

To our clients and friends

INFORMATION LETTER

Concerning Amendments to the Republic of Kazakhstan's Legislation on Migration Issues

The normative legal acts of the Republic of Kazakhstan (RK) regulating foreign labor engagement issues and procedure for immigrants' entry and stay in Kazakhstan were amended at the end of March and early April 2016.

1. Intra-Corporate Transfer

Changes to legislation firstly affected the conditions and procedure for issuing and extending foreign labor engagement permits in the framework of intra-corporate transfer¹. Basic legal regulations in this sphere were laid down in November 2015 in the Population Employment Law (as a result of improving the Kazakhstan legislation in connection with joining the World Trade Organization), and now they are set out in details in respective subordinate normative legal acts.

From now on, understood as intra-corporate transfer is a temporary (for the term established by an employment contract, but not more than 3 years, with the right to extend for 1 year) transfer of a foreigner or a stateless person carrying out labor activities in the position of an executive officer, manager or specialist in a legal entity organized in the territory of WTO member state, which is located and acts outside the RK, to branches, subsidiary organizations or representative offices of such legal entity organized in the RK territory under the RK laws.

Thus, only foreign employees of companies organized in the territories of WTO member states sent to their Kazakhstan structural subdivisions or subsidiaries and those employees referred to certain categories (executives, managers and specialists) may be engaged in the framework of intra-corporate transfer.

Pursuant to the general rule, foreign labor engagement permits are issued in the RK within the limits of quota determined by the Government for a respective year. According to the introduced amendments, foreign labor may be engaged in the framework of intra-corporate transfer by the authorized agency's permission, but beyond quota.

¹ Decree No. 173 of the RK Government "On Introduction of Amendments into the Decree No. 45 of the Government of the Republic of Kazakhstan of 13 January 2012 on Approval of the Rules for Establishing Quota for Foreign Labor Engagement in the Republic of Kazakhstan, Rules and Conditions for Issuing Job Placement Permits to Foreign Employees and Work Permits to Employers for Foreign Labor Engagement, and on Introduction of Amendment into the Decree No. 836 of the Government of the Republic of Kazakhstan of 19 June 2001 on Measures for Implementation of the Law of the Republic of Kazakhstan of 23 January 2013 on Population Employment, and Decree No. 673 of the Government of the Republic of Kazakhstan of 2 July 2013 on Approval of the Rules for Privatization of Dwellings from the State Housing Fund" dated 31 March 2016.



Moreover, Kazakhstan again introduces the employer's obligation to conduct preliminary search for labor on the Kazakhstan labor market in the event of intra-corporate transfer via submission of information on the presence of vacant positions to the local executive authority at least 15 calendar days and not earlier than 60 calendar days prior to filing an application to the authorized agency for the issuance or extension of a foreign labor engagement permit.

The RK legislation also defines the list of cases where foreign labor engagement permit in the framework of intra-corporate transfer is not issued or extended:

- employer's failure to observe percentage ratio of the number of foreign employees to the number of local employees determined by the authorized labor agency;
- availability of relevant offers on the domestic labor market;
- establishing the fact of engaging foreign employees by an employer without permits (in this case no new permits are issued within 12 months of the date of establishing such fact);
- failure to fulfill special conditions of permits issued for the previous and current calendar years, which became due (if any);
- non-conformity of educational level (professional qualification) and hands-on experience of foreign labor to respective requirements;
- engagement of a foreign employee to a profession or specialty, which does not conform to the profession or specialty specified in a permit.

There is an obligation imposable on an employee carrying out activities in the RK in the framework of intra-corporate transfer to exit country after expiration of the term of employment contract, which is not to exceed in total 4 years.

2. Foreigners' Stay in the RK

Despite setting out a new version², the procedure for immigrants stay in the RK remains the same.

However, adoption of amendments in this sphere slightly extended the range of obligations of host companies (including employers engaging foreign labor). Starting 25 April 2016, an obligation is imposed on such persons to inform internal affairs authority concerning immigrants staying with them within 3 business days of the date of their arrival. Calculation of the said period starts from 00:01 AM of the day during which an immigrant crossed the RK state border or arrived to the host party.

² Decree No. 190 of the RK Government "On Introduction of Amendments into the Decree No. 148 of the Government of the Republic of Kazakhstan of 21 January 2012 on Approval of the Rules for Immigrants' Entry and Stay in the Republic of Kazakhstan, and Their Exit from the Republic of Kazakhstan, and the Rules for Migration Control and Recording of Foreign Citizens and Stateless Persons Illegally Crossing the State Border of the Republic of Kazakhstan, Illegally Staying in the Territory of the Republic of Kazakhstan, and Persons Prohibited to Enter the Territory of the Republic of Kazakhstan" dated 7 April 2016.

Moreover, in case an immigrant changes temporary place of residence in the RK the obligation to notify the internal affairs authority is imposed on both the host party (within 3 business days) and immigrant who is to pass re-registration with the internal affairs authority at the place of new residence within 5 calendar days.

It is worth mentioning that in the framework of liberalization of the procedure for bringing immigrants to administrative liability for violating the migration legislation, from now on, in case of detecting violations of the migration legislation entailing a sanction in the form of a *warning* and provided that a foreigner himself/herself admits the fact of such violation, no protocol of administrative violation is executed at the RK state border checkpoints.

Should you have any additional questions in connection with this Information Letter, we would be happy to provide you with more detailed information.

Best regards,
AEQUITAS Law Firm