

Legislative alert

On 1 June 2008 the new version of the Rules for Determining the Quota, Conditions and Procedure for Issue of Permits to Employers to Employ Foreign Employees in the Republic of Kazakhstan came into force.

Rules for Employment of Foreign Employees in the Republic of Kazakhstan

In this issue we would like to bring to your attention a brief overview of the most important provisions of a new version of the Rules for Determining the Quota, Conditions and Procedure for Issue of Permits to Employers to Employ Foreign Employees in the Republic of Kazakhstan (the "Rules"), adopted by the Resolution of the Government of the Republic of Kazakhstan dated 19 December 2007 No. 1242 "On Amendment to the Resolution of the Government of the Republic of Kazakhstan dated 19 June 2001 No. 836."

The list of foreigners and individuals without citizenship who are exempt from application of the Rules has been amended. Thus, individuals seconded to branches and representatives of foreign legal entities in accordance with an agreement for a period of over 60 calendar days have been included into this exemption list provided that certain conditions are met. The following individuals, on the other hand, were excluded from the exemption list:

1. First heads of foreign legal entities
2. First heads of banks, insurance (reinsurance) organizations
3. First heads of executive bodies of joint-stock companies of the Republic of Kazakhstan, not less than 50% of the charter capital of which is owned by the state
4. Members of sea vessel crews
5. Individual entrepreneurs.¹

According to the new version of the Rules, a permit to employ foreign employees in the Republic of Kazakhstan (the "Permit") is issued for each foreign employee individually with indication of his/her personal data, category and position/profession. As a general rule, a work permit is issued for a period of one year.

With respect to employees holding the following positions a Permit can be issued for the period of validity of a labor agreement:

- a) First heads of legal entities of the Republic of Kazakhstan, not less than 50% of the charter capital of which is owned by foreign legal entities and individuals.
- b) Members of the board of directors of joint-stock companies, not less than 50% of the charter capital of which is owned by the state, foreign legal entities or foreign individuals.

Moreover, an authorized body cannot establish special conditions with respect to the above employees.

The stage that approves the list of employees is excluded from the procedure for obtaining permits. According to the new version of the Rules, the deadline for issuance of a decision by the authorized body is 20 (twenty) working days. However, the new version of the Rules does not establish the term within which an employer can actually obtain a Permit upon issuance of the decision by the authorized body.

¹ According to Article 8 of the Law "On Migration", foreigners and individuals without citizenship temporarily visiting the Republic of Kazakhstan can no longer operate in Kazakhstan as individual entrepreneurs. Entrepreneurial activities as a small or medium size business are allowed exclusively through establishment of a legal entity.

The Rules establish a new evaluation system for foreign employees to be employed. According to this evaluation system, an employee should obtain a certain number of points based on the following criteria:

- a) Education
- b) Work experience by specialty in a field of activity relevant to an employer's main activity
- c) Availability (absence) of demand for a specific specialty (profession) in the market in accordance with a list determined annually by the central executive authority on the basis of the proposals of local executive authorities. This criterion does not cover foreign employees to be employed under the first category (i.e., first heads with higher education and work experience in executive positions in a relevant field of activities no less than five years).

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