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UK

Launch of tier 4 (Students)

Tier 4 of the points based system (PBS) was launched on 31 March 2009. All students wanting to study in the UK are now required to be sponsored by a recognised UK institution, and hold a valid visa letter as Confirmation of Acceptance for Studies (CAS), in order to apply under tier 4.

New visa regimes for nationals of South Africa, Lesotho, Swaziland, Bolivia and Venezuela

Following a global review of the UK's pre-entry immigration controls, there have been changes to the entry requirements for nationals of South Africa, Lesotho, Swaziland, Bolivia and Venezuela.

- From 1 July 2009, all nationals of Swaziland and Lesotho will require visas to enter the UK.
- Since 3 March 2009, South African nationals require visas to enter the UK. There is a temporary exemption for South African nationals with a previous travel history to the UK which will cease at midnight on 30 June 2009.
- Visa regimes for nationals of Bolivia and Venezuela were implemented on 18 May 2009, although

Venezuelan nationals holding valid biometric passports containing an electronic chip are exempt from the requirement.

Changes to IRIS recognition accounts

IRIS is an automated means of border control that enables registered users to enter the United Kingdom more quickly at certain airports.

As of 17 May 2009, all existing IRIS accounts for Bolivians and Venezuelans are invalid. Nationals of these countries will need to re-enrol at a designated IRIS enrolment room.

IRIS accounts for South Africans registered as a visitor (V) or business visitor (BV) also became invalid on 17 May 2009, and these individuals will also need to re-enrol at a designated IRIS enrolment room.

From 1 July 2009 all existing IRIS accounts (irrespective of category) for nationals of South Africa, Lesotho and Swaziland will become invalid. On or after 1 July 2009 re-enrolment will be necessary.

New immigration application forms and fees

New fees for UK immigration applications were introduced on 6 April 2009, with fee increases in most categories. New application forms for tiers 1, 2 and 5 were also introduced on that date.

Worker registration scheme extended

The government has extended the requirement for A8 nationals (Czech Republic, Estonia, Latvia, Lithuania, Slovenia, Slovakia, Poland and Hungary) to register on the Worker Registration Scheme when taking employment in the UK. The requirement has been in place since 2004, and has been extended for a further two years until 2011.

Highly skilled migrant programme (HSMP) Judicial review – judgment of 6 April 2009

Migrants who successfully made a HSMP application before 6 April 2006, and were granted entry clearance or leave to remain on the basis of that application, are covered by the judgment of 6 April 2009. The judgment relates to the residence requirement for settlement (indefinite leave to remain) applications. The qualifying period was increased from four years to five years in April 2006. This retrospective change has now been reversed by the judgment, and migrants covered by the judgment can now apply for settlement based on a four year qualifying period.

Quota reached for Japanese nationals on the tier 5 Youth Mobility Scheme (YMS)

The issuing limit has been reached for Japanese nationals applying to enter the UK under the tier 5 YMS for the period ending 31 December 2009. Applications will not be accepted from Japanese

nationals under this scheme for the rest of the year. Applications will be accepted again from 1 January 2010.

Argentina

Immigration services rate increase

The Decree no 231 published in March 2009, established an increase in the Argentine immigration services fees.

In order to request a mercosur residence and associate states (Argentina, Brazil, Uruguay, Paraguay, Venezuela, Peru, Ecuador, Colombia, Chile and Bolivia) the application fee is now AR \$300 and for an extramercosur residence the application fee is now AR \$600.

Appointments needed for visa applications

Since 3 April 2009, in order to request a residence or category change, it will be necessary to have an appointment to attend the Argentine immigration authority.

The following services will not require an appointment:

- Extensions of permanence
- Precarious renewal
- Entry permit
- Certifications
- Requesting registration of foreigners



Barbados

New initiatives

Following the recent change of government in Barbados, a number of new initiatives have been implemented with respect to streamlining and enhancing the efficiency of its immigration policies. During this transitional period, the time taken for processing of immigration applications, namely applications for work permits and long stay visas, has increased.

In more recent times, Barbados has been experiencing increased levels of immigration, when compared with its nearby neighbours in the Caribbean region.

Nationals of CARICOM member states, the USA, Canada, the UK and some Commonwealth countries can travel directly to Barbados with acceptable proof of nationality and identity (a valid passport from their country and/or original birth certificate with national photo identification) and may be admitted for a period not exceeding three months. All visitors are required to have onward or return tickets.

Recent information from the immigration department indicates that CARICOM skilled nationals are required to arrive in Barbados with return airline tickets, until they have been formally registered

with the Immigration department. The registration process includes submitting a registration form to the immigration department (available from the immigration department) along with supporting documentation.

Belguim

Work permits are no longer needed for nationals of Poland, Hungary, Slovenia, Slovak Republic, Lithuania, Latvia, Estonia and the Czech Republic

The Belgian government decided to abolish the work permit requirement for the nationals of the above EU member states as of 1 May 2009. Since 1 May 2009, the above nationals now benefit from the principle of free movement of workers, as do other EU nationals.

Please note that for Bulgaria and Romania, which joined the EU in January 2007, transitional measures have been extended until 31 December 2011, as published in the *Belgian Official Gazette* on 30 December 2008. Consequently, Bulgarian and Romanian nationals still need a work permit.

Brazil

[New changes of the application for Brazilian permanent visas for investors](#)

On 10 February 2009, the Brazilian National Immigration Council enacted the Normative Resolution no. 84, which established some alterations in the requirements for the application for permanent visas for investors, as follows:

- i. The minimum amount of direct investment to be made in a Brazilian company by a foreign individual (investor) for the application for a permanent visa for investors has been increased from the equivalent, in foreign currency, of R\$ 50.000,00, to the equivalent, in foreign currency, of R\$ 150,000.00;
- ii. When analysing the application forms for a permanent visa for investors, along with the corresponding related documentation, the Brazilian immigration authorities shall take into consideration any social interests related to the foreign investment, as well as the possible increase of production, assimilation of technology and fund raising;
- iii. In case the investor decides to invest a lower amount than the minimum indicated in item (i) above, such investment must be related to a social interest, according to the criteria set forth in the corresponding legal provisions, which refers to the position of the employee, the geographical region and the

economic sector of the investment and possible technology innovation, among others;

- iv. The Brazilian immigration authorities were allowed to verify any economic and social adverse impacts that may be caused by the granting of a large number of permanent visas for investors, being entitled to reject new applications, as well as to give privilege to investments resulting from South American business undertakings; and
- v. The validity term of the Identity Card for Foreigners was reduced from five to three years.

Canada

LMO extensions abolished

The application to extend a Labour Market Opinion (LMO) has now been removed from circulation. Acquiring an LMO is one of the requirements when applying for a Canadian work permit. In cases where employers wish to extend an employee's LMO, employers are requested to apply for a new LMO well in advance of the employee's work permit expiry, to ensure that ample time exists for the processing of the new LMO and subsequent work permit.



Chile

The deadline to file the necessary documents for permanent residence applications in Chile has been extended from 30 days to 90 days prior to the expiration of an individual's work permit. This extended time frame will allow time to solve any contingencies related to the documents requested by the authorities.

China

Adjustments of visa application processing for US citizens

In the wake of the global A(H1N1) flu pandemic alert, and effective since 4 May 2009, the China visa processing times were increased to six business days for US nationals, while the express service for visa applications was suspended. This measure applied to both business and tourist visa categories. Previously, US nationals could obtain visas in as little as one day.

In addition, all China visa applicants, regardless of nationality, are required to complete and submit the declaration form of which countries and US states they have visited in the previous two weeks.

Visa restrictions ahead of 60th anniversary of the founding of People's Republic of China

In the run-up to the 60th anniversary of the founding of the People's Republic of China on 1 October 2009, visa policies for foreigners have recently been subject to increased scrutiny by approving authorities, despite no formal announcement yet being made.

Business (F) visa applications are currently being issued with expiry dates on or before

15 September 2009 - a fortnight before the National Day celebration. Processing of new applications for business visas beyond 15 September 2009 are to be put on hold, pending further government clarification. The extension of existing China visas may also require additional submission of documents.

Visa applications for tourists and students have not yet been affected, but it is anticipated that temporary measures relating to these visa categories may also be introduced.

The new requirements should not affect the issuance of work (Z) visas, but such applications may be subject to extended processing times.

Shenzhen – new immigration regulations for employment of foreigners

Employers of foreign employees are

now required to provide documents demonstrating that no suitable local candidate is available to fill the proposed position for work permit applications.

In relation to work permit cancellations, employers are also now required to provide documentation confirming the termination of a foreign worker's employment.

Costa Rica

Currently, a Bill to reform the immigration law is in process of approval. This Bill suggests important changes in the amounts required for residency applications in the categories of annuitants and pensioners. This Bill intends to increase the amount of income for the application of residencies for annuitants and pensioners. We will not know the specific reforms until the Bill has been approved.

The Dirección General de Migración y Extranjería (immigration office) has had a number of modifications in the last five months. One of them is in relation to residency card renewals, adding a new requisite, where the applicants have to present a letter manifesting that they have not stayed abroad for a period above a year and their address of residency in Costa Rica. In the event the applicant has stayed for a year abroad, the residency card will be cancelled and

they will need to submit a new request for the process of approval, for which they would have to provide criminal background certification, approved by the consulate in their country of origin.

Denmark

Citizens of new EU member states

On 1 May 2009 the special interim arrangement concerning employees from Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia ended and these nationals now have the same rights as EU citizens.

Stays in Denmark of less than three months

An EU/European Economic Area (EEA) citizen can now freely enter Denmark and stay in the country for up to three months without a residence permit. If their stay in Denmark will last more than three months, individuals must apply for a certificate of registration before the three months expires.

If an EU/EEA citizen seeks employment, the person may stay in the country for up to six months without a certificate of registration. The periods of three and six months are determined on the basis of the date of entry.



Honduras

Easing entry into Honduras

The Ministry of Foreign Affairs in Honduras has recently decided to eliminate the consultation visa to citizens of over 20 countries worldwide that had restricted access to the country. This decision consists in upgrading many countries which hold diplomatic relationships with Honduras from consultation visas to consulate visas - this will grant their citizens easy entry to Honduras. Among the favored countries of this improvement in immigration category are India, Republic of China, Russia, Cuba, Dominican Republic, United Arab Emirates and other African countries that have close bonds with Honduras. The purpose of this decision is to facilitate the traffic of people, develop the investment environment and increase tourism in Honduras.

The consulate visa is necessary for countries of medium category, whose citizens do not represent any threat to the homeland security of the country that issues the visa. This visa is approved in the consulate located in the foreign country, with basic requirements of owning real estate in their home country, proven economic capacity, among others.

Consultation visas require a more selective procedure requested before the consulate of the foreign country and approved by the immigration office in conjunction with the Ministry of Foreign Affairs in Honduras.

Hong Kong

New visa application forms

In a move to streamline the administrative process, the Hong Kong immigration authorities have standardised the forms for employment visa, training and extension of stay applications. Previously, the application forms required would vary depending on the scheme applied for within each visa category (for example the 'general employment policy'). With the new process, the same forms are required for applications within each visa category regardless of the scheme applied under. Additionally, accompanying dependants' information is now included in the main application.

Immigration arrangements for Taiwan visitors

Taiwan residents who hold a valid travel permit ('mainland travel permit for taiwan residents', commonly known as 'tai bao zheng') no longer need to obtain a valid entry/exit endorsement for mainland China for entry to and stay of up to seven days as a visitor in Hong Kong.





Ireland

Green cards – curtailment

The green cards scheme remains in place to attract highly skilled workers to Ireland from outside the European Economic Area (EEA), where the skills are not available locally, although the list of eligible occupations has recently been scaled back on a number of occasions.

Romanian and Bulgarian nationals

The transitional arrangements requiring these nationals to obtain employment permits to work in Ireland for an initial period of 12 months have been extended until the end of 2011, when it will be reviewed again.

Stricter conditions for granting of work permits from 1 June 2009

More stringent work permit eligibility conditions will be implemented, including:

- An increase of the ineligible job categories.
- A tougher labour market needs test.
- Curtailment of the Spousal/Dependant Work Permits Scheme, except for spouses/dependants of green card holders.

Government processing fees for renewals

Increased fees now apply to renewal work permit applications where the first work permit is applied for after 1 June 2009.

Non-marital (de facto) relationships

Non-EEA partners of green card holders with permission to reside in Ireland on the basis of a de facto relationship are now eligible to apply for spousal/dependant work permits.

Japan

Sponsorship of a foreign national domestic helper

As of March 2009, where a foreign business executive whose working status is investor/business manager or legal/accounting services wishes to sponsor a work permit application in order to employ an individual such as a domestic helper, the following changes have been made to make the rules more flexible:

- Previously, the foreign business person needed to be the chief manager of an organisation or hold a similar position. Now the Ministry of Justice has opened the opportunity to heads of department and positions on a similar level, and will now consider other factors such as size

of organisation, type of business, income and responsibilities, regardless of an individual's job title and ranking within the organisation.

- The foreign business person can be eligible to sponsor a domestic helper if they have a child up to the age of 13 years old, or a spouse who is ill and not capable of conducting household work. The foreign business person may also qualify if they have a spouse who works full-time in Japan, regardless of whether or not the couple has any children.

Revised guidelines for applications for change of status and extension of the period of stay

The immigration authorities have confirmed that they are in the process of reviewing guidelines for change of status and extension of period of stay applications. It is anticipated that more emphasis may be placed on the following factors when assessing the applications:

- 1) Japanese tax compliance;
- 2) Japanese social insurance participation;
- 3) Performance of individual's duties in relation to the alien registration certificate.

As of 1 April 2010, social insurance certificates will be required to be shown

when applications are submitted. Further details are targeted to be released by the authorities in the coming months.

The Netherlands

Checks by the Dutch labour inspectorate

We have recently received more reports of the Dutch Labour Inspectorate making announced and unannounced visits to our clients. The media are also talking about the inspectorate's frequent checks for compliance with the Dutch Foreign Employment Act (Dutch acronym: wav). Considering these developments, this newsletter provides a rough outline of an employer's legal obligations under the Act.

The Dutch Labour Inspectorate pays businesses announced and unannounced visits to check their compliance with the Dutch Foreign Employment Act. The inspectorate performs these checks in dialogue with other services, such as the foreign police and the tax & customs administration, where appropriate. These services have made covenants with each other for such mutual services and the exchange of information. The inspectorate enforces the Act by making onsite visits and reviewing a business's accounting records. In general the inspectorate looks at the accounts of the past two years



A check includes verifying whether all foreign employees have a valid work permit, or a residence permit with work authorisation (e.g. a highly skilled migrant permit). An employer can expect a fine for every foreigner who works on an illegal basis, whether formally or effectively. This does not apply, however, to some categories of foreign employees, the most important being European Economic Area (EEA) nationals (not including Romanians and Bulgarians) and foreigners holding a Dutch permanent residence permit. The Act also mentions a number of work categories for which no work permit is required, subject to conditions.

The Dutch Labour Inspectorate also checks for compliance with the legal provisions of the Foreign Employment Act, which stipulates that both the formal and the effective employer should keep a copy of the employee's ID on file for at least five years, after having checked whether the information provided is correct. This applies to all foreign employees in the Netherlands, even if they are legal residents of this country and require no work permit.

30% ruling for highly skilled migrants

Highly skilled migrants have recently been given easier access to the 30% ruling, which – put briefly – allows them to receive 30% of their salary on a tax-

free basis as compensation for the additional costs that they incur for their temporary stay in the Netherlands. In order for a foreign employee to qualify for the 30% ruling, the employer needs to be able to demonstrate that the foreign-hired employee has specific skills that are difficult to recruit on the Dutch labour market, if at all. In relation to the 30% application, highly skilled migrants are considered to be scarce and have specialist skills. Please note that they do have to meet the other qualifying criteria for the 30% ruling. A highly skilled migrant should, for instance, still be recruited from abroad. An employee's status as a highly skilled migrant needs to be evidenced by enclosing a copy of the decision by the Dutch Immigration and Naturalisation Service (Dutch acronym: IND) with the application for the 30% ruling. The result of this more lenient stance on the 30% ruling is that recent graduates, with little or no work experience, might now qualify for the 30% ruling as well.

Nicaragua

Free circulation agreement

A recent change in Nicaraguan immigration announced that the agreement to create one central American visa for free circulation of foreigners was approved and ratified by Congress on 12 December 2008.

Any foreigner that wishes to enter into the country will be classified in category B (visa without consultation) and will be granted with the corresponding visa, without detriment of the law's requirements, as long as they are in country, with the obligation to present themselves before the respective Migration office where they will pay the costs of the visa and tourism card.

The free circulation agreements entered into by the Nicaraguan Republic and other states maintain their validity, as do those entered into with the United Nations and the Organisation of American States.

The compliance of these provisions is to be guaranteed by the Department of State and the Ministries of Exterior and Tourism through their corresponding organisations. Saudi Arabia, United Arab Emirates, Russia, Egypt, India, Jamaica, Rwanda, Zimbabwe, Cameroon, Colombia, Niger, Cambodia, Costa Rica, Togo, United Republic of Tanzania, Senegal, Dominican Republic, Peru and Fiji are some of the countries and states that are benefitted by this decree.

Norway

The service centre for foreign workers

The Labour Inspection Authority, the police, the tax administration and

the Directorate of Immigration have established a joint Service Centre for Foreign Workers in Norway. At the service centre, both employers and employees can obtain information, and initiate a fast-track handling of applications such as:

- Work or residence permits (first time permits and renewals);
- Tax deduction cards and, if necessary, obtain an identification number;
- Notification of immigration to the population Register.

The service centre serves all parts of Norway and the staff speak English, Italian, Lithuanian, Polish, Russian and Spanish.

With respect to work permits, the service centre guarantees that if the application is filled in correctly and has all the needed attachments, the processing time should be a maximum of ten working days, and our experience is that this guarantee is met.

Useful note for employers: if given a power of attorney, the employer can meet at the service centre and apply for a work and resident permit on behalf of the employee.



Philippines

SVEG creates 2000 jobs

Less than a month after it was officially launched, the Philippine Bureau of Immigration has reported that the Special Visa for Employment Generation (SVEG) has already created almost 20,000 jobs for Filipinos.

SVEG provides indefinite stay to a foreign employer who provides full-time jobs to at least 10 Filipino workers in legitimate and sustainable business in the Philippines. The new job-generating visa aims to create at least 100,000 jobs in its first year.

Across the country, foreign investors have already applied for the SVEG. To date, a total of 47 companies are already enjoying the convenience of SVEG. Of these 47 companies, 19,579 Filipinos are employed.

Romania

Work authorisation quota

The Government Decision no.264/2009 regarding the number of work authorisations which can be issued to foreign citizens in 2009 (Decision) has been published. According to the Decision, 8,000 work authorisations can be released in 2009 to foreigners wishing

to work under employment contracts or being seconded by foreign companies to Romania.

The Decision also states the procedure should the number of applications for work authorisations exceed the annual quota established; the number can be increased by the government through a new decision, at the proposal of the Ministry of Labour, Family and Social Protection.

Serbia

New labour law on foreigners

A new law on foreigners came into effect on 1 April 2009 and introduced the following changes to immigration procedures in Serbia:

- The process for residence permit renewal has to start no later than 30 days before current residence permit expires.
- When applying for a residence permit for the first time or when applying for a renewal of residence permit, the applicant has to provide the authorities with the proof of effective health insurance.
- The residence permit can be issued for a period of one year (at most), or up to six months before the applicant's passport expires (if this is less than one year).

- The new law did not withdraw the decision for the abolishment of visas for entering and temporary stays up to 90 days for citizens of certain countries.
- The new law recognises four types of visa for entering the country:
 - a. Airport transit visa
 - b. Transit visa
 - c. Temporary stay visa
 - d. Temporary residence visa (These classifications are yet to be arranged by government)
- Government processing fees both for residence and work permit will increase in June.

Singapore

Tightening of S Pass criteria

On 25 May 2009, the Ministry of Manpower (MoM) formally announced that its assessment criteria for S Pass holders would be raised with effect from 1 June 2009, to ensure the continuing high standard of mid-level skilled foreign employees awarded this pass. The move was widely anticipated to take place in order to allay concerns regarding the availability of positions for local employees, in light of the economic downturn.

The S Pass is a category of employment pass made available to foreigners who earn a fixed monthly salary of more than SGD 1800. Applications will continue to be assessed on the existing point-based system, which attributes merit relating to salary, educational qualifications and technical skills, job title and years of relevant work experience. Despite the announced changes, the precise weighting now afforded to these factors will remain subject to the MoM's internal policy.

The existing quota or 'dependency ceiling' of the number of S Pass holders a company can employ remains at 25% of the total work force.

Long-term pass card updates

Following the announcement of the long-term pass (LTP) card initiative in July 2008, the LTP card has been introduced in stages by the Immigration & Checkpoints Authority (ICA) in relation to its long-term visit passes in September 2008, and subsequently to student passes since 4 May 2009.

The next phase, which will capture the majority of foreign pass holders, is the planned launch on 1 July 2009 of LTP cards for all categories of MoM issued



employment passes, dependant passes and long term visit passes. A pilot scheme is scheduled to take place in June ahead of the formal 1 July launch.

The roll out relates to newly approved passes and the renewal of existing passes only. Therefore, the complete transition of all foreign passes to the LTP card format could take approximately two to three years.

Key features of the new LTP card include photo and fingerprint identification in place of the existing green FIN card. Further information relating to the initiative is available in our July 2008 immigration alert and October 2008 newsletter.

[Launch of online PR application system](#)

In its continued expansion of online services, the ICA is due to launch an electronic permanent resident (e-PR) system in July 2009, enabling foreigners to submit PR applications online. The current process requires individuals to make an advance appointment with the ICA to manually submit their application. The new e-PR system will only require personal attendance at the ICA following approval of the application to complete formalities.

Spain

[Spanish government expedites work permit applications procedure for qualified employees](#)

The government will soon adopt an amendment to expedite the processing of work and residence permit for management staff and/or highly skilled staff from foreign companies that have investments, or would like to start a business in Spain.

This reform has been introduced in response to feedback from employers that had been discouraged from sending assignees to Spain due to the bureaucratic barrier, which subsequently led to hesitation in investing in Spain.

The main change would lie on loosening the access requirements to a premium process (faster and simpler procedure) with the “Unidad de Grandes Empresas” (large companies desk of the Labour Ministry). There would no longer be the requirement of 20 million euro of investment from abroad; rather it would be sufficient to show an investment of 1 million euro in the last two years, two in the last three years and five in the last five years and so forth.

It is expected that if this measure is finally approved, the number of companies that could benefit from this measure would be more than two thousand.

St. Kitts and Nevis

[St. Kitts and Nevis and EU sign visa waiver agreement](#)

A short-stay visa waiver agreement was signed on 28 May 2009 between the European Union and St. Kitts and Nevis. This agreement creates a reciprocal agreement between the EU and St. Kitts and Nevis to allow both nationals visa-free travel for up to three months in a six month period. This agreement is applicable to all visa categories, except for those carrying out paid activities, or those travelling to find work.

Thailand

[30 days visa exemption](#)

There are 41 nationalities that can enter Thailand without a visa for 30 days by air transportation. Since 25 November 2008, any foreigners who enter Thailand by ground transportation will be granted only 15 days stay, except for Malaysian nationals.

[90 days registration](#)

When a foreigner intends to stay in Thailand for 90 consecutive days, notification must be made to the immigration authorities.

Those who obtained visa approval from the One Stop Service Centre (for large

corporations whose registered capital is at least Baht 30 million), the registration can be made within seven days prior to or after the due date.

Those who obtained visa approval from the Immigration Bureau, the registration must be made within seven days prior to or on the due date. Otherwise, a fine of Baht 2,000 will be imposed.

[Re-entry permit](#)

The re-entry permit counter at Suvarnabhumi Airport has been abandoned. Therefore, before travelling out of Thailand, a re-entry permit must be first obtained from the Immigration Bureau or the One Stop Service Centre. Otherwise, the visa will be automatically cancelled upon departure date.

[Filing long-term visa application](#)

With effect from March 2009, all long-term visa applications must be submitted at the immigration office close to where the company is located. Certain companies located in some provinces, or fulfilling certain criteria, may be exempt from this requirement. Previously, long-term visa applications could be submitted at any immigration office, regardless of the location of the company.



Ukraine

New work permit rules

The Cabinet of Ministers of Ukraine recently approved amended rules on the issuance, prolongation and cancellation of work permits for foreign nationals and stateless persons. The document was officially published on 14 April 2009 and came into force on 14 May 2009. The list of documents required when applying for a Ukrainian work permit has been broadened and the fee for the Employment Authority to consider an application has increased to four minimum salaries (currently UAH 2,500) from the current UAH 170. The fee is not refundable if the work permit application is rejected.

In a positive development, inter-corporate cessionaries and “*persons, who work without a commercial presence in Ukraine*” are also covered by the new rules. Additional documents should be provided to obtain work permits for such employees (e.g. agreement with a foreign employer to transfer the employee to work in Ukraine). Work permits for these categories will be issued for a period of up to three years with the possibility to prolong them for another two years.

The rules provide an exhaustive list of grounds that the Employment Authority may use to refuse a work permit,

including the following, which were not previously included:

- Untruthful information was presented to the Employment Authority;
- The individual’s Ukrainian visa was rejected within past 12 months (or the individual was deported);
- The company has outstanding contributions to the Employment Fund;
- “*Further to changes in the market*” (meaning it is not necessary to use foreign labour);
- The salary and working conditions indicated in the draft employment agreement are worse than those for a Ukrainian employee working in the same position.

According to the rules, a salary indicated in a draft employment agreement submitted to the Employment Authority within the work permit application file, should not be less than the average salary for a similar position in the same industry which is provided monthly by the Ministry of Statistics of Ukraine.

The new rules also outline a connection between obtaining a Ukrainian work permit and registering with the immigration authorities. In addition to the existing requirement to inform the local employment authority of the foreign

employee’s actual start date within three working days of their first day of employment, the employer must also carry out the appropriate registration of the foreign employee’s passport within five working days of receiving their temporary residence. If a work permit is nullified, or if the foreign national, without any valid reasons, does not start work during the period provided in the employment agreement, the foreign national may be deported from Ukraine at the employer’s expense.

According to the rules, the work permit commission will involve representatives of various departments within the Ministry of Internal Affairs, secret service, frontier service, tax authority and other interested bodies. Each of these institutions may influence the commission’s decision.

The penalty for not obtaining a Ukrainian work permit has been significantly increased to 20 minimum salaries (currently UAH 12,500).

USA

H-1B cap update

On 18 May 2009, United States Citizenship and Immigration services (USCIS) announced that 45,500 H-1B petitions have been received since 1 April 2009. After factoring in the H-1B numbers which are reserved solely for nationals of

Chile and Singapore pursuant to trade agreements between these countries and the U.S., there are now approximately 12,700 H-1Bs available for FY2010, which begins on 1 October 2009.