

To our clients and friends

INFORMATION LETTER

Concerning Amendments to the RK Legislation on Foreign Labor Engagement

Starting 1 January 2017, Kazakhstan introduces an updated procedure for foreign labor engagement, which is regulated by the following normative legal acts:

- Key rules for foreign labor engagement are defined in new chapters of the Migration Law¹ (chapter 6) and Employment Law² (chapter 7).
- Rules and Conditions for Issuing Job Placement Permits to Foreign Employees and Work Permits to Employers for Foreign Labor Engagement approved by the Government Decree No. 45³ will remain in effect, however, undergoing slight adjustments.
- The Order No. 559⁴ and the Order No. № 503⁵ describe in details the procedure for obtaining foreign labor permits.
- Since work permits will be issued on a fee-paid basis starting 1 January 2017, the rates of charges for issuing or extending permits are determined in the new chapter 68-2 of the Tax Code⁶ and the Government Decree No. 459⁷.
- The Kazakh language knowledge of foreign employees will be evaluated for the purpose of obtaining a permit for intra-corporate transfer in accordance with the Order No. 212⁸.

¹ RK Law No. 477-IV "On Migration" dated 22 July 2011, as amended (hereinafter, the "Migration Law").

² RK Law No. 482-V "On Population Employment" dated 6 April 2016 (hereinafter, the "Employment Law").

³ Rules and Conditions for Issuing Job Placement Permits to Foreign Employees and Work Permits to Employers for Engagement of Foreign Labor and Foreign Employees Transferred in the Framework of Intra-Corporate Transfer, approved by the Government Decree No. 45 dated 13 January 2013, as amended (hereinafter, the "Government Decree No. 45").

⁴ Order No. 559 of the RK Acting Minister of Health and Social Development "On Approval of the Rules and Conditions for Issuing and/or Extending Foreign Labor Engagement Permits to Employers, and for Intra-Corporate Transfer" dated 27 June 2016 (hereinafter, the "Order No. 559").

⁵ Order No. 503 of the RK Minister of Health and Social Development "On Approval of the Rules for Issuing Information Certificates to Foreigners or Stateless Persons Concerning Their Qualification Conformity for Job Placement, List of High Priority Industries (Types of Economic Activities) and Professions in Demand Therein for Job Placement of Foreigners and Stateless Persons" dated 13 June 2016 (hereinafter, the "Order No. 503").

⁶ RK Code "On Taxes and Other Mandatory Payments to the Budget" dated 10 December 2008, as amended (hereinafter, the "Tax Code").

⁷ Decree No. 459 of the RK Government "On Determination of Rates of Charges for Issuing and/or Extending Permits for Engagement of Foreign Labor to the Republic of Kazakhstan" dated 18 August 2016 (hereinafter, the "Government Decree No. 459").

⁸ State Standard "Evaluation of the Level of the Kazakh Language Knowledge – "KAZTEST," approved by the Order No. 212 of the RK Ministry of Education and Science dated 16 April 2015 (hereinafter, the "Order No. 212").



Please see below the key novelties related to foreign labor engagement procedure.

1. According to the new rules, foreigners' job placement in the RK will be performed not based on a work permit, but on the basis of information certificate concerning qualification conformity for job placement in high priority economy industries (Order No. 503). The procedure for obtaining such information certificate almost coincides with the permit obtainment procedure currently in effect; however, the validity term of the information certificate is 3 months with a possibility of extension for a period not to exceed 3 years and subject to an employment contract entered into with a local employer. The list of high priority economy industries for job placement is defined in Attachment 2 to the Order No. 503.
2. Foreign labor engagement permits (except for permits for intra-corporate transfer) will be issued to employers on a fee-paid basis. This issue is regulated in chapter 68-2 of the Tax Code and Government Decree No. 459. The rates of charges will depend on the foreign employee's category and type of employer's economic activities. Thus, the rate of charge for one permit for engagement of the 1st category employee (chief executive officers and their deputies) will be 137-171 MCI⁹, 2nd category employee (heads of structural subdivisions) – 158-198 MCI, 3rd category (specialists) – 179-224 MCI, and 4th category (qualified employees) – 200-225 MCI.
3. The current procedure for engagement of foreign labor by employers will generally remain the same. However, with respect to intra-corporate transfer, starting 1 January 2017 until 1 January 2021 Kazakhstan again introduces the employer's obligation to conduct preliminary search for labor force on a Kazakh labor market by way of publishing information on available vacancies in the state (Kazakh) and Russian languages in national and local periodicals and on websites of private employment agencies, as well as through sending information on the presence of vacant positions to the population employment center according to the place of carrying out labor activities by foreign labor within 3 business days of the date such vacancies occur. Moreover, a permit for intra-corporate transfer will be issued, *inter alia*, subject to the foreign employee's knowledge of the Kazakh language at a level not lower than elementary, which is to be supported by a certificate in accordance with the Order No. 212. There are also some other changes related to timeframes and other procedural issues.
4. There now exists a category of foreign employees called labor migrants, which cover foreign employees arriving to Kazakhstan as household employees to perform work (provide services) related to housekeeping for employers who are individuals, on the basis of a permit issued by the RK internal affairs authority. The maximum term of a permit to a labor migrant cannot exceed 12 months with a possibility of extension for a period not to exceed 3 months.
5. Foreign labor engagement quota was previously calculated as a percentage ratio to the number of economically active population totally in the RK, and now it will be calculated as a percentage ratio to the labor force, which includes both employed and unemployed population. Foreign labor engagement quota will be determined separately with respect to types of activities, countries of origin, and for engagement of labor migrants. The rules for annual quota allocation for foreign labor engagement do not cover foreigners or stateless persons carrying out labor activities in the RK territory in the framework of intra-corporate transfer.
6. The list of economy industries where it is possible to conduct intra-corporate transfer is defined in Attachment 12 to the Government Decree No. 45 and consists of 21 points,

⁹ In 2016, 1 monthly calculation index (hereinafter, the "MCI") is approximately USD 6.

including mining and processing industries, power supply, construction, wholesale and retail sale, healthcare, agriculture, etc.

7. The list of persons whose labor does not require obtainment of permits in the RK was reduced to 9 points (paragraph 2 of Article 32 of the Employment Law). The current exceptions contained in the Government Decree No. 45 for heads of representative offices and branches of foreign companies, business travelers entering the RK for business trips up to 120 days per a year, and some other categories of foreign employees were not included in this list. So, there is an issue which remains open: will the Government Decree No. 45 be applied starting 1 January 2017 with regard to the lists of persons for whom no permit is required, and if not, what about foreign employees entering the RK before 1 January 2017 without permits, since they would not be required as of the moment of their entry, and will it be necessary to initiate the process of obtaining permits for them starting 1 January 2017? We have organized filing of a respective inquiry to the RK Ministry of Health and Social Development to get official clarifications with respect to this situation.

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

Best regards,
AEQUITAS Law Firm