

April 22, 2016  
2016-054

## flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

### Russia – Several Statutory Changes and Updates to Immigration System

by KPMG, Russia (a KPMG International member firm)

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Some notable changes in Russian immigration policies and practices for 2015 and early 2016 include the decline in the number of highly qualified specialist (hereinafter, HQS) work permits being issued and a rise in the number of foreign nationals prohibited from entering Russia.

In this *GMS Flash Alert*, we look at specific rules and policies introduced over the past few months which:

- will impact the procedures for bringing employees into Russia,
- will affect the number and types of foreign employees permitted entry into Russia;
- will alter the administration around foreign employees' visas and work permits; and
- will impose various penalties for non-compliance.

#### Why This Matters

There have been several important changes over the past few months to Russia's immigration system that foreign employees coming into and leaving Russia, their employers, as well as global mobility advisers and immigration counsel need to be aware of. Many of the changes introduce:

- new restrictions on entry into Russia;
- limitations on the hiring of foreigners; and
- new requirements and administrative obligations for employers (as well as the employees) with respect to contracts, notification to the authorities, and the level of HQS employees' remuneration.

Failure to comply with many of these changes could result in failed assignments, inability to meet business objectives, penalties, and other sanctions.

#### Prohibition on Employing Turkish Nationals

Presidential Order No. 583 of 28 November 2015<sup>1</sup> introduced restrictions on employers hiring/employing Turkish nationals (for prior coverage, see *GMS Flash Alert 2015-151*, 22 December 2015).

The prohibition does not apply in the following cases:

- If, up to and on the 31 December 2015, the Turkish nationals were employed or engaged for the provision of services in Russia and had proper work authorization documents;

- If the Turkish national's employer is on the list of employers approved by the Russian government in the relevant Resolution<sup>2</sup>. This Resolution, however, has placed a limit on the number of Turkish nationals that can be employed/engaged in Russia by a firm. The number of Turkish nationals employed as of 1 January 2016, cannot exceed the number of Turkish employees working for the employer on the 31 December 2015. The list of employers (in Russian) can be found at the following URL:  
<http://government.ru/media/files/nZyYqlzAnURqOxsnG0TYIfur7REDoA0v.pdf> .

### **Federal Law No. 116–FZ of 5 May 2014<sup>3</sup>: Prohibition on the Secondment of Personnel**

The general provisions of this new Law – which came into force on 1 January 2016 – prohibit the secondment of personnel to/from Russia unless an employer is providing its personnel to third parties on a temporary basis and in a limited number of cases in accordance with a contract on provision of personnel. If the consent of employees is obtained, employers (private employment agencies accredited for this specific purpose; other legal entities, including foreign legal entities and their affiliates) can provide their personnel to work – as per their employment contracts – under the control and supervision of the inviting party. However, current immigration legislation does not cover the legal procedures and requirements concerning secondment of foreign personnel to Russia.

### **FMS Order No. 574 of 30 December 2015<sup>4</sup>: Change in Validity Period of a Foreign National's ID Documents When Applying for a Russian Work Permit**

A new Order which reduced the acceptable validity date range for the passport (or other ID documents) of a foreign national seeking to obtain HQS status or to work in a foreign commercial organization in Russia entered into force on 19 February 2016. Passports or other ID documents need now only be valid for one year from the date on which an application for a work permit is submitted. Previously, ID documents had to be valid for at least three years from the date of application.

### ***Abolition of State Fee When Adjusting a Work Permit***

In accordance with this FMS Order<sup>5</sup>, no state fee is to be paid when applying to the FMS (Federal Migration Service of Russia) to have the details of a work permit adjusted due to changes in the foreign national's personal data (his/her first name, surname, or passport information), or in his/her position, profession, or line of business.

### **Eurasian Economic Union Treaty: Employment and Periods of Stay in Member States**

The Republic of Armenia and the Kyrgyz Republic acceded to the Eurasian Economic Union in 2015. The Eurasian Economic Union Treaty was signed on 29 May 2014, by the Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan.

According to section 26 of the treaty:

- Citizens of member states can work in other member states of the union without having to obtain work permits;
- An employee and his/her accompanying family members can stay in a member state of the Union as long as his/her employment/civil law contract, concluded with an employer/a contractor, is valid;
- Citizens of member states of the Union and their accompanying family members can stay without registering with the FMS or obtaining notification about arrival for 30 days from the date of entry, if the purpose of visit is "work."

### **Article 1 of Federal Law No. 56-FZ of 8 March 2015: Changes to HQS Remuneration**

Among other changes introduced by Article 1 of Federal Law No. 56-FZ<sup>6</sup>, the HQS minimum remuneration threshold in one calendar month must be RUB 167,000 (approximately EUR 2,000) gross. When interruption to the work of an HQS occurs due to sickness, unpaid leave, or for any other reason, restricting the remuneration to an amount below RUB 167,000 in one month, then the mandatory minimum remuneration for one reporting quarter must be RUB 501,000 gross. As such, in order to meet the required legislative amount, employers have to pay the mandatory remuneration irrespective of whether the HQS was absent or present at the place of work.

Previously, to keep HQS status, a foreign national's minimum remuneration had to meet RUB 2,000,000 (approximately EUR 26,000) for one year (365 calendar days).

### **Federal Law No. 199-FZ of 29 June 2015<sup>7</sup>: Obligation on Foreign Employees to Inform of Changes to Personal Data within the Stated Deadline**

The Law makes it obligatory for foreign employees to submit changes to their first name, surname, or passport details (or any other ID documents) to the FMS in order to have their work permit adjusted. An application to have an individual's personal data changed in the work permit should be submitted to the FMS within seven (7) working days from the date of entry into Russia following the change in the person's details or data, or from the date on which the personal data was actually changed.

Failure to comply with this obligation, or to meet the deadline, could trigger an administrative violation penalty (RUB 4,000 - 5,000, approximately EUR 50 - 60) for the foreign employee.

Please note that if a foreign national has two or more administrative violations (fines) within a year, he/she may be prohibited from entering Russia for several years.

### ***Foreign Employees Must Not Work in Any Other Position/Profession or Line of Business Other Than the One Stated on His/Her Work Permit***

According to the Law, foreign employees are prohibited from working in any other position (profession or line of business) other than the one stated on their work permits/patents. If a change of position/profession or line of business occurred, the foreign employee must apply to the FMS for an adjustment of his/her work permit.

If non-compliance with this requirement is discovered, the foreign employee will be penalised (the fine is RUB 5,000 - 7,000, approximately EUR 60 - 90) and may be deported from Russia. The company chief executive will be penalised as well (the fine is RUB 35,000 - 70,000, approximately EUR 460 - 930). In addition, the legal entity (the firm employing the foreign national) will have to pay a fine (RUB 400,000 - 1,000,000, approximately EUR 5,300 - 14,000), or its operations may be suspended for a period from 14 to 90 days. The fines indicated here are valid for Moscow, Saint Petersburg, and Moscow and Leningrad oblasts (regions). Fines in other regions of Russia may differ.

### **Federal Law No. 465-FZ of 30 December 2015: Exemption for Citizens of Belarus When Applying for Temporary Residence Permits or Residence Permits**

The amendments passed into law under Federal Law No. 465-FZ<sup>8</sup> provide citizens of the Republic of Belarus with an exemption from confirming their knowledge of the Russian language, of Russian history, and of basic Russian legislation when applying for temporary residence permits or for residence permits to be issued.

### **Liberalisation of Visa Regime with Georgia<sup>9</sup>**

Citizens of Georgia can apply for business, student, and humanitarian visas for one, double, and multiple entries, as well as for private visas, but no longer are required to make confirmation of the relationship between the parties. Russian consulates will issue visas based on invitation letters issued by the FMS.

### **Federal Law No. 357-FZ of 24 November 2014<sup>10</sup>: Obligation on Employers to Notify of the Conclusion/Termination of Employment or Civil Law Contracts with Foreign Nationals**

Employers/contractors are obliged to notify the FMS regarding the conclusion/termination of any employment/civil law contracts with foreign citizens. Notification should be submitted to the office of the FMS in the area in which the foreign employee works. This obligation to notify concerns employment relations with all categories of foreign nationals, including citizens of Kazakhstan, Belarus, Kyrgyzstan, and Armenia, as well as HQS and temporary residence permit/residence permit holders. The deadline for the submission of notifications is three (3) working days from the date on which the employment/civil law contract was concluded/terminated.

Please note that failure to notify or to meet the deadline/notification process requirements could trigger significant financial liabilities: either for the employer (a fine of up to RUB 1,000,000, approximately EUR 14,000), and for the company chief executive (a fine of up to RUB 70,000, approximately EUR 930), or for the foreign employee (a fine of up to RUB 7,000, approximately EUR 90). These fine amounts apply to the federal cities of Moscow and Saint Petersburg, as well as to Moscow and Leningrad oblasts (regions). Fine amounts in other regions of Russia may differ.

### **Additional Requirements When Formalising Employment Contracts with Foreign Nationals**

In 2015, employers hiring foreign citizens amended their employment contracts to comply with the requirements of the articles in Federal Law No. 409-FZ of 1 December 2014<sup>11</sup>.

The Law made it obligatory to conclude “undefined-term” employment contracts with foreign nationals. Furthermore, the Law stipulated the reasons for any temporary transfers of the foreign employees within the company, suspension from work, or termination of contracts with them.

In addition, the Law stated that the following information must be provided in employment contracts:

- Information from the foreign national’s work permit/patent or temporary residence permit/residence permit;
- Information from a voluntary medical insurance contract or from the foreign citizen’s voluntary medical insurance certificate, or from the agreement regulating the provision of medical treatment between the employer and the medical organisation contracted to provide medical treatment to foreign employees (including primary health-care and specialised medical care in case of emergencies).

*Footnotes:*

- 1 *Presidential Order No. 583 of 28 November 2015 “On measures to ensure the national security of the Russian Federation against criminal and other unlawful actions and on implementing special economic measures against the Republic of Turkey”* prohibited employers/contractors from employing or engaging for the provision of services citizens of the Republic of Turkey as of 1 January 2016.
- 2 *Resolution of the Russian Government No. 1458 of 29 December 2015 “On approving the list of employers and contractors allowed to employ or engage Turkish nationals for the provision of services who were not employed / engaged by the stated employers on the 31 December 2015.”*
- 3 On 1 January 2016, *Federal Law No. 116–FZ of 5 May 2014 “On changes to certain legislative acts of the Russian Federation”* came into force.
- 4 On 19 February 2016, *FMS Order No. 574 of 30 December 2015 “On changes to the Administrative Regulations of the FMS on the issuance of permits to employ foreign nationals and individual work permits, approved by FMS Order No. 589 of 30 October 2014,”* entered into force.
- 5 *Ibid.*
- 6 *Article 1 of Federal Law No. 56-FZ of 8 March 2015 “On amendments to Article 13.2 of the Federal Law ‘On the legal status of foreign citizens in the Russian Federation’, and to Article 6 of the Federal Law ‘On changes to the Federal law ‘On the legal status of foreign citizens in the Russian Federation’” and to certain legislative acts of the Russian Federation.”*
- 7 On 30 June 2015, *Federal Law No. 199-FZ of 29 June 2015 “On amendments to Articles 18.10 and 18.15 of the Code of the Russian Federation on administrative offences and on changes to the Federal Law ‘On the legal status of foreign citizens in the Russian Federation’”* entered into force.
- 8 On 30 December 2015, *Federal Law No. 465-FZ of 30 December 2015 “On amendments to Article 15.1 of the Federal Law ‘On the legal status of foreign citizens in the Russian Federation’”* came into force.

*Footnotes (cont'd):*

9 Pursuant to *clarification No. 2520-22-12-2015 by the Ministry of Foreign Affairs of the Russian Federation of 22 December 2015 "On visa liberalisation measures for citizens of Georgia,"* Russian multiple entry visas for Georgian nationals can be issued as of 23 December 2015.

10 On 1 January 2015, *Federal Law No. 357-FZ of 24 November 2014 "On changes to the Federal Law 'On the legal status of foreign citizens in the Russian Federation' and to certain legislative acts of the Russian Federation,"* came into force.

11 *Federal Law No. 409-FZ of 1 December 2014 "On changes to the Labour Code of Russia and on amendments to Article 13 of the Federal Law 'On the legal status of foreign citizens in the Russian Federation', which regulate the work of foreign nationals and stateless persons in Russia."*

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\* *Please note KPMG LLP (U.S.) does not offer immigration services.*

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