obtaining citizenship are stipulated in the Citizenship of the Republic of Slovenia Act. By naturalisation, the foreigner can obtain citizenship if he or she fulfils the conditions and submits an application. The conditions are that the applicant must:

- be at least 18 years of age;
- terminate previous citizenship;
- have been living in Slovenia for 10 years, and living continuously in Slovenia for the five years prior to the submission of the application;
- have the lawful status of a foreigner;
- have guaranteed means of subsistence in the amount of the basic minimum income;
- have mastered the Slovenian language for the needs of everyday communication;
- not have been sentenced to an unconditional prison sentence for more than three months, or sentenced to a conditional prison sentence with a period of probation of more than one year;
- not have been banned from living in Slovenia;
- have settled tax obligations; and
- have taken an oath of respect for the free democratic constitutional order.

Additionally, the person's acquisition of citizenship must pose no threat to public order, security or defence of the country. In special cases, Slovenian citizenship may be obtained extraordinarily if this is beneficial for the state for scientific, economic, cultural, national or similar reasons, provided that the foreigner actually lives in Slovenia continuously for at least one year before submitting the application, he or she has the lawful status of a foreigner and he or she must also fulfil additional conditions. In exceptional cases, a foreigner may acquire Slovenian citizenship even if he or she does not fulfil the condition of one-year continuous residence in Slovenia and the condition of the lawful status of a foreigner, taking into account his or her exceptional contribution to development and increasing the international reputation or recognition of Slovenia.

**Update and trends**

Since the mandate of the National Assembly was terminated because of the resignation of the prime minister, the transition period for employing Croatian citizens will not be extended; therefore, since 1 July 2018, Croatian citizens have free access to the Slovenian labour market, as do other citizens of EU member states.

At the time of writing, the government has adopted a proposal to supplement the Law on Medical Services, which eliminates certain obstacles in the employment of foreign specialist doctors in Slovenia. In accordance with the proposal, the Minister of Health, in exceptional cases, will be able to issue a decision by which medical doctors who have acquired a professional qualification in a third country and possess special expertise can provide health services in Slovenia.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

If the foreigner wishes to change jobs within the same employer, to change employers, to take up employment with two or more employers or to conclude a new civil law contract for work during the period of validity of a single permit or an EU Blue Card, he or she has to submit an application for written authorisation. Only after such authorisation has been issued can the foreigner change job, change employer, take up employment with two or more employers or conclude a new civil law contract for work during the period of validity of a single permit or an EU Blue Card.

The single permit is valid for a certain period of time. After that, the permit ceases to be valid without cancellation.

### 25 Are there any specific restrictions on a holder of employment permission?

As described in question 24, in certain cases the foreigner has to obtain a written authorisation (if he or she wishes to change job, change employer, take up employment with two or more employers or to conclude a new civil law contract for work during the period of validity of a single permit or an EU Blue Card). A foreigner can study in Slovenia; however, only as an employed person, not as a regular student. No other restrictions apply.

## Dependants

### 26 Who qualifies as a dependant?

The Personal Income Tax Act stipulates that dependants are a spouse who is not employed, does not have a business, does not have his or her own income for subsistence or whose income is less than the amount stipulated in the Personal Income Tax Act; and a divorced spouse, if a judgment or an agreement made in accordance with the law governing marriage and family relations grants him or her the right to maintenance paid by the taxpayer. A spouse, under the Personal Income Tax Act, shall be considered to be a person who lives with a taxpayer or the taxpayer's common-law partner, as defined in the Marriage and Family Relations Act. A family member is also considered a partner with whom the taxpayer lives in a registered same-sex partner community, according to the Civil Union Act.

A child under the age of 18 shall also be considered a dependent family member of the taxpayer. In certain cases, a child under the age of 26 is also considered a dependent family member, if he or she:

- is continuously in education or, with a suspension of up to one year, continuing education;
- is not employed or has a business; and
- does not have his or her own income or whose income is less than the amount of special allowance for a dependent family member, determined in the Personal Income Tax Act.

A dependent family member is also a child who meets the above-stated conditions and is over the age of 26 if he or she enrols for studies up to the age of 26, for a maximum of six years from the day of enrolment in undergraduate studies and for a maximum period of four years from the date of enrolment in postgraduate studies.

**27 Are dependants automatically allowed to work or attend school?**

Slovenia allows free access to its labour market for citizens of EEA member states and Switzerland, and for their family members, regardless of their citizenship, which means that these persons can work, on an employed or self-employed basis, without a work permit. Also, foreigners residing in Slovenia on the basis of a permit for temporary residence for family reunification with a Slovenian citizen have the right to free access to the Slovenian labour market. Otherwise, the foreigners need to follow the same process for obtaining a single permit.

Children who are foreign nationals or are without citizenship and reside in Slovenia, have the right to compulsory primary education under the same conditions as the citizens of Slovenia.

**28 What social benefits are dependants entitled to?**

Family members of workers coming from other member states of the EEA and Switzerland have the same rights to education and social security as nationals of the host country.

In accordance with the Social Assistance Act and the Social Assistance Benefits Act, foreigners who have a permanent residence permit in Slovenia are entitled to social benefits (social assistance benefit, child benefit, reduced childcare payment, etc) in accordance with the above-stated acts if, at the same time, they do not have enough resources to survive, do not have the assets or savings that would allow them to survive and are actively solving their social problems.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

When applying for a single permit, an alien will have to provide the authorities with a police clearance certificate, no older than three months, issued by his or her country (if the country in question issues it), translated into Slovenian and verified. A residence permit may also be terminated or permanent residence revoked if a foreigner was convicted of a criminal offence in Slovenia and given an unconditional prison sentence of more than three years (in the case of permanent residence) or three months (in other cases when the foreigner is residing in Slovenia in compliance with the laws).

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Penal provisions for non-compliance with immigration law are stipulated in ZZSDT. Fines can be imposed on the employer or hirer and also on the responsible person of an employer or hirer for committing an offence referred to in ZZSDT. Prohibitions of the employment, self-employment and work of foreigners are also stipulated in ZZSDT. In certain cases, the employer or hirer is not allowed to employ foreigners for a certain period of time (if a fine was imposed on them or if they are convicted of the criminal offence of exploitation through prostitution, enslavement, human trafficking, a violation of the fundamental rights of employees or a violation of rights relating to social insurance). A foreigner convicted of submitting falsified evidence shall be prohibited from employment, self-employment and work for five years after the judgment becomes final.

Supervision over the implementation of ZZSDT is exercised by the Labour Inspectorate of the Republic of Slovenia. Supervision is also exercised by the police within supervision over the legality of residence under the Foreigners Act.

**31 Are there any minimum language requirements for migrants?**

There are no language requirements in applying for the single permit; however, language proficiency can be required by an employer. Foreigners who are third-country nationals are entitled to Slovenian language courses, facilitating integration into the cultural, economic and social life of Slovenia. In any case, knowledge of the Slovene language might benefit a foreigner while working and living in Slovenia.

Mastering the Slovenian language for the needs of everyday communication is needed if a foreigner wishes to obtain citizenship of Slovenia. The evidence is a certificate of successful completion of the exam in the knowledge of Slovene at the basic level.

**32 Is medical screening required to obtain immigration permission?**

No, medical screening is not required to obtain a single permit or residence permit; however, one of the terms and conditions for issuing a temporary residence permit is adequate health insurance.

In order to establish a candidate's health condition for carrying out work, an employer has to refer the applicant for a preliminary medical examination in accordance with the regulations on safety and health at work.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

A single permit can be issued on the basis of a consent to posted workers. Foreign employers may post workers to Slovenia in accordance with the regulations of Slovenia and international treaties binding on Slovenia. Foreign employers may post workers in order to:

- provide transnational services on their own behalf and for their own account under a contract concluded with a client from a member state of the EEA or Switzerland, or under a contract concluded with a service provider that has a contract concluded with a client from a member state of the EEA or Switzerland;
- carry out particular tasks in an organisational unit in Slovenia linked to it by capital ties; or
- undertake training in a company established in Slovenia and linked to it in one of the ways defined in ZZSDT.

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# South Africa

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

South African immigration is governed by the Immigration Amendment Act (the Act) and Regulations thereto (implemented on 26 May 2014), which controls the movement of foreign nationals who enter the country for purposes of investing their financial resources, skills and experience in order to promote economic growth.

The South African government supports skilled immigration in accordance with their stated policy to develop and expand the local economy for the benefit of South Africa and its citizens. However, this policy is balanced against the need to address unemployment levels within the country, security issues for the country (including citizens, foreign nationals, and minor children and travellers) and the commitment to increase employment opportunities for local citizens.

Accordingly, the intention is that the importation of foreign skills to South Africa should gradually decrease through the training of local citizens to meet future employer demand.

The Department of Home Affairs (DHA) is responsible for the control, regulation and facilitation of immigration to South Africa including the enforcement thereof. Enforcement measures include fines or imprisonment for breaches of the immigration legislation with the potential for deportation of non-compliant foreign nationals. The Department of Labour (DoL) is increasing its role in the immigration process, in conjunction with the DHA, to ensure sustainable opportunities for South African citizens or permanent residents in the local employment market.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

The South African government distinguishes between visa-exempt and non-visa-exempt nationalities. Visa-exempt nationals may travel to South Africa for periods of up to 30 or 90 days (the distinction depends upon their nationality) for tourism and limited business purposes and receive the visitor's visa upon arrival at the South African port of entry.

Non-visa-exempt nationals are required to apply for the required visitor's visa in person at the South African representative in their home country or country of long-term residence and receive same prior to travelling to South Africa. The visitor's visa may be issued for a maximum period of 90 days (single or multiple entry) and the processing time ranges from 10 to 15 working days calculated from the date of submission of the application.

The purpose of these visitors' visas is to facilitate entry for tourism purposes and limited business purposes while work activities are prohibited. All foreign nationals (irrespective of nationality) intending to perform short-term work in South Africa are required to apply for a section 11(2) visitor's visa in person from the South African representative in their home country or country of long-term residence and receive same prior to travelling to South Africa.

Eligibility to perform work-related activities under a section 11(2) visitor's visa is subject to specific qualifying criteria originally introduced by the DHA in December 2011 and amended in May 2014.

### 3 What are the main restrictions on a business visitor?

A foreign national entering South Africa to undertake business activities (not work) will be permitted to attend local business meetings or training and strategy sessions for a limited duration. There is no specific maximum duration applicable to business visitors; however, the foreign national, if queried, must be able to justify the length of stay spent in South Africa and the non-work related activities being performed. A business visitor should not receive remuneration from a South African source while present in South Africa.

A foreign national intending to perform work-related activities within South Africa must obtain a visitor's visa (section 11(2) of the Act) with special conditions. General practice requires such foreign national to retain employment abroad throughout their stay in South Africa (external contractor resources are only permitted in certain instances) and, in accordance with the revised qualifying criteria, such foreign national's activities in the country must be of an urgent nature and such individual must be unable to qualify for a formal category of work visa. The DHA has further issued a directive preventing certain applicants from eligibility for a section 11(2) visitor's visa based on the intended activities to be performed in South Africa (these exclusions include project managers and self-employed applicants).

Visitors' visas in terms of section 11(2) may be issued for a maximum period of 90 days from the date of entry and may be extended for a further period from within South Africa of up to 90 days subject to the discretion of the DHA. A foreign national, subject to the discretion of the South African representative in their home country or country of application, may lodge an application for a second section 11(2) visitor's visa should such foreign national be required to return to South Africa for urgent work related activities – this would usually only be granted if the services to be rendered during the second visit are related to a different project phase or work-related activity and not viewed as services of an ongoing nature.

In the normal course of events, intended stays exceeding 90 days will thus require an application for one of the available work visa categories.

The holder of a section 11(2) visitor's visa may be remunerated from within South Africa (including freelance or consulting services); however, the foreign national may only open a non-resident bank account that generally speaking only permits receipts from offshore. Holders of a visitor's visa further cannot import household goods free of duty or VAT.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

The differentiating factor is found in the activities to be performed in the country. Attending training should not require a work endorsement, whereas presenting or facilitating training will require a work endorsement as these activities are consistent with work-related activities.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Under a directive issued in 2015, the Minister of Home Affairs exempted travellers transiting through the following international airports in South Africa from transit visas:

- OR Tambo;
- Cape Town;
- King Shaka; and
- Lanseria.

Travellers transiting these airports will be subjected to biometric capturing and travellers using land ports of entry to transit through South Africa should apply for port of entry visas.

However, deportees transiting must be in possession of transit visas and at all times be escorted, failing which, they must be returned to the airline that conveyed them for removal from the country.

A transit visa is required when travelling to one of the following neighbouring countries via South Africa: Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe.

Transit visas are not issued at South African ports of entry and applications must be made to the South African representative abroad. Transit visas are issued for periods up to 72 hours and the processing time ranges from five to 10 days calculated from the date of submission thereof.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The categories are dependent upon the employment relationship with the foreign national (direct employment with the South African entity or retention of employment with an entity abroad), the expected assignment or employment duration, the skills, qualifications and experience of the foreign national and the role to be performed by the foreign national within South Africa.

Intra-company transfer (ICT) work visas are utilised for the transfer of skills between affiliated entities where the foreign national retains employment with the group entity abroad. An ICT work visa may be issued for a period of up to four years.

Corporate visas may be issued to any employer demonstrating a need for a predetermined number of foreign nationals within specific roles for a limited duration to the satisfaction of the DoL, the Department of Trade and Industry (DTI) and DHA. The issuance of the visa is subject to such employer operating within certain industry sectors as prescribed in the national interest and possessing and maintaining a workforce comprising a minimum of 60 per cent South African citizens or permanent residents in permanent employment. An individual corporate work visa is issued to an individual foreign national based on the corporate visa held by the prospective employer.

General and corporate work visas are utilised where a foreign national commences direct employment with a South African entity. These work visas may be issued for a period of up to five years subject to the duration of the employment contract or the validity period of the corporate visa (held by the employer); however, additional labour law requirements, administered by the DoL, have recently been introduced.

A critical skills work visa is available for foreign nationals intending to take up direct local employment who comply with prescribed skills to facilitate the importation of foreign nationals holding specific skills to the benefit of South Africa. In certain instances, a critical skills visa may be issued to a foreign national, in the absence of a contract of employment, for a period of up to 12 months subject to the foreign national confirming securing employment within 12 months of the date of issuance of the visa.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

**ICT work visa**

An ICT work visa may be issued to a foreign national who is employed abroad by a business operating in South Africa in a branch, subsidiary or affiliate relationship and who by reason of employment is required to conduct work in the country. A foreign employment contract and letters of motivation from the related home and host entities confirming the purpose and duration of the transfer are required. The host entity should sufficiently motivate the foreign national to be in a position to transfer skills and knowledge to the host entity during the assignment period (he or she must submit a detailed skills transfer plan upon application) and will depart the country upon completion of the tour of duty.

The foreign national applicant must have worked for the home country entity for a minimum period of six months prior to becoming eligible for an ICT work visa.

**Corporate visa**

A corporate visa is an approval granted to an employer to employ a predetermined number of foreign nationals within specific roles for a limited duration. Owing to the nature of the approval, a corporate visa requires the involvement and approval of the DoL, DTI and the DHA.

Upon identification of a suitable foreign resource, the holder of the corporate visa must apply to the DHA for the issuance of an individual authorisation certificate to enable the foreign national to apply for an individual corporate work visa within a specific role or position.

The Act prescribes that a corporate visa may now only be issued to an employer operating within the prescribed national interest and further such employer must provide proof that at least 60 per cent of the total staff complement that are employed in the operations of the business are South African citizens or permanent residents employed permanently in various positions and such ratio must be maintained through the validity period of the corporate visa. A corporate visa may be issued for a period not exceeding three years and authorisation certificates to employ workers (individual corporate work visas) may not be issued for a validity period exceeding the validity period of the corporate visa held by the employer.

The Act prescribes a minimum financial guarantee to be posted by a corporate applicant to be 30,000 rand (subject to change) per foreign national employee that the corporate applicant intends to employ.

**General work visa**

A general work visa may be issued to a foreign national who is intending to take up direct employment with a South African entity. The Act now requires the prospective South African employer to submit an application to the DoL for a certificate confirming the following points:

- that despite a diligent search, the prospective employer has been unable to find a suitable South African citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant;
- the applicant has qualifications or proven skills and experience in line with the job offer;
- the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or permanent residents occupying similar situations in South Africa; and
- the contract of employment stipulating the conditions of employment and signed by both the employer and the applicant is in line with the labour standards in South Africa and is made conditional upon the general work visa being approved.

An evaluation of the foreign national's academic qualifications by the South African Qualifications Authority (SAQA) is an additional requirement; however, this may be exempted in certain circumstances where a foreign national applicant does not have formal qualifications (or existing qualifications cannot be assessed for whatever reason) and his or her skills and experience are the defining criteria for the appointment.

The DHA may, upon application for exemption thereof, waive certain of the mandatory requirements for a general work visa.

**Critical skills work visa**

A critical skills work visa may be issued to a foreign national provided that such foreign national falls within a specific professional category or occupational class included in the critical skills visa list. The key requirements include SAQA evaluation, registration with the relevant professional body or council and a letter of recommendation from the relevant professional body or council recognised by SAQA attesting to the skills and qualifications of the foreign national. (Note a directive issued in October 2014 has removed the need for the applicant for a critical skills work visa to submit the prescribed letter of recommendation from the applicable regulatory body in circumstances where the applicant has submitted proof of membership or application for membership with such regulatory body as part of his or her application. However, certain South African representatives abroad do not accept the directive, which affects the consistency of the application process.)

A critical skills work visa may be issued upon receipt of an offer of employment, or in the absence thereof, however, the holder of a critical

skills work visa must confirm receipt of employment within a period of 12 months of obtaining the visa.

All foreign nationals are required to apply for the respective work visa either at the South African representative in their home country or country of long-term residence or the DHA within South Africa (only in certain defined instances as the majority of applications will now be submitted abroad). Foreign nationals will need to submit all prescribed personal supporting documentation including, but not limited to, birth certificates, medical and radiological reports and police clearance certificates.

The processing times are dependent upon the category of work visa and the place of submission and range from 10 to 60 working days calculated from the date of submission thereof.

Note that foreign nationals are only allowed to commence working or seek work following the issuance of the respective work visa.

In addition to the Immigration Regulations, the Employment Services Act 24 of 2014 prescribes that skills transfer plans must be prepared with respect to all foreign national appointments, irrespective of the temporary residence visa category, and retained on the employee file.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

An ICT work visa may be issued for a period of up to four years and is not renewable from within South Africa.

General and critical skills work visas may be issued for a period of up to five years.

Corporate visas (held by the employer) are issued for a period of up to three years and are not renewable – a new application would need to be submitted.

Individual corporate work visas may not be issued for a period exceeding the validity period of the employer's corporate visa and are thus limited to a maximum period of three years subject to the validity period of the corporate visa held by the employer at time of application and the duration of the employment contract.

Existing work visas granted under the previous Immigration Act will remain valid until the expiry date of the respective visa, following which the foreign national will be required to either extend the work visa (if the category allows for same in terms of the Act) or apply for a new category of work visa.

Note that all work visa validity periods will be restricted to the validity period of the applicant's passport if such passport is valid for less than the maximum validity period available under the respective work visa category.

**9 How long does it typically take to process the main categories?**

Submissions to the South African representative abroad take an average of 10 to 60 working days for finalisation, calculated from the date of submission thereof; however, this is dependent upon the country of submission.

Submissions to the DHA in South Africa, through VFS Global Visa and Permit Facilitation Centres, take an average of 30 to 60 working days for finalisation calculated from the date of submission thereof.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

Currently, there are no prescribed benefits or facilities for applicants intending to apply for a work visa to South Africa; however, certain South African representatives reserve the discretion to request proof that the applicant will be provided with medical insurance and accommodation upon arrival in South Africa when adjudicating temporary residence visa applications.

Foreign nationals intending to study in South Africa require proof of medical insurance coverage for South Africa (international medical coverage accepted if under the age of 18) when applying for the required study visa.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The mandate of the DHA is to assess all applications on an objective basis against the criteria and requirements defined in the Act and Regulations thereto.

Discretion is exercised by officials during the interpretation of the Act and Regulations, which may result in a request for additional documentation, outside of the prescribed requirements, clarification of documentation submitted and inconsistent adjudication.

**12 Is there a special route for high net worth individuals or investors?**

With respect to applications for temporary residence (work and visitors' visas), there are currently no special routes for high net worth individuals or investors involving reduced lead times.

However, individuals or investors intending to permanently reside in South Africa may investigate applying under the minimum net worth category subject to meeting a prescribed minimum net worth (currently 12 million rand) and upon payment of an application fee of 120,000 rand.

Foreign nationals intending to establish a business in South Africa may apply for a business visa subject to meeting the prescribed requirements including a minimum capital investment (5 million rand) and proof or undertaking that 60 per cent of the employees directly employed in the business will be South African citizens or permanent residents.

Furthermore, the Act prescribes that a business visa may not be issued or renewed in respect of any business undertaking that is listed as undesirable by the minister from time to time (published in the Government Gazette) after consultation with the Minister of Trade and Industry.

**13 Is there a special route for highly skilled individuals?**

Yes. There are options available under temporary and permanent residence.

**Temporary residence**

***Critical skills work visa***

A critical skills work visa may be issued to a foreign national provided that such foreign national falls within a specific professional category or occupational class as determined by publication by the DHA. The critical skills visa list, published in the Government Gazette (on 3 June 2014), includes several new categories including information communication and technology (expanded list), business process outsourcing and retains engineers, life and earth science professionals and health professionals, among others.

A critical skills work visa may be applied for and issued upon receipt of an offer of employment or in the absence thereof; however, the holder of a critical skills work visa must confirm securing employment within a period of 12 months of obtaining the critical skills work visa.

**Permanent residence**

Permanent residence may be granted to a foreign national, subject to any prescribed requirements, who demonstrates that he or she possesses extraordinary skills or qualifications under the circumstances or as may be prescribed. Accordingly, holders of critical skills work visas are able to apply for permanent residence of South Africa in the absence of any prescribed waiting period (subject to confirmation in practice owing to the recent implementation of the Amendment Act).

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There are currently no prescribed minimum salary levels for work visa applications.

However, applications for a general work visa, where the foreign national is taking up direct local employment with a South African entity must be accompanied by a DoL certificate confirming that the proposed remuneration is not less than what a South African citizen or permanent resident would receive for the same duties.

**16 Is there a quota system or resident labour market test?**

Under the general work visa category, there is an obligation for South African employers to confirm that there are no suitable South African

citizens or permanent residents to fulfil a vacancy prior to offering same to a foreign national.

The South African employer is required to advertise the vacancy in the national printed media and provide details of all unsuccessful citizen or permanent resident applicants and the objective reasons why they were deemed unsuitable.

The above efforts must be included in the submission to the DoL for the issuance of the DoL certificate, as described above, to proceed with an application for a general work visa. The DoL reserves the right to either accept the proof as submitted by the employer or to undertake an independent search of the local labour market and refer additional candidates to the employer for assessment.

In order to protect the interests of the local labour pool (unemployed citizens or permanent residents), the DoL has the right to decline to issue the certificate in circumstances where it believes the vacancy could be fulfilled locally by a South African citizen or permanent resident. The absence of the DoL certificate or a negative referral from the DoL would result in the general work visa application being unsuccessful.

An applicant for a corporate visa must provide proof that at least 60 per cent of the total staff complement that are permanently employed in the operations of the business are South African citizens or permanent residents. The holder of a corporate visa must ensure that the 60 per cent ratio will be maintained following the issuance of the corporate visa and subsequent appointment of the approved number of foreign national employees.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

A restriction that the applicant must have worked for the home entity for a prescribed minimum period of six months is applicable for ICT work visa applications

**18 What is the process for third-party contractors to obtain work permission?**

Third-party contractors will require a section 11(2) visitor's visa for the initial maximum 90-day period, and potential extension thereof for a further 90-day period, subject to compliance with the qualifying criteria. However, the issuance of work visas to third-party contractors (sometimes viewed as labour broking by the South African authorities) is challenging and the circumstances of the employment role to be performed in South Africa and the recipient of the benefit for such services must be assessed prior to advising on the potential work visa categories.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

A SAQA evaluation is required for general and critical skills work visa applications (and may be requested for individual corporate work visa applications subject to the discretion of the adjudicating official). A letter of recommendation from a regulatory body recognised by SAQA is further required for the majority of critical skills work visa categories.

Certain professions further require a foreign national to register with the relevant professional council, body or board as part of the work visa process.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

A visitor's visa may not be converted into a work visa from within South Africa except under exceptional circumstances as prescribed. Accordingly, holders of visitors' visas wishing to convert to a work visa should lodge the appropriate work visa application outside of South Africa in their country of nationality or country of long-term residence.

Exceptional circumstances include accompanying family members (spouses and children) to the holder of a business or work visa where the spouse or child intends to work or study in South Africa while continuing to accompany the primary business or work visa holder.

**21 Can long-term immigration permission be extended?**

Critical skills and general work visas may be extended upon application and the number of extensions is subject to the discretion of the DHA.

The period of any extension is usually linked to the duration of the employment contract; however, this is subject to the maximum period available under the respective work visa category (as an example, a foreign national may be issued with a permanent contract of employment, but a general work visa may only be issued for a maximum period of five years and extended thereafter for another period of five years).

An existing two-year ICT work visa may be extended for a further maximum period of two years from within South Africa to meet the maximum four-year validity period (this extension application removes the need for the submission of police clearance certificates except from within South Africa) or the applicant may return to their home country to apply for an additional two-year ICT work visa (submission in the home country is regarded as a new application requiring submission of all prescribed supporting documentation). Holders of ICT work visas for a period of four years may not extend the work visa for a further period from within South Africa; however, they may return to their home country to lodge a new four-year ICT work visa subject to meeting the prescribed requirements of a new application and proving successful skills transfer during the initial assignment period.

An individual corporate work visa (issued under the auspices of an employer's corporate visa) may not be extended and the holder of such work visa is required to depart the country upon completion of his or her contract of employment to apply for a new work visa in the home country. However, the holder of an individual corporate work visa may convert to a critical skills work visa from within South Africa subject to meeting the requirements of the critical skills work visa category and remaining in the employment of the holder of the corporate visa.

Existing work visas granted under the previous Act will remain valid until the expiry date of the respective visa, following which the foreign national will be required to either extend the work visa (if the category allows for same) or apply for a new category of work visa.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Visitors and work visas are generally issued for multiple entries and no additional entry or exit permits are required once such visa is issued. However, immigration officials reserve the discretion to restrict a visitor's visa to a single entry.

In order for an applicant to activate a work visa under the Movement Control System, the applicant must enter the country under that work visa where such visa was issued by a South African representative abroad.

**23 How can immigrants qualify for permanent residency or citizenship?**

Foreign nationals may qualify for permanent residency through various means, including relationships with South African citizens or permanent residents, skills and experience and duration spent in South Africa under work visas.

Personal circumstances include being a spouse of a South African citizen or permanent resident for a period of five years and being a relative of a citizen or permanent resident within the first step of kinship.

Permanent residence through employment includes being the holder of a work visa (critical skills, quota and general work visas) for a period of five years subject to receipt of a permanent offer of employment. However, in addition to the permanent offer of employment, holders of a general work visa may also be required to furnish a certificate from the DoL detailing the average salary earned by a person occupying a similar position in the republic and that the terms and conditions of the work offer are not inferior to those prevailing in the relevant market sector for citizens or permanent residence.

Holders of critical skills visas are eligible to apply for permanent residence upon issuance of the visa (without a waiting period), subject to the above conditions.

Citizenship is acquired through birth, descent or naturalisation.

Permanent residence and citizenship are complex areas of immigration legislation and require professional consultation and advice prior to assessing eligibility and the appropriate category.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

All employers have an obligation to notify the DHA upon the departure of a foreign national from their employment and submit proof

**Update and trends**

In March 2017, the Department of Home Affairs in South Africa published a Draft White Paper on International Migration in South Africa containing definitive proposals to guide a comprehensive review of our immigration and related legislation. Administrative elements of the New Policy will be implemented immediately with major amendments (requiring legislative amendment) to be introduced following due process.

Key elements, impacting the expatriate market, include a review of residency and naturalisation criteria (in accordance with strategic, security and national priorities) and management of international migrants with skills and capital in terms of increasing South Africa's international competitiveness to attract and retain highly skilled and valued foreign national migrants. This will require increased focus, and enabling legislation and regulations, on the speed and simplicity of administrative processes to enable the attraction and retention of skilled foreign nationals in South Africa.

In a local context, the Draft White Paper addresses new considerations, including management of international migration in the African context; management of ties with South African expatriates (diaspora); and the management of the integration of bona fide international migrants. This will facilitate cross-border movement for African citizens and seek to provide a legal route for Southern African Development Community economic migrants pursuant to South Africa's socio-economic and security priorities.

The legislative amendments proposed under the Draft White Paper are being closely monitored to assess the immediate and future impact on the importation and retention of key skills to the South African labour market and are subject to ongoing debate.

The DHA announced an intention to update the critical skills list, which defines the skills or qualification of critical shortage in the South African labour market, in 2017, which was welcomed as the list has not been updated since its initial publication in 2014. Amendments to the critical skills work visa category, in conjunction with the updating of the critical skills list, is a possibility; however, the stated amendments have not yet been implemented.

thereof. This enables the DHA to cancel the work visa and releases the employer from any repatriation guarantees or deposits lodged in respect of the foreign national.

**25 Are there any specific restrictions on a holder of employment permission?**

Work visa holders are subject to restrictions as endorsed on the respective visa. Changes of role or employer require a change of the conditions or status of the respective visa, which must be lodged with the DHA or the South African representative abroad depending upon the category thereof.

The holder of a work visa may only work for the employer endorsed thereon and any change in employer is subject to application and approval by the DHA.

In terms of a May 2015 directive, the holder of an ICT, critical skills, general work or business visa may now undertake part-time studies with institutions of higher learning without lodging an application for a secondary study endorsement. However, full-time study will require a formal application to the DHA and secondary endorsement of permission to study on the work visa prior to commencing such studies.

The holder of a critical skills work visa, initially issued in the absence of an offer of employment, must secure employment and provide proof thereof to the DHA within 12 months of the issuance of the critical skills work visa. The DHA must be notified of any subsequent change in employment and the foreign national must confirm that they are still performing the role or working within the field for which the critical skills visa was originally issued.

The holder of a general work visa issued after 26 May 2014 is no longer required to confirm continuing employment within a period of six months after the issuance of the visa and every 12 months thereafter. However, holders of general and quota work permits issued prior to 26 May 2014 are advised to continue to meet the previous 12-month confirmation of employment notification requirement to the DHA as required under the previous legislation.

## Dependants

**26 Who qualifies as a dependant?**

Dependants include members of the foreign national's immediate family (spouse and biological and adopted children).

Spouse is defined as a person who is a party to a marriage, as defined in the Act, including permanent heterosexual and homosexual relationships as prescribed.

Immediate family is defined as persons within the second step of kinship, where marriage or a spousal relationship is counted as one such step, but any common antecedent is not so counted.

The Act does not define a dependant or child; however, for the purposes of a dependant visa, a child should be financially and emotionally dependent upon the main applicant. In practice, a child will be any person under the age of 18, or older if studying.

**27 Are dependants automatically allowed to work or attend school?**

All foreign nationals (including dependants of a work visa holder) intending to work in South Africa are required to apply for the respective work visa category in their own capacity.

Foreign national spouses or partners of South African citizens or permanent residents may apply for permission to work subject to the continuing existence of the good faith spousal relationship.

Foreign nationals intending to take up studies within South Africa must obtain a study visa to legally study within South Africa.

Applications for conversion from a visitor's visa to a study visa may be submitted within South Africa subject to the discretion of the DHA. Study visas may now be issued for the duration of study (as opposed to annually) subject to a maximum limit of eight years for primary schooling and six years for secondary schooling (the study permit for a dependant will traditionally be limited to the maximum duration of the temporary residence visa granted to the main applicant).

**28 What social benefits are dependants entitled to?**

There are no prescribed social benefits available to foreign nationals.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

All foreign nationals applying for temporary residence visas exceeding three months in duration and permanent residence permits must submit a police clearance certificate for all countries they have lived in for a period of 12 months or longer since the age of 18.

Depending upon the nature of any criminal conviction, the adjudicating officer will determine whether such a conviction will result in the application being declined.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

The penalties for non-compliant employers and foreign nationals include deportation, fines and imprisonment and have been significantly increased in terms of the new Act.

Current practice in South Africa (effective from May 2014) will result in foreign nationals overstaying the validity period of their temporary residence visa being fined and declared undesirable for periods from one year (overstaying for less than 30 days) or five years (overstaying for 30 days or longer).

The increased penalties have been implemented in an effort to deter non-compliance with the Act.

**31 Are there any minimum language requirements for migrants?**

There is no minimum language requirement.

**32 Is medical screening required to obtain immigration permission?**

All foreign nationals applying for temporary residence visas exceeding three months in duration and permanent residence permits must complete and submit medical and radiological examination reports for the processing of the respective application.

The results of such examinations may influence the outcome of a foreign national's application – the DHA reserves the right to consult with the Department of Health in such cases.

All foreign nationals travelling from or through a yellow fever endemic area are required to submit proof of yellow fever vaccination.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Secondments are acceptable in the standard situation where the sending and receiving entities are members of the same group structure.

However, in the scenario where the sending entity wishes to second a resource directly to the client (where such client is not a member of the corporate structure of the sending entity), additional requirements may be required subject to the discretion of the Immigration Department.

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# Spain

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**PwC Compliance Services**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Because of the global economic downturn, which has mainly affected Spain's unemployment rate, immigration policies in the past few years and at present, following the entry into force of the regulations introduced by Royal Decree 557/2011 of 30 June 2011, have focused on protecting the local workforce and restricting foreign workers.

Nevertheless, the Spanish government is currently focusing on attracting talent and investment to Spain and with this aim published Law 14/2013 on Entrepreneurs and their Internationalisation, which came into force at the beginning of October 2013. This Law tries to facilitate and streamline the granting of residence permits for economic interest reasons.

It should be borne in mind that the information below will refer to third-party nationals since European Economic Area and Swiss nationals and their family members, irrespective of their nationality, are able to move freely and the requirements, documentation and timelines involved are different.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Anyone who, because of their nationality, needs a visa and is planning to travel to Spain, for work, tourism or on private visits, must have the pertinent visa, validly issued and in effect, stamped in their passport or travel documentation. The countries whose nationals are subject to border-crossing visa requirements, together with the countries whose nationals are exempt from that obligation, are listed in EU Council Regulation 539/2001 of 15 March 2001, amended subsequently:

For visits of up to three months within a six-month period, no visas will be required by the following:

- nationals of countries exempt from that requirement under EU legislation;
- holders of diplomatic passports;
- holders of safe-conduct documents issued by certain international intergovernmental organisations to civil servants, when Spain has agreed to eliminate visa requirements;
- foreign nationals with refugee status and who are documented as such by a country that is a party to the European Agreement;
- duly documented crew members of foreign passenger and cargo ships;
- duly documented crew members of foreign aircraft; and
- foreign nationals with residence authorisation.

Visas are requested and issued at Spanish diplomatic missions and consulates. In the absence of a Spanish diplomatic mission or consular office in a specific country, transit and visit visas may be requested at the diplomatic mission or consular office representing Spain in that country.

Short-term stay visas may be:

- an all-in-kind short-term Schengen visa: a visa for the Schengen area for a period that does not exceed the time necessary to complete the transit or stay in the Schengen area up to a maximum of 90 days in a six-month period. Uniform visas allow one, two or several transits or visits, the total duration of which may not exceed 90 days in a six-month period; or
- a limited territorial validity visa: valid for transit or stays in the territory of one or more Schengen states, but not for all of them. The total duration of the transit or stay may not exceed 90 days in a six-month period.

### 3 What are the main restrictions on a business visitor?

Foreign nationals who are obliged to apply for an entry visa under Schengen regulations, in general terms, should provide reasons for their travel and stay in Spain.

For such purposes, they may be asked to provide documents showing that there are business relationships or business-related activities or access cards to fairs and congresses, round-trip tickets and sufficient economic means for their stay in Spain.

They may also be asked to submit the following: the invitation of a company or authority, issued in the terms set out in the Order of the Ministry of the Presidency, documents showing that there are business relationships or business-related activities or access cards to fairs and congresses.

Note that a business visa does not allow the holder to work in Spain, but only enables him or her to attend business meetings, trade fairs, congresses, etc. In this sense immigration legislation does not provide a complete list of the activities that may be performed. It is commonly accepted that the person may attend meetings and carry out commercial activities. It should also be noted that there should be no evidence suggesting that the foreign national with business visitor status is performing a 'hands-on' job. Evidence could include having a Spanish email address, a direct phone line in Spain, visitor's card, etc. The assignee cannot, in any event, work in Spain.

Foreign visitors should attest to the possession of sufficient economic means for the duration of the period that they aim to stay in Spain or, if appropriate, to be in a position to legally obtain such means.

According to EC Regulation 810/2009 establishing a Community Code on Visas, a health certificate may be required for all visa applications. It is common practice for Spanish consulates to ask for this document when applications are filed for all types of visas.

Entry visas for less than three months may be extended, but not for more than three months within a six-month period.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

In general, as mentioned below, in accordance with applicable legislation, a study visa will be required to receive training programmes and work authorisation will be needed to give short-term training programmes.

It will be necessary to request a study visa in order to carry out the following non-work related activities:

- carrying out or extending studies at an authorised learning centre in Spain;
- carrying out research or training activities;
- participating in a study mobility programme;
- carrying out non-work practical training; and
- voluntary work within a programme that pursues objectives of general interest.

Training courses shorter than 90 days can normally be attended on a business visitor visa.

**5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?**

Those foreign travellers who need a visa to enter into Schengen territory and will remain in international transit in a Spanish airport or travel through Spanish territory will need a Schengen transit visa.

The airport transit visa (ATV) may allow transit on one, two or, exceptionally, on various occasions.

Visas are requested and issued at the Spanish diplomatic missions or consular offices.

Those foreigners staying in the international transit area of a Spanish airport, without access to national territory during stop-overs or flight connections are considered to be in airport transit.

Countries whose nationals are required to have an ATV by Spain are Afghanistan, Bangladesh, Cuba, the Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Ghana, Guinea, Guinea Bissau, India, Iran, Iraq, the Ivory Coast, Liberia, Mali, Nigeria, Pakistan, Sierra Leone, Somalia, Sri Lanka, Syria and Togo.

Holders of diplomatic passports and ordinary passport holders who are residents or holders of a valid entry visa issued by Andorra, Bulgaria, Canada, Cyprus, Ireland, Japan, Romania, San Marino, the United Kingdom or the United States will not need an ATV.

Transit visa rules are subject to continuous changes according to reciprocal agreements between respective countries or supranational organisations.

## Long-term transfers

**6 What are the main work and business permit categories used by companies to transfer skilled staff?**

The Spanish regulations, in line with EU directives, have set up temporary residence and work arrangements for highly qualified professionals holding EU Blue Cards.

Similarly, companies also use temporary residence and employment authorisation for local hires and temporary residence arrangements within the transnational provision of services framework.

Note should also be taken of Law 14/2013 that relaxes the requirements for companies that hire highly skilled workers locally or participate in intra-company transfers and introduces investor and entrepreneur residence visas designed to attract foreign investments to Spain.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

The general procedure to be followed to obtain a work permit in Spain is similar for all the types of authorisations mentioned above. The differences only affect the documentation required, on the basis of the type of permit requested and the place or entity filing the application, depending on the host company's characteristics.

During the initial stage, both the assignee and company are required to compile and review all the documentation. Once the file has been completed with all the documentation required, the application is filed with the competent body. In this respect, an appointment has to be made beforehand and the company's legal representative has to attend in person. The relevant administrative fees will accrue when the application is filed and should be paid within a maximum of 10 days in order to continue the process.

The time needed to issue a resolution depends on the competent body. In the case of the Directorate General for Migration, the maximum period is 30 days from the application date while government offices, that process most work and residence permit applications, have a maximum of three months, or 20 days if the application is filed under Law 14/2013.

Once a favourable resolution has been obtained, it is sent to the employee who should be ready to request the pertinent work visa. The maximum period to complete the application with the Spanish consulate in the country of origin or last legal residence is 30 days. The Spanish consulate will come to a decision and stamp the visa in the applicant's passport within a maximum of 10 days. It should be noted that, according to Law 14/2013, this step may be avoided if the applicant is in Spain on a regular basis at the time of filing his or her residence authorisation application. In this case, one of the requirements will be the submission of an original criminal record certificate for the past five years, duly legalised and translated into Spanish by an official translator.

After obtaining the visa or the work permit, if the file is processed under the visa exemption envisaged in Law 14/2013, the employee is then authorised to travel to Spain to start up an employer–employee relationship. In the case of employee work authorisations, once the employee is in Spain, they will be registered with the Spanish social security system. Only after entry with the proper work visa or work permit approval is the foreign national allowed to work in Spain.

For those permits that are not aimed at highly qualified staff or intra-company transfers, previous labour market test and respective authorisation by the local labour authorities will be necessary with a view to determine whether foreign workers can be hired for jobs considered not difficult to fill when the employer evidences the difficulty of filling job vacancies with workers from the local labour pool.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

**Temporary residence and work authorisation for highly qualified professionals holding an EU Blue Card**

Initial residence and work authorisation for an employee is for one year and will be limited to a specific activity and territorial area. It may be renewed for periods of two years, up to a maximum of five years' residence, when the individual can apply for a permanent residence card.

**General employee work authorisation**

An employee is initially granted residence and work authorisation for one year, limited to a specific activity and territorial area. It may be renewed for periods of two years.

**Temporary residence and work authorisation within the transnational services provision framework**

This work and residence authorisation will be limited to a specific activity and territorial area. Its duration will agree with the employee's assignment period that must match the period of coverage included in the social security certificate of coverage, but limited to one-year. An extension can be processed for another year, or for the period provided in the bilateral social security treaties signed by Spain if it is evidenced that the conditions involved are identical.

**Work and residence permits under Law 14/2013**

Permits processed under Law 14/2013 are generally valid for an initial period of two years. However, the validity of highly qualified professional and intra-company transferee permits will be subject to either the duration of the employment contract or the certificate of coverage, respectively.

**9 How long does it typically take to process the main categories?**

If the application for temporary residence and work authorisation is filed with the Directorate General for Migration (Large Companies Unit), the authorities have a maximum of one month to notify the pertinent resolutions as from the day following the registration of the application with the competent body for processing. Note that this timeline is reduced to 20 days if the application is filed under Law 14/2013.

However, other immigration bodies have three months to notify interested parties through the procedures regulated in the applicable immigration regulations as from the day following the registration of the application for processing with the competent body. In practice, this period can be reduced or extended depending on the region or the type of application filed.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

The assignee's initial application for residence and work authorisation need not refer to whether or not they hold valid international medical insurance or has suitable accommodation. However, the foreign worker asking for residence authorisation on the grounds of family unification should at the time the application is submitted attach a report

issued by the competent bodies of the autonomous region where they are resident, evidencing that they have a suitable dwelling to attend to their own and their family's needs.

As mentioned in question 3 in regard to EC Regulation 810/2009 establishing a Community Code on visas, a health certificate may be required for all visa applications. It is common practice for Spanish consulates to ask for this document when applications are filed for all types of visas.

The health certificate should state that the applicant does not suffer any of the infectious diseases listed by the World Health Organization (WHO), mental disorders or drug addiction according to WHO Regulation 2005.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities follow objective criteria and observe legislation in force.

Moreover, there are numerous internal instructions issued by each body and it is therefore essential to be aware of the internal regulations that affect the decisions taken.

**12 Is there a special route for high net worth individuals or investors?**

Law 14/2013 tries to address the lack of regulation that had existed until its implementation. As mentioned above, it aims to attract talent and investment to Spain and has created the 'investor visa'.

See question 14 for more information.

**13 Is there a special route for highly skilled individuals?**

There are special routes if the host company, or group of companies, in Spain fulfils a series of requirements according to both the General Immigration Law (Law 4/2000) and Law 14/2013:

| Law 4/2000 requirements | Law 14/2013 requirements |
|---|---|
| More than 500 employees on average in the past three months | More than 250 employees on average in the past three months |
| Annual turnover exceeds €200 million | Annual turnover exceeds €50 million |
| Equity exceeds €100 million | Equity exceeds €43 million |
| Duration of the permit: generally one year | Duration of the permit: generally two years |
| Processing time: up to 45 days | Processing time: up to 20 days |

Special routes also apply if the company is a small or medium-sized enterprise established in Spain and the employee holds a legalised university degree applicable to the job's position or the company operates in one of the following strategic sectors:

- information technology and communications;
- renewable energies;
- the environment;
- waste and water processing;
- healthcare;
- biopharmaceuticals;
- aeronautics and aerospace; or
- others declared as strategic by the relevant authority.

National unemployment rates will not be taken into consideration for this type of residence permit and this may be extended to companies included in strategic sectors of activity.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Law 14/2013 has had a considerable impact on immigration regulations. It aims to attract talent and investment to Spain and facilitate and streamline the granting of residence permits, including work authorisation, for economic interest reasons. The process is now faster and tries to involve a single authority.

The beneficiaries of this regulation are:

- investors in real estate, bonds, stock or shares in Spain; or
- holders of a bank deposit in a Spanish bank.

The main changes are:

- visas may be granted for up to one year;
- residence permit resolution should be obtained within a maximum of 20 days. If no reply is received, approval will be assumed to have been granted;
- entry visa applications should be resolved within a maximum of 10 days;
- residence permits will include work authorisation; and
- residence permits will be granted for two years with a possible extension of two more years.

The main requirements to apply for this type of visa are:

- the acquisition of real estate in Spain with an investment of €500,000 or more per visa applicant. The applicant must demonstrate full ownership of the property and must certify that the property is free of liens and encumbrances;
- the acquisition of shares in Spanish companies or bank deposits in Spanish financial entities for €1 million; or
- the acquisition of bonds or other kinds of Spanish public debt for €2 million.

The visa will include a one-year residence permit, but if the applicant would like to work in Spain, he or she will need to apply for residence authorisation in Spain that will be valid for two years. The investor entry visa application process will take place at the corresponding Spanish consulate abroad.

Extensions or renewals of the investor visa may be obtained even if the foreigner is outside Spain for more than six months in one year as long as it is evidenced that his or her business operations are based in Spain.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is a minimum salary requirement for foreign workers hired.

In order to grant temporary residence and work authorisation to highly qualified professionals, the gross annual salary must be at least one and a half times the average gross annual salary. For other foreign workers hired, salaries will have to meet the conditions stipulated in Spanish legislation.

The internal guidelines of the Directorate General for Migration establish that the salaries of highly qualified professionals transferred to large companies must be at least one and a half times the average gross salary published by the Spanish Institute of Employment in the latest annual survey of labour costs in the Spanish Classification Code assigned to the company.

In addition to this limitation, the Directorate General for Migration has established certain minimum salary levels internally:

- for transnational workers, in the case of management personnel, this minimum is equal to twice the average gross annual salary and may in no event be less than €56,159, while in the case of highly qualified personnel, the limit is one and a half times the average gross annual salary and may in no event be less than €28,079; and
- for highly qualified workers holding a Blue Card and who are hired locally, the minimum is equal to one and a half times the average gross annual salary and may in no event be less than €42,119.

If processed under Law 14/2013, the minimum salary should be that indicated in the applicable collective agreement. Although not specifically prescribed in Law 14/2013, the Spanish authorities are, in practice, requesting a minimum salary of at least €35,000 per annum for highly qualified professionals, which is considered as evidence that the job position meets the criteria to be deemed as high qualification.

**16 Is there a quota system or resident labour market test?**

The situation of the local employment market is taken into account in respect of the work to be carried out by the foreign workers to be hired. This approach is strictly applied, when applicable.

For the purposes of determining the national employment situation, the Spanish Public Employment Service (SEPE) prepares a catalogue of positions that are difficult to fill for each province or region on a quarterly basis.

The specific definition of a job to be included in the catalogue of jobs that are difficult to fill takes into account the level of specialisation required to perform the activity. The classification of a job as difficult

to fill makes it possible to process initial temporary residence and work authorisation abroad.

The local employment situation will be taken into account with a view to determining whether foreign workers can be hired for jobs considered not difficult to fill when the employer evidences the difficulty of filling job vacancies with employees from the local labour pool.

In this respect, it will be necessary to submit a specific offer for the job with the SEPE, which will advertise the offer so that workers living in Spain can apply.

Within 25 days of the submission of the offer, the employer should inform the SEPE of the results and, if appropriate, should issue a certificate evidencing that there is an insufficient number of applicants in order to fill the vacancy with foreign workers.

Similarly, initial residence and work authorisation will be rejected if, within the 12 months immediately prior to the application date, the employer has eliminated the positions that it had planned to cover through dismissals considered unfair or null and void.

### 17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

Depending on the kind of residence and work authorisations, some of the conditions to be met are as follows.

**Temporary residence and work authorisation for highly qualified professionals holding EU Blue Cards**

In order to apply for this type of work authorisation, in addition to other requirements, the following conditions must be met:

- an employment contract should be signed that guarantees the worker an ongoing activity over the duration of the temporary residence and work authorisation;
- the conditions laid down in the employment contract should conform to those established by current legislation and the annual gross salary specified in the employment contract must be at least one and a half times the average annual gross salary;
- the foreign professional must have the skills and, if appropriate, legal qualifications required to exercise his or her profession (higher education or, exceptionally, at the discretion of the immigration authorities, evidence of a minimum of five years' professional experience, which may be considered comparable to that qualification, connected with the activity for the performance of which authorisation is granted); and
- the local employment situation permits the hiring of foreign workers.

**Employee work authorisation**

In order to apply for this type of work authorisation, in addition to other requirements, the following conditions must be met:

- the immigration body involved will ask for a certificate from the SEPE, setting out a list of the unemployed who meet the conditions of the job vacancy. The SEPE will issue a certificate, stating whether it is possible to submit the work authorisation file (at present, Spain has a very high unemployment rate and this type of work permit is difficult to obtain); and
- the employee is hired by the Spanish company and registered with the Spanish social security system.

**Temporary residence and work authorisation within the transnational services provision framework**

In order to apply for this type of work permit, in addition to other requirements, the following conditions must be met:

- the temporary assignment must be on account and under the management of the foreign company, under a contract between the foreign company and the recipient of the provision of services established in Spain. This arrangement applies when a temporary assignment of workers is involved, from work centres established outside Spain to work centres in Spain of the same company or another company of the group to which it belongs or when dealing with the temporary assignment of highly qualified workers for the supervision or provision of advice on work or services that companies located in Spain are to carry out abroad;
- the employee is resident on a stable and regular basis in the country where the assigning company is based;
- the foreign employee's professional activity in the assigning country must be habitual in nature and must have been carried out for at least one year and the employee must have been working for the company for at least nine months; and
- the employee will continue to be subject to social security legislation in the home country if there is an applicable social security arrangement. In the event there is no bilateral social security agreement or the agreement does not allow contributions to continue in the home country, the employee will have to be registered with the Spanish social security system and the home company will have to be registered with the Spanish social security and Treasury.

Certain work and residence permit requirements, such as length of service and salary, among others, have been relaxed under Law 14/2013.

### 18 What is the process for third-party contractors to obtain work permission?

For a third-party contractor to obtain work authorisation, they should apply either for temporary residence and work authorisation within the transnational services provision framework or for intra-company residence authorisation according to Law 14/2013.

The transfer may go ahead provided that it is on account of and under the management of the foreign company in the performance of a contract between both parties and the company receiving the services is established or operates in Spain.

### 19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

In order to request work authorisation, it will be necessary to show that the worker has the skills and, if appropriate, the professional qualifications legally required to carry on the profession.

In order to prove professional qualifications, the immigration authorities are, at present, asking for university degrees, duly translated and legalised, and only in exceptional cases is professional experience taken into account. Moreover, Law 14/2013 introduces this exemption in general terms if the employee has at least five or three years' experience, for local and intra-company employees respectively.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Short-term visas holders, or nationals of countries that are visa-exempted, who are on regular stay in Spain, are eligible to convert their tourist or business status to a work and residence authorisation.

The conversion is possible only under Law 14/2013 and in compliance with all additional requirements set out for these cases.

### 21 Can long-term immigration permission be extended?

Extensions will depend on the type of residence and work authorisation, for example:

- initial one-year temporary residence and work authorisation for highly qualified professionals with an EU Blue Card may be renewed for two two-year periods, until long-term residence is obtained;
- initial one-year employee residence and work authorisations may be renewed for two two-year periods, until long-term residence is obtained; and
- the duration of temporary residence and work authorisation within the transnational services provision framework will agree with the employee's assignment period up to a one-year limit, which may be extended for another year or for the period envisaged in the international social security treaties signed by Spain if it is evidenced that conditions are identical.

Visas granted according to Law 14/2013 will be valid for one year. Residence authorisations will be valid for a period equal to the term of the contract or certificate of coverage, but limited up to two years and may be extended for a further two years.

**Authorisation for studies, student mobility, non-employment training or voluntary services**

Authorisation may be extended annually when the interested party evidences that they continue to meet the general and specific conditions envisaged in their initial application to stay in Spain.

If appropriate, it will also be necessary to evidence that they have passed the tests or fulfil the requirements associated with the continuity of their studies or that they have made progress on the research conducted. This requirement may be evidenced through the performance of studies or research in the territory of another EU member state within the framework of temporary programmes promoted by the EU itself.

### 22 What are the rules on and implications of exit and re-entry for work permits?

There are two basic implications:

- once a residence card has expired and while the renewal of the pertinent work authorisation is being processed, in order to re-enter Spain, the interested party will need to apply for re-entry authorisation; and
- continual absences from Spanish territory may lead to the loss of residence.

### 23 How can immigrants qualify for permanent residency or citizenship?

Immigrants who have lived legally and continuously in Spanish territory for five years are entitled to long-term residence.

Similarly, foreign nationals who evidence having lived continuously for five years in the EU as holders of an EU Blue Card qualify for long-term residence authorisation provided that during the two years immediately prior to applying, they have resided in Spanish territory.

In order to obtain Spanish nationality on the grounds of residence, foreign nationals must reside in Spain legally for 10 years, continuously and in the period immediately prior to their application.

There are cases in which the residence period required may be reduced, for example:

- to five years when the immigrant has been declared a refugee; and
- to two years when the immigrant is from Latin America, Andorra, Equatorial Guinea, the Philippines, Portugal or of Sephardic origin.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Foreign nationals leaving the country before the end of their residence authorisation have to submit a letter of cancellation to the immigration authorities.

In any event, once the foreigner ID card expires or entitlement to it has been forfeited, foreigners with such cards are required to deliver the document to the immigration offices or police station corresponding to their place of residence.

### 25 Are there any specific restrictions on a holder of employment permission?

Initial employee residence and work authorisation is limited to a province and job. Initial residence and work authorisation within the transnational provision of services framework will be limited to a specific territory, occupation and only for the company for which the transfer was arranged.

In practice, the Directorate General for Migration has redefined its criterion and authorisations for highly qualified personnel holding a Blue Card and hired locally are issued for the whole of Spain.

Note that, under Law 14/2013, there are no territorial or occupational restrictions.

## Dependants

### 26 Who qualifies as a dependant?

Spanish legislation considers the following family members dependants for the purposes of obtaining residence authorisation linked to the worker's authorisation, enabling them to live in Spain:

- spouse, provided that the marital ties are in effect at the time of application. If either spouse has been married before, such marriages must have been dissolved through the relevant judicial proceedings before the date of application for residence authorisation;
- cohabiting partners or persons with whom there is an analogous relationship of affectivity. Spanish legislation considers that there is a relationship provided that it is legally recognised in the country of origin through its registration in the relevant public register or the validity of an unregistered relationship is evidenced through a public document;
- children of the spouse or couple, including adopted children, provided that they are under 18 at the time of application and, if over 18, they have a disability and are dependent. When only one of the spouses is the parent, he or she should have custody; and
- parents and grandparents to the first degree or their spouse or partner, when it is evidenced that they are in the foreign national's charge, are over 65 and there are reasons evidencing the need to authorise their residence in Spain.

**Update and trends**

**Residence card application process: tracking of entry date into Spain**

Spanish police, who are responsible for processing residence card applications once the applicant has arrived in Spain, have started to track the foreigner's entry date into Spain as part of the residence card application process. In order to carry out this tracking, it is necessary to provide the original passport and a copy of the page on which the entry stamp issued by border control at the Spanish entry port is located. This is the most common scenario when arriving in Spain directly from abroad (not including the Schengen Area).

**Entering Spain via another Schengen state**

When a foreign individual has arrived in Spain via another Schengen state, and hence there is not any Spanish entry stamp on the individual's passport, it will be mandatory for the foreign individual to attend a police station to make a Declaration of Entry. The most common police stations to apply for the Declaration of Entry are those located at the corresponding arrival airport, although it can also be carried out at any police station of the individual's choice. This Declaration must be carried out within 72 hours of the individual's arrival in Spain, and the Declaration of Entry will be the required document in the absence of any Spanish entry stamp, for a residence card application.

### 27 Are dependants automatically allowed to work or attend school?

Residence authorisation on the grounds of family unification held by the spouse and children involved when they reach working age will allow dependants to work without any need for further administrative formalities.

It should be borne in mind that the application for family unification may be filed when the foreigner involved is authorised to reside in Spain for at least one year and has requested residence authorisation for at least another year except for ascendants who will only be eligible for family unification once the applicant has obtained their long-term residence authorisation.

According to Spanish regulations, all children between the ages of four and 16 have to attend school, even if they do not hold the relevant residence authorisation. Dependent spouses are automatically entitled to work if their file has been processed under Law 14/2013.

### 28 What social benefits are dependants entitled to?

Depending on the type of work and residence authorisation and provided that the applicant is registered with the social security, their dependants will have the same rights to access the Spanish healthcare system.

## Other matters

### 29 Are prior criminal convictions a barrier to obtaining immigration permission?

In order to obtain an entry visa, if the age of the applicant means that they can be held criminally responsible, it is essential that they have no previous criminal convictions in Spain or any of the countries in which they have resided in the previous five years for the offences envisaged in Spanish legislation. Criminal records or a police clearance certificate are required for visa applications.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Infringements may be considered minor, serious and very serious.

Some of the most serious infringements are, inter alia, as follows:

- the foreign national is in an irregular situation in Spain because their stay has not been extended, they lack residence authorisation or such authorisation expired more than three months previously, provided that the interested party has not applied for renewal within the envisaged time frame;
- the foreign worker is working in Spain without having obtained prior work authorisation or administrative authorisation before working, when there is no valid residence authorisation;
- the foreign worker has not been registered under the pertinent social security system when employee residence and work authorisation has been requested or his or her employment contract has not been registered under the conditions used as a basis for the application when the company is aware that the worker is legally in Spain and authorised to start the employer–employee relationship;
- encouraging a foreign national's irregular stay in Spain when his or her legal entry was accompanied by an express invitation from the infringing party and they continue in their charge after the time permitted by his or her visa or authorisation. The penalty is adjusted taking into account the personal and family circumstances involved;
- the owner of a property agrees to register a foreign national in the municipal register when it is not the foreign national's real home address but a property used for such purposes. There will be a fine for each person improperly registered; and
- the hiring of foreign workers without previously obtaining the corresponding residence and work authorisation. Each foreign worker hired will be considered an infringement, provided that the situation does not constitute an offence. This is considered one of most noteworthy of the very serious infringements.

**Penalties**

Infringements are penalised as follows:

- minor infringements with fines of up to €500;
- serious infringements with fines of €501 to €10,000; and
- very serious infringements with fines of €10,001 to €100,000.

**31 Are there any minimum language requirements for migrants?**

In order to renew temporary residence and work authorisation, the foreign national's integration efforts will be assessed, evidenced through a positive report from the autonomous region of his or her place of residence.

The report will, at the very least, refer to the foreign national's active involvement in training aimed at knowing and observing the constitutional values of Spain and the EU and learning the official languages of his or her place of residence.

**32 Is medical screening required to obtain immigration permission?**

The only medical requirement in applying for a visa will be to submit a health certificate issued in the home country by the healthcare services provider designated by the Spanish diplomatic mission or consulate.

In the event that there is no need to apply for a visa, immigrants may be required upon entry to undergo medical screening by the competent Spanish healthcare services to prove that they do not have any illnesses that may have serious public health repercussions in accordance with the International Health Regulations of 2005.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

The current situation remains more or less the same. The only option for this type of assignment is to obtain temporary or transnational work authorisation. Alternatively, an intra-company transfer could be arranged under Law 14/2013 requirements.

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# Sweden

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

There is a high pressure from the Swedish government and parliament to ease the procedures of employing foreign personnel. There is a lack of qualified highly educated individuals in Sweden (eg, IT specialists and engineers), so business immigration is a priority area and the Migration Agency also actively promotes international cooperation. The most common business immigrants to Sweden are currently Indian IT specialists. To prevent non-serious employers from exploiting employees, certain industries are subject to more stringent control before the Migration Agency can grant a work permit.

EU citizens have the right to work, study, live and start and operate a private business in Sweden without a residence permit. If they can support themselves, they automatically have right of residence in Sweden and do not need to contact the Migration Agency. If any accompanying family member is a citizen of a country outside of the EU, they need to apply for a residence card. As from 1 May 2014, registration of right of residence for EU citizens with the Migration Agency is no longer required. Citizens of Switzerland require a Swedish residence permit if they wish to stay for longer than three months.

The migration process in Sweden has become more demanding and the Migration Agency requires more information than it did previously. The processing time at the Migration Agency was affected by the refugee crisis in 2015 but the processing times are now back to normal.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

In principle, non-EU nationals need a visa to enter Sweden for short-term travel. Some nationals are exempt from the requirement of a visa.

Some requirements differ from country to country and the requirements may change depending on the current circumstances. It is therefore important to check what applies in each case. The visa should be applied for at the Swedish embassy or consulate in the home country or the country of residence. To be granted a visa, an invitation from a Swedish company is required. The applicant must show that he or she has enough money for the stay and for the home trip. Health insurance is also required to cover the cost of becoming ill during the visit to Sweden. The processing time for a visa is approximately two weeks, but it varies between countries. A recommendation is to apply for a visa at least two months before the planned travel date.

With a visa from Sweden, it is also possible to visit other countries within the Schengen area.

For nationals who do not need a visa to enter Sweden, the 90-day rule also applies, meaning the person may spend 90 days during a 180-day period in the Schengen area (as explained below).

### 3 What are the main restrictions on a business visitor?

A Schengen visa is time-limited and valid for up to 90 days per half a year. If the intention is to stay longer than 90 days, a residence permit for visits should be applied for instead. A person who has been in the Schengen area for 90 days needs to be outside of Schengen for 90 days before he or she can apply for a new visa. It is possible to apply for a Schengen visa with several entries to Sweden. Such a visa is valid for a maximum of 90 days per half a year during a maximum period of five years. If a person has special reasons, he or she may receive a visa for a longer period (D visa). D visas are valid throughout the Schengen area, but are considered in accordance with national rules and can be applied for up to one year.

The main restriction of a business visitor is the limited scope of activities one can perform during a business trip. On a business visit, a fair can be visited or a customer can be visited to market a product, or to negotiate a contract, or executives can conduct a management meeting, etc. Swedish immigration law does not contain a clear definition of permitted activities during a business trip.

It is quite often difficult to decide whether an activity can be exercised as a business visitor. It is therefore recommended to contact the competent immigration authority in Sweden and check whether the intended activities are allowed under the business traveller status.

Foreigners often abuse a business trip for employment activities that legally require a work permit. This is considered as an illegal stay in Sweden and can have serious legal consequences for both employer and employee such as fines and, in aggravating circumstances, a prison sentence.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

There are some exceptions from the requirement of a work permit; for example, for employees who participate in practical experience, internal training or other skills development at a company in an international group for up to three months in total over a period of 12 months. A business visa is, however, required for some nationals.

Swedish immigration law does not provide explicit regulations within this area. It is therefore recommended to check the immigration requirements with a Swedish immigration specialist.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Yes, all nationals who need a visa to visit Sweden as a tourist or business visitor also need a visa to transit Sweden. A national who can enter the Schengen area can also transit a Schengen country. A national who is an EU or EFTA citizen, a holder of a Schengen visa, a long-stay visa or residence permit from one of the Schengen countries or is from a country whose citizens do not need a visa to visit the Schengen area can enter the Schengen area. For nationals who must apply for a visa, it should be applied for at the Swedish embassy or consulate in the country where the applicant resides.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The two main categories are international transfer and local hire. In both cases, a work permit is normally required from the first day of work. If the length of the assignment is more than three months, a residence permit is also required. The work and residence permit is applied for at the same time.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

The employer will start the process by completing an offer of employment that can be made online. If it is a local hire, the position must have been advertised within the EU or European Economic Area (EEA) and Switzerland for at least 10 days before the application for a work permit can be submitted.

When the offer of employment has been completed an opinion from the relevant union should be arranged for. The union must, in each application for a work permit, be given the opportunity to confirm that employment conditions (such as salary, insurances and working time) are in line with Swedish collective agreements. When all the required documents are complete, the application can be submitted online with relevant documents attached. An application fee to the Migration Agency needs to be paid when submitting the application.

After the Migration Agency has granted a permit, the individual must provide his or her biometrics (fingerprints and photo). For nationals requiring a visa to enter Sweden, this needs to be done at the Swedish embassy in the country where the applicant resides. After three to four weeks, the applicant will receive a residence permit card and it is not until then that the applicant can travel to Sweden and start work as from the first validity date of the permit. The applicant does not need to hand the passport in to the embassy, as it is sufficient to show the passport.

Nationals not needing a visa to enter Sweden can travel to Sweden and start work as from the first validity date of the official decision from the Migration Agency. The applicant must then visit the Migration Agency permit unit to fulfil the biometric requirements to receive the residence permit card. The card will be sent to a Swedish address within one to two weeks.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

A work permit can normally be granted for as long as the work continues, or for two years at a maximum. It can be extended for another two years thereafter. Employees who are to work for a shorter period than three months in Sweden must apply for a work permit at the Swedish embassy in the country of residence. This application cannot be submitted online. After four years with a work permit (without interruption), a permanent residence permit can be applied for, provided that the intention is to settle permanently in Sweden.

During the first 24 months, the work permit is linked to the specific employer and occupation indicated in the decision. A new permit must be applied for if the employee is offered a new job during this period. Once the application has been submitted to the Migration Agency, the employee is permitted to begin working for the new employer before receiving a decision, provided that the application was submitted before the previous permit expired.

If an employee has had a work permit for 24 months and is granted an extension, he or she is permitted to change employer without applying for a new work permit, provided the employee is in the same occupation. If the new job is in a different occupation, the employee must apply for a new work permit.

**9 How long does it typically take to process the main categories?**

Normally, the processing time at the Migration Agency is between five and 20 working days if a company certified by the Migration Agency submits the application. During the refugee crisis in 2015, the processing time was heavily delayed (especially for extensions of permits). Firms certified by the Migration Agency have a fast-track procedure compared with normal processing time. If an application is incomplete and the Migration Agency needs to request additional information, the processing time can be up to 10 months or longer.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

The applicant needs to have been offered terms of employment that are on a par with those set by Swedish collective agreements, or that are customary within the occupation or industry. The salary needs to be equivalent to that set by Swedish collective agreements or what is customary within the occupation or industry. The applicant also needs complete insurance coverage (health insurance, life insurance, insurance for occupational injury at work and pension insurance). The employer also needs to be able to show proof of insurance if the Migration Agency requests it.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The Migration Agency follows the requirements stipulated in the immigration law. A work permit will only be granted if the applicant and the Swedish employer meet all criteria for obtaining a work permit. Some terms in the immigration law have not been defined very precisely, which gives some room for different interpretations of the law.

**12 Is there a special route for high net worth individuals or investors?**

There are no specific special routes for high net worth individuals or investors. They can apply for a residence permit for self-employed if they intend to stay in Sweden for longer than three months, in which case a work permit is not required. There are special rules for individuals performing self-employed activities. Extensive information and documentation need to be submitted proving significant experience, possession of sufficient funds and a business plan showing that the business can support the applicant. The Migration Agency will assess the business plan from a financial perspective. The processing time to obtain a residence permit for self-employed is unfortunately very long; it is currently approximately two years.

For stays shorter than three months, the individual should apply for an ordinary business visa if this is required, depending on nationality.

**13 Is there a special route for highly skilled individuals?**

There are some exemptions from the requirement of a work permit in Sweden, for example for specialists who work in Sweden for an international group for less than one year in total. A residence permit should be applied for if the stay in Sweden will be longer than three months. There are no clear definitions of a specialist, but the skills should be hard to find in Sweden. It is up to the employer and the employee to decide if the individual should be regarded as a specialist. If the individual does not work in an international group, there is no special route for highly skilled individuals and they must apply for an ordinary work permit.

A visiting researcher who is qualified to pursue postgraduate studies based on studies at a higher education institution and who has been chosen to conduct research in Sweden does not require a work permit. A residence permit is required for stays of longer than three months.

Some nationalities need a visa, however, and if the stay is longer than three months, a residence permit needs to be applied for.

A non-EU national with a university degree or five years' professional experience and a salary equivalent to one and a half times the average gross salary in Sweden, may apply for an EU Blue Card. The advantages of holding an EU Blue Card compared with an ordinary Swedish work and residence permit are, however, not major.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

There is no special route for high net worth individuals in Sweden.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Minimum salary levels are not stipulated in Swedish law. The different unions recommend minimum salary levels, based on yearly salary statistics. The minimum salary set by the Migration Agency is currently 13,000 kronor per month before taxes, but the salary needs to be equivalent to that set by Swedish collective agreements or what is customary within the occupation or industry.

There are no clear guidelines because there are too many different professions, collective agreements and other variables to consider and it is difficult to keep up-to-date information on actual salary and employment conditions for all different professions. However, the Migration Agency considers the minimum salary would generally be 29,000 kronor per month for engineers with a bachelor's degree and 31,000 kronor for engineers with a master's degree and some years of experience, including salary and other allowances paid out to the employee (May 2015).

The union for engineers in Sweden considers that the minimum salary for a highly educated engineer should be 30,000 kronor per month, according to statistics.

The salary levels mentioned above are for employees assigned to Sweden for a limited period and who receive salary and allowances from their employer abroad. If the employment is in Sweden, for a certain time or ongoing, the salary should be adjusted to conditions on the market. This salary is between 30,500 and 43,000 kronor for an IT specialist with an engineering degree and a few years of experience.

The Migration Agency makes its own judgement in each case and may grant a permit even if the union considers the salary to be too low.

### 16 Is there a quota system or resident labour market test?

A quota system does not exist in Sweden. When hiring somebody locally, the position must first be advertised for at least 10 days in Sweden, the EU and EEA before submitting an application.

Advertising is not required if a person with an overseas employer is assigned to perform work in Sweden. Nor is it required if an employee is transferred within a company group as long as the position remains abroad. However, if the position is moved to Sweden (local hire) this counts as a new recruitment and means that the position must be advertised and the person the company intend to employ must apply for a new work permit. Advertising is not required when a company employs a person for a leading position (eg, a managing director).

If the employee changes his or her profession or is promoted and will be performing different tasks, he or she must apply for a new permit and the new position must be advertised, even though the employer is the same. The position does not need to be advertised when the employee applies for an extension of the permit, provided the employment is the same as previously.

### 17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

The terms of the employment need to be equivalent to those set by the Swedish collective agreements or what is customary within the occupation or industry. An opinion from the relevant Swedish union must be obtained. The employer also needs to provide insurance coverage for health insurance, life insurance, insurance for occupational injury at work and pension insurance. There is no minimum amount of time that the applicant must have been employed by the employer.

### 18 What is the process for third-party contractors to obtain work permission?

A contractor can obtain a work permit for Sweden. The Swedish customer or the actual employer in the home country needs to verify that the working conditions are equivalent to what is standard on the Swedish market and according to collective agreements and the contractor needs to have insurance coverage for health, life, injury at work and pension.

If the applicant is employed by a Swedish contractor, the work permit should be valid for work for this company and not with the company that buys the services from the Swedish contractor and for which the applicant will perform services.

If the applicant is employed by a foreign contractor, it may be necessary to verify the employment conditions given by the Swedish hirer (ie, the company that buys the services) and the work permit will be valid for work for the Swedish hirer.

### 19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

There is no formal skill assessment required by the Migration Agency in order to obtain a work permit. It is, however, required to state the level of education and previous work experience in the application in order for the Migration Agency to judge if the salary offered is in line with the education and experience.

## Extensions and variations

### 20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Short-term visas cannot be converted into longer-term authorisations. A work permit must be applied for. An individual with a visa who wants to apply for a Swedish work permit first needs to leave Sweden before the application for a work or residence permit can be submitted. When the permit has been approved and the applicant has submitted biometric information (fingerprints and photo) and received the residence permit card, the applicant can enter Sweden and start work.

### 21 Can long-term immigration permission be extended?

A work permit may be granted for as long as the work will continue or for two years at a maximum. It can thereafter be extended for another two years. After four years with a work permit, a permanent residence permit may be granted. There are no restrictions on the number of extensions during the four-year period.

If an individual is going to keep working in Sweden after the permit has expired, he or she must apply for an extension of the permit before the current permit expires. The person is entitled to be in Sweden during the waiting period if the application is submitted before the previous permit expires. If the employee has had a permit for six months or longer, he or she is also entitled to work during the processing time. This also applies if the previous permit expires before the person has received a decision regarding the extension application.

To be granted an extension of a work permit, salary and other employment conditions must have at least matched those in the previous offer of employment. Documents showing salary and any allowances received during the previous permit period, proof of insurance coverage and information of how many days the applicant has spent in Sweden must be attached to the application for a new permit. The Migration Agency will compare the calculated income with actual received income and if the reimbursement was lower than offered, the reason for it must be given.

### 22 What are the rules on and implications of exit and re-entry for work permits?

Non-EU citizens holding a valid residence permit and a valid passport can travel freely between the Schengen states during a maximum of 90 days within a six-month period, counted from the first journey. There are no limitations on exiting and re-entering Sweden for travel outside the Schengen area, provided one has a valid work and residence permit.

### 23 How can immigrants qualify for permanent residency or citizenship?

If a person has had a work permit for four years during the past seven years, he or she can qualify for permanent residency. It is a requirement that the individual has actually been employed and has worked during these four years. If the individual has spent significant

### Update and trends

**The ICT Directive**
The ICT Directive came into force in Sweden on 1 March 2018. The Migration Agency thereafter screen all submitted applications in order to assess whether an ICT permit is applicable. The ICT Directive takes precedence over national legislation, which means that it must be taken into consideration before a permit on national rules could be applicable. The Migration Agency will not abolish the national legislation on work permits, as grounds for the two permits will be in place side by side.

**Registration with the Swedish Work Environment Authority**
All employees on assignment to Sweden need to be registered with the Swedish Work Environment Authority. This registration needs to be completed, by the latest, on the sixth day of employment in Sweden. If the employer fails to do this, a sanction fee of 20,000 kronor may be issued to the employer.

**New judicial rulings on overall evaluation of previous work conditions**
The Swedish Migration High Court has released three new rulings that all stipulate that an overall evaluation of an individual's work conditions under the previous work permit must be completed. This has come to mean that small discrepancies on salary and insurance coverage during previous work permits do not automatically mean a rejection of an extension application.

parts of the permit period outside Sweden or has not been working, this may affect the chances of receiving a permanent residence permit.

To become a Swedish citizen, an individual must have been living in Sweden on a long-term basis for a certain period of time. As a rule, the individual must have been resident in Sweden for a continuous period of five years. Habitual residence means that one is a long-term resident and intends to remain in Sweden. Whether a person is allowed to count all of his or her time in Sweden as a period of habitual residence depends on the reasons for settling in Sweden and which permit he or she had during the period of residence. The main rule is that time with a residence permit that leads to a permanent residence permit is counted as a period of habitual residence. Non-EU citizens who are married to a Swedish citizen and have lived with them in Sweden for the previous two years may apply for Swedish citizenship after three years. Other requirements, such as having no criminal record, also need to be fulfilled for Swedish citizenship to be granted.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

If the employment comes to an end during the permit's validity period, the Migration Agency may cancel the permit if the employee has not been offered a new job within three months of when he or she left the job.

If the person has a new employment or a new employer, a new work permit must generally be applied for. If for any reason the employment ends before the work permit expires, the Migration Agency should be notified and the residence permit card be returned; this is, however, not a legal requirement.

**25 Are there any specific restrictions on a holder of employment permission?**

The restrictions on a holder of a work permit are that if he or she changes job or employer during the first two years, a new permit must be applied for. During the following two years, they can work for any unnamed employer or sponsor. If the employee is promoted and the tasks will be different, a new permit must be applied for. Another restriction is that the person can only have one job (ie, may not be working for more than one employer). This is also a restriction for higher management who might want to have, for example, a board commission in another organisation, which is not possible in Sweden.

## Dependants

**26 Who qualifies as a dependant?**

According to Swedish immigration law, the following are considered dependants:

- spouses, common-law spouses or registered partners. If not married, the main applicant and the spouse must be able to prove that they have lived together in the home country; and
- unmarried children who are under 21.

Unmarried children aged 21 or older can obtain a permit under certain circumstances. They must be financially dependent on the parents.

**27 Are dependants automatically allowed to work or attend school?**

If the main applicant obtains a work permit for six months or longer, dependants can also obtain a work permit for the same period as the main applicant and can work for any employer. Dependants are automatically allowed to attend school. However, they must first obtain a Swedish personal identity number. In order to obtain a personal identity number, the intended stay in Sweden must be at least 12 months.

**28 What social benefits are dependants entitled to?**

If a permit is granted for fewer than 12 months, the person cannot register with the Swedish Population Register at the Tax Authority and is therefore not eligible for any Swedish social benefits. It is, therefore, important that they have sufficient insurance coverage.

If a person is registered with the Swedish Population Register, he or she is most likely entitled to Swedish social benefits. Some benefits are based on residence and other benefits are based on work. If a person intends to live in Sweden for 12 months or longer, he or she is most likely entitled to the benefits based on residence, such as child allowance and parental allowance on a guarantee level. If a person is working in Sweden, he or she is entitled to the benefits based on work, such as sick allowance and parental allowance above guarantee level. The amount of work benefits is based on income level.

There are some special rules for employees who are employed by their home company and are on a temporary assignment in Sweden. There can also be special rules for dependants. Contacting the Social Insurance Office is always recommended to get confirmation of what the entitlements are in a specific case.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Yes, prior criminal convictions can be a barrier and the immigration board may refuse to grant an employment permit or visa in such cases.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

If non-compliant with Swedish immigration law, both employee and employer can be fined and, with aggravating circumstances, be sent to prison. The amount is one Swedish price-base amount (currently 45,500 kronor) for each employee. If the employer has employed an individual illegally for more than three months, it may be fined two whole price-base amounts. The employee will also probably have to leave the country.

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**31 Are there any minimum language requirements for migrants?**

There are no minimum language requirements for migrants to Sweden.

**32 Is medical screening required to obtain immigration permission?**

No medical screening is required for obtaining immigration permission to Sweden.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

No. Regular immigration procedures are used in the case of secondments. See also question 18.

# Switzerland

**Mirela Stoia**

**PricewaterhouseCoopers SA**

## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Switzerland has a dual system for the admission of foreign workers. Gainfully employed nationals from EU and European Free Trade Area (EFTA) states can benefit from the agreement on the free movement of persons (AFMP). Only a limited number of management level employees, specialists and other qualified employees are admitted from non-EU countries. It is to be noted that only foreigners who actually work and reside on Swiss territory require a work and residence permit. Foreigners who are employed by a Swiss entity, but who work and reside abroad, do not require a Swiss work and residence permit, even if they are on Swiss payroll and hold a Swiss employment contract.

Following the vote of 9 February 2014 in favour of the 'Mass immigration initiative', the Swiss government decided to implement the new constitutional provision in line with the AFMP. In short, the implementation consists in a mandatory reporting of all job vacancies in professions with an average unemployment level of 8 per cent. The reporting became mandatory as of 1 July 2018. As of 1 January 2020, the reporting obligation will become slightly stricter, with a mandatory reporting obligation when the average unemployment level reaches 5 per cent.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Switzerland is an associate member state to the Schengen Agreement. As such, visa nationals wishing to travel to Switzerland to do business on their or their employer's behalf must obtain a Schengen visa before travelling to Switzerland.

Short-term Schengen visas valid for a maximum of 90 days in a 180-day period can be obtained by making an application for a business visitor visa at the relevant Swiss representation in the individual's country of legal residence.

Nationals of the EU are visa-exempt. Also, nationals of certain non-EU countries such as Canada, Japan, Singapore, the United States, etc, are visa-exempt as long as they travel to Switzerland as business visitors and not for the purpose of taking up employment. It is important to check on the visa requirements before travelling to Switzerland.

### 3 What are the main restrictions on a business visitor?

A business visitor cannot undertake work activities while in Switzerland. There is a short list of activities that a business visitor is permitted to carry out, which includes attending meetings, interviews, conferences, classroom training sessions, contract negotiations, etc. This list, which is based on a directive issued by the Federal Office for Migration, is not exhaustive.

Business visitors can remain in Switzerland for a maximum of 90 days in a 180-day period provided they limit their activity to the aforementioned and the expiry date on their visa allows them to do so.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

It is possible to give training for up to eight days per year or receive short-term classroom training without requiring a specific work authorisation.

However, it depends on the specific circumstances and the type of training whether a foreigner will qualify as a business visitor or will require a work authorisation. In the event that the business visitor visa criteria are not met, the foreigner would be required to apply for a short-term work authorisation.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

A Schengen short-term C-type visa is required if visa nationals wish to leave the international transit zone of airports or enter Switzerland through other ports of entry. Such visas are obtained at the relevant Swiss representation in the individual's country of legal residence.

Citizens of certain countries need, in any case, an airport transit visa (Schengen visa, A-type), even if they do not leave the international transit zone of the airport and do not enter the Schengen area.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main permit categories are as follows:

- B permits: for long-term work and residence of more than one year, issued to employees who are hired on a local contract or for long-term assignments (these require a quota);
- L permits: for short-term work and residence of between four and 12 months (the L permit can be extended to a maximum of 24 months and then in principle a conversion to a B permit is possible), issued to employees who are hired on a temporary contract or for a short-term assignment (these require a quota); and
- 120-day or four-month work permits: for work of up to 120 days spread over a year or four consecutive months per year (quota-free).

An online notification procedure exists, for which the following applies:

- this is used for EU nationals or non-EU nationals who have been working on the EU labour market for at least one year;
- it is also used for short-term employment of up to 90 days per calendar year with a Swiss company (local hires) or for very short-term assignments in the case of an assignment by an EU entity (for EU entities assigning employees to Switzerland, there is a limit of 90 days per calendar year and per assigning entity);
- the submission date is one day in advance in the case of local hires and eight days in the case of assignees;
- the exact assignment dates or period must be reported; and
- the salary must be indicated when filing the notification (this new requirement came into effect in 2013).

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

A work and residence permit is obtained via a sponsor (typically the employing entity).

**Non-EU nationals**
The granting of a work permit for non-EU nationals lies, to a significant extent, at the discretion of the immigration authorities under consideration of the legal framework and the specific circumstances of the case. As a basic principle, only highly skilled and highly qualified employees from non-EU countries may obtain a Swiss work permit and only under the condition that a quota is available (with the exception of permits for up to four months or 120 days per year, for which a quota is not necessary).

The application is filed by the employing entity with the labour authority that is competent for the canton where the foreigner will work. The application must be approved by the competent cantonal labour authority, the State Secretariat for Migration and, finally, by the competent cantonal migration authority. The latter issues the work visa approval on the basis of which the foreigner collects the visa allowing him or her to enter Switzerland, register and commence work. There are few exceptions where non-EU nationals do not require a visa in addition to the work authorisation (Japan, Singapore, etc).

Non-EU nationals are, in principle, entitled to start work after the post-arrival registration in Switzerland.

**EU nationals (with the exception of Croatian nationals)**
EU nationals (EU-17, EU-8 and EU-2) who have signed an employment contract with a Swiss employer may simply register with the competent commune of residence and start to work right away. However, for the period between 1 June 2017 and 31 May 2019, B permits for EU-2 nationals are again restricted by quotas that will be released quarterly. L permits are not affected. From 1 June 2019, EU-2 nationals will benefit fully from the free movement of persons.

In the case of EU nationals on foreign employment contracts who are assigned to Switzerland as intra-company transferees or as project workers, the application is filed by the employing entity with the labour authority that is competent for the canton where the foreigner will work. The application must be pre-approved by the competent cantonal labour authority prior to the employee being able to start work. The employee must register with the competent commune in case of stays of over four months or 120 days.

**Croatian nationals**
Croatia joined the EU on 1 July 2013. Croatia's accession did not have any immediate bearing on the AFMP. Extension of the AFMP to Croatia was negotiated in Protocol III, which provides full free movement of persons for Croatian nationals following a 10-year transitional period. Protocol III came into force on 1 January 2017. However, access to the Swiss labour market remains subject to the provisions of the Foreign Nationals Act until 31 December 2023. Additional, separate quotas for work permits still apply, but they are increased on an annual basis: 78 B permits and 748 L permits for 2018, and 103 B permits and 953 L permits for 2019. 120-day permits issued to unqualified persons are counted under the quota for L permits. Further, the online-notification procedure does not apply in the case of Croatian nationals who are locally hired.

The employing entity submits an application to the cantonal labour authority and, upon receipt of the labour authority's pre-approval, the employee may legally start to work. A post-arrival registration is necessary where the employee holds a work permit for longer than four months.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

There are no minimum periods. The maximum periods for assignees on foreign employment contracts are usually between two and five years, depending on the social security treaty or free trade agreement with the relevant countries.

**9 How long does it typically take to process the main categories?**

In the case of non-EU nationals, the processing time of a work permit application is usually between four and eight weeks from the filing date of the application, depending on the workload of the competent authorities and the canton where the application is filed.

In the case of EU nationals on assignment in Switzerland, the application may take around one to three weeks from the filing date of the application. EU nationals on local Swiss contract may start to work right after they register at the competent commune of residence.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

In the case of assignments (ie, employees who remain on a foreign employment contract during the assignment duration), housing, travel and meal expenses must be borne by the employing entity throughout the duration of the assignment.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

**Non-EU nationals**
As a basic principle, only highly skilled or highly qualified employees from non-EU countries may obtain work permits. 'Highly qualified employee' means, first and foremost, people with a university degree as well as several years of professional experience. Depending on the profession or field of specialisation, other people with special training and several years of professional work experience may also be admitted to the Swiss labour market. As well as professional qualifications, the applicant is also required to fulfil certain other criteria, which would facilitate their long-term professional and social integration. These include professional and social adaptability, knowledge of a language (or languages) and age. The Swiss authorities examine the person's qualifications on the basis of their curriculum vitae, their educational certificates and references. The Swiss authorities further examine whether the salary and other terms of employment are in line with the Swiss requirements in the specific region and business sector in which the foreigners will work. This implies that the specialisation and the qualification of the employee must also be reflected in the conditions of the employment.

Thus, the granting of permits to non-EU nationals lies, to a significant extent, at the discretion of the immigration authorities under consideration of the legal framework and the specific circumstances of the application. There are, however, some categories of cases where a legal entitlement exists and the granting of permits is facilitated (eg, cases of senior management employees from non-EU countries being transferred to Switzerland as part of an intra-company assignment or EU nationals locally hired in Switzerland).

**EU nationals**
EU nationals with a Swiss employment contract have a legal right to obtain a Swiss work and residence permit on the basis of the AFMP. Consequently, no discretion is exercised by the authorities.

**12 Is there a special route for high net worth individuals or investors?**

High net worth individuals from EU countries may obtain a residence permit by proving that they have sufficient financial means.

In the case of high net worth individuals from non-EU countries, it is possible to obtain a residence permit on the basis of lump-sum taxation (not available in the canton of Zurich, Schaffhausen and Appenzell Ausserrhoden, but available in Geneva, Zug, Lucerne, Vaud, etc). However, this type of residence permit does not allow the foreigner to work in Switzerland.

The other possibility is to invest into a business in Switzerland (either by creation of a new business or by investment into an existing business). In such a case, it is necessary to prove to the immigration authorities that the investment serves a macroeconomic interest of Switzerland and that, in particular, the Swiss employment market will benefit from the investment (eg, that the investment will contribute to the diversification of the regional economy, that it will create jobs for the local work force and generate new mandates for the Swiss economy). These effects would need to be evidenced by a detailed business plan.

**13 Is there a special route for highly skilled individuals?**

No, there is no special route, since Switzerland only admits highly skilled individuals from non-EU countries.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

No, there is no special route for high net worth individuals for a residence permit other than those outlined in question 12.

**Update and trends**

There have been increased labour market inspections in recent years to ensure that there is no wage dumping or other cases of non-compliance with Swiss immigration laws.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There are no minimum salary requirements with the exception of those stipulated in collective agreements (eg, in the construction and professional cleaning industry).

However, in the case of non-EU and Croatian nationals, or EU or EFTA nationals assigned to Switzerland, the employer may only obtain a work authorisation if he or she pays a salary that is in line with what Swiss employees with similar educational backgrounds and work experience earn in a similar position and in the same industry and canton.

**16 Is there a quota system or resident labour market test?**

Yes, there is a labour market test, as well as a quota system.

**Labour market test**

The labour market test only applies when a Swiss employer wishes to hire an individual from a non-EU country or from Croatia. In such a case, the employer must advertise the position in local and EU (only for non-EU nationals) newspapers or websites, or both, for several weeks. In certain cantons, the advertisement must also be displayed on certain public websites for unemployed workforce. Only if the employer can prove that he or she could not find any suitable candidate on the Swiss or EU labour market will the authorities grant a work authorisation to a candidate from a non-EU country. In the case of Croatian candidates, the labour market search must only be done on the Swiss labour market.

As of 1 January 2018, the annual work permit quotas (only applicable to permits valid for more than four months) are limited as follows:

**Non-EU nationals:**

- short-term L permits: 4,500; and
- long-term B permits: 3,500.

These quotas are allocated annually and they are divided in half between the cantons (there is an exact number of quotas for each canton) and the federal government.

**EU nationals (with the exception of Croatian nationals)**

In the case of EU nationals assigned to Switzerland by their foreign employer, the following quotas apply:

- short-term L permits: 3,000; and
- long-term B permits: 500.

These quotas are allocated on a quarterly basis and administered at the federal level. Since 1 June 2017, B permits for Bulgarian and Romanian nationals (EU-2 nationals) are again subject to quota. The annual quota is 996, released quarterly.

**Croatian nationals**

In the case of Croatian nationals who are locally hired, the following quotas apply:

- short-term L permits: 748; and
- long-term B permits: 78.

These quotas are also allocated on a quarterly basis and administered at the federal level. In the case of assignments, the same quotas as for EU nationals apply.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

In the case of intra-company transferees, the Swiss authorities usually require that employees from a non-EU country have worked for at least one year for their employer abroad prior to being assigned to Switzerland by that same employer. Some cantonal authorities are stricter than others with regard to this requirement.

**18 What is the process for third-party contractors to obtain work permission?**

A contractor can usually only work for the company, project and location for which the work permit was granted. A change of company, project or location usually requires a new work authorisation.

It should be noted that body leasing from abroad is forbidden by law in Switzerland.

As well as the standard work permit application procedure, a contractor may also obtain permission to work using the online notification procedure described in question 6.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

For the work permit application process, an equivalency assessment or recognition of skills and qualifications is, in principle, not required. However, in order to take up work in Switzerland, the recognition of skills and qualifications for certain jobs (eg, the medical sector) may be required from various bodies. It must be checked on a case-by-case basis whether the existing diplomas are recognised or whether additional qualifications need to be obtained.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

In-country change from business visitor status to work authorisation is, in principle, not possible. However, it is, in general, possible to have a short-term work authorisation converted into a long-term work authorisation.

**21 Can long-term immigration permission be extended?**

There is, in principle, no limitation on how long a work authorisation may be extended – under the assumption that all conditions for the extension are fulfilled and that there are no criminal charges or similar reasons for the Swiss authorities to retrieve the authorisation already granted.

However, in the case of assignments, the duration of the assignment must be limited in time. If the extension of the stay in Switzerland is necessary beyond the duration of four to six years (depending on the social security treaty or free trade agreement with the relevant countries), the authorities usually require that the employee is put on a Swiss employment contract.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Foreigners may enter and exit Switzerland using their passports and their Swiss residence permits. All non-EU nationals whose residence permits have expired or who have not yet obtained their Swiss residence permits, must obtain a re-entry visa before leaving Switzerland.

Foreigners holding an L-type permit should not leave Switzerland for more than three consecutive months or the permit will be automatically cancelled.

Foreigners holding a B-type permit should not leave Switzerland for more than six consecutive months or the permit will be automatically cancelled.

**23 How can immigrants qualify for permanent residency or citizenship?**

Immigrants can qualify for permanent residency (settlement permits (C permits)) on the basis of settlement treaties signed between Switzerland and their home country. The timeline to obtain a C permit differs from treaty to treaty: a citizen of Canada, EFTA countries, EU-17 (except Cyprus and Malta) or the United States may obtain a C permit after five years of continuous residence. Citizens of other countries must usually have resided in Switzerland for 10 years before being able to obtain a C permit.

The basic conditions to qualify for Swiss citizenship are as follows:

- at least 10 years of residence in Switzerland, including several years in the canton and the commune where the individual intends to apply for the citizenship (the exact duration depends on the specific canton and commune); and

- other criteria such as good social integration (including language skills and familiarity with Swiss customs), as well as a good reputation (including compliance with the rule of law and no danger to internal or external security).

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

A foreigner who holds a work and residence permit has the obligation to deregister and return his or her residence permit before leaving Switzerland.

Depending on the canton, there might be cantonal requirements for employers to notify the authorities about the termination of employment because of redundancy or change of employer.

**25 Are there any specific restrictions on a holder of employment permission?**

Usually, short-term employment permissions (ie, L-type permits) issued to non-EU nationals are restricted to a specific employer, function and canton. All relevant changes must be notified to the competent authorities. Long-term employment permissions (ie, B-type permits) of non-EU nationals may also be restricted; this must be checked on a case-by-case basis and where there are restrictions, all relevant changes must be notified to the competent authorities.

EU nationals enjoy full freedom of movement and employment in Switzerland.

## Dependants

**26 Who qualifies as a dependant?**

Usually, married partners and children (under 18 years of age for non-EU nationals and under 21 years of age for EU nationals) qualify as dependants. Civil partners and same-sex partners may also qualify as dependants, however, only if certain conditions are met (several years of partnership, living together in the same household, etc).

**27 Are dependants automatically allowed to work or attend school?**

Dependants of EU nationals may automatically work in Switzerland.

Dependants of non-EU nationals who hold an L-type dependant permit cannot automatically work on the basis of their dependant permit and must find an employer who will be willing to sponsor a work permit for them. Dependants of non-EU nationals who hold a B-type dependant permit may automatically work.

Dependent children may automatically attend school.

**28 What social benefits are dependants entitled to?**

In principle, there are no particular social benefits that dependants are entitled to. Dependants must show that the main applicant can support them for the duration of their time in Switzerland. In addition, they must show that they will not rely upon public funds.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Refusal of entry into Switzerland can be justified for non-EU nationals on grounds of having a criminal record.

With regard to EU nationals seeking entry to Switzerland, previous criminal convictions alone cannot constitute sufficient grounds for refusal. They can only be excluded from Switzerland on very limited grounds of public policy, public security or public health.

However, individuals applying for a C permit or for Swiss nationality must, in principle, have a clean criminal record.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

There are various legal provisions in Swiss law regulating illegal practice in connection with immigration. Below is a very brief overview of a few main provisions that are currently in force.

According to article 115 of the Swiss Foreigners Law, foreigners who reside in Switzerland without a valid residence permit or who work in Switzerland without a valid work permit may be sanctioned with a fine or with imprisonment of up to one year.

According to article 117 of the Foreigners Law, companies or employers who knowingly either employ or receive the services of assigned foreign nationals to Switzerland who do not hold a valid Swiss work authorisation may be sanctioned with a fine or with imprisonment of up to three years. In the case of negligence, the fine can amount to up to 20,000 Swiss francs.

When applying for the relevant work authorisation, one should disclose all relevant information accurately. If an application contains misleading information or relevant pieces of information have not been disclosed, the authorities may impose a fine or imprisonment of up to three years respectively, and five years in the case of intentional unjustified enrichment (article 118 of the Foreigners Law). According to article 122 of the Foreigners Law, if the employer repeatedly breaks the Foreigners Law, the authorities may totally or partially refuse all further permit applications.

Every Swiss company employing foreign workers undergoes a duty of diligence and must ensure that all foreign employees have the necessary permits before starting work in Switzerland (either on the basis of an employment contract or on the basis of a contract for provision of services (article 91 of the Foreigners Law)).

It should be noted that the Swiss authorities can investigate cases at all times and all non-compliant cases may be communicated to the public prosecutor and employers may be prosecuted by a public prosecutor or blacklisted (which implies a rejection of future work permit applications).

**31 Are there any minimum language requirements for migrants?**

In general, only for the purpose of obtaining a C permit based on successful integration, a language test proving an A2 level of the national

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language, which is spoken in the canton where the applicant lives, is required.

To obtain other types of permits, in principle, the foreigner is not required to prove that he or she speaks one of the Swiss national languages. However, it may be that in some cantons individuals are required to attend language courses during their stay in Switzerland to ensure a certain level of integration.

**32 Is medical screening required to obtain immigration permission?**

No.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

There is no specific procedure. The same type of process needs to be followed as for intra-company transferees. However, a copy of the service agreement between the employing entity and the client, as well as a very detailed project description, must be provided as part of the application.

# Tanzania

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

For a long time, Tanzania had been without a business immigration policy, although labour and immigration matters for non-citizens had been heavily regulated by fragmented laws and regulations since the mid-1990s.

However, in 2015, Tanzania passed the Non-Citizens (Employment Regulation) Act 2015 (the Act), which seeks to regulate employment of non-citizens and simplify the process for application and issuance of work permits under the immigration regime. The Act further seeks to centralise powers for issuing work permits with the Labour Commissioner (the Commissioner), as opposed to the previous position where the Commissioner's role was to recommend to the Director of Immigration Services who issued the permits.

Currently, the Act, together with the Immigration Act 1995 and regulations made thereunder, such as the Immigration Regulations 2002, the Immigration (Amendment) Regulations 2016, the Immigration (Visa) Regulations 2016 and the Non-Citizens (Employment Regulation) Regulations 2016, are the main legal instruments that administer the movement and documentation of people entering Tanzania. Generally, Tanzania invites foreigners to invest in the country and share their skills and knowledge with local people. A good example of such laws is the Tanzania Investment Centre (TIC) Act that entitles investors registered under it to an initial automatic immigrant quota of up to five persons during the start-up period of investment in Tanzania.

The overall objective of the laws is to ensure that a non-citizen who will be employed or engaged to work in Tanzania holds qualifications, knowledge and skills required for the performance of the job for which the permit is issued and, furthermore, that the laws restrict the hiring of expatriate employees to job positions for which there are local experts. Therefore, the Commissioner is required to be satisfied that every possible effort has been explored to get a local expert prior to approving an application for a work permit.

The Act also requires an employer intending to employ or engage a non-citizen in employment or any other occupation to prepare a well-articulated succession plan of the non-citizen's knowledge or expertise for citizens during his or her tenure of employment. This person will also be required to establish an effective training programme to train Tanzanians to undertake the duties of the non-citizen expert. This is a new statutory requirement that was not previously specifically needed under the Immigration Act and its regulations.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A carry on temporary assignment visa is no longer valid in Tanzania as it was abolished in September 2015.

A business visa or pass has become a temporary immigration solution designed to allow applicants to engage in a range of business-related activities including attending meetings and business conferences and research activities. For leisure activities, a tourist visa may be used. These visas and passes are issued at either the Tanzanian embassy or consulate in the traveller's home country or at the entry point (airports) at a cost of US$250 for the business visa, US$200 for the business pass and US$50 for the tourist visa, for a single stay that does not exceed 90 days.

An applicant can also obtain a multiple-entry visa at either the entry point or the Tanzanian embassy in his or her home country for US$100. The visa is valid for six or 12 months, but a single stay in Tanzania cannot exceed 90 days.

### 3 What are the main restrictions on a business visitor?

A short-term business visa does not constitute a work permit or employment visa and does not entitle the holder to work in Tanzania either in paid or unpaid employment. The visa expires as soon as the holder leaves the country, even before the expiry of 90 days, unless it has multiple-entry status as described above.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Yes. A traveller is required to obtain a business visa or pass at the entry point.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas are required for a person of any nationality (except countries that do not require a visa to enter Tanzania) who intends to pass through Tanzania to another destination for a period not exceeding 14 days, provided that such a person has an onward ticket, sufficient funds for subsistence while in Tanzania and an entry visa to the country of destination. This visa can be obtained from entry points such as airports and at Tanzanian missions abroad.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

These are work and residence permits.

For short-term employment of between three and six months, a six-month short-term work permit is issued.

For long assignments of between six months and two years, the following permits are available:

- work permit Class B for non-citizens in possession of prescribed professional qualifications, such as medical and healthcare professionals, teachers in science and mathematics subjects and university professors;
- work permit Class C for any other profession;
- work permit Class D for non-citizens engaged in registered religious and charitable activities; and
- residence permit Class B.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

An applicant must first apply for a work permit from the Commissioner, whose role is to evaluate the application to ensure that a non-citizen who will be employed in Tanzania holds qualifications, knowledge and skills required for the performance of the job for which the permit is

being applied and, furthermore, that such skills are rare or unavailable in the local labour market. The applicant will be issued with a work permit.

Upon procuring the work permit, application must be made to the Immigration Department for a residence permit. The Immigration Department will again review the application and, in the absence of any objection (mostly security-based), will issue a residence permit.

A person should apply for both work and residence permits while outside Tanzania and cannot start working in the country unless both permits have been obtained.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

A work permit (Class B or C) and a residence permit (Class B) are valid for 24 months, and can be renewed for up to a maximum total of 60 months. They can be extended if the investment is of 'great value' to the nation. However, the new Non-Citizens Regulations, which came into force in February 2017, provide an exemption that allows a work permit granted to an employer hiring a non-citizen who has been legally married to a Tanzanian for at least three years, to be extended to a period of more than 60 months.

**9 How long does it typically take to process the main categories?**

It takes up to two months after the application is lodged through the Labour Commission and the Immigration Department to obtain the permits.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

No, it is not necessary to obtain any benefits or facilities for staff to secure a work permit in Tanzania.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities follow objective criteria when issuing permits, such as that the applicant holds qualifications, knowledge and skills required for the performance of the job, and that such skills are rare or unavailable in the local labour market.

**12 Is there a special route for high net worth individuals or investors?**

Yes. Foreigners who come to Tanzania as investors are eligible for work and residence permits Class A, which are valid for two years and can be renewed for another term of up to 10 years or more depending on whether the investment is of great value to the nation.

Furthermore, TIC investors are entitled to an initial automatic immigrant quota of up to five persons on Class B or C work and residence permits during the start-up period of the investment in Tanzania.

**13 Is there a special route for highly skilled individuals?**

Yes. A work permit Class B is available for non-citizens in possession of prescribed professional qualifications such as medical and healthcare professionals, teachers in science and mathematics subjects and university professors.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

No, although there are exemptions by the president's office for employees of governments, agencies or organisations engaged in special developmental or humanitarian projects in Tanzania. These are required to apply and obtain work and residence permit exemption through the respective ministry or agency.

In addition, envoys, consular officers, consular employees or other representatives of the government of a foreign state accredited to Tanzania, and their family members and domestic staff, are exempted from applying for work and residence permits.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There is no minimum salary requirement in Tanzania. However, the salary should not be below the minimum monthly salary as announced by the government at that particular time for a particular sector.

**16 Is there a quota system or resident labour market test?**

No. An employer must show the effort made to find a local employee in Tanzania to fill the vacant position before the foreigner is employed. The employer must submit a copy of the advertisement that was published for that particular position. However, the new Non-Citizens Regulations introduces bulky recruitment where an employer may employ many non-citizens in phases for execution of a specific project within a specified time. The Regulations further set a quota in cases of bulky recruitment (ie, work permits may be granted at a ratio of 10 local employees to one non-citizen employee). The Commissioner is now using the same quota in relation to all applications brought before him or her, whether for bulky recruitment or normal recruitment.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

The main requirement to qualify for work permission in Tanzania is that the applicant must be at least 18 years old and holds qualifications, knowledge and skills required for the performance of the job, and such skills are rare or unavailable in the local labour market.

**18 What is the process for third-party contractors to obtain work permission?**

The process for a third-party contractor is the same as any other work and residence permit application. The third-party contractor can apply for the work permit (Class B or C) and residence permit (Class B) just like any other employee, provided that a contract between the subcontractor and an entity he or she works for in Tanzania is produced, and that the applicant will be sponsored by his or her client, which is a company incorporated or registered in Tanzania.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Yes, the assessment and recognition of the skills and qualifications is of paramount importance before a permit is issued. This is done when the application is lodged at the Labour Commission.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

A short-term visa cannot be converted into a longer-term authorisation in Tanzania. If the holder of a short-term visa wants a longer-term authorisation he or she must make a fresh application to the relevant authorities.

**21 Can long-term immigration permission be extended?**

Yes, as follows:

- work and residence permits (Class B, C and D): valid for a period of 24 months from the date of issue and renewable provided that the total period of validity of the first grant and its renewals does not, in any event, exceed five years; and
- Class A (for investors): the total period of validity of the work permit of an investor whose contribution to the economy or the wellbeing of Tanzanians through investment is of great value may exceed 10 years.

**22 What are the rules on and implications of exit and re-entry for work permits?**

A holder of work and residence permits in Tanzania is allowed to enter and exit Tanzania without any restrictions.

The new Non-Citizens Regulations introduces a provision to cancel a work permit within 90 days of being issued if the holder of the work permit fails to enter into Tanzania.

**23 How can immigrants qualify for permanent residency or citizenship?**

There is no permanent residency in Tanzania. Tanzanian citizenship is governed by the Tanzania Citizenship Act No. 6 of 1995 and the 1997 regulations made thereunder. A person can acquire Tanzanian citizenship by birth, lawful marriage, by descent or by naturalisation.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

The employer must notify the Commissioner within 14 days of the cessation of employment of a non-citizen employee.

**25 Are there any specific restrictions on a holder of employment permission?**

The holder of a work and residence permit in Tanzania is not allowed to change his or her employment status or immigration status. All expatriate staff must be working as per the designations stated in their work and residence permits. If an expatriate changes his or her status, the employer must notify the Commissioner and a fresh application for a work permit must be made. An expatriate will not be allowed to engage in the new role until both new permits are approved.

## Dependants

**26 Who qualifies as a dependant?**

A dependant (mostly wife and children) in Tanzania is a person who is related to the applicant for the permit. The applicant is required to produce a document that shows the existence of the relationship between him or her and the dependant, such as marriage certificate, birth certificate, etc. However, the Immigration Act 1995 specifically provides that dependants shall be 'the wife, child or near relative of the applicant and is dependent on the applicant for his or her maintenance'. This implies that a husband cannot be a dependant of his wife, although in practice, this is now possible. Children who are 18 years and above and children who intend to attend school in Tanzania should apply for a Class C residence permit, which is issued to students.

The law in Tanzania does not recognise same-sex marriages, fiancées or any other type of relationship apart from formal marriages. It is only a wife or husband within a formal marriage who can be included as a dependant.

**27 Are dependants automatically allowed to work or attend school?**

Dependants are not allowed to work in Tanzania. Once a dependant secures employment in Tanzania, he or she must apply for a separate Class B or C permit. Dependants who are of school age (seven years and above) are required to apply for a separate Student Pass 2. A fee of US$100 is paid in respect of this pass. Where a dependant is a child of 18 years or above, he or she must acquire an independent permit: Dependant Pass 1. In the event that a dependant wants to work as a volunteer, he or she will then need to obtain a Class D work permit and Class C residence permit sponsored by the organisation with which he or she will volunteer.

**28 What social benefits are dependants entitled to?**

None. Dependants must show that the main applicant can support them for the duration of their stay in Tanzania.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

No. However, there are times when the applicant will be required to produce a letter of good standing from his or her country of origin.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

For failure to comply with the employment and immigration laws of Tanzania, a fine of not less than 10 million Tanzanian shillings or imprisonment for a term of not less than two years, or both, may be imposed on either or both the employer and the employee.

**31 Are there any minimum language requirements for migrants?**

No.

**32 Is medical screening required to obtain immigration permission?**

No.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

The law does not recognise such procedures. However, if a non-citizen arrives in Tanzania to work at a client site, that client must issue the non-citizen with a proper contract to show that he or she will be working with the client while in Tanzania and that the client will sponsor the non-citizen and will take on all immigration responsibilities for the non-citizen. All other procedures will be the same as if the non-citizen were an employee of the client.

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# Thailand

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Foreign labour is a key driver of the Thai economy, which grew by 3.9 per cent in 2017 (up from 3.3 per cent in 2016), and the government's policy towards business immigration reflects this. Thailand welcomes foreign workers subject to the criteria and requirements of Thai immigration and foreign employment law. Some occupations are reserved for Thais only; foreign nationals, for instance, are prohibited from engaging in work that involves national security and in occupations that would otherwise limit the employment opportunities of Thais. While primary consideration is for the development of the country, exemptions to the applicable restrictions are made to help meet demand for skilled labour and prevent skills shortages. Foreign business immigration applications are considered in terms of necessity and suitability. Decisions are rendered on a case-by-case basis, and permission is granted based on the criteria and requirements set by law.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A short-term visa is required in the following circumstances:
- when visiting Thailand as a tourist;
- when transiting through Thailand;
- for non-immigration purposes; and
- for diplomatic or consular missions and performing official duties.

A transit visa is required prior to entry into Thailand for certain activities, including participation in sports competitions and for persons in charge of (or the crew of) a conveyance arriving at a terminal, port or station in Thailand. Applications for transit visas can be made at the relevant Royal Thai Embassy or Consulate-General abroad. Transit visas are normally valid for three months from the date of issuance. Foreign travellers with this type of visa are permitted to stay in Thailand for a period not exceeding 30 days from the date of arrival. Foreign travellers transiting at an airport in Thailand for a connecting flight within 12 hours of arrival are not required to obtain a transit visa.

A foreign traveller on a tourist visa is not permitted to work in Thailand. Applications for a tourist visa must be made at the relevant Royal Thai Embassy or Consulate-General abroad prior to entering Thailand. A foreign traveller on a tourist visa is permitted to remain in Thailand continually for a period not exceeding 60 days from the date of arrival. Some foreign travellers of countries that have entered into an agreement with Thailand are permitted to stay in Thailand without a visa for a period not exceeding 30 days from the date of arrival. Also, some foreign travellers who are citizens of countries agreed by the Thai government are able to apply for a visa on arrival upon entering Thailand for tourism purposes for a period not exceeding 15 days.

Foreign nationals travelling for non-immigration purposes must enter into Thailand only for the performance of business or work, investment (as approved by the relevant ministry or department), education or observation, official duties or other activities as permitted by law. The process for obtaining a non-immigrant visa varies depending on the type of visa required and the purpose of the visit. Normally, the foreign traveller must apply for a non-immigrant visa at the Royal Thai Embassy or Consulate-General abroad before entering into Thailand. The foreign traveller who has been granted a non-immigrant visa is not permitted to work in Thailand until a work permit has been issued. Non-immigrant visa holders are granted a permit to stay in Thailand for an initial period of 90 days.

For diplomatic or consular missions and for performing official duties, a diplomatic visa is required for foreign nationals holding a diplomatic passport. Applications for visas must be made at the relevant Royal Thai Embassy or Consulate-General abroad prior to entering Thailand. Some foreign travellers who are citizens of countries that have entered into a bilateral agreement with Thailand are exempt from applying for a visa. Foreign travellers with this type of visa are permitted to stay in Thailand for a period not exceeding 90 days from the date of arrival.

### 3 What are the main restrictions on a business visitor?

Foreign travellers arriving in Thailand for business purposes must not engage in work, which is defined as entering into employment or a profession, whether or not there is an employer, excluding the operations of a foreign business licence holder as defined under the Foreign Business Act 1999. Examples of foreign business operations that do not require a work permit include foreigners who occasionally enter into Thailand to attend, organise or present meetings, provide opinions, give lectures, participate in training sessions, seminars, tours, art or cultural exhibitions or sports competitions, as well as foreigners who enter into Thailand to engage in business or investment, who are experts or specialists, who have skills that will help improve the country or who are representatives of a foreign entity that has been granted a foreign business licence under the Foreign Business Act.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

It depends on the purpose of the training. If a foreign traveller occasionally joins the training and they are not required to engage in work by entering into employment or a profession, whether or not there is an employer, then such foreign traveller may enter into Thailand without having to apply for a non-immigrant visa and work permit. However, if the training does require the foreign traveller to engage in work by entering into employment or a profession, whether or not there is an employer, then such foreign traveller may be considered as arriving in Thailand for work, which does require a non-immigrant visa and work permit.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

See question 2.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

To enable the transfer of skilled staff to Thailand, one of the following types of visa is required:
- 90-day non-immigrant visa to conduct business or work;
- one-year non-immigrant visa to conduct business or work; or
- three-year non-immigrant visa to conduct business.

Note that a non-immigrant visa grants the holder permission to enter into and stay in Thailand for a limited period of time and is for business purposes only. If the foreign traveller wishes to work in Thailand, then they must also obtain a work permit.

**7 What are the procedures for obtaining these permissions? At what stage can work begin?**

Prior to entering Thailand, any employer who wishes to employ a foreign worker must apply for a letter of approval from the Thai Ministry of Labour. Upon the employer's receipt of such letter of approval, the foreign worker must apply for a non-immigrant visa at the relevant Thai Embassy or Consulate-General in the country where such foreign worker resides. The foreign worker will initially receive a 90-day non-immigrant visa for the purpose of coming to Thailand and applying for a work permit. The work permit application must be completed within 90 days, according to the period granted by the non-immigrant visa. The period of permission to work will be in accordance with the period granted under the non-immigrant visa. The foreign worker whose application for a work permit is granted will be required to collect the work permit within 30 days.

If the foreign worker wishes to extend the period of permission to work, then they must apply for a one-year non-immigrant visa. After this is granted, an application can then be submitted to extend the work permit to enable the foreign worker to work for one year, according to the one-year non-immigrant visa. The foreign worker may only commence work after the work permit is obtained. However, if the foreign worker requires permission to work under Thailand's investment promotion laws, then they may engage in authorised work while the application is being processed.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

There is no minimum period of stay for transferred foreign workers. The maximum period of stay for each entry of each foreign worker must not exceed 90 days consecutively. If the foreign worker is granted a one-year non-immigrant visa, then they may stay in Thailand for more than 90 days consecutively; however, they are still required to report their current address to the local immigration office every 90 days.

Alternatively, the foreign worker may opt to leave Thailand and then re-enter, upon which the 90-day period of stay is recounted. If the non-immigrant visa does not permit multiple entries into Thailand, then leaving and re-entering Thailand will require a re-entry permit, otherwise, the non-immigrant visa will expire immediately upon such foreign worker leaving the country.

**9 How long does it typically take to process the main categories?**

The whole process of applying for a 90-day non-immigrant visa and temporary work permit takes approximately 10 to 15 days. It takes another 30 days or so to apply for an extension of stay and work permit, depending on the relevant official's workload. Work permit issuance does not exceed 15 working days after a completed application and supporting documents have been received by the authority.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

No. There is no requirement under Thai immigration or foreign employment law to provide any benefits or facilities to transferred staff in order to secure a work permit. Whether or not to extend such benefits and facilities depends on each company's internal policies and procedures. Each employer is, however, required to provide transferred staff with the minimum benefits and welfare specified under other applicable laws, such as the labour protection law.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

Thai immigration authorities follow objective criteria that are specified under immigration law. However, in certain complicated cases, they do have the right to exercise sole discretion. For example, if they ask specific questions of an applicant, then they may request additional documentation for the purposes of verification.

While the immigration authorities do have the right to exercise sole discretion and apply certain subjective criteria, such discretion must always be used in the interests of national security or in consideration of either employment opportunities for Thais or demand for foreign labour as necessary for the development of the country.

**12 Is there a special route for high net worth individuals or investors?**

Yes. If a foreign investor meets any of the following criteria, then they have access to a special 'one-stop service' route when applying for a visa and work permit:

- general investors whose office or work is located in Bangkok investing a minimum of 2 million baht may receive approval for one year;
- those investing a minimum of 10 million baht may receive approval for two years; and
- foreign executives and experts working for a company with a registered capital or total assets of a minimum of 30 million baht.

Any foreign national who satisfies the above criteria shall be able to apply for a work permit or extension of visa at a one-stop service centre, the entire process of which takes just three hours to complete.

**13 Is there a special route for highly skilled individuals?**

Yes. Similar to high net worth individuals and investors, if a highly skilled foreign national meets any of the following criteria, then they have access to a special one-stop service route when applying for a work permit or extension of visa:

- foreign executives or experts obtaining privileges under the Investment Promotion Act 1977, the Petroleum Act 1971 or the Industrial Estate Authority of Thailand Act 1979;
- researchers and developers in the fields of science and technology;
- officials of branch offices of overseas banks, foreign banking offices of overseas banks, provincial foreign banking offices of overseas banks and representative offices of foreign banks certified by the Bank of Thailand; or
- foreign nationals working for a branch of an overseas enterprise.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Yes. Thai immigration law provides annual quotas for foreign nationals taking up residency in Thailand, which shall not exceed 100 persons from each country per year. However, if the foreign national transfers a minimum of 10 million baht in a foreign currency for the purpose of investment in Thailand, then they may be permitted to take up residence in Thailand in addition to the provided annual quota.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Yes. This depends on the nationality and the country of origin of the transferred foreign national. The specified minimum salaries of each nationality and country of origin are as follows:

- 50,000 baht per month for foreign nationals from Australia, Canada, the EU, Japan and the United States;
- 45,000 baht per month for foreign nationals from Hong Kong, Korea, Singapore and Taiwan;
- 35,000 baht per month for foreign nationals from Asian countries (except Cambodia, Hong Kong, Korea, Laos, Myanmar, Singapore, Taiwan and Vietnam), Central America, Eastern Europe, Mexico, Russia, South Africa and South America; and
- 25,000 baht per month for foreign nationals from all African countries (except South Africa), Cambodia, Laos, Myanmar and Vietnam.

**16 Is there a quota system or resident labour market test?**

Under Thai law, work permit issuance must always be in the interests of national security or in consideration of either employment opportunities for Thais or demand for foreign labour as necessary for the development of the country. To meet such criteria, the law specifies qualifications for both foreign nationals and persons who wish to have foreign nationals work in Thailand, which the authorities must always follow when considering work permit issuance.

**Update and trends**

Foreign employment management law in Thailand has occasionally been criticised for being impractical and for imposing excessive penalties on offenders. Recently, however, a government order has been issued suspending certain penalties and amending the requirements and obligations of employers and employees. For example, the requirements for obtaining some foreign employment management permits and licences have been relaxed, some penalties have been reduced and some exemptions have been granted for certain types of work by business operators. In addition, applications for work permits can now be submitted electronically (full details regarding e-submission requirements will be issued by the authorities later). However, new duties have also been imposed on employers and employees, including the obligation to notify the authorities when any foreign employment commences, changes or ends.

Generally, the law prohibits foreign nationals from engaging in occupations reserved for Thai people. Any company that wishes to hire a foreign worker must have a paid-up registered capital of a minimum of 2 million baht in the case of a Thai-registered company, or, in the case of a foreign company operating a business in Thailand, inject funds into Thailand of not less than 3 million baht and maintain a minimum ratio of four Thais for every foreign worker.

For Thai companies, an additional foreign worker may be hired for every capital increase of 2 million baht, subject always to the condition that the minimum ratio of Thais to foreign workers is met. In every case, the reason for not hiring a Thai person must be specified.

However, in certain cases, exemptions apply that allow employers to hire foreign workers as appropriate and necessary. For instance, foreign workers may be hired for a special project to perform work that requires specific expertise, which has an exact end date. In addition, if an employer has been granted an investment certificate under investment promotion law, then such employer may enjoy the privilege of hiring foreign employees at a ratio greater than the 4:1 minimum of Thais to foreigners.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

There are no other main eligibility requirements to qualify for permission to work in Thailand. However, the foreign national must still demonstrate the knowledge and skills that are required to perform the work stated in their work permit application. Copies of educational certificates (or determination forms duly filled out, in case there are no educational certificates), as well as copies of professional or occupational licences (in case the work is prescribed by law), must be submitted together with the foreign national's work permit application.

**18 What is the process for third-party contractors to obtain work permission?**

There is no process for any third-party contractor to obtain work permission on behalf of another company in Thailand. The foreign national is only permitted to perform work at the location specified on their work permit.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

The foreign national must possess the requisite knowledge and skills to perform the work stated in their work permit application. Such foreign national is required to submit their educational certificates and professional or occupational licences (if any) as evidence. An equivalency assessment is not required.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Yes. Foreign nationals entering into Thailand on a tourist or transit visa can apply to convert such tourist or transit visa into a non-immigrant visa. The relevant application form (and other required documents) must be submitted to an authorised immigration office in Thailand. The application must be submitted 15 days before the existing visa expires. A foreign national holding an expired visa cannot apply for visa conversion. If the application has been correctly submitted but the responsible officer is of the opinion that the visa conversion process cannot be completed before the expiry date of the existing visa, then such foreign national must apply for an extension of stay.

**21 Can long-term immigration permission be extended?**

Yes. Extensions of stay are granted based on necessity and on the reason provided in the foreign national's application. The actual length of the extension of stay is at the discretion of the immigration authorities. In any case, extensions of stay shall not exceed one year.

Foreign nationals who wish to extend their stay in Thailand must apply for an extension of stay at the relevant immigration office within 30 days of the date of expiry of their current visa. The law does not specify how many times a foreign national may apply for an extension of stay, as approval is at the discretion of the immigration authorities.

As mentioned above, if a foreign national holds a one-year non-immigrant visa, then they are permitted to stay in Thailand for 90 consecutive days; at which point, the foreign national must either report their current address to the local immigrant office or leave Thailand before the 90-day period lapses.

**22 What are the rules on and implications of exit and re-entry for work permits?**

If the holder of a single-entry non-immigrant visa wishes to exit and re-enter Thailand, then they must apply for a re-entry permit; otherwise, the existing single-entry non-immigrant visa will expire and the work permit will not be effective (work permit validity depends on the holder's non-immigrant visa). Consequently, the foreign national will have to go through the entire visa and work permit application process again.

An application for a re-entry permit may be submitted to the local immigration office or to the immigration authorities at any Thai international airport before leaving Thailand. There are two types of re-entry permit: single re-entry permits and multiple re-entry permits. A single re-entry permit allows the foreign national to leave Thailand and return on the same visa one time only. A multiple re-entry permit allows the foreign national to leave Thailand and return as many times as they wish, without having to apply for a re-entry permit, according to the validity of the existing visa.

**23 How can immigrants qualify for permanent residency or citizenship?**

Foreign nationals who wish to take up permanent residence in Thailand must receive authorisation from the Immigration Commission and the approval of the Thai Ministry of Interior. Foreign nationals who are eligible to apply for a Thai residence certificate must meet the following criteria:

- hold a non-immigrant visa and have been granted yearly permission to stay in Thailand for at least three years in total;
- must pass the relevant background checks;
- must present evidence of assets, education, income, professional qualifications or family status with a Thai national, depending on the application; and
- must be able to communicate in and understand the Thai language.

A Thai residence certificate allows the foreign national to live permanently in Thailand without needing to reapply for an extension of stay every year. However, a foreign national who is granted a Thai residence certificate is still obliged to report their current address to the local immigration office every 90 days, or may opt to leave Thailand with a re-entry permit.

Foreign nationals who have been granted a Thai residence certificate and have lived in Thailand for five years may be eligible to request Thai citizenship, if the following criteria are met:

- must have reached legal maturity both under Thai law and under the law of their country of origin;
- must pass the relevant background checks;
- must have a certain level of income and present evidence that they have paid Thai income tax for at least three years, or present evidence that they have paid a certain amount of Thai income tax;
- must be able to communicate in and understand the Thai language; and
- must be able to sing the Thai national anthem and the King's song.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Any foreign national whose employment ends, or whose employer changes, or any other cause resulting in a change to the reason of stay as specified in the original application, is required to inform the authorities at the immigration office where they applied for their non-immigrant visa.

The employer must notify the registrar of the Department of Employment within 15 days of the end of the foreign national's employment. The non-immigrant visa of the foreign national (and the work permit granted according to such visa) expires automatically upon termination of employment, and the foreign national is required by law to leave Thailand on the same day. It is the foreign national's sole responsibility to apply for a seven-day extension of stay (counting from the date of termination), should additional time be required to arrange for repatriation.

Note that under Thai law, employment ends upon the expiry or termination of employment whether by redundancy or resignation. Any relocation of employment is also considered as a termination of employment. If the employment of the foreign national is not terminated but there are changes to the foreign national's employment conditions (such as to the location of the place of work or the work to be performed), then the employer must apply for an amendment of the foreign national's work permit to reflect such change.

**25 Are there any specific restrictions on a holder of employment permission?**

The holder of employment permission in Thailand may not perform any work, work for any employer or work at any location other than that specified on their work permit. The holder of employment permission may be promoted and receive incremental increases in salary; however, if such promotion results in a change to the actual nature of their work, then the authorities must be notified so that it may be reflected on their work permit.

## Dependants

**26 Who qualifies as a dependant?**

Dependants of persons entitled to stay in Thailand are as follows:

- spouse of a Thai citizen;
- spouse of a foreign citizen permitted to stay in Thailand whether on a Thai residence certificate or a non-immigrant visa;
- single children of no more than 20 years of age, or more than 20 years of age if parental support is considered to be necessary; and
- parents.

Note that, under Thai law, the classification of 'spouse' does not include civil or cohabitation partners; only factual and legal marriages are considered to be established partnerships under the law in Thailand.

**27 Are dependants automatically allowed to work or attend school?**

Dependants must also apply for permission to stay either on a Thai residence certificate or a non-immigrant visa or as a dependant of a foreign national entitled to stay in Thailand. If they wish to work in Thailand, then they must apply for a work permit.

For children, if they would like permission to stay long-term in Thailand in order to study, then they must apply for a Thai residence certificate or a non-immigrant visa.

**28 What social benefits are dependants entitled to?**

Dependants residing in Thailand are not entitled to any social benefits per se; however, if they are entitled to work, then they are eligible for the minimum benefits and welfare that are provided under Thai labour laws (ie, social security, workmen's compensation, etc).

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Yes. Any foreign national having been imprisoned by judgment of a Thai court or by judgment of a foreign court or by lawful injunction (excluding punishments for petty offences or offences committed through negligence) are prohibited from entering into Thailand. The results of criminal record checks are sometimes required to be submitted together with visa and work permit applications.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Criminal penalties are incurred by companies and individuals as a result of non-compliance with Thai immigration and labour law, depending on the type of non-compliance. Criminal penalties that may be incurred are as follows:

- foreign nationals who engage in work without a work permit are liable to a fine ranging from 5,000 to 50,000 baht;
- employers or foreign nationals who fail to notify the authorities of the employment, workplace and nature of the work within 15 days of the date that the employment commences, and each time there is any change in the employment, are subject to a maximum fine of 20,000 baht;
- foreign nationals who do not have their work permit with them while working are liable to a fine of up to 5,000 baht; and
- any company that employs a foreign national without a work permit is liable to a fine ranging from 10,000 to 100,000 baht for each foreign worker. Repeat offenders are subject to imprisonment for a term not exceeding one year, or to a fine ranging from 50,000 to 200,000 baht for each foreign worker, or to both. The employer shall also be prohibited from employing any foreign worker for a period of three years from the date of the final court judgment.

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**31 Are there any minimum language requirements for migrants?**

Migrants who wish to take up residency in Thailand or apply for Thai citizenship must be able to communicate and understand the Thai language. The test is by oral examination in the form of an interview with the authorities.

**32 Is medical screening required to obtain immigration permission?**

Yes. Foreign nationals who are deemed to be of unsound mind or who have the following communicable diseases are prohibited from entering into or taking up residence in Thailand:

- leprosy;
- tuberculosis;
- drug addiction;
- alcoholism;
- elephantiasis; and
- tertiary syphilis.

In addition, foreign nationals who have not been, or who refuse to be, vaccinated against smallpox or any other disease are also prohibited from entering into Thailand.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Foreign nationals who are employed in Thailand may only perform work at the location specified on their work permit. If the foreign national is required to perform work at another location (ie, on a client's site), then such location must be specified on the foreign national's work permit. If the client's site is not specified on the work permit, then the employer can later apply to add the client's site as an additional workplace of the foreign national.

# United Arab Emirates

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## Overview

**1 In broad terms what is your government's policy towards business immigration?**

Policies relating to the employment of United Arab Emirates (UAE) and foreign nationals are maintained by the Federal Ministry of Human Resources and Emiratisation (MOHRE) (formerly the Ministry of Labour and Social Affairs). The Labour Law is loosely based on the International Labour Organization's model. In 2003, the UAE launched an initiative aimed at increasing the participation of national employees in the workforce, the framework of which continues to evolve in recent years. This policy of 'Emiratisation' aims to employ citizens in a meaningful and efficient manner in the public and private sectors as this contributes to a successful economic and political structure. Emiratisation works through the implementation of prescribed percentages in certain business sectors as well as requiring certain positions to be filled by UAE nationals. However, despite the underlying framework for Emiratisation, there remains a heavy reliance on expatriate workers, and Emiratisation policies are not strictly enforced in certain sectors and geographical locations.

The UAE also maintains several geographically distinct areas referred to as freezones. Freezones permit 100 per cent foreign ownership and, from an immigration perspective, do not fall under the direct purview of the MOHRE. Freezones operate their own government services offices (GSOs) that liaise with the immigration authorities on behalf of the sponsoring entity. Freezones also tend follow a relatively streamlined work authorisation process, although documentation requirements (and subsequent processing times) tend to vary from freezone to freezone.

## Short-term transfers

**2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?**

Generally speaking, short-term visas are issued for specific purposes such as tourism, general visits, business visits, seminars, exhibitions and conferences. Each type of short-term visa is issued for a different purpose with the expectation that the short-term visitor will comply with the regulations governing these visas. Travellers who require a visa require a local sponsor (usually a company or a family member) to initiate the process within the UAE. For certain visa types, sponsors could also be hotels or travel or tourism companies. In recent months 'transit' visa facilities have also been made more flexible. Transit visas are generally valid for 48 hours, but new rules announced in 2018 are being put into place to permit extensions to up to 96 hours.

Gulf Cooperation Council (GCC) nationals are visa-exempt for an indefinite period of stay, while numerous nationalities (including the US and all EU member states) are currently eligible for a visit visa on arrival obtained at the airport of entry. Historically, GCC residents holding managerial and professional job titles were also eligible for a visa on arrival, but since 1 September 2015, are required to obtain a pre-approved e-visa from the General Directorate of Residency and Foreigners' Affairs (GDRFA) prior to entry. As of 5 June 2017, and to date, Qatari nationals are prohibited from entering the UAE owing to the political situation between the UAE and the State of Qatar and the existing embargo in place.

**Tourist entry permit**

Tourist visas can be issued through hotels, tourism companies or national airline carriers and are valid for 30 or 90 days' stay from the date of entry, but are no longer extendable. If the tourist visa holder overstays, he or she may be subject to a daily fine as well as an exit fee. Since tourist visas are generally issued by hotels and airlines, the documentation requirements vary from company to company – most companies would require the applicant to book a hotel room or purchase travel tickets (if applicable). In most instances, the applicant is required to provide a copy of his or her passport, a passport-sized photograph and the reasons for the visit. A copy of the visa, once it is issued, is sent to the applicant. Most tourist visas are valid for entry into the UAE for a period of 60 days.

**Short-term and long-term visit entry permits**

Unlike the tourist visa, a visit visa (short-term or long-term) is issued at the request of a corporate sponsor or legal resident in the UAE. Visit visas sponsored by individuals (ie, family members) are usually meant to facilitate general visits, while those sponsored by corporates tend to facilitate business travel.

Although the UAE authorities do not maintain an exhaustive list of activities that may be conducted on a business visit visa, activities such as attending meetings, conducting research, negotiating contracts, attending training, etc, are permissible in practice. Hands-on or technical work or other activities that may be construed as generating profit are not permissible. Business visit visas are generally valid for a period of 30 or 90 days and can be obtained for both single or multiple entries – the type of visa granted would depend on the privileges granted to the sponsoring entity and the quota available to it. Sponsored visit visas for business cannot be extended in-country, but are no longer subject to a cooling-off period – previously a 30-day cooling-off period during which the applicant could not re-enter on the basis of another short-term visa was enforced throughout the country.

It is important to note that the requirements for obtaining visit visas vary from location to location, with certain areas such as freezones implementing their own list of documentation requirements, which are known to change without prior notice. As such, it is always advisable to check regulations in advance and immediately before travelling. At the time of writing, the following GCC nationals are visa-exempt for an indefinite period of stay: Bahrain, Kuwait, Oman and Saudi Arabia.

Individuals from the following countries can currently receive a visa on arrival valid for up to 90 days (in a 180-day period): Austria, Belgium, Brazil, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Seychelles, Slovakia, Slovenia, Spain, Sweden, Switzerland and Uruguay.

Citizens of the following countries are eligible for a 30-day visa on arrival (extendable in-country for an additional 30 days): Andorra, Argentina, Australia, Brunei, Canada, Chile, China, Hong Kong, Ireland, Japan, Kazakhstan, Malaysia, Mauritius, Monaco, New Zealand, Russia, San Marino, Singapore, Ukraine, the United Kingdom, the United States and Vatican City. Indian passport holders who hold a valid US green card (or visa) or valid EU residence permit or visa are eligible for a 14-day visa on arrival, which is extendable once, in-country, for an additional 14 days.

Although the UAE authorities do not maintain an explicit list of nationalities that are restricted from entering the country, certain Middle Eastern, eastern European, South Asian and African nationalities may undergo extensive security screening, experience longer processing times and, in some cases, have their applications rejected. Individuals with prior Israeli travel stamps may also be denied a visa or be denied entry at the time of arrival. Individuals of Arab origin, even if they hold a different, non-Arab passport, may be required to provide additional supporting documentation such as copies of birth certificates, home-country identification, family books, etc when obtaining visit visas.

### 3 What are the main restrictions on a business visitor?

Establishments and companies operating in the UAE can sponsor business visitors for a variety of different visas, including entry service visas (ESVs), visit visas for business (as explained above), visit visas to attend exhibitions or conferences (available under select circumstances) and mission work permits (MWPs).

ESVs are sponsored by private-sector companies and establishments for individuals required to visit the UAE for very short periods (up to 14 days) for business purposes such as attending meetings (although in practice, limited hands-on work may be conducted). Permits to attend exhibitions or conferences are issued for a period of 30 days on a non-renewable and non-extendable basis. Such visas do not permit work, but permit the holder to attend the conferences and seminars in relation to which the visa has been issued.

MWPs are non-extendable single-entry permits, valid for a period of 90 days. Such visas are granted and issued subject to the approval of the MOHRE. MWPs allow the holder to engage in hands-on or technical work and are usually meant to facilitate short-term contractual obligations in relation to a project. Note that MWPs cannot be converted into employment visas and holders would need to exit the country prior to expiry.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

From a strict immigration-compliance perspective, foreign nationals intending to receive short-term training in a classroom setting may do so without formal work authorisation and on business visitor status (ie, by entering the UAE on the applicable short-term visas permitting business-type activities). Since the UAE immigration authorities do not maintain a list of activities that require formal work authorisation, giving training (especially if it involves technical demonstrations) is not recommended without first procuring the appropriate work authorisation. Short-term training may, in practice, be given on an ESV, although this would retain an element of risk in the event of an immigration check.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit passengers stopping at airports in the UAE for a minimum of eight hours and meeting the following conditions are eligible to obtain a 96-hour transit visa:

- sponsored airlines only (prior arrangements may be required); and
- applications should have a confirmed onward booking to a subsequent destination.

More recently, the UAE authorities have announced plans to streamline the process for obtaining transit visas and have made the facility available under more circumstances. The authorities are also considering removing processing fees for transit visas.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

As indicated above, the main short-term categories are as follows:

- ESV;
- MWP; and
- business visit visas.

Longer-term work authorisation is granted by the employment residence permit (ERP). ERPs are generally valid for two to three years, permit multiple entry and can be renewed upon expiry.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

Each permit or visa has its own requirements and procedures and requirements also tend to vary from jurisdiction to jurisdiction. However, certain general conditions must be satisfied in most instances.

These are as follows.

**Employee-specific requirements**

The applicant must ensure the following:

- that they hold a passport with at least six months' remaining validity at the time of application – it is recommended that a minimum validity period of six months remains at all stages of the process;
- that the relevant authorities (GDRFA or MOHRE) have approved the applicant's visa or permit application;
- that they are not banned from entering the UAE (prior labour or immigration ban) and they do not belong to any of the nationalities or categories disallowed by the UAE immigration authorities on the grounds of national security or policy, or both;
- that they are free from communicable diseases – certain visa and permit categories require the applicant to complete an in-country medical examination; and
- that they have valid academic credentials that can be presented as part of the work authorisation application (certain managerial or professional job titles would require this).

In early 2018, the authorities required that foreign nationals provide a police clearance certificate from their home country or country of legal residence as part of the work authorisation process. This requirement was placed on hold in April 2018, with no clear indication as to whether the policy will be reinstated.

**Employer-specific requirements**

The sponsoring entity must:

- be in good standing with the MOHRE and GDRFA, as well as the relevant freezone authority (if applicable);
- have all valid and up-to-date corporate and corporate immigration documentation and must be licensed to conduct business in its relevant jurisdiction; and
- have the relevant quotas and sponsorship permissions in place (if applicable).

When the above conditions are met, the following steps need to be followed to obtain an ERP (the primary form of work authorisation in the UAE):

- the sponsoring business seeks approval (in the form of a quota) from the MOHRE or the GSO of the relevant freezone (if applicable) to sponsor the foreign national employee;
- once the relevant quota is in place, an employment entry permit (EEP) is obtained from the GDRFA for the employee's entry into the UAE;
- once the employee enters on the basis of the issued EEP, the employee must undergo a medical examination and complete biometrics for the Emirates ID;
- upon completion of the medical examination, the final ERP is endorsed in the employee's passport – certain freezones issue a freezone-specific identity card as well; and
- the Emirates ID card is issued approximately two to three weeks after the completion of biometrics.

In addition to the above steps, mainland (onshore) companies also require the registration of a formal labour contract as well as an offer letter (in the prescribed format) with the MOHRE.

Certain nationalities go through a slightly different process to the above and obtain an EEP directly from the UAE consulate or embassy in their home country. This may require additional steps to be completed, including an out-of-country medical examination (in addition to the examination completed in the UAE post arrival).

From a strict immigration compliance perspective, employees must not start work until the final ERP has been endorsed.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

The employment entry permit is valid for 60 days from the date of issue and entitles the holder to enter the UAE once for a total period of 60 days to finalise all the requirements for obtaining an ERP – extensions to the allotted 60 days are not possible. Once the ERP is obtained, foreign nationals can reside in the UAE for the period stipulated in the ERP (usually two years for onshore entities and three years for freezone entities). To keep the ERP active, the employee must not stay outside of the UAE for 180 or more calendar days.

**9 How long does it typically take to process the main categories?**

This is dependent on whether the application is being processed onshore or in a freezone. The processing time for obtaining an ERP is approximately four to five weeks assuming that all the relevant documentation is ready (documentation legalisation times can add significantly to total lead time) and there is no extensive security screening.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is essential to have the prescribed form (dual Arabic and English) MOHRE job offer letter and employment contract in place (for onshore companies) in order to obtain an ERP. The other UAE freezones either have their own template employment contracts in place or mandate specific minimum terms and conditions of employment be included in any company-specific employment contractual documentation. Dubai has implemented a mandatory health insurance policy for all foreign nationals residing in Dubai. Obtaining health insurance is interlinked with the work authorisation process and failure to provide this will result in the application being refused. Abu Dhabi adheres to a similar health insurance requirement, while other emirates are expected to follow suit in the future.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The immigration authorities follow objective criteria but do have discretion in requesting additional supporting documentation if they deem it necessary. Rejected applications are generally not accompanied by any explanation, while exemptions are subject to the discretion of the senior immigration officer on a case-by-case basis. Such exemptions are generally issued on humanitarian grounds or granted by way of special approvals from senior officials.

**12 Is there a special route for high net worth individuals or investors?**

High net worth individuals, also called investors, can obtain legal residency by way of investing in a local business. Once the entity is set up by the individual, he or she can then be appointed as a general manager and obtain a residence permit sponsored by that entity. In essence, the individual would be an employee of the newly established business and the business would serve as the corporate sponsor – similar to the standard work authorisation process followed in the UAE.

Another option is to invest in property and obtain a property-based investment residence permit. However, there are certain requirements for obtaining legal residency under this approach, and these include the following:

- presenting official documentation proving that the property is worth 1 million UAE dirhams or more;
- proving that the property is wholly owned by the investor and not jointly owned with another individual or entity;
- if the property is mortgaged, proving that at least 50 per cent of the mortgaged amount has been paid off;
- providing copies of bank statements for the previous six months to show a minimum monthly income of 10,000 UAE dirhams (in the home country or in the UAE);
- obtaining valid health insurance for the principal applicant as well as any sponsored dependants; and
- presenting a title deed that has been certified by the Dubai Land Department.

**13 Is there a special route for highly skilled individuals?**

No, there is no special route for highly skilled individuals. All foreign nationals must go through the standard route for obtaining work authorisation. However, the authorities have recently announced that certain niche and highly skilled professions in the fields of medicine, engineering, academics, technology and science may be able to obtain residence permits that are valid for up to 10 years. Practical considerations relating to implementation (and whether a 'special' processing route will be implemented) are still under discussion.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

The UAE does not implement a minimum salary requirement for sponsoring foreign national employees; however, there are minimum salary requirements applicable to sponsoring dependants, being eligible for bank loans, etc. In addition, mainland UAE (as well as certain freezones) implement the UAE Central Bank's Wage Protection System (WPS). The WPS requires all registered employees to be paid locally, in the local currency (UAE dirhams), and through an authorised agent. As such, salaries that are declared locally (mentioned on the employment contract) must be paid locally and are actively monitored throughout the term of employment.

**16 Is there a quota system or resident labour market test?**

Yes, there is a quota system in place to sponsor foreign individuals to enter the UAE for employment purposes. For entities based in mainland UAE, the sponsoring entity must first seek the approval of the MOHRE to employ the individual in question. The MOHRE has specific undisclosed criteria for adjudicating such requests, which include analysing the market for qualified UAE nationals, analysing the firm's office space, analysing the nature of the business and the job title requested, etc.

Certain industries (and locations) may also be subject to Emiratisation and the authorities may not issue quotas for sponsoring foreign nationals if this is not adhered to.

Moreover, the MOHRE has implemented a labour market testing initiative referred to locally as 'Tawteen Gate'. The portal aims to make these roles more accessible to Emirati nationals by requiring certain companies to formally post openings prior to hiring any foreign national employees. Unemployed UAE nationals can register on the platform and benefit from accessing the priority job listings. Currently, the role needs to be posted for at least five days, after which the authorities inform the company about any potential candidates through an automated system. The company is not required to interview each applicant; however, if they 'accept' an applicant, they are required to interview them. The applicant and the company have an option to reject the opportunity; however, the company must record the reason for the rejection from a set drop-down menu on the portal. Companies learn whether they are subject to the mandatory job posting requirement once they initiate a work authorisation application and prepare a job offer application on the MOHRE's database.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

Yes, the regulations prescribe minimum qualifications for specific jobs, especially for higher managerial posts. For instance, there is a minimum requirement of a bachelor's degree for certain executive and management positions. For females sponsoring males (or dependants), there are criteria regarding specific job titles and salaries.

**18 What is the process for third-party contractors to obtain work permission?**

A holder of a work permit may be subcontracted through his or her company to work at another company's premises. This can be done by engaging the services of an authorised manpower provider that can sponsor the individual in question and then second him or her to the end client – a trilateral agreement is usually in place in such engagements.

**Update and trends**

While we are seeing a general trend of governments in the Middle East introducing more protectionist measures to ensure a higher representation of local nationals in the workforce, the UAE remains very pro-immigration, with over 12 million visas issued last year alone. The government is, however, committed to ensuring improvements to the representation of UAE nationals in the private sector. This has resulted in various changes to Emiratisation policies and the introduction of various initiatives and programmes to facilitate this in the private sector.

Government authorities are embracing technology and rapidly moving to online systems. The GDRFA has requested that all companies register for an immigration portal in order to process immigration applications. We envisage this trend to continue with all the immigration authorities, with government service employees having access to mobile phones and smart devices around the clock – other neighbouring countries such as Saudi Arabia have made the move towards completely electronic portals for managing immigration requests.

There have been several changes to visas on arrival: several nationalities have been added to the list in an effort to strengthen relations with various countries, as well as to boost tourism and trade.

With over 80 per cent of the population in the UAE being expatriates, many companies are familiar with the immigration process. However, we are seeing a trend of companies outsourcing the immigration process to professional firms. This is following a global trend where human resources and internal global mobility teams see the cost saving in outsourcing the mobility function to a third party. Third-party professional firms will tend to turn round applications more quickly and ensure compliance of companies' employees at all times.

Obtaining a temporary work permit from the MOHRE may also be a possible alternative for onshore companies servicing onshore clients. Temporary work permits are usually valid for 180 days (with an option to renew for an additional 180 days), but are subject to the approval of the MOHRE, which would adjudicate the application on the basis of the underlying relationship between the two engaging entities.

Although freezones are not eligible for temporary work permits, certain freezones may offer temporary access card (TAC) facilities that would grant the holder the ability to engage in hands-on work for a short-term period. TAC durations (and the type of activities permissible) vary from freezone to freezone, but do require that both the sending entity (sponsor) and the host entity (end client) have an underlying business relationship. In practice, entities with common investors or local partners (sister concerns), or both, can also share human capital.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Yes, attested copies of educational certificates are required in order to obtain an ERP – this only applies to some professional and managerial job titles. Academic certificates are legalised by the Foreign Affairs Department and UAE embassy in the country of issuance and then counter-legalised by the Ministry of Foreign Affairs in the UAE.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

As of now, it is possible to change a visit visa (which was obtained for purposes other than tourism) into an employment visa if the applicant falls under one of the following categories (only the main categories have been listed below):

- engineer;
- doctor, chemist, nurse or medical technician;
- teacher;
- agricultural adviser;
- qualified accountant and auditor;
- technician in electronic, scientific equipment and labs;
- driver licensed to drive heavy vehicles and buses;
- employee in a private oil company; and
- spouse and dependants of any of the above categories.

In practice, however, individuals who do not fall into one of the above categories, but still hold professional job titles, can regularise their immigration status by way of amendment without exiting and re-entering the country.

**21 Can long-term immigration permission be extended?**

Holders of valid ERPs may continue to live and work in the UAE for as long as such residence is valid. The ERP must, however, be renewed every two years for onshore-sponsored entities and every three years for freezone-sponsored entities. If the individual is no longer employed by the sponsoring entity, he or she would have to exit the country (or initiate the work authorisation process under a different employer) within 30 days following formal cancellation of his or her residency. It is illegal for an employee to work for an employer different from his or her sponsoring entity, the penalties for which are severe and can extend to all three parties.

**22 What are the rules on and implications of exit and re-entry for work permits?**

Employees can exit and re-enter the country as long as their ERP remains valid. It should be noted, however, that the ERP becomes invalid if the holder stays outside of the UAE for a period of six months or more.

**23 How can immigrants qualify for permanent residency or citizenship?**

Foreign nationals cannot qualify for permanent residency or citizenship.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

Yes, the ERP must be formally cancelled at the end of the employment engagement. Generally, the employer has a legal obligation to cancel the ERP within 30 calendar days of the employee's termination date, triggering a further 30 calendar day 'grace period' for the employee to secure alternative UAE sponsorship (failing which, he or she must leave the UAE). Movement within the same entity (eg, a promotion) does not require the work permit to be cancelled. Failure to formally cancel ERPs can result in penalties for both the employee and the employer. Dependant residence permits must be cancelled prior to cancellation of the principal's residency.

**25 Are there any specific restrictions on a holder of employment permission?**

Holders of ERPs can study, be promoted and have their salaries changed without having to change their permit (from a strict immigration-compliance perspective, job titles and salaries mentioned on the labour contract must be amended to reflect any changes (ie, in the event of promotions, etc)). However, an employee can only work for, and at the premises of, the sponsoring employer. If the employee wishes to work for a different employer, the ERP will need to be cancelled and reissued under the new sponsor.

## Dependants

**26 Who qualifies as a dependant?**

The following are considered as dependants:

- spouses;
- siblings;
- children (male or female minors, female adults unless married and males up to 18 years old); and
- parents and in-laws.

Sponsoring a dependant will involve submitting an application and a deposit with the immigration authorities that is refunded on application after cancelling the visa. The visa regulations are strict in terms of salary, accommodation, bank statements, etc. There is a minimum monthly salary requirement of 4,000 UAE dirhams (or 3,000 UAE dirhams if accommodation is provided) for sponsoring spouses and children; however, the minimum salary requirement to sponsor parents is currently 20,000 UAE dirhams per month, as well as accommodation with at least two bedrooms. Being able to present

legalised birth certificates (if sponsoring children) and legalised marriage certificates (if sponsoring a spouse) is central to the dependant residency process.

Note that the UAE does not recognise the following as dependants:

- civil partners;
- unmarried partners;
- same-sex partners;
- cohabitees; and
- children of unmarried parents.

**27 Are dependants automatically allowed to work or attend school?**

Female dependants are allowed to work if they obtain a no-objection letter from their sponsor (their spouse or their father, in this instance). Such requests need pre-approval from the MOHRE or relevant freezone authority, depending on where the employer is located. Under this approach, female dependants can remain under their existing sponsor's sponsorship and obtain a dependant work permit or card permitting them to work. Alternatively, female dependants may opt to obtain direct sponsorship by their employer. Male spouses cannot work under such dependant status and must obtain sponsorship from a company in order to work.

Dependent minors are allowed to work in the UAE provided that they are between the ages of 15 and 18 years (new provisions permitting part-time work for dependants between the ages of 12 and 15 years have recently been introduced). Dependant minors may not be employed in dangerous, physically exhausting or taxing jobs. In addition, they must have obtained written approval from their parents or guardians in order to secure work authorisation.

**28 What social benefits are dependants entitled to?**

There are no social benefits provided to dependants of foreign nationals.

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Obtaining work authorisation in this case would involve an element of discretion, as the authorities may pick up on the prior conviction during security screening. Most government and semi-government employers request the applicant to provide a police clearance certificate from the employee's home country or country of residence prior to applying for a residence permit in the UAE.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

Non-compliance with UAE immigration and labour policies can result in the imposition of fines and other sanctions including restrictions on future sponsorship privileges. In instances of extreme non-compliance, trade licence managers of such companies can also be held accountable and be subject to fines or imprisonment, or both. Foreign national employees can also be fined, imprisoned, have their residence permits cancelled or be deported from the country. They can also be subject to immigration and labour bans.

**31 Are there any minimum language requirements for migrants?**

No.

**32 Is medical screening required to obtain immigration permission?**

Medical screening is required to obtain an ERP, dependant residence permit and MWP. For other temporary entry permits, medical screening is not currently required. Nevertheless, additional tests may be prescribed depending on which country a foreign worker is coming from. There are certain exceptions made for pregnant women and children; however, this is subject to change without prior notice and so it is recommended that all visitors to the UAE speak to the UAE embassy in their country of residence prior to entry.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

A temporary work permit can be issued by the MOHRE for an employee of one onshore company to work for another onshore company. Temporary work permits are usually valid for 180 days (with an option to renew for an additional 180 days) and are subject to approval of the MOHRE on the nature of business between the two engaging entities. The original employing entity remains responsible for discharging its full legal and contractual obligations towards the seconded employee (such as payment of salary and benefits), notwithstanding the secondment arrangements.

Although freezones are not eligible for temporary work permits, certain freezones may have TAC facilities that would grant the holder the ability to engage in hands-on work for a short-term period. TAC durations (and the type of activities permissible) vary from freezone to freezone, but TACs do require that both the sending entity (sponsor) and the host entity (end client) have an underlying business relationship. In practice, entities with sister concerns can share human capital.

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# United Kingdom

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

The UK policy towards immigration distinguishes between European Economic Area (EEA) (and Swiss) nationals and non-EEA nationals.

EEA and Swiss nationals currently have the right to work in the UK, with no need to apply for entry clearance or leave to remain (a visa). An annual cap of 20,700 has been set on the number of non-EEA migrants entering the UK for work under the Tier 2 route, which affects non-EEA nationals who have been offered a job by a company based in the UK. This cap does not apply to individuals who are earning £159,600 or more, individuals who are already in the UK and wish to extend their immigration permission in a permissible category (unless the individual is in the UK as a Tier 4 partner) or those coming in under the Tier 2 (intra-company transfer (ICT)) subcategory.

A number of other measures have also been introduced by the UK government to curb immigration into the UK, including the introduction of a mandatory 12-month cooling-off period outside the UK for some Tier 2 migrants and restrictions on in-country switching between categories.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A short-term visa would be necessary for someone who works abroad but who intends to visit the UK for short periods of time in order to transact business on their or their employer's behalf. Note that nationals of certain countries (known as 'visa nationals') are required to obtain business visit visas in order to enter the UK for this purpose. Other non-visa nationals can enter the UK and present themselves to an immigration officer at their port of arrival. It is important to check whether an individual requires a visa before travelling to the UK. Short-term visas can be obtained by making a business visitor visa application to a UK diplomatic post in the individual's country of origin or legal residence. It is important to note that the need to obtain a visa for the UK is determined by the activity that the individual is undertaking and not the duration of the visit. As such, if an individual is undertaking 'productive work' beyond that of business meetings, a work permit will be required, irrespective of the duration of their visit to the UK (see below).

### 3 What are the main restrictions on a business visitor?

A business visitor cannot undertake work activities while in the UK. There is a list of permissible activities that a business visitor is allowed to undertake, which includes attending meetings, interviews, conferences, one-off training sessions and conducting site visits. Note that this is not an exhaustive list. More recently, the visitor rules have been expanded and business visitors may undertake recreational study for up to 30 days as long as this is not the main reason for the visit.

Business visitors can remain in the UK for a maximum of 180 days at any one time providing the expiry date on their visa allows them to do so. Frequent business visitors can be issued with business visitor visas for two, five or 10 years. However, business visitors must not spend more than six months in the UK in any rolling 12-month period.

A further restriction is that business visitors should not receive their salary from a UK source, although they can receive reasonable expenses to cover the cost of travel and subsistence. Note that the only time a salary from a UK source is permissible is if a multinational company administers their entire payroll from the UK.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

An individual may require immigration permission to give or receive short-term training. Depending upon the specific circumstances of the individual or the type of training, or both, it may be possible to qualify as a business visitor. In the event that the business visitor criteria are not met, the individual would be required to apply under a suitable Tier 2 category.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

Transit visas are required in certain circumstances for specific nationals. If an individual from one of the specified countries is staying in the UK for up to 48 hours before continuing their journey to another country, they will need to apply for a visitor-in-transit visa. If the individual wishes to stay for longer than 48 hours, they will need to apply for a visitor visa.

Certain nationals who wish to transit through the UK will require direct airside transit visas. These visas are valid for up to 24 hours and individuals who have been granted this visa do not enter the UK nor do they pass through immigration control. Individuals should check the relevant list of nationalities to verify if they are required to obtain a direct airside transit visa before transiting through the UK.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The most widely used immigration category is the Tier 2 skilled workers category. The Tier 2 (General) subcategory can be used to facilitate the employment of a new hire to the company and bring over employees who will be undertaking a permanent UK role that cannot be filled by a settled worker. The Tier 2 (ICT) subcategory allows the company, provided it is a multinational company, to temporarily move existing employees to the UK. The Tier 2 (ICT) subcategory is broken down into a number of specific subcategories: Long-term Staff and Graduate Trainee, which can be utilised depending on the business's needs.

### 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The Tier 2 category is the main category that UK companies use to employ skilled, non-EEA staff. In order to sponsor an individual under the Tier 2 category, an employer must first obtain a Tier 2 sponsor licence by applying to the Home Office. The Home Office is the UK government department that deals with all immigration applications. If the sponsor licence is granted, the employer will be able to issue certificates of sponsorship to their skilled migrant staff, providing they meet the relevant criteria. The migrant must then apply for entry clearance (if applying outside the UK) or leave to remain (if applying from

inside the UK) in order to be granted the requisite immigration permission to work in the UK. All of these steps must be undertaken before the individual can commence work in the UK. Note that applicants applying from outside the UK will typically be subject to the monthly quota (known as restricted certificates of sponsorship) and this quota has, since late 2017, been frequently oversubscribed.

**8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?**

There is no minimum period of stay granted by the Home Office. The maximum duration a single visa can be issued under the most commonly used subcategories of Tier 2 is five years. This can be extended for up to nine years for staff earning £120,000 a year or more under the Tier 2 (ICT) subcategory and six years under the Tier 2 (General) subcategory. Other subcategories have different periods of leave attached, which vary in length depending on the category.

**9 How long does it typically take to process the main categories?**

Processing times for Tier 2 applications are dependent upon a number of factors including, but not limited to, the subcategory under which the individual is applying, the country in which they are filing, the complexity of the matter and the availability of the required documents needed to process the application. Standard processing times from the point of commencing the application process to receiving the visa are approximately two to 12 weeks.

Some countries, for example the US, operate a priority service whereby applications are usually processed within approximately five working days of the date the documents are received by the UK diplomatic post abroad. Note this does not include the time required to prepare the application up to the point of submission. The availability of priority processing services is dependent on the country and the application category. At present, the Home Office is in the process of extending priority processing to a number of additional posts.

**10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?**

It is not necessary for employers to provide their employees with any benefits or facilities in order to obtain working immigration permission. However, when making a Tier 2 application, an employer may wish to certify that they will maintain and accommodate an employee for the first month of their employment. If an employer chooses not to do this then the individual will need to provide evidence to the Home Office that they have the requisite funds to meet this requirement by way of personal bank account statements.

**11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?**

The most commonly used immigration category is Tier 2, which is part of the points-based system. This immigration route is subject to a set of objective criteria, which means that all applications made under this category must meet the set points criteria and no discretion is permitted. However, it is possible in exceptional circumstances to have applications approved that fall outside the UK Immigration Rules.

**12 Is there a special route for high net worth individuals or investors?**

High net worth individuals may apply under the Tier 1 (Entrepreneur) or Tier 1 (Investor) categories. The Entrepreneur subcategory aims to allow individuals to invest in the UK by setting up or taking over and being actively involved in the running of a business. In order to qualify under this subcategory, applicants must have access to a minimum of £200,000 (or £50,000 in certain circumstances) in addition to meeting other mandatory criteria.

The Investor subcategory is designed for high net worth individuals who wish to make a substantial financial investment in the UK. Individuals must be able to invest a minimum of £2 million in the UK, in addition to meeting other mandatory criteria.

For both categories, the UK immigration regulations contain detailed requirements concerning the nature of the investment and the criteria for eligibility.

**13 Is there a special route for highly skilled individuals?**

The Tier 1 (Exceptional Talent) subcategory is for non-EEA migrants who are internationally recognised as world leaders or potential world-leading talent in the fields of science and the arts who wish to work in the UK. The subcategory is limited to 2,000 endorsements per year. These are divided between five designated 'competent bodies': the Royal Society (natural sciences and medical science research), Arts Council England, the British Academy (humanities and social sciences), the Royal Academy of Engineering and Tech City UK. Note that, should an applicant receive an endorsement, a visa is not automatically issued and the applicant must still meet further mandatory criteria.

In April 2012, the UK government also introduced the Tier 1 (Graduate Entrepreneur) subcategory that allows UK graduates, identified by UK higher education institutions as having developed world-class innovative ideas or entrepreneurial skills, to extend their stay in the UK after graduation to establish one or more businesses in the UK. This subcategory is limited to 2,000 places per year. Some 1,900 endorsements are allocated to higher education institutions to endorse graduates in any subject. One hundred endorsements are allocated to the Department for International Trade to endorse overseas graduates.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

Under the Tier 1 (Investor) subcategory, an individual may be eligible to settle in the UK if they have been living in the UK for two, three or five years with enough assets and investments. The amount of time depends on the level of investment, which can be either cash or assets and a loan. Accelerated settlement status can be achieved by investing either £5 million (obtaining settlement after three years) or £10 million (obtaining settlement after two years). Applicants must invest the full relevant amount in UK government stocks and bonds or shares in UK trading companies.

Under the Tier 1 (Entrepreneur) subcategory, an individual may be eligible to settle in the UK if they have been living in the UK for three or five years. All Tier 1 (Entrepreneur) individuals who have invested the minimum required amount in a business in the UK can qualify for settlement after five years. If, after three years, the net number of settled employees has increased to 10 or the business has had a turnover or increased turnover of £5 million, the individual will be able to apply for settlement at that point.

Under the Tier 2 (General) route, individuals earning over £159,600 are exempt from the annual cap of certificates of sponsorship and the employer does not have to undertake the resident labour market test. Furthermore, individuals who have held a Tier 2 (General) visa within the previous 12 months and wish to make a subsequent Tier 2 application from outside the UK after their initial visa has expired, may have to spend 12 months outside the UK before they can reapply to return to the UK under the Tier 2 category. However, if they are earning over £159,600, they are exempt from the 12-month cooling-off period.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

There are minimum salary requirements applicable to the Tier 2 (ICT) subcategories. These vary depending on factors such as the length of the proposed UK assignment, type of role the non-EEA national will be undertaking in the UK and the subcategory under which they will be applying (typically £41,500 for the Long-term Staff subcategory and £23,000 for the Graduate Trainee subcategory). The Home Office publishes codes of practice that specify the minimum salary requirements for the role as well as minimum salary thresholds for the visa category. The employer should determine the relevant salary requirement for the sponsored worker by identifying the appropriate code that matches most closely to the proposed job. If the individual is working in the UK for less than 12 months, they will be assessed on their pro rata yearly earnings.

**16 Is there a quota system or resident labour market test?**

There is a quota system in the UK that applies to non-EEA nationals who are being sponsored under the Tier 2 (General) subcategory. The quota (annual cap) applies to migrants applying for a visa from outside the UK and earning a salary of less than £159,600 or those applying

**Update and trends**

As part of Brexit negotiations, the continued right of EEA (and Swiss) nationals to live, work and travel freely in the UK, after 29 March 2019, remains subject to agreement as part of the exit deal. In June 2018, the Home Office issued a statement of intent that seeks to provide clarity for those individuals, and their associated family members, arriving in the UK before the end of the proposed transition period (31 December 2020) to continue to reside in the UK and to ultimately secure settled status. No details have been given at this time as to the proposed position for EEA nationals after December 2020. All such agreements relating to freedom of movement remain at proposal stage and are subject to agreement and ratification by the UK and all 27 other EU member states.

from within the UK and switching from the Tier 4 partner category. The current quota limit is 20,700. There is also a limit of 2,000 places per year for individuals applying under the Tier 1 (Exceptional Talent) and a limit of 2,000 places for Tier 1 (Graduate Entrepreneur) categories.

The UK also requires a resident labour market test (advertising) to be completed for Tier 2 (General) applications unless the role qualifies for an exemption. Employers must demonstrate that they have advertised the vacancy to the resident labour market for a minimum of 28 days via two specific mediums and have been unable to find a suitable settled worker. The medium of advertising is dependent on the salary for the role being advertised.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

The skill threshold for Tier 2 employment requires that a role is National Qualifications Framework level 6 or above. Individuals must have worked for the company for at least 12 months directly prior to a transfer if they will be applying under the Tier 2 (ICT) Long-term Staff subcategory, unless they are earning over £73,900. The Tier 2 (ICT) Graduate Trainee subcategory requires that the individual must have been employed by the company for a minimum of three months prior to the transfer.

Under the Tier 2 (General) subcategory, individuals must be able to demonstrate their competence in the English language.

Individuals applying under both categories must demonstrate that they have sufficient funds to maintain and support themselves and any dependants in the first month without having to resort to public funds. Employers are also able to certify this requirement for any Tier 2 migrants.

**18 What is the process for third-party contractors to obtain work permission?**

A third-party contractor may work on another company's premises if there is a contract in place that enables the work to be undertaken. The sponsoring company must have full responsibility and control for the contractor's duties, functions and output while they are working on the client company's site.

If the contractor's duties or responsibilities fall outside the scope of the contract between the client company and the sponsoring company, the contractor may have to be sponsored directly by the client company.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

Individuals are no longer required to claim points for qualifications under the Tier 2 category. However, sponsors must be able to show that the individuals are suitably qualified for the role they are undertaking in the UK and they may still need to rely on their degree to meet the English language requirement.

In addition, individuals switching from the Tier 4 (Student/General) subcategory into the Tier 2 (General) subcategory within the UK will need to show that they have been awarded their degree, unless they are completing a PhD.

Individuals applying under the Tier 1 (Exceptional Talent) subcategory will need to be endorsed by the relevant competent body as designated by the Home Office. Each of the competent bodies has their own requirements, which take into account the individual's qualifications, skills, career history and potential contribution to the UK.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Restrictions apply on switching immigration categories within the UK. Individuals with Tier 2 permission cannot convert their short-term visa into a longer-term visa while in the UK. Individuals must return to their country of origin or legal residence and apply at a UK diplomatic post for new immigration permission under a different category or subcategory.

Individuals who have held a Tier 2 (ICT) Long-term Staff visa within the previous 12 months and who wish to make a further Tier 2 application will be subject to a 12-month cooling-off period outside the UK before they can re-apply. The exceptions to this are if the individual will be making an application under the Tier 2 (ICT) Long-term Staff visa subcategory and will be earning a minimum salary of £120,000, if they are applying under Tier 2 (General) and will be earning a minimum salary of £159,600 or where they were only being sponsored under the Tier 2 category as recorded by the certificate of sponsorship for a period of three months or less.

**21 Can long-term immigration permission be extended?**

Broadly speaking, immigration permission can be extended but the maximum period varies depending on the category.

Individuals issued with a certificate of sponsorship under the Tier 2 (ICT) Long-term Staff subcategory can only extend their stay up to a maximum of five years (unless they are earning a salary of £120,000 or more, in which case the maximum is nine years). Once the maximum period is complete, the individual must leave the UK and cannot apply for further Tier 2 permission for a period of 12 months unless they are receiving a salary package of £120,000 or more.

Tier 2 (General) migrants can extend their leave up to a maximum of six years in total and may be eligible to apply for indefinite leave to remain in the UK (settlement) after five years. If they do not qualify for settlement, they must leave the UK once they have spent six years in the country. They will also be subject to the 12-month cooling-off period outside the UK, unless they are earning a salary of £159,600 or more.

**22 What are the rules on and implications of exit and re-entry for work permits?**

As a general rule, individuals are able to exit and re-enter the UK until the expiry of their visa. However, if individuals will be based primarily outside the UK, they should apply for a multiple-entry visa.

If an individual remains outside the UK for a continuous period of more than two years, their immigration permission may automatically lapse.

Further, individuals should note that if they eventually wish to apply for settlement in the UK or UK citizenship, absences outside the UK may have an effect on their eligibility for any such application and should therefore be monitored.

**23 How can immigrants qualify for permanent residency or citizenship?**

Permanent residency in the UK is referred to as 'settlement' or 'indefinite leave to remain'. If an individual is in a category that permits settlement, and provided they meet the requirements in place at the time they apply, they will usually be able to apply after a five-year residence period. Individuals under the Tier 1 (Investor) or Tier 1 (Entrepreneur) subcategories may be eligible to apply for settlement after two (Investor) or three (Investor and Entrepreneur) years if certain criteria are met. Note that certain Tier 2 (ICT) migrants who submitted their entry clearance application after 6 April 2010 are not eligible for settlement after five years of continuous residence spent in the UK but may be eligible for settlement after 10 years. They will be required to meet the eligibility requirements for this category at the time of application.

A migrant's absences from the UK may affect their ability to apply for settlement. During the five-year residence period in the UK, there must be no more than 180 days' absences in any rolling 12-month period, unless there are exceptional circumstances. Settlement status can lapse if an individual remains outside the UK for a continuous period of more than two years.

Individuals must usually have held settled status for at least a year before being able to apply for citizenship. Note that the residency requirements for settlement and citizenship are different.

**24 Must immigration permission be cancelled at the end of employment in your jurisdiction?**

If an individual is sponsored under Tier 2 or the former work permit scheme and the individual resigns, is dismissed or made redundant or their assignment ends earlier than anticipated, the sponsoring organisation must notify the Home Office that the individual is no longer being sponsored. If an individual has more than 60 days remaining on their current visa, the Home Office will usually curtail their permission to 60 days and if the individual wishes to remain in the UK they will be required to make a new visa application before that date to extend their stay. However, if the assignment ends in line with their visa, no notification is required.

When and how the notification must be made will be dependent upon the type of sponsorship the individual holds.

**25 Are there any specific restrictions on a holder of employment permission?**

Under Tier 2, an individual is only permitted to work in the UK in the role specified on the certificate of sponsorship (work permit) for the sponsoring organisation. However, they may also:

- undertake voluntary work in any sector;
- undertake a course of study provided it does not interfere with the job they have been sponsored to do in the UK; or
- take an extra job in the same sector at the same level as that specified on the certificate of sponsorship provided they do not work more than 20 hours per week in their secondary employment.

If an individual with Tier 2 permission wishes to significantly change his or her role or change employer in the UK, he or she must submit a new application and obtain new immigration permission before commencing in the new role or with the new employer.

Other restrictions include a prohibition on migrants claiming public funds while in the UK and a requirement that certain nationals register their status with the police if they are granted UK immigration permission for more than six months.

## Dependants

**26 Who qualifies as a dependant?**

The following people qualify as dependants:

- partners, including spouses, civil partners, unmarried partners or same-sex partners; and
- children, including adoptive children, under the age of 18 years. It is important to note that children who are already in the UK as dependants may extend their immigration permission beyond 18 years of age in line with the main applicant, provided they remain financially and emotionally dependent on the main applicant and meet certain requirements.

**27 Are dependants automatically allowed to work or attend school?**

Under the Tier 2 category, dependants are permitted to work. However, they are not allowed to work as a doctor or dentist in training.

It is compulsory for children between the ages of five and 16 to be in full-time education, regardless of their immigration status. Dependants can also attend further education colleges, sixth-form colleges and universities as long as they have the required qualifications (if necessary) and fees are paid (where applicable).

**28 What social benefits are dependants entitled to?**

Dependants must show that they are able to maintain and accommodate themselves for the duration of their stay in the UK without relying upon public funds.

As part of the application process, migrants pay the immigration health surcharge and, as such, will be able to receive healthcare from the National Health Service (NHS). Immigration applications can be refused, however, if an individual has previously incurred NHS charges that remain unpaid (if treatment was received without a suitable visa status).

## Other matters

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

Applications for entry clearance or leave to remain in the UK can be refused if the applicant has been convicted of a criminal offence, particularly where individuals have been sentenced to a period of imprisonment of 12 months or more.

For EEA citizens seeking entry to the UK, under current legislation, previous criminal convictions alone cannot constitute sufficient grounds for refusal and exclusion can only be based on the grounds of public policy, public security or public health.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

If an organisation is discovered to be employing workers illegally, they can be fined up to £20,000 per illegal worker and face reputational damage from any resulting publicity. Any employer who was aware of the illegal working could also be imprisoned for up to five years, and fines can be unlimited.

Organisations could also have their sponsor licence rating downgraded or lose their licence in its entirety, which affects an organisation's ability to employ new non-EEA migrants and to continue to employ any existing sponsored employees.

Individuals who are found to be non-compliant with UK immigration law may be refused entry or asked to leave the UK and, in the most serious of cases, an individual can be banned from entering the UK.

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**31 Are there any minimum language requirements for migrants?**

Under the Tier 2 category, an English language requirement must be met by all migrants applying under Tier 2 (General).

At present, applicants are able to show that they meet the English language requirement in one of three ways:

- being a national of a country recognised as being majority English-speaking;
- obtaining a specific score in an approved English language test; or
- obtaining a qualification that has been taught in English and is recognised by the UK national academic recognition information centre as being equivalent to a UK bachelor's degree or above.

**32 Is medical screening required to obtain immigration permission?**

Non-EEA migrants applying for a UK visa for more than six months may be referred for a medical examination. In addition, individuals who state health or medical treatment as a reason for their visit to the UK, or those who appear not to be in good mental or physical health, can also be referred. The cost for the health screening varies depending on the country of origin and it is the migrant's responsibility to meet this cost and failure to attend could result in the refusal of the visa application.

Individuals applying from particular countries are required to obtain a certificate to prove they are free from infectious pulmonary tuberculosis if they are applying for a visa that is more than six months in duration. They should consult the UK diplomatic post before travelling. These individuals must carry their medical certificate in their hand luggage to avoid being delayed on arrival to the UK. It is also possible for individuals to be chosen for medical screening on entry to the UK.

There is now an immigration health surcharge that must be paid by all non-EEA migrants who are applying to come to or remain in the UK for six months or more. There are some exemptions and the amount payable depends on the duration of the visa being applied for.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

Under the Tier 2 category, a non-EEA employee may be seconded to a third-party client site by the UK sponsor. There must be a time-bound contract in place between the companies for the provision of goods or services. The sponsoring company must have full responsibility and control of the employee's duties, functions and output while he or she is working on the client company's site and it must continue to employ and pay the secondee. The employee must be seconded as an extra member of staff to assist with the delivery of the contract.

A non-EEA national may also be seconded to the UK under the business visitor rules and similar considerations will apply. In addition, the UK client company must have no direct corporate relationship with the overseas company.

# United States

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## Overview

### 1 In broad terms what is your government's policy towards business immigration?

Current US immigration law permits foreign nationals with certain knowledge, skills and abilities to be admitted to the US on either a temporary (non-immigrant) or permanent (immigrant) basis to meet specific labour market needs. There are numerous categories under which an individual may be granted non-immigrant status to enter the US for business purposes, including the following:

- business visitor;
- specialty occupation professional;
- professional under the North American Free Trade Agreement (NAFTA);
- intra-company transferee;
- treaty trader;
- treaty investor; and
- individual with extraordinary ability or achievement.

There are also several categories under which a foreign national may qualify for an immigrant (permanent residence) visa. These categories are prioritised based on the needs of the US labour market, as determined by Congress. The number of immigrant visas issued in each category is determined by both annual and per-country numerical limits.

Certain business immigration applications require that the petitioning employer demonstrate to the Department of Labor (DOL) that no US workers are able, willing, qualified and available to take the position to be filled by the foreign national beneficiary. Moreover, an employer may need to attest that hiring the foreign national will not negatively impact the wages and working conditions of similarly situated US workers. Companies are subject to strict penalties for failing to comply with the tightly regulated conditions relating to the employment of foreign workers in the US.

## Short-term transfers

### 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A short-term business visitor will require a visa if he or she is not a citizen of either a visa-exempt country or a nation that participates in the Visa Waiver Program (VWP) administered by the Department of Homeland Security. The Electronic System for Travel Authorization (ESTA) is an automated system used to assess eligibility to travel to the US under the VWP and to confirm whether such travel poses any risk. Upon completion of an online ESTA application, an applicant is notified of his or her eligibility to temporarily travel to the US without a visa.

A short-term business visitor who requires a visa to enter the US will need to apply for the required visa stamp at a US consulate or embassy. The individual will need to attend an interview as part of the application process.

### 3 What are the main restrictions on a business visitor?

Business visitors may enter the US for a period of stay up to six months, although individuals entering under the VWP are only permitted to remain in the US as a business visitor for 90 days. In practice, a foreign national will only be admitted to the US as a visitor for the period of time required to complete his or her business activities.

Permissible activities for a business visitor in the US include the following:

- consulting business associates;
- attending business meetings;
- travelling for a scientific, educational, professional or business convention or a conference on specific dates;
- conducting independent research; and
- negotiating a contract.

A business visitor generally may not engage in 'hands-on' work in the US or receive remuneration from a US source.

### 4 Is work authorisation or immigration permission needed to give or receive short-term training?

Work authorisation is generally not required for individuals providing short-term training on products or technology purchased by a US entity from a supplier abroad. In addition, work authorisation is generally not necessary to provide specific short-term training involving the transfer of information from a foreign entity to a related US organisation.

Persons entering the US to receive short-term training do not typically require work authorisation, so long as the training activities do not constitute productive employment.

Foreign nationals entering the US to give or receive training may not receive any remuneration from a US source.

### 5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

US transit visas are not required for citizens of visa-exempt countries. Travellers permitted to enter the US under the VWP or who hold a valid business visitor visa generally do not require a transit visa. All other foreign nationals require a transit visa to travel through the US. In order to obtain a transit visa, travellers must apply at a US consulate or embassy.

An applicant for a transit visa must establish that he or she intends to pass in immediate and continuous transit through the US. Transit aliens must have onward transportation arrangements to a final destination outside the US.

## Long-term transfers

### 6 What are the main work and business permit categories used by companies to transfer skilled staff?

The work permit categories most commonly used by companies to transfer skilled personnel are outlined below.

**H-1B – specialty occupation professional**

The H-1B category allows US employers to hire certain foreign employees in specialty occupations. US immigration regulations define 'specialty occupation' as an occupation that normally requires a minimum of a four-year US bachelor's degree or equivalent for entry.

There is a limit or quota of 65,000 new H-1B visas that can be issued each year. The US sets aside 6,800 of these H-1B visas for citizens of Chile and Singapore.

A separate quota of 20,000 H-1B visas is reserved for beneficiaries who have attained a US master's degree or higher. Petitions filed on behalf of beneficiaries who hold a US master's degree or higher

will be counted against the regular H-1B quota once the United States Citizenship and Immigration Services (USCIS) receives sufficient petitions to reach the advanced degree cap.

**E-3 – Australian specialty occupation professional**
E-3 visas are available for Australian citizens who meet the criteria for an H-1B visa, as stated above. The number of E-3 visas issued is limited to 10,500 per fiscal year.

**Professional under NAFTA**
NAFTA establishes the rules of trade and investment between Canada, the US and Mexico. The non-immigrant NAFTA professional (TN) category allows citizens of Canada and Mexico to engage in prearranged business activities in the US as NAFTA professionals. NAFTA provides that a citizen of either Canada or Mexico may work in a professional occupation in the US provided that the following criteria are met:
- the individual's profession is among the 63 occupations listed in NAFTA Appendix 1603.D.1;
- the alien meets the specific criteria for the occupation; and
- the foreign national will engage in business activities at a professional level in the occupation.

**L-1A or L-1B – intra-company transferee**
L-1 status is used to transfer employees from a company abroad to a related entity in the US. L-1A classification applies to aliens seeking admission to the US to assume an executive or managerial role, while L-1B classification is reserved for foreign nationals entering the US to perform work in a 'specialised knowledge' capacity. To qualify for L-1 status, an individual must have been employed with a qualifying organisation outside the US for at least one continuous year in the past three years in a position that was either managerial or executive in nature or required the application of specialised knowledge. A qualifying organisation is a US or foreign firm that is or will be doing business on a regular, systematic and continuous basis providing goods or services, or both. Branches, affiliates, joint ventures and subsidiaries are all considered qualifying organisations in the L-1 context.

**E-1/E-2 – treaty trader/treaty investor**
E-1 or E-2 non-immigrant visa status may be granted based on either substantial trade or investment undertaken by a foreign national or company with the same nationality as a country that has entered into a treaty of commerce and navigation with the US. An applicant for E-1 or E-2 status must be required in the US to provide either managerial direction or highly specialised skills essential to the successful operation of the enterprise.

**O-1 – alien with extraordinary ability or achievement**
The O-1 non-immigrant visa is for individuals who possess extraordinary ability in the sciences, arts, education, business or athletics, or who have a demonstrated record of extraordinary achievement in the motion picture or television industries and have been recognised nationally or internationally for those achievements.

## 7 What are the procedures for obtaining these permissions? At what stage can work begin?

The procedure for obtaining US work authorisation is determined by the category under which an individual applies and his or her country of citizenship.

In most cases, the process begins by filing a petition with USCIS. Once the petition is approved, the beneficiary will apply for a visa stamp (if required) at a US consulate or embassy abroad and then enter the US to begin work.

Some applications for US work authorisation do not involve USCIS. For example, Canadian nationals may apply for admission as a NAFTA professional or L-1 intra-company transferee at a US port of entry, and Mexican citizens are permitted to apply for NAFTA professional status at a US consulate or embassy. In addition, E visa applicants may submit their application directly to a US consulate or embassy. Finally, employers with an approved L-1 blanket petition may direct foreign national employees to apply for L-1 status at a US consulate or embassy abroad without first obtaining an individual approval from USCIS.

A US employer who intends to submit an H-1B or E-3 petition on behalf of a non-immigrant worker must file a labour condition application (LCA) with the DOL. Each H-1B and E-3 petition must include an LCA approved by the DOL.

In order to prevent an adverse impact on the US workforce, the employer applying to temporarily hire a non-immigrant worker in H-1B or E-3 status must make the following attestations:
- employment of the foreign worker will not adversely affect the wages and working conditions of US workers similarly employed in the area of intended employment;
- the employer will pay the foreign national the higher of the actual wage or the prevailing wage for the occupational classification in the area of intended employment;
- the employer will notify employees that an LCA is being filed; and
- at the time the application is signed, there is no strike, lockout or work stoppage related to a labour dispute in the occupation.

In most situations, employment cannot commence until the individual has been admitted to the US in work-authorised status.

## 8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

Classification in the H-1B, TN, L-1 and O-1 categories is normally granted for an initial period of three years. In most instances, E-3 visas are issued with an initial validity period of two years. E-1, E-2 and L-1 visas may be issued for up to five years, but individuals are often only admitted to the US for two or three years at a time.

Extensions are permitted for most visa categories. The number of extensions permitted and the total amount of time that a person may remain in the US depends on his or her category. See question 21.

## 9 How long does it typically take to process the main categories?

The length of time required to adjudicate a US immigration petition varies considerably depending on the specific category, application procedure and current government processing times relating to the filing in question.

Canadian citizens seeking status as a NAFTA professional or intra-company transferee may apply at a US port of entry, which typically results in an on-the-spot decision. However, there is currently a pilot programme at the Blaine Port of Entry that may affect this in the future.

Most applications filed with USCIS take several months to be processed, although certain types of cases may be submitted for premium processing service for an additional fee of US$1,225. USCIS guarantees 15-calendar day processing of applications filed for premium processing, which is typically prolonged if there is a Request for Evidence.

Individuals who require a visa in order to enter the US must apply for a visa stamp at a US consulate or embassy. Wait times vary by visa post and fluctuate depending on the volume of applications received. During busy periods, it may take several weeks to secure a visa appointment. Following the appointment, the US consulate or embassy will usually take five to seven business days to provide the actual visa stamp.

Some visa applications require 'administrative processing', which involves completion of additional checks before a visa stamp will be issued to an applicant. Administrative processing is usually complete within 60 days of a visa interview, although it may take several months to conclude.

## 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

An employer who intends to file either an H-1B or E-3 application on behalf of a foreign worker must attest that the individual will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to US workers.

## 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

US immigration authorities generally follow objective criteria, but they are also permitted to exercise discretion based on subjective factors. For example, the adjudication of an L-1B petition requires careful consideration of certain objective criteria; however, the final determination as to whether the beneficiary is a 'specialised knowledge' worker will often turn on the officer's subjective reasoning. In October 2017, a USCIS policy memo was issued requesting adjudicators to no longer give deference to prior case approvals.

**12 Is there a special route for high net worth individuals or investors?**

There are two visa categories that may be considered a special route for high net worth individuals or investors.

**EB-5 – Immigrant Investor Program**

USCIS administers the Immigrant Investor Program, also known as EB-5, created by Congress to grant US permanent residence to foreign investors who stimulate the US economy through job creation and capital investment. EB-5 visa holders must generally invest a minimum of US$1 million in the US, although a minimum investment of US$500,000 may suffice if the foreign national invests in either a rural area or an area with high unemployment.

**E-2 – treaty investor**

The E-2 non-immigrant visa category allows a citizen of a country with which the US maintains a treaty of commerce and navigation to enter the US to develop and direct the operations of an enterprise in which the individual has invested or is in the process of investing. The investment must be substantial, which is interpreted to mean that it is sufficient to ensure the successful operation of the enterprise. Moreover, the investment must be operational; speculative, passive or idle investments do not qualify. The foreign national must also have control over the funds and the investment must be subject to loss if the enterprise fails.

**13 Is there a special route for highly skilled individuals?**

The US does not have a special route for highly skilled foreign nationals, other than what has been previously mentioned regarding L-1B specialised knowledge workers and O-1 extraordinary ability workers. There are also permanent residence routes for those with exceptional ability, extraordinary ability and outstanding researchers and professors.

**14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?**

See question 12 for information relating to the EB-5 programme.

**15 Is there a minimum salary requirement for the main categories for company transfers?**

Employers who file either an H-1B or E-3 application on behalf of a foreign national must attest that the individual will be paid the higher of the actual wage or the prevailing wage for the occupational classification in the area of intended employment. The prevailing wage is determined by the DOL based on wage survey results. The actual wage is the salary paid to employees in the same or similar role as the one to be assumed by the foreign worker.

**16 Is there a quota system or resident labour market test?**

See question 6 for information relating to the annual quota that applies to the H-1B and E-3 visa categories.

In recent years, the H-1B cap has been met within the first week of the date on which the US government began accepting applications for the next fiscal year.

Although the E-3 visa category is also subject to an annual quota, it has never been met.

There is no labour market test for the main categories.

**17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?**

See question 6 for the primary eligibility requirements associated with the main categories.

**18 What is the process for third-party contractors to obtain work permission?**

It is typically necessary for an employer to establish that it has a valid employer–employee relationship with the sponsored foreign worker, meaning that the employer has authority to hire, fire and pay the individual. In addition, the employer should exercise the right to control the means and manner in which the beneficiary performs the job. No single factor is decisive; adjudicators will review the totality of the circumstances when making a determination as to whether the required employer–employee relationship exists.

Exception: Petitions filed for aliens with extraordinary ability or achievement in the O-1 category may be filed by an agent as opposed to an employer.

It is generally permissible for an employer to enter into a contract with another party to provide services to be performed by a US visa holder, so long as a bona fide employer-employee relationship exists between the sponsoring US employer and the foreign worker at all times. In the event that the contract requires the visa holder to provide services at an end-client or third-party location, this information must be disclosed in any H-1B, E-3 or L-1 petition filed by the employer, along with documentation that establishes the existence of the required relationship even while the beneficiary works off-site.

**19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?**

The H-1B and E-3 visa categories require an expert evaluation of any degrees not obtained in the US. If a beneficiary does not have a four-year US bachelor's degree or foreign equivalent, or the individual has a degree that is not in a relevant field, then it may also be necessary to obtain an evaluation of the individual's professional experience.

An academic equivalency assessment may also be required for certain NAFTA professionals who do not hold a degree from a US, Canadian or Mexican educational institution.

If the position that the foreign national will assume in the US requires membership in professional associations or guilds, completion of tests relating to medical knowledge, etc, then evidence that the foreign national meets these requirements should be filed with the application.

## Extensions and variations

**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Tourists or business visitors should not enter the US with the intention to work or to remain in the country on a long-term basis. Nonetheless, it is possible for certain non-VWP visitors in the US to secure classification in a work-authorised visa category in the event that circumstances change subsequent to their initial entry. This is normally achieved by filing a change of status petition with USCIS prior to the expiry of the individual's authorised stay in the US. In some situations, it may be easier and quicker for the individual to simply depart the US and apply for status in a work-authorised visa category from outside the country.

**21 Can long-term immigration permission be extended?**

Long-term US immigration permission may be extended so long as the beneficiary continues to meet the eligibility criteria and the statutory time limit for their particular US immigration classification is not yet met:

- H-1B status is normally granted for an initial period of three years and may be extended for an additional three years. In certain situations, H-1B status may be extended beyond the six-year maximum;
- L-1B status is usually granted for an initial period of three years and then extended for up to two years. Thus, the maximum time that a person may remain in the US in L-1B status is five years;
- persons in L-1A status may also be admitted for an initial period of three years and extensions in increments of two years are permitted up to a total of seven years;
- an individual in E-1 or E-2 status is permitted to extend status indefinitely in two-year increments, although the individual must maintain an unequivocal intent to return to his or her home country. An individual in E-3 status is also permitted to extend status indefinitely in two-year increments, but must not exhibit immigrant intent, which can be implied after lengthy stays in the US; and
- Canadians and Mexicans admitted to the US as NAFTA professionals may extend status for three years after their initial period of stay is complete.

There is no limit on the number of extension requests that may be filed; however, the individual may not exhibit immigrant intent, which can be implied after lengthy stays in the US.

### 22 What are the rules on and implications of exit and re-entry for work permits?

**Exit requirements**

All travellers who enter the US by air or sea will receive an admission stamp in their passport, which notes the date, class and expiry of admission to the country. An electronic arrival or departure record (Form I-94) may be downloaded online. Land crossings may issue travellers paper arrival or departure records. The expiry date shown on a foreign national's Form I-94 governs how long he or she may stay in the US.

When departing the US, persons with a paper I-94 record must surrender it to the commercial carrier or Customs and Border Protection (CBP). Paper I-94 records do not, however, need to be surrendered by individuals travelling from the US to Canada or Mexico for fewer than 30 days.

**Re-entry requirements**

Individuals who require a visa for admission to the US generally require a valid passport and visa stamp in order to re-enter the country.

Canadian nationals are visa-exempt, but they may be required to provide other evidence of US work authorisation upon re-entry. Acceptable evidence includes a Form I-797, Approval Notice issued by USCIS.

### 23 How can immigrants qualify for permanent residency or citizenship?

**Permanent residence**

A permanent resident is an individual who is authorised to live and work in the US on a permanent basis. A person granted permanent residence is issued a permanent resident card, commonly called a green card. A foreign national may qualify for US permanent residence in several different ways.

**Permanent residence through an offer of employment**

A foreign national may be eligible for permanent residence based on an offer of permanent employment in the US. Most categories require an employer to obtain an approved labour certification application, also known as PERM. The process requires an employer to first conduct a rigorous test of the labour market to establish that there are no able, willing, qualified and available US workers to accept the job opportunity. PERM also requires an employer to attest that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed US workers. Once the employer obtains an approved PERM, then an I-140, immigrant visa petition for alien worker, may be submitted to USCIS. The third and final stage of the process for obtaining permanent residence involves adjusting status from within the US or applying for an immigrant visa at a US consulate or embassy abroad.

**Permanent residence through investment**

Permanent residency may be available to investors or entrepreneurs who make an investment in an enterprise that creates new US jobs. See question 12 for more information regarding the EB-5 programme.

**Permanent residence through self-petition**

Certain 'aliens of extraordinary ability' and individuals who have been granted a US national interest waiver may self-petition for US permanent residence.

**Permanent residence eligibility**

The basic criteria for securing permanent resident status either while in the US through adjustment of status or outside the US by way of consular processing are as follows:

- qualification in one of the established US immigrant categories, as evidenced by an approved immigrant visa petition (there are a few exceptions to this general requirement);
- immediate availability of an immigrant visa; and
- admissibility to the US.

**Immigrant visa availability**

The number of immigrant visas that may be issued to individuals seeking permanent residency status each year is subject to an annual quota.

Immigrant visas for immediate relatives of US citizens are unlimited and, therefore, always available. Immediate relatives include spouses, parents and unmarried children under the age of 21.

Immigrant visa numbers for individuals in the various employment-based categories are limited.

The US Department of State is responsible for allocating visa numbers. Since immigrant visa demand exceeds the available supply in many categories, it may take several years for some foreign nationals to secure US permanent resident status.

The length of time that a person must wait before adjusting status or receiving an immigrant visa from a US consulate or embassy depends on the following factors:

- the demand for and supply of immigrant visa numbers in the individual's particular category;
- the per country visa quota applicable to the foreign national's country of birth; and
- the person's priority date, which is the date on which an approved PERM was filed. If no PERM was filed on behalf of the foreign national, the priority date is determined based on the date when his or her approved immigrant visa petition was properly filed with USCIS.

**Citizenship through naturalisation**

Naturalisation is the process by which US citizenship is granted to a foreign national after fulfilling specific statutory requirements established by Congress. A person may naturalise in any one of the following situations:

- he or she has been a US permanent resident for at least five years and meets all other eligibility requirements;
- he or she has been a permanent resident for three years or more and meets all eligibility requirements to file as a spouse of a US citizen; or
- he or she has qualifying service in the US armed forces and meets all other eligibility requirements.

### 24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

In the event that a foreign national in H-1B, O-1 or E-3 status has his or her employment terminated by the US employer or resigns prior to the expiry of his or her authorised period of stay, the employer must notify the appropriate government agency. Moreover, the employer is obliged to cover the reasonable cost of return transportation for terminated employees in H-1B or O-1 status. The employer should also withdraw the LCA or LCAs associated with any H-1B or E-3 visa holder whose employment is terminated or resigns.

### 25 Are there any specific restrictions on a holder of employment permission?

A foreign national in the US may not change employers or engage in other employment without the necessary approval. Some visa categories require that an amended petition be filed whenever a foreign worker changes work location or position. As such, it is important to obtain legal counsel to determine whether a change in employment requires an amended filing.

Individuals who have US work authorisation may attend school or engage in volunteer work that does not involve compensation and would not otherwise be performed by a paid employee.

## Dependants

### 26 Who qualifies as a dependant?

Spouses (including same-sex spouses) and unmarried children under 21 years of age qualify as dependants. Common law partners or persons in a civil union are not regarded as dependants for US immigration purposes, but these individuals may apply to enter the US in B-2 visitor status.

### 27 Are dependants automatically allowed to work or attend school?

Dependants are not automatically permitted to work in the US. Spouses of principal visa holders in the E and L categories may file an application for an employment authorisation document (EAD) with USCIS after being granted dependant status. With effect from 26 May 2015,

**Update and trends**

With the Trump administration in office for more than one year now, the landscape of US immigration is certainly beginning to feel different. Under the banner of 'Buy American, Hire American', we have seen increased levels of scrutiny being applied to nearly all aspects of US immigration. While comprehensive changes to the US immigration system would require legislation, likely requiring years of debate, changes to the way immigration applications are interpreted by immigration offices has been felt across the entire immigration landscape.

**Travel ban**

Perhaps the most talked about development in US immigration recently has been the travel ban. In June 2018, the United States Supreme Court upheld a Presidential Proclamation that imposed travel restrictions on nationals from seven countries: Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. The restrictions imposed on nationals of these countries vary in severity, from restrictions on visitor visas to government officials and their families from Venezuela, to nearly full bans on travel for individuals from North Korea. This highly contested Proclamation was challenged through various levels of the court system, with the Supreme Court ultimately ruling that the implementation of such travel restrictions is within the President's powers to suspend the entry of certain foreign nationals where such entry would be detrimental to the national interest.

**Future of Deferred Action for Childhood Arrivals (DACA) policy remains unclear**

Following a year of challenges to the DACA programme, the future of the programme remains unclear. The Trump administration originally planned to terminate the programme, but before they could do so, two federal courts ordered the Department of Homeland Security to continue accepting applications from DACA recipients applying for extensions under the programme. The federal court order will force the Department of Homeland Security to evidence their justification for rescinding the programme; their response has not yet been publicised.

**Increased scrutiny**

Overall, the trend has been an increase in scrutiny of nearly all non-immigrant and immigrant classifications. No more deference is given to prior case approvals, allowing USCIS adjudicators to scrutinise cases as if they are reviewing them for the first time. There have been delays at consular posts, with several cases held in administrative processing. Immigration and Customs Enforcement released its comprehensive worksite enforcement strategy in January 2018, and more than ever, companies must ensure that their I-9 files are in order and be prepared for site visits. There has been increased information sharing within agencies and between governments. H-1Bs have been increasingly scrutinised, with additional requirements placed on employers to demonstrate that roles qualify as specialty occupations, and Level 1 wages have been increasingly challenged. In addition, as a result of a February 2018 USCIS policy memo, US employers have been burdened with increased requirements when placing H-1B workers at third-party client sites. While the requirement to notify USCIS of such placements has existed for several years, placements were not challenged to this degree. New requirements mandate that employers be able to provide a full itinerary for H-1B workers whom they wish to place at client sites, resulting in the inability for businesses to react in an agile manner when business needs dictate swift movement of their H-1B workers.

Similarly, USCIS also released a memorandum that will increase the level of scrutiny applied to F-1 students, J-1 exchange visitors, and M-1 vocational students in relation to whether they have ever violated their status. In situations where an individual in one of the above-mentioned classifications violates their status, they will begin to accrue unlawful presence in the United States, which can ultimately result in a three-year, 10-year or permanent ban from returning to the country. Perhaps most concerning about this development is the limited insight available to understand what types of actions will be considered to be a violation of status, resulting in the trolling of time towards issuance of such a ban. This memorandum has therefore resulted in much anxiety among students and exchange visitors in the US.

Further actions being implemented by the Department of Homeland Security that indicate an increased level of scrutiny is being applied to cases also includes the ban on the use of power of attorney authority in certain immigration filings, the now mandatory interview requirement for employment-based green card applicants, and a pilot project for L-1 applications filed by Canadians at the Blaine Port of Entry, which may indicate that the past practice of applying for L-1 status at the US–Canada border may be changed. It must also be mentioned that the future of NAFTA, which allows for Canadian and Mexican citizens to obtain work authorisation for specific professional roles, remains unclear.

H-4 spouses of certain H-1B non-immigrants who are in the process of seeking employment-based lawful permanent resident status are eligible to apply for an EAD, though this programme is currently under review and is expected to be cancelled. Dependent children are not eligible for an EAD. Processing of EAD applications can take several months.

Dependent spouses and children are generally permitted to attend school in the US. Once a child reaches the age of 21 or gets married (whichever occurs earlier), he or she ceases to qualify as a dependant and would then require his or her own visa to continue studying in the US.

**28 What social benefits are dependants entitled to?**

Dependent children may attend US public school up until grade 12 at no cost.

**Other matters**

**29 Are prior criminal convictions a barrier to obtaining immigration permission?**

A foreign national with a criminal history may be inadmissible to the US. If the individual is already in the US, then he or she may be prevented from adjusting status to lawful permanent resident on the basis of criminality.

The primary criminal grounds for inadmissibility are below:

- crimes of moral turpitude, including murder, rape, arson, theft, forgery, fraud and misrepresentation;
- violations of controlled substance laws;
- multiple criminal convictions;
- drug trafficking;
- human trafficking; and
- prostitution.

It is important to note that there are exceptions to criminal inadmissibility. Most notably, the petty offence exception may be invoked if the offender only committed one crime of moral turpitude, the maximum possible imprisonment sentence for the offence did not exceed one year under statute and the offender was not sentenced to prison for more than 180 days. An exception also applies to offences committed when the individual was under 18 years of age. Certain political offences, such as convictions for attending opposition rallies or demonstrations, may also be exempt.

In some situations, a foreign national may be eligible for a waiver of criminal inadmissibility.

**30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?**

US employers have certain responsibilities under immigration law during the hiring process. More specifically, all companies must confirm the identity and work authorisation of each person hired. In addition, employers are required to complete an I-9 record for every employee. During the entire employment period, companies must comply with any applicable LCA requirements.

Employers that violate US immigration laws may be subject to the following penalties:

- debarment from various immigration programmes;
- civil fines;
- criminal penalties (when there is a pattern or practice of violations);
- debarment from government contracts;
- a court order awarding back pay to any individual discriminated against by the employer; and
- a court order requiring that a certain individual be hired by the employer.

Non-compliance by employers is typically discovered in the course of audits or worksite inspections conducted by US immigration authorities.

Foreign nationals who fail to maintain lawful status in the US may be subject to removal. Individuals who remain in the country well beyond their period of authorised stay may be barred from re-entering the US. Persons who overstay in the US for more than 180 days may be subject to a three-year bar, while aliens who overstay for one year or more may be barred from re-entering the US for a period of 10 years.

**31 Are there any minimum language requirements for migrants?**

The US does not impose any minimum language requirements for migrants. However, there is an English language examination, which must be passed, for naturalisation applications.

**32 Is medical screening required to obtain immigration permission?**

The medical grounds of inadmissibility as defined by US immigration law can be divided into four categories:

- communicable diseases of public health significance;
- lack of required vaccinations;
- physical or mental disorders involving harmful behaviour; and
- drug abuse or addiction.

Medical screening is mandatory for applicants for US permanent residence. As part of the examination process, a physician obtains a blood sample, chest X-ray and vaccination records from the foreign national to establish that he or she is not inadmissible to the US on public health grounds.

Medical examination is generally not necessary for a foreign national seeking temporary admission to the US for employment purposes; however, a consular or CBP officer may require medical screening if deemed necessary. If an individual is diagnosed with a communicable disease, then he or she may be medically inadmissible to the US. As of January 2010, HIV is no longer on the list of communicable diseases of public health significance. Therefore, individuals infected with HIV are not inadmissible to the US on this basis.

**33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?**

If a foreign worker will provide services at an end-client or third-party location, this information must be disclosed in any H-1B, E-3 or L-1 petition filed by the employer. The petitioning employer must also provide evidence that it will have the right to control when, where and how the beneficiary performs work even while the beneficiary is offsite, and a full itinerary is required for H-1B workers. It is advisable for the employer to also submit a copy of a client contract or correspondence confirming the duration of the assignment and the fact that the employer will maintain control of the foreign national at all times. An L-1B petition filed for a beneficiary who will be seconded to a client site should explain how the services provided require application of specialised knowledge.

* *The authors would like to thank Lauren Mullen for her contribution to this chapter.*

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