

Almaty, April 29, 2016

Kazakhstan

Corporate transfer – A simplified procedure for receiving work permits

Due to the accession of Kazakhstan into the WTO, a number of amendments have been introduced to Kazakhstani legislation, including amendments related to the corporate transfer of foreign employees to Kazakhstan (i.e. the intra- company transfer of a foreign employee from a foreign company to the subsidiary, representative or branch office located in Kazakhstan).

Although corporate transfer of Kazakhstani employees was introduced to the Law “On Migration of People” and the Law “On Occupation of People” in December 2015, the procedure for corporate transfer of foreign employees to Kazakhstan was not clarified since no changes were introduced to the main act regulating the issuance of work permits. This main act, outlining the rules “On terms and conditions for issuing permits to foreign workers for employment and to employers for attracting foreign labour”, was approved by the Decree of the Government of Kazakhstan as of 13 January 2012 No.45 (hereinafter: the “**Rules**”).

However, on 31 March 2016, the Government of Kazakhstan adopted Decree No. 173 (the “**Decree**”) that amended the Rules and set forth the procedure of corporate transfer of foreign employees to Kazakhstan. The Decree has been in effect since 19 April 2016.

Below we provided the major amendments concerning corporate transfer of foreign employees to Kazakhstan in a Q&A format.

1) Which foreigners are eligible for corporate transfer?

Directors, managers and specialists working in the head office of a branch/representative office located in Kazakhstan and/or in the mother company of a local legal entity are eligible for corporate transfer. The head office or mother company must be incorporated in a country that is a member of the WTO.

The Decree sets out the list of economic sectors within which the employer must operate in order to be eligible to apply for corporate transfer. We would note that the list is quite vague and includes a wide range of economic activities.

2) What is the term of a corporate transfer?

The work permit is issued for the term of the corporate transfer, but not for more than 3 years. It can be prolonged for another 1 year.

3) Is the application for a quota necessary?

No quota is required for work permits issued in relation to corporate transfer procedures.

Moscow

ul. Bakhrushina 32/1
115054 Moscow, Russia
t +7 / 495 / 956 55 57
info@schneider-group.com

St. Petersburg

Business Center Petrovskiy Fort
Office 801-803, Finlyandskiy pr. 4a
194044 St. Petersburg, Russia
t +7 / 812 / 458 58 00
spb@schneider-group.com

Aktau

Business Centre Grand Nur Plaza
Office 46, Microdistrict 29 A
130000 Aktau, Kazakhstan
t +7 / 7292 / 201 151
aktau@schneider-group.com

Almaty

Tole Bi Street 101, Block 9 B
050012 Almaty, Kazakhstan
t +7 / 727 / 355 44 48
almaty@schneider-group.com

Astana

Syghanaq Street 29, Floor 12
Office 1201
010000 Astana, Kazakhstan
t +7 / 7172 / 249 319
astana@schneider-group.com

Berlin

Ritterstr. 2B
10969 Berlin, Germany
t +49 / 30 / 615 08 918
berlin@schneider-group.com

Hamburg

Alstertor 15
20095 Hamburg, Germany
t +49 / 40 / 226 33 760
hamburg@schneider-group.com

Frankfurt

THE SQUAIRE at the Airport
Entrance 12, Office 616
60549 Frankfurt, Germany
t +49 / 69 / 959 32 51 78
frankfurt@schneider-group.com

Kyiv

Horizon Office Towers
vul. Shovkovychna 42-44
01601 Kyiv, Ukraine
t +380 / 44 / 490 55 28
kyiv@schneider-group.com

Minsk

ul. Surganova 29
220012 Minsk, Belarus
t +375 / 17 / 290 25 57
minsk@schneider-group.com

Warsaw

ORCO Tower, Office 17.02.
Al. Jerozolimskie 81
02-001 Warsaw, Poland
t +48 / 22 / 695 03 10
warsaw@schneider-group.com

4) What proportion of local and foreign employees must be maintained prior to application for the work permit?

If a foreign employee is transferred from the head office for the position of director, the employer is not required to maintain the proportion of local and foreign employees before applying for the work permit. However, the proportion of local and foreign employees must be maintained by the employer in a case of corporate transfer of employees for the positions of managers and specialists. The exact proportion of local and foreign employees for the position of managers/specialists will be determined by the labour authorities.

5) Is it required to conduct a search for employees on the local market prior to applying for the work permit?

It is not required to conduct a search for employees on the local market in case the corporate transfer is for the position of a director. However, a search on the local market (for up to 60 calendar days) is required in case of corporate transfer for the positions of managers and/or specialists.

6) What special conditions must be fulfilled in case of corporate transfer?

The corporate transfer of managers and specialists requires the employer to comply with so-called “special conditions”. The Decree fails to mention whether compliance with the special conditions is required in case a director is being transferred.

If a manager is employed, the employer is provided with the right to choose one of the following special conditions;

1. retraining of a Kazakhstani citizen to match the skills/position of the foreign employee;
2. qualification upgrade of a Kazakhstani citizen to match the skills/position of the foreign employee;
3. creation of additional employment for a Kazakhstani citizen matching the skills/position of a foreign employee.

If a specialist is employed, the employer may choose either option 1 or option 3 of the above special conditions.

We hope you find our newsletter useful. Should you have any questions or require our assistance with respect to the above, please contact the following specialists:

Dina Jazylbekova

Legal Team Leader

Tel. + 7 (727) 355 4448

JazylbekovaDN@schneider-group.com

www.schneider-group.com