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## flash Alert

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### Germany – Proposed Amending Law Contains Changes for Immigration, Business Travelers

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Germany's government proposed a significant amending law to German immigration law on December 29, 2014, to the Federal Council ("Bundesrat"), Parliament's upper chamber.<sup>1</sup> Even though the amending law focuses mainly on humanitarian matters, including asylum and deportation matters, it also includes changes related to labor migration, of particular note, a new business traveler scheme. The amending law will likely become effective by late spring or summer.

#### Why This Matters

The proposal in the amending law would introduce significant changes for business travelers by extending the time-frame for certain permissible activities that a business traveler undertakes – from 90 to 180 days out of 360 days. Additionally, the trial phase for the new job seeker visa is to be superseded and this type of visa would become an enduring type of visa. Also, a completely new type of residence title is to be introduced allowing foreigners to complete a vocational training ("Berufsausbildung") in Germany, which is necessary for the acknowledgment of any training they may have completed abroad.

Finally, the proposal deals with the involvement of third-party providers in visa application procedures for national visas.

#### Business Travelers in Terms of German Employment Regulation Section 16

Under current German immigration law, certain activities of business travelers are "work authorization exempt" in cases where they do not exceed three months within a 12-month period.<sup>2</sup> Such activities of foreign business travelers coming to Germany include:

- Undertaking meetings and negotiations in Germany for an employer situated abroad; proposing contracts; closing a deal in Germany; or overseeing the completion of a contract.
- Establishing, overseeing (in terms of auditing), or supervising a local entity of the foreign employing entity.

These work authorization exemptions are currently not harmonized with the Schengen rules setting the framework for short-term trips to the Schengen Area. Even though individuals may make short-term trips to the Schengen Area lasting up to 90 days within a rolling period of 180 days, the German work authorization exemption is limited to three months within a 12-month period. The proposed German amendment will

<sup>1</sup> See BR-Drs. 642/14.

<sup>2</sup> See Sec. 16 in conjunction with Sec. 30 No. 2 of the German Employment Regulation (BeschV).

align the country's national work authorization exemption rules with the Schengen rules, so the activities listed above as work authorization exempt can be performed by business travelers within each 90-/180-day period and not only in just one. Currently, as the work authorization is limited to three months, the work authorization exempt activities can be performed only in one 90-/180-day period (and the other period could only be used for 'tourist' purposes).

Other work authorization exemptions – for example, for intra-corporate training – will not be prolonged, because the prolongation is strictly limited to the activities listed above.

### **Job Seeker's Visa**

In 2012, Germany implemented a new type of visa unofficially named "job seeker's visa."<sup>3</sup> The job seeker's visa is in a trial phase due to end on July 31, 2016. The amending law will end the trial phase. Thus, the job seeker's visa will be obtainable beyond that date. However, the job seeker's visa itself can only be issued for a period of six months. If an individual finds employment in Germany within that six months, he or she will be able to apply for a combined residence and work permit (including an EU Blue Card) in-country without having to apply for a new entry visa. This will not be revised by the amending law.

### **New Residence Title for Additional Vocational Training in Germany**

A new type of residence title will be introduced for additional vocational training Germany. Since July 1, 2013, Germany has been granting labor market access also to foreign individuals with a vocational training for the first time. However, the individual vocational training has to be listed in a so-called "white-list" maintained by the Federal Employment Agency.<sup>4</sup> Only individuals in possession of a listed vocational training can be granted labor market access, for example, mechatronics or construction electronics professionals.

Because vocational training of foreigners is typically completed abroad (e.g., in their home countries), German immigration law requires a validation process ("Anerkennungsverfahren"). As part of this validation process, the training content has to be comparable to the contents of similar German vocational training. If the training content is not considered as comparable, foreigners will then have the option to apply for an entry visa, where required, and a final work and residence permit for Germany valid cumulatively for an 18-month period when taking and completing additional vocational training in-country.

This type of entry visa or final combined residence and work permit will allow its holder to work concomitant to the completion of the additional in-country vocational training in a position that the vocational training is suited for. Alternatively, individuals will be able to work 10 hours per week in any position irrespective of their existing vocational training. Once the additional vocational training is completed, the individual will be allowed to reside in Germany for one year for purposes of job hunting and will have unrestricted labor market access during this time. Consider the following example: The foreigner is a mechatronics engineer, but has to complete additional vocational

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<sup>3</sup> See Sec. 18c of the German Residence Act (AufenthG).

<sup>4</sup> See for details:

<http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mta4/~edi sp/l6019022dstbai447048.pdf> .

training in Germany. He could work already for up to 40 hours (regular working time in Germany) as a mechatronics professional in Germany while he is pursuing courses, or he can work for up to 10 hours, for example, as a temp in a supermarket (as it is unrelated to his training).

### **Involvement of Providers in Application for National Visas**

At the moment third-party providers are already involved in visa application processes for national visas in 14 countries. They do not decide on the application themselves as officials, but, rather, collect the required information and forward it to the responsible consular officers at the German diplomatic missions. The amending law highlights that the involvement of third-party providers of German diplomatic missions must be in-line with the requirements applicable to Schengen business visas in terms of reliability and complying with data security policies.

With the amending law, the involvement of third-party vendors will not be a pilot experiment anymore, but, instead, will be a general approach that the local diplomatic missions can pursue when they are faced with work over-load. Even though third-party providers are not entitled to decide on behalf of German diplomatic missions, they will at least be able to collect documents and perform application interviews, including the collection of biometric data.

#### **KPMG Note**

Firstly, the new rules for business travelers will require companies to amend their business traveler policies and internal guidelines. However, there is much that is still ambiguous and undefined – and this could lead to interpretation and practical, implementation issues. The work authorization exemptions pursuant to German Employment Regulation Sec. 16 leave a margin of discretion to the authorities in terms of how to interpret these scenarios (“What are acceptable meetings and negotiations?”). According to the amendment, meetings and negotiations will be possible in total for up to 180 days within 360 days (2 x 90 days within a rolling period of 180 days). The Federal Employment Agency currently treats activities obviously not being work authorization exempt, such as consulting, as “meetings and negotiations” according to their internal guidelines.<sup>5</sup> From our point of view, activities like consulting require an entry visa or combined residence and work permit and can only be performed at a client’s for 3 months within 12 months on the basis of German Employment Regulation Sec. 29 (5). This will not be revised by the amending law. Thereafter, the time-frames will not be identical anymore and the current approach of the Federal Employment Agency will no longer be feasible.

Secondly, the amendments regarding the job seeker’s visa and the new residence title for additional vocational training in Germany also send a strong signal in respect of the opening up of labor migration channels into Germany, especially in cases where individuals do not have a specific job offer or are required to obtain additional qualifications in-country.

Thirdly, the option of involving third-party providers may lead – in accordance with a statement in the proposal – to a significant improvement regarding lead times for appointments. Currently, the lead times between scheduling an appointment and the appointment actually taking place can be up to several months.

KPMG Law in Germany will provide updates once it becomes clear, where and to what extent third-party providers will be involved, so companies can get a better handle on their internal lead times for secondments to Germany.

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<sup>5</sup> See No. 2.29.501 of the internal guidelines (“DA BeschV”) regarding the German Employment Regulation.

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The information contained in this newsletter was submitted by the KPMG International member firm in Germany. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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