



Important changes to Russian immigration law

Recent changes to Russian immigration law will introduce significant changes to the procedure for obtaining work permits for foreign employees. This briefing looks at some of these changes, including the introduction of the 'highly-qualified professional' category of foreign employees.

In recent years Russian immigration laws governing the employment of foreign citizens coming into Russia have been relatively strict. Under these laws:

- work permits for foreign employees are valid for no more than one year;
- employees of foreign legal entities seconded to the representative offices of such foreign companies are treated in the same way as foreign employees of Russian companies (previously such employees had not been required to obtain work permits);
- invitations to come to Russia, and work permits, are subject to quotas; and
- it can take over a year to obtain a work permit.

On 20 May 2010, the Russian Federation President Dmitry Medvedev signed the federal law 'On Amendments to the Federal Law 'On the Legal Status of Foreign Citizens in the Russian Federation' and separate legislative acts of the Russian Federation'. Most of these amendments will come into force on 1 July 2010, introducing significant changes to the procedure for obtaining work permits.

Highly-qualified professionals

The law introduces a new term – 'highly-qualified professional'. Such professionals are foreign citizens who have attained experience, skills and achievements in a specific field and whose salary for their work in Russia is equal to or exceeds RUB2m (approximately \$66,000 or €52,000) 'for a period not exceeding one year'.

There is no definition of the *highly-qualified professional* in the law, and the employer or contractor for works (services)¹ must evaluate a foreign citizen's competency and qualifications based on the documents provided by the employee, confirming his education and prior professional experience, references and any other relevant documents. The authorities seem not to be entitled to challenge the employers' judgement, however, the employer will be required to describe in the application form the highly-qualified professional's 'qualifications and level of competency' and in certain situations may be required to refer to the candidate's educational documents confirming his specific education.

Procedure for obtaining a work permit for highly-qualified professionals

Highly-qualified professionals will be able to obtain work permits for the term of their employment agreements subject to a limit of three years (previously one year). A highly-qualified professional may extend the work permit if he enters into a new employment agreement but for no more than three years at a time. Work permits will continue to be issued by the immigration authorities.

The quotas governing invitations to foreign citizens for the purposes of employment and the issuance of work permits to foreign citizens do not apply to highly-qualified professionals. Neither are the employers obliged to obtain a permit to engage highly-qualified professionals.

¹ We hereafter refer to both employment and civil services contracts as 'employment agreements' and to employers and contractors for works (services) as 'employers'.

The family members of a highly-qualified professional (spouse and children) may reside in Russia for the term of the highly-qualified professionals' employment agreement based on a residency permit. The employee will be granted a work visa for the length of the work permit.

If the agreement with a highly-qualified professional is terminated before the end of its term, he may, within 30 days of such termination, search for another employer and receive a new work permit and a new visa. Within this 30-day period, the work permit issued to the highly-qualified professional (and the visa and residency permits of the highly-qualified professional and his family) remains valid.

While an application submitted by a new employer is being considered by the issuing authority, the validity of the work permit issued to a highly-qualified professional (and the validity of the visa and residency permits issued to the highly-qualified professional and his family) is extended. Previously, an employee was obliged to leave the country in similar circumstances.

If the highly-qualified professional has not entered into a new employment agreement before the end of the 30-day period, or an application submitted to another employer is rejected, the work permit and the visas and residency permits of the highly-qualified professional and family members continue to be valid for one month after the 30-day period has ended. The highly-qualified professional and his family must leave the Russian Federation within such 30 days.

Under the new law, the immigration authorities are required to review all applications from employers for the employment of highly-qualified professionals, and the extension of work permits for highly-qualified professionals, within 14 working days of submission.

Medical insurance requirements

From the date when he enters Russia, a highly-qualified professional and any accompanying family members must be insured under an agreement for voluntary medical insurance at the expense of the employer. The employment agreement that the employer must submit to the immigration authorities must include a voluntary medical insurance provision.

Employer's requirements

Under the new law, highly-qualified professionals may only be employed by Russian commercial companies, scientific, educational and medical institutions that have state accreditation, and branches of foreign legal entities. Representative offices of foreign legal entities are not included in this list.

In addition, employers will not be able to invite highly-qualified professionals if the employers have been subject to administrative liability for illegally employing foreign citizens or stateless persons within the Russian Federation within the past two years.

Employers of highly-qualified professionals are subject to new disclosure obligations including responsibilities to inform the state authorities of salaries paid to highly-qualified professionals and of any unpaid holiday granted to highly-qualified professionals for a period of more than one month.

Tax benefits

Highly-qualified professionals are entitled to significant tax benefits. Highly-qualified professionals will be subject to the same tax rate as Russian tax residents (currently 13 per cent) in respect of income generated through their employment in Russia, regardless of the number of days they spend in Russia per tax year (previously, foreign citizens were required to spend at least 183 days per tax year in Russia to qualify for the 13 per cent tax rate, otherwise they were taxed at a 30 per cent rate).

Employees of representative offices of foreign legal entities

From 1 July 2010, representative offices of foreign legal entities duly accredited in Russia will no longer be required to obtain work permits for those foreign citizens employed in their offices who received accreditation from the authorised accrediting body. Neither will these employers be required to obtain a permit to engage accredited foreign employees.

Conclusion

It's likely that it will take some time before the procedures established by the new law become clear.

However, once the new regime is established, we believe it will provide an opportunity for significant administrative savings. The new regime may also be another factor to take into account when deciding whether to operate a representative office, branch or subsidiary in Russia, since the tax advantages described above do not apply to foreign employees of representative offices.

These innovations are only some of the amendments being introduced. We would be happy to answer any questions relating to the new changes.

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