



ICLG

The International Comparative Legal Guide to:

Corporate Immigration 2019

6th Edition

A practical cross-border insight into corporate immigration law

Published by Global Legal Group, with contributions from:

A. KARITZIS & ASSOCIATES L.L.C
Advokatfirmaet Ræder AS
AILA Global Migration Section
Al Hashmi Law
AOV ABOGADOS
BARTLAW Canadian Immigration,
Barristers and Solicitors
BDO Migration Services
Bojorge & Associates
Borenus Attorneys Ltd
CONCERN-DIALOG CJSC
CS Global Partners
De Luca & Partners
Enrique Arellano Rincón Abogados
S. de R. L. de C. V.

EXPATPRO
Famsville Solicitors
Grant Thornton Malta
Gulapa Law
Immigration Law Associates
J Fetting Inc.
Kingsley Napley LLP
Kuck | Baxter Immigration LLC
Law firm Šafar & Partners, Ltd
Lenz & Staehelin
Magrath Global
michels.pmks Rechtsanwälte
Partnerschaft mbB
Mynta Law

Nakai Immigration Services LPC
Oberhammer Rechtsanwälte GmbH
Petrel & Associes
PKF Demei Law Firm
PricewaterhouseCoopers Legal
Middle East LLP
REAL Avocats à la Cour
Ryken and Associates
SANDIVA Legal Network
Skau Reipurth & Partnere
SRS Advogados | Sociedade Rebelo de
Sousa & Advogados Associados, SP, RL



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

g|g
global legal group



Contributing Editor
Nicolas Rollason,
Kingsley Napley LLP

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Toni Hayward

Sub Editor
Iris Gioti

Senior Editors
Caroline Collingwood
Rachel Williams

CEO
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
July 2019

Copyright © 2019
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-912509-84-3
ISSN 2054-7579

Strategic Partners



General Chapters:

1	What is in Store Under the UK's Proposal for a Future Immigration System? – Nicolas Rollason, Kingsley Napley LLP	1
2	The Peripatetic Businessman's Route to Global Mobility – Micha-Rose Emmett, CS Global Partners	5
3	Open for Business in an Era of American and British Nationalism: Business-Friendly Immigration Policies Around the Globe – Audrey Lustgarten & Dana Imperia, AILA Global Migration Section	9

Country Question and Answer Chapters:

4	Armenia	CONCERN-DIALOG CJSC: Sedrak Asatryan & Janna Simonyan	16
5	Australia	BDO Migration Services: Maria Debra Jockel	22
6	Austria	Oberhammer Rechtsanwälte GmbH: Ewald Oberhammer & Petra Pardatscher	32
7	Belgium	Immigration Law Associates: Tanel Feldman	42
8	Canada	BARTLAW Canadian Immigration, Barristers and Solicitors: Jacqueline R. Bart & Carrie A. Wright	49
9	China	PKF Demei Law Firm: Kelvin Ma & Bruce Chen	59
10	Cyprus	A. KARITZIS & ASSOCIATES L.L.C: Antria Aristodimou & Marios Christodoulou	65
11	Denmark	Skau Reipurth & Partnere: Frederik Brocks & Louise Horn Aagesen	72
12	Finland	Borenus Attorneys Ltd: Jani Syrjänen	79
13	France	Petrel & Associates: Pascal Petrel	86
14	Germany	michels.pmks Rechtsanwälte Partnerschaft mbB: Dr. Gunther Mävers	94
15	Indonesia	SANDIVA Legal Network: Arthur Wailan Sanger, S.H. & Romy Jiwaperwira, S.H.	107
16	Italy	De Luca & Partners: Vittorio De Luca	113
17	Japan	Nakai Immigration Services LPC: Masahito Nakai	123
18	Luxembourg	REAL Avocats à la Cour: Maria Ana Real Geraldo Dias	130
19	Malta	Grant Thornton Malta: Wayne Pisani & Paul Caruana Turner	137
20	Mexico	Enrique Arellano Rincón Abogados S. de R. L. de C. V.: Enrique J. Arellano	146
21	Netherlands	Mynta Law: Arend van Rosmalen	154
22	New Zealand	Ryken and Associates: David Ryken	164
23	Nigeria	Famsville Solicitors: Dayo Adu & Omolola Ahmed	172
24	Norway	Advokatfirmaet Ræder AS: Nils Kristian Lie & Ole André Oftebro	178
25	Oman	Al Hashmi Law: Omar Al Hashmi & Syed Faizy	185
26	Peru	AOV ABOGADOS: Ariel Orrego-Villacorta Icochea	191
27	Philippines	Gulapa Law: Aris L. Gulapa & Phillip Don G. Recentes	199
28	Portugal	SRS Advogados Sociedade Rebelo de Sousa & Advogados Associados, SP, RL: Raquel Cuba Martins	207
29	Singapore	Magrath Global: Ruth Wilkins	213
30	Slovenia	Law firm Šafar & Partners, Ltd: Martin Šafar & Polona Boršnak	220
31	South Africa	J Fetting Inc.: Jonty Fetting	227
32	Spain	Bojorge & Associates: Marla Vanessa Bojorge Zúñiga	237
33	Switzerland	Lenz & Staehelin: Rayan Houdrouge & Dr. Matthias Oertle	243
34	Ukraine	EXPATPRO: Vasyi Cherednichenko & Tetiana Yashchenko	251
35	United Arab Emirates	PricewaterhouseCoopers Legal Middle East LLP: Anir Chatterji	260
36	United Kingdom	Kingsley Napley LLP: Nicolas Rollason & Kim Vowden	268
37	USA	Kuck Baxter Immigration LLC: Charles H. Kuck & Phillip C. Kuck	280

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Open for Business in an Era of American and British Nationalism: Business-Friendly Immigration Policies Around the Globe

Audrey Lustgarten



Dana Imperia



AILA Global Migration Section

Immigration has become an even more controversial and divisive topic in the US and the UK than usual over the past few years. In the US, the Trump administration has chosen to both propagate anti-immigrant rhetoric and to take concrete action to make the US a much less welcoming, appealing place for temporary and permanent immigrants alike. Processing times for most types of immigration applications have slowed markedly and adjudication criteria have been tightened to the point that even the strongest cases may now be routinely subjected to burdensome requests for evidence or summarily denied.¹ In this unpredictable environment, employers are unable to predict if and when they will be able to get the key talent they need to run their businesses. Likewise, prospective employees are unable to foresee if and when they might be able to take up jobs in the US and, as a result, many top candidates are choosing to take positions in other countries that offer more business-friendly, predictable immigration systems.

Similarly, in the UK, anti-immigrant sentiment was a major driving force behind the 2016 vote to leave the European Union. Although Brexit has been temporarily postponed until later in 2019, the uncertainty and looming prospect of the exit from the EU is already having a significant impact on businesses and immigrants in the UK. Due to both the uncertainty surrounding Brexit and concern over not being able to get the key talent that they need, many businesses are choosing to move or to open new offices elsewhere.²

In contrast to the US and the UK's restrictionist approaches (or in some instances because of it), many other countries are "open for business" and only too happy to welcome the businesses, employees and investment that the US and UK are turning away. For instance, the Netherlands has purposefully shifted its immigration policy from "restrictive" to "selective" and has established a recognised sponsor system where select companies can obtain work permits for key employees via a simple online system in as little as two weeks. Switzerland has also chosen to adopt a selective immigration policy, providing attractive immigration options for highly qualified and specialised professionals, entrepreneurs and foreign students that graduate from Swiss universities, who are granted extended residence in order to be able to search for local employment.

Ireland has likewise taken measures to reduce the immigration "red tape" that businesses face by introducing a Trusted Partner Initiative to speed adjudication of employment permits and reduce the documentation needed. Unlike many other jurisdictions, Ireland's immigration rules have kept pace with the business reality that short-term assignments are often the norm, offering a streamlined short term "atypical" permit for workers who will be in Ireland for less than 90 days. Similarly, France modernised its immigration system in 2016 by passing business-friendly immigration reforms that allow short term assignments of 90 days or less in certain skilled categories

to be carried out without the need for a work permit. Under Mexico's 2012 Migration Law, visitors coming to Mexico for less than six months who will continue to be remunerated abroad do not need a work permit regardless of the type of work activities they will engage in.

Although the EU Blue Card, intended as an immigration solution to facilitate the employment of skilled workers meeting a wage threshold, has not taken off in some jurisdictions due to technical and logistical challenges in implementation, it has been a resounding success in Germany, which issues 84% of all Blue Cards. Germany is continuing on its trajectory of welcoming skilled immigrants and plans to adopt the Immigration Act for Skilled Workers in 2020 to further streamline the process for employers to bring foreign talent to Germany.

Last but not least, given its location, Canada is the number one business-friendly alternative for companies and employees seeking refuge from the restrictive and burdensome immigration policies in the US. In line with its bid to become "Silicon Valley North", Canada introduced a Global Skills Strategy in 2017 to provide Canadian employers with faster access to highly skilled foreign talent, and continues to work to find innovative ways to attract business, investment and talent from its neighbour to the south.

This chapter seeks to provide a high-level overview of the innovative, open immigration policies that these countries have chosen to adopt.

Canada

In recent years, Canada has done an outstanding job opening its country and companies to global talent. Offering both a growing, educated population as well as intimate access to the United States and Europe, the country has taken major steps forward in attracting prominent companies to its borders. Indeed, the moniker of "Silicon Valley North" has never rang truer than today.

In 2017, the Canadian Government debuted its "Global Skills Strategy", promising to deliver faster access to highly skilled foreign talent helping Canadian companies grow and prosper, as well as newfound facilitation for innovative companies to open up in the country. This ambitious plan focused on reducing barriers and regulatory provisions, helping attract foreign investment and accelerating the process to bring in foreign talent. It has been a massive success for global mobility programs looking to access Canada and neighbouring countries.

There are two core elements of the Global Skills Strategy that best display this "open for business mentality", which are Expedited Work Permit Processing, and the Global Talent Stream.

Expedited Processing

Under the Global Skills Strategy, companies can get workers into Canada with two-week processing for those that meet the necessary criteria. Namely: 1) that they are Labour Market Impact Assessment Exempt (for example, intra-company transferees); 2) that they are applying from outside Canada; 3) that the job is employer-specific and sufficiently specialised; and 4) that they have used the appropriate portals.

Global Talent Stream

The Global Talent Stream is another programme that makes Canada stand out on an international level. This recently made permanent programme offers expedited access to unique, specialised and highly skilled temporary foreign workers. It is intended for innovative, high potential growth companies to scale up and grow, while generally supporting Canadian companies seeking to hire highly skilled foreign workers within in-demand occupations. The programme is divided into two “streams”:

- Category A is for innovative, high-growth, high-potential companies that have been specifically referred to the programme by a Designated Government Partner in order to hire their unique and specialised talent.
- Category B functions to serve Canadian businesses that are seeking to hire highly skilled foreign workers to fill specific “in-demand” occupations on the Global Talent Occupations List. These “in-demand” occupations include many popular information technology positions, including software engineers, computer systems managers, computer engineers and web developers, among others.

Both Category A and Category B firms are required to work with the department of Employment and Social Development (ESDC) to develop a Labour Market Benefits Plan (LMBP) that demonstrates their commitment to activities that will track overall job creation, skills and training investments and demonstrate the benefit to the Canadian economy through the employment of the highly-skilled global talent, and, in so doing, access the unprecedented speed and efficiency that the Global Talent Stream can offer.

In turbulent times below Canada’s southern border, the Canadian government has made sure that such uncertainty has been to Canada’s gain. The government has shown itself to be receptive to industry needs, and proactive in ensuring that they are met. Now, more than ever, companies need the consistency and predictability offered by countries like Canada to ensure their needs are met.

France

France has demonstrated that it is “open for business” through business-friendly immigration reform since 2016, when certain categories of short-term (90 days or less) assignments became exempt from work permits. This includes the following professional activities:

- sporting, cultural, artistic and scientific events;
- conferences, seminars and trade shows;
- film production and distribution, audio-visual, and performance and recording industry when the entertainer or technical staff is attached directly to production or construction;
- modeling and artistic poses;
- domestic workers during the stay of their employer in France;

- audit and expertise in IT, management, finance, insurance, architecture and engineering when the assignee is seconded (under the provisions of Article L. 1262-1 of the Labour Code); and
- occasional lectures by visiting professors.

Foreign employees who are sent to France to perform the professional activities listed above are no longer subject to prior authorisation to work. However, non-EU foreign workers remain subject to the Schengen rules relating to entry and residence in the Schengen area.

Multi-year authorisations

Until 2016 all professional immigration categories were subject to annual renewal. We now have multi-year authorisation to work and live in France across most professional immigration categories, such as inter-company transferees and students. This reduces the burden the immigration process places on both businesses and foreign employees.

The multi-annual Talent Passport scheme

The multi-year residence card “Passport Talent” streamlined the French immigration system, bringing together under a single residence permit 10 categories of professional activities. The Passport Talent is usually valid for four years.

Family members can receive a “Family Passport” residence permit for a duration of which will be equal to that of the principal and will include the right to work.

First application: If the foreign national resides outside of France, the decision to issue the Passport Talent visa stamp is made by the consular authority and the residence permit is then issued by the prefect with jurisdiction over where the foreign national will reside in France. When the envisaged duration of stay in France is 12 months or less, a joint long-stay visa and permit to stay (VLS-TS) is issued for the duration of the stay. When the duration of the stay exceeds 12 months, a long stay visa and residence permit is issued, according to the contract or the nature of the project.

If the foreign national is already admitted to reside on French territory, the decision to issue the Passport Talent shall be made by the prefect of his/her place of residence in France.

Renewal: the renewal must be requested within two months of the expiry of the VLS-TS or the application of residence permit. Renewal is subject to compliance with the initial conditions and certain additional conditions for the specific categories of business creator, innovative economic project holder, or economic investor.

The 10 Talent Passport categories are:

- European Blue Card Worker.
- Employee on Assignment.
- Researcher.
- Performing Artist.
- Young Graduate Employee or Employee of an Innovative Company.
- Creator of Business.
- Innovative Economic Project holder.
- Corporate Officer.
- Foreigner of International or National Fame.
- Economic Investor.

The multi-annual ICT posted worker

The multi-annual residence permit, referred to as an ICT posted worker, may be issued to a foreign employee who is a non-EU national posted by his/her employer to an affiliate company in France and for the purpose of holding a senior management position, or to provide expertise without a contract of employment with the host entity in France.

The conditions required to qualify for the ICT posted worker permit are:

- A minimum of three months of continuous seniority in the group.
- Intra-group posting.
- Assignment for a senior management position or contribution of expertise.
- Assignment of up to three years.
- No minimum pay threshold.
- The conditions of remuneration must be commensurate with the nature of the employment and it is necessary to show sufficient resources to meet his/her own needs and, where appropriate, those of his/her family members.

Greater intra-EU mobility for ICT posted workers

The introduction of the ICT mobile posted work permit has provided greater flexibility in intra-EU employee transfers. This permit is issued to foreign employees holding an ICT residence permit issued by another member state of the EU, and who is assigned to France for more than 90 days as an intra-group transfer.

The conditions to qualify for the ICT mobile posted worker status are as follows:

- Intra-group posting.
- Having already received admission to another EU country as a posted ICT employee.
- Demonstrate the employment conditions specific to the ICT posting with legal remuneration thresholds applying.
- Show sufficient resources.

Germany

Over the past years, Germany has successfully introduced immigration regulations to make the country more attractive for foreign skilled workers and more open for businesses. Additionally, administrative procedures at the German employment agency have been revised to reduce processing times.

The German immigration system follows the approach of regulating case groups, which contain the conditions for entry, residence and work of foreign nationals in Germany.

The German immigration options available for skilled workers follow:

- EU Blue Card.
- Residence permit for work purposes as a foreign specialist.
- ICT Card for intra-company-transferees.

The EU Blue Card is the central residence permit for foreign academics who will work in Germany on a local employment contract and receive an annual gross salary of at least EUR 53,600. It does not require the involvement of the German employment agency but is issued directly by the German immigration authorities

(German missions abroad or foreign offices in Germany) that help reduce processing times. To ensure the permanent stay of such foreign academics in Germany, the EU Blue Card is associated with certain benefits, including, amongst others, a permanent settlement permit for Germany that can be obtained after a shorter period of time and ensures an easier route to family reunification.

In comparison with all EU countries, Germany is the leader in issuing EU Blue Cards. In 2016, 84% of all Blue Cards issued in the EU were issued by Germany.

To further attract foreign academics, German immigration law contains regulations for a job seeker visa, allowing them to enter Germany to seek an appropriate employment opportunity, which is dictated by their university degree. Such a job seeker visa can be issued for a maximum duration of six months.

If the preconditions for an EU Blue Card are not met, foreign skilled workers on a local employment contract can apply for a residence permit for the purpose of work as a foreign specialist with specific knowledge/qualifications. This residence permit requires the approval from the German employment agency. It is possible to obtain this work approval directly at the German employment agency in a separate procedure called pre-audit enquiry, while the foreign nationals are still abroad, and before they have filed for a visa at the German missions. The processing times of the pre-audit enquiry are generally 7–10 days after electronic filing. The advantage of the pre-audit enquiry is planning security for the foreign skilled workers and the German employer, and the subsequent visa application procedure is expedited.

The ICT Card, introduced on August 1, 2017, is a special residence permit for the intra-company-transfer (ICT) of foreign executives, specialists and trainees to the German entity of an international operating enterprise. It is issued for a maximum time period of three years and requires the approval of the intended ICT by the German employment agency. At introduction, the processing times at the German employment agency for the ICT approval were around two to three months after filing with substantial documentation required for review and adjudication. To meet the demand of global enterprises for expedited processing, the German employment agency employed more personnel and drafted new ICT application forms, which now contain more information relating to the case and reduced the required documents to be submitted. As a result, the processing times for an ICT approval have been shortened to seven to 10 days.

Germany plans to adopt a new regulation called “Immigration Act for Skilled Workers (*Fachkräfteinwanderungsgesetz*)” as of the beginning of 2020. For this, new immigration regulations are to be introduced and procedures facilitated. The major aspects are:

- A uniform definition of skilled workers, which includes foreign academics and foreign employees with a qualified vocational training.
- Omission of a priority job market test, upon recognised qualification and employment contract in Germany.
- Waiver of the limitation to shortage occupations, in case of a qualified vocational training.
- Possibility for skilled workers with a qualified vocational training to come to Germany for a limited time to search for a job (prerequisite: German language skills and maintenance of livelihood).

The intention of this new regulation is to enable entry of foreign academics and skilled workers with a recognised qualified vocational training, a targeted and controlled immigration, into the German labour market.

Ireland

Ireland is very much pro-business. As IDA Ireland, Ireland's inward promotions agency, succinctly states, "we favour green lights over red tape", which is why we are one of the best countries in the world for ease of doing business. New business is welcomed and supported by the flow of talent coming from our schools, universities and abroad, to work for high performing companies across a range of cutting-edge sectors.

The Irish Employment Permits Regime

Currently there are nine different employment permit schemes catering to a wide range of employment structures and assignment scenarios. Two of the most frequently used are the Critical Skills Employment Permit Scheme (CSEP) and the Intra-Company Transfer Employment Permit Scheme (ICT).

The CSEP is designed to attract highly skilled workers into the labour market with the aim of encouraging them to take up permanent residence in Ireland. Eligible occupations are deemed to be critically important to growing Ireland's economy, are in high demand and highly skilled, and in significant shortage of supply in our labour market. Occupations such as ICT professionals, professional engineers and technologists are highlighted.

The ICT employment permit is designed to facilitate the transfer of senior management, key personnel or trainees who are non-EEA nationals from an overseas branch of a multi-national corporation to its Irish branch. In particular, ICT employment permits can be invaluable in the initial establishment of a foreign direct investment company. Therefore, they play a crucial role in contributing to Ireland's achievement of its job growth ambitions.

Atypical Working Scheme ("AWS") and Business Visitors

The Irish employment permit schemes, referred to above, typically cater for work assignments of 90 days or more. However, the AWS aims to address short-term employment scenarios of less than 90 consecutive days, which are atypical and are not catered for under the relevant legislation of departmental guidelines.

The AWS coupled with the 90-day business visitor/business visa permission and the option to work in Ireland for 14 days or less without any form of employment permit (subject to any entry visa requirements being complied with) means that the vast majority of work assignments and business activities, regardless of the time period in question are a possibility.

Third Level Graduate Scheme

This scheme allows legally resident, non-EEA, third level graduates to remain in Ireland for the purposes of seeking employment and applying for an employment permit. The scheme enables non-EEA graduates: (a) to remain in Ireland for a specific period (12–24 months depending on the third level qualification secured) to obtain an offer of permanent employment; (b) to work a limited number of hours per week (40 hours) so that they can support themselves while searching for permanent employment; and (c) apply for an employment permit on the basis of this offer of employment. It is another way in which Irish based companies are being facilitated in harnessing the talent that they need.

Trusted Partner Initiative ("TPI")

The objective of the TPI is to ease the administrative burden on employers in expansion mode and to remove the requirement that they replicate the same corporate information in respect to each employment permit application submitted to the Irish authorities.

The TPI will streamline and expedite the employment permit application process for employers (four weeks approximately in the TPI queue versus 12 weeks approximately in the standard queue). It is aimed primarily at high volume users of the employment permits regime. This may include companies in expansion mode and startup companies.

Spouses/Partners of CSEP holders

As a result of a recent policy change, spouses/partners will no longer require an employment permit to work in Ireland. The change will allow the spouse/partner to reside in the state under Stamp 1 immigration conditions. Stamp 1 holders have direct access to the Irish labour market without the need for an employment permit.

Success of Ireland

Five of the Top 10 companies on Forbes' list of the "World's Most Innovative Companies" have Irish operations. This underlines Ireland's success in attracting cutting-edge FDI investment across a range of sectors.

In particular, Ireland has become the global technology hub of choice when it comes to attracting the strategic business activities of ICT companies. This has earned Ireland the reputation for being the heart of ICT in Europe. The industry employs over 37,000 people and generates €35 billion in exports annually. World renowned enterprises such as Microsoft, Amazon, Dell, Facebook, Airbnb, Stripe and Salesforce have all established operations in Ireland.

Mexico

The immigration regime in Mexico was substantially modified with the entry of the Migration Law in November 2012. This occurred in the aftermath of a rise in immigrants' human rights' violations and sought to align the country's immigration laws with the liberal approach that the country had established in recent decades regarding the attraction of foreign investment and the free movement of people. The business- and work-related immigration statuses were simplified alongside a streamlining of processes to adhere to the provisions set forth in the several multilateral and bilateral agreements that Mexico is a part of, including free trade agreements with 46 countries that are responsible for 60% of the global gross domestic product. From an immigration perspective, it is noteworthy that many of these treaties, which primarily address the liberalisation of commerce, also contain provisions on the free transit of people for work- and business-related purposes.

The new federal administration, which has been in office since December 1, 2018, has embraced the protection of migrants' human rights and the development of Mexico's southeastern region as the axis of their migratory programme. However, following pressure from U.S. President Donald Trump's administration plans to build a wall along the U.S. southern border, as well as the exodus of large caravans of migrants coming mainly from Central American countries transiting to the north, the Mexican government now faces unprecedented challenges to maintain a welcoming approach with

massive flows of irregular migrants escaping from violence and poverty without a life plan or economic resources.

This is relevant in the political perspective as the number of irregular immigrants entering Mexico grows, alongside the U.S. government's pressure for Mexico to deter massive flows of immigrants heading to the U.S. These pressures may lead to a shift from the humanitarian views on irregular immigration back to a contention policy.

Notwithstanding the above, during the nearly one decade that has followed the enactment of the Migration Law, Mexico has expanded the list of countries whose nationals do not require a visa to enter the country, approved flexibilities for business travellers, and expanded visa-waiver alternatives to facilitate business travel.

The requirements to secure a work permit have been relaxed for foreign applicants, provided that there is a local Mexican company that holds a valid registration certificate that can act as a sponsor. Foreign applicants no longer need to demonstrate professional or technical capacities to conduct work activities in the country as the sponsor is now solely responsible for assessing the foreign employee's capability to fill the position offered. Thus, this has streamlined the process of procuring a work visa, which can typically be obtained within one or two months.

From an immigration standpoint, foreigners who are not paid locally in Mexico may also request a long-term visa that would allow them to stay for up to four years on the grounds of invitation from a Mexican-based entity. This immigration status for non-remunerated activities allows foreigners to perform a variety of professional activities, such as technical training, systems installation, after-sales service, auditing, hands-on technical work, market rollout and integration, public relations, inventory, software development and consulting.

Although the Migration Law in Mexico exists at a federal level, some localities have disproportionately benefited from the flexible immigration policies, including the State of Jalisco. Jalisco has become a magnet for IT talent during the last three decades and has created a potential route for talent relocation from countries that have adopted a restrictive approach, including the U.S. during President Donald Trump's administration. According to Mexico's Minister of Economic Development, in 2019 the State of Jalisco attracted \$222 million investment that led to the creation of nearly 4,400 jobs as a result of both the Government's and private sector's efforts to promote Jalisco as the new Silicon Valley.

The Netherlands

Characterised as the "first modern economy in the world", the Netherlands has placed itself at the forefront of international trade since the 16th century. Our government policies remain dedicated to ensuring an attractive international business climate; we hold high rankings on all relevant international business indexes, and our citizens appear to be living in the 6th Happiest Place on Earth. Home to 15,000 foreign companies, 50% of the Netherlands' GDP is derived internationally.

The 2013 Modern Migration Policies Act and European Directives

In 2008, the government initiated an immigration reform which resulted in the 2013 Modern Migration Policies Act. This legislation specifically aimed to shift our immigration policy from "restrictive" to "selective", meaning that the policy would facilitate the immigration of skilled migrants, such as workers, students, researchers, self-employed individuals and investors, while remaining restrictive for others.

Skilled employment

Skilled migrants who wish to work in the Netherlands may qualify under one of three skilled worker immigration categories, which are very transparent and have a high level of predictability with regards to outcome. The three categories are the 'Highly Skilled Migrant Programme' (HSMP), the 'European Blue Card' (EBC) and the 'Intra-Corporate Transfer (ICT)'; applications under these categories are not subject to a resident labour market test. Under the HSMP, the skilled worker of a recognised sponsor is eligible if he or she will be earning a monthly salary that meets the designated threshold (2019: €4,500, €3,299 if the person is 29 or younger, or €2,364 if the person is a qualifying graduate) and is in line with the Dutch market level. This makes the outcome of an immigration application under the HSMP highly predictable, and the overall success rate is high with 93% of applications lodged in 2017 granted. To be eligible under EBC, skilled workers of ordinary sponsors must have an academic degree received after three years of study, and a monthly salary of at least €5,272. Finally, transferees who are posted while remaining in home country employment must meet the conditions of the ICT-programme, as dictated by the Immigration and Naturalisation Service of the Netherlands.

Recognised sponsor status

To further facilitate sponsors of skilled migrants, the Modern Migration Policies Act has introduced a sponsor licence system referred to as "recognised sponsor status". This designated recognition offers many benefits, including shorter processing times (applications are typically decided within two weeks), little to no required support materials, and the option to submit these applications online. Additionally, migrant workers have access to so called "expat centers" which expedite and facilitate the post-arrival formalities of this process.

Graduates

The immigration policy also aims to retain migrant graduates and encourage foreign graduates from the Top 200 universities to move to the Netherlands for employment purposes: these graduates can be eligible for an orientation year residence permit to search for a skilled job, which can then be converted, while in the country, to a residence permit under the HSMP. To ensure a graduate's employability under the HSMP, a special, much lower, monthly salary threshold was set (2019: €2,364).

Self-employed and start-ups

Applications under the self-employment scheme are tested against a transparent points-based system, which makes the outcome predictable. Applicants who are unable to score sufficient points under this system may be alternatively eligible under the start-up visa scheme, which allows an initial residency for one year, under more lenient conditions, to establish a new business. These categories are not relevant for United States and Japanese nationals, who may instead rely on a special scheme based on the Treaties of Friendship and Trade between the Netherlands and these countries, allowing immigration for self-employment based on an investment of (in most cases) €4,500 into a company they incorporate.

Investors

Foreign investors can be eligible for a Dutch residence permit in return for investing €1,250,000 in a Dutch innovative company, a SEED fund, a venture capital fund, or a joint venture which is investing in innovative companies.

Considerations

Besides being transparent and facilitative, all the above-mentioned schemes and categories allow family reunification and offer a path to permanent residence or citizenship. The skilled worker and investor categories allow dependents to work without restrictions.

Job Creation, Investment and Brexit

According to the most recent data provided by the Netherlands Foreign Investment Agency, 372 foreign companies, such as Giant, Timberland and DAZN, generated 9,847 additional jobs in the Netherlands in 2018. Collectively, these companies contributed €2,85 billion to the Dutch economy. In 2017, 357 companies invested €1.67 billion. In 2018, the Invest in Holland network brought 42 companies to the Netherlands as a result of Brexit, accounting for 1,923 jobs and some €291 million in investments. Companies signaling expansion of their offices in the Netherlands partly due to Brexit include Norinchukin, TVT Media, MarketAxess, Azimo and UK P&I. The European Medicines Agency has already moved to Amsterdam. In 2019, companies such as Discovery and Bloomberg announced their intention to invest in the Netherlands due to the United Kingdom's intended departure from the EU.

Switzerland

Switzerland manages to stay highly competitive while remaining a very attractive location for companies as well as individuals seeking a safe and productive work and living environment. The ease of establishing new businesses, the political and economic stability, and a fair legal framework contribute as much to its popularity as the functioning social security and pension schemes, and the widespread use of English amongst the country's own national languages.

Switzerland has a high foreign national population and continues to address the topic of immigration in public political discussion. In recent years the annual net immigration has declined due to the economic recovery of several EU countries, prompting the Swiss Federal Council to issue higher work permit quota numbers for non-EU/EFTA nationals for 2019. These now have risen to the level encountered before the Mass Immigration in 2014. This ensures that the country can grant work permits for specialists from non-EU/EFTA countries as well as for EU/EFTA nationals on assignment to Switzerland.

Bilateral agreements with the EU/EFTA countries ensure that the free movement of persons continues to lead to an active participation in the European economy and a mobile workforce. Through measures taken to prevent wage and social dumping, as well as the mutual recognition of professional qualifications and the coordination of social insurance issues, a coherent implementation is achieved despite Switzerland not being a member of the EU.

In particular, immigration to Switzerland is encouraged in the following categories:

1. Investment in existing businesses.

2. Creation of new businesses which favour the local economy and contribute to a diverse economic life.

A tiered immigration system is in place with different permit types according to the purpose and the duration of stay (eight-day exemption, online notification, 120-day permits with maximum flexibility, and straightforward registration processes for residents).

In addition, Switzerland has taken steps to ensure that non-EU/EFTA graduates from Swiss universities are granted extended residence in order to search for local employment, and are also exempt from the usually applicable labour market testing in cases in which the position is of high economic or scientific value. On the political side there are currently discussions about further providing easier access to such graduates in order to prevent "brain drain".

Swiss cantons, as well as multi-cantonal economic regions, have set up economic promotion offices which successfully communicate the specific region's advantages to companies or entire industries, partly creating hubs/clusters that further attract start-ups and international students interested in new fields of business such as cryptocurrency, blockchain technology and new developments in the scientific areas, especially within medicine and pharmaceuticals.

Though the interest in settling in Switzerland remains high, the country continues to see itself balancing the freedom of movement of persons from EU/EFTA countries with a more restrictive stance on immigration from further afield. The focus at the admission stage thus remains on highly qualified and specialised professionals as well as entrepreneurs, scientists and applicants involved in cultural affairs, as well as employees of international corporations. Despite recent additional measures on requirements of proof of local language skills to prove integration, Switzerland still intends to remain a country where an international workforce thrives.

Endnotes

1. See, e.g. Laura D. Francis, *Administration's H-1B Denials Again Subject to Litigation*, Bloomberg Law, 8 April 2019, available at: <https://news.bloomberglaw.com/daily-labor-report/administrations-h-1b-denials-again-subject-to-litigation-1>; Melissa Manna, *USCIS Data Confirms Increase in RFEs and Denials, Especially for H-1Bs*, The National Law Review, 28 February 2019, available at: <https://www.natlawreview.com/article/uscis-data-confirms-increase-rfes-and-denials-especially-h-1bs>; George Tzamaras and Belle Woods, *AILA; H-1B Numbers Show America is Losing Out on Talent*, AILA Doc. No. 18041332, 13 April 2018, available at: <https://www.aila.org/advo-media/press-releases/2018/aila-h-1b-numbers-show-america-is-losing-out>.
2. See, e.g. Callum Burroughs, *Companies Are Fleeing the UK No Matter What Happens With Brexit*, Business Insider, 13 March 2019, available at: <https://www.businessinsider.com/brexit-damaged-city-of-london-2018-11>; Joe Sommerlad and Ben Chapman, *Which Companies Are Leaving UK, Downsizing or Cutting Jobs Ahead of Brexit?* Independent, 26 February 2019, available at: <https://www.independent.co.uk/news/business/news/brexit-companies-leaving-uk-list-job-cuts-eu-no-deal-customs-union-a8792296.html>; Ivana Kottasová, *\$1 Trillion is Leaving Britain Because of Brexit*, CNN Business, 7 January 2019, available at: <https://www.cnn.com/2019/01/07/investing/brexit-banks-moving-assets/index.html>.

Acknowledgment

The coordinators of this chapter, Audrey Lustgarten and Dana Imperia, and the GMS, would like to thank the following members for contributing to the chapter:

- Canada – **Evan Green**, of Green and Spiegel, Toronto, Canada. Evan Green is a Senior Partner at Green and Spiegel specialising in Canadian immigration law. Tel: +1 416 862 7880 / Email: evang@gands.com.
- France – **Karl Waheed**, of Karl Waheed Advocats, Paris, France. Karl Waheed is the founder of Karl Waheed Advocats, specialising in French immigration law. Tel: +33 1 4366 9427 / Email: karl.waheed@karlwaheed.fr.
- Germany – **Dieter Kohlfürst**, of Kohlfürst & Färber, Hausham, Germany. Dieter Kohlfürst is a German Attorney at Law and founder of the Law Firm Kohlfürst & Färber, specialising in German immigration, nationality and employment law. Tel: +49 8026 394 950 / Email: kohlfuerst@rackf.de.
- Ireland – **David Heneghan**, of Eugene F Collins, Dublin, Ireland. David Heneghan is an associate at the law firm of Eugene F Collins, Dublin, specialising in Irish immigration law. Tel: +353 120 264 00 / Email: dheneghan@efc.ie.
- Mexico – **Enrique Arellano**, of Enrique Arellano Rincon Abogados, Mexico City, Mexico. Enrique Arellano is the founder of Enrique Arellano Rincon Abogados, specialising in Mexican immigration law. Tel: +52 555 280 1233 / Email: earrellano@arellanoabogados.com.mx.
- The Netherlands – **Marcel Reurs**, of Everaert Advocaten, Amsterdam, Netherlands. Marcel Reurs is a partner and co-head of the corporate immigration practice at Everaert Advocaten, specialising in Dutch immigration law. Tel: +31 020 752 3200 / Email: reurs@everaert.nl.
- Switzerland – **Nina Perch-Nielsen**, of Blue Lake Legal, Zürich, Switzerland. Nina Perch-Nielsen is an attorney at Blue Lake Legal, specialising in Swiss immigration law. Tel: +41 781 699 18 / Email: nina.perch@bluelakelegal.com.



Audrey Lustgarten
 Lustgarten Global LLC
 101 Lewis Street
 3 Pennsylvania Plaza
 Petoskey, MI 49770
 USA

Tel: +1 404 334 7060
 Email: audrey@lustgartenglobal.com
 URL: www.lustgartenglobal.com

Audrey is the founder of Lustgarten Global LLC, a boutique firm dedicated exclusively to representing companies in global (non-US) immigration matters. Prior to founding Lustgarten Global, Audrey was an attorney and global manager for two of the largest international firms specialising in immigration law. Audrey is licensed to practice law in Georgia and Michigan, and is an active member of the American Immigration Lawyers' Association (AILA) and the American Bar Association (ABA). She is a Senior Advisor to the ABA Section of International Law Immigration & Naturalisation Committee and Immediate Past Chair of the AILA Global Migration Section Steering Committee.



Dana Imperia
 Green & Spiegel
 1524 Delancey Street, 4th Floor
 Philadelphia
 PA 19102
 USA

Tel: +1 215 395 8959
 Email: dimperia@gands-us.com
 URL: www.gands.com/en-us

Dana Imperia is a Partner in the Green and Spiegel's Philadelphia office. Exclusively working in the field of immigration law since 2005, Dana has gained extensive experience across various tracts of complex non-immigrant and immigrant visa acquisition within employment-based immigration law, representing multinational corporations, domestic entities, major league sports organisations, eSports teams and league universities and colleges, research institutions, hospitals, and nonprofits, among others. Dana is also well known in the immigration law community for her unique expertise in sports immigration, regularly representing professional teams in major league sports, eSports teams and leagues, elite athletes at the professional and amateur levels, coaches, professional staff, and sports agents. Dana also leads the Firm's outbound/global immigration, providing a strategic partnership to companies in global immigration matters, from short-duration visas for the global executive, to business visas, residence permits and work permits for countries around the world.



The American Immigration Lawyers Association's (AILA) Global Migration Section (GMS) includes over 800 leading immigration attorneys from approximately 45 different countries throughout North America, South America, Europe, the Middle East, Africa and Asia. The Annual GMS Immigration Forum brings together GMS members and other lawyers, paralegals, and corporate human resources representatives interested in the field of global migration for networking sessions, workshops, consular tours and a dual-track multi-day conference covering the latest topics in global migration.

The mission of GMS is to educate AILA members and International Associates on matters of non-U.S. immigration law, and to connect immigration lawyers around the world. We focus primarily on corporate global mobility issues and the laws, policies and procedures applicable to the international movement of employees around the world. GMS works to advance the quality of global migration practice and to enhance the professional development of its members.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Foreign Direct Investment Regimes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Sanctions
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk