



Tax Alert

Amendments to the Act on foreigners

KPMG in Poland

November 2021

On 17 November 2021, the Lower House of the Polish Parliament passed the Act amending the Act on Foreigners and certain other acts, including the Act on promotion of employment and on labour market institutions. The Act brings a raft of important amendments to provisions on employing foreigners. The main purpose thereof is to improve the process of applying for and granting foreigners temporary residence and work permits as well as visas.

The key changes brought about by the Act can be found below.

Amendments to the Act on foreigners

The most important amendments to the Act on foreigners include facilities in granting temporary residence and work permits to foreigners. The Act repeals the requirement to have a secured place of residence and the requirement to have a stable and regular source of income for granting the permit. However, it will still be required from a foreigner to receive a remuneration not lower than the minimum one. Importantly, this condition will have to be met regardless of the working time and the type of legal relationship under which the work is performed.

The amendments also apply to provisions on granting temporary residence permits. The list of instances in which changing or issuing a new temporary residence and work permit is not necessary got extended with changes to the foreigner's job title, while the scope of duties remains unchanged, as well as increasing the working time, with a proportional increase in remuneration.

At the foreigner's request, the district governor [Wojewoda] may amend the permit in situations where the foreigner intends to perform work for a different work-entrusting entity or under the conditions of exemption from the obligation to have a work permit.

Under the Act, the district governor may refuse to amend the temporary residence and work permit in situations where:

- the entity entrusting work, or its managing or supervising entity has been legally sentenced for any crime or offense concerning employees' rights or related to the violation of the provisions on employing foreigners;
- the amount of the monthly remuneration does not meet the condition relating to the minimum remuneration for work, regardless of the number of working hours and the type of legal relationship;
- the foreigner intends to perform work in a period shorter than the period of validity of the amended temporary residence and work permit;
- the foreigner did not notify the district governor of the loss of job within 5 working days.

Additionally, the district governor may refuse to amend the permit in situations where financial means or sources of revenues of the entrusting entity are insufficient to cover liabilities resulting from entrusting work to a foreigner or where the entrusting entity does not conduct any actual business, agricultural or statutory activities that would substantiate the need to entrust given work to a foreigner in a given period, especially, when the entity suspended its activity, was removed from the relevant register or is under liquidation.

Amendments to the Act on promotion of employment and on labour market institutions

One of the key amendments to the Act on promotion of employment and on labour market institutions relates to declarations of entrusting work to a foreigner. Pursuant to the Act, work under the permits may be performed for up to 24 months. This provision will apply, as in the current legal status, to citizens of 6 countries (Armenia, Belarus, Georgia, Moldova, Russia, and Ukraine). Importantly, the Act provides for eliminating the 12-month settlement period, meaning that it will be possible to entrust the work to a foreigner on a continuous basis, under subsequent declarations.

The Act also stipulates that the entry of the declaration on entrusting work to the records will depend on the employer providing the foreigner with the so-called comparable pay - not lower than the remuneration of employees performing work of a comparable type or in a comparable position, which is aimed at increasing protection of the Polish labour market. Moreover, the employer's deadline for notifying the district employment agency of the commencement of entrusted work by a foreigner got extended to 7 days.

The Act is also to facilitate the process of granting temporary residence and work permits to foreigners intending to perform work for companies conducting business activities of strategic importance to the national economy. The Minister competent for economy may, by way of decree, establish a list of such entities. Applications for permits related to work for entrepreneurs conducting such activity will be considered in the first place.

The Act is now before the Upper House of the Polish Parliament and will enter into force 14 days after publication.



How can we assist you?

The vast array of services provided by KPMG includes:

- obtaining work permits and temporary residence permits in Poland and in the country of posting;
- drafting employment contracts, contracts of mandate and other contracts (including managerial contracts), as well as resolutions establishing remuneration of Management Board and Supervisory Board members;
- consultancy in the field of 'work from anywhere' (remote work provided in the taxpayer's home country for a foreign entity, without formal physical secondment);
- registration for tax, insurance, and labour law purposes;
- comprehensive assistance in the field of tax and insurance settlements.

If you would like to learn more about the issue discussed, please do not hesitate to contact us.

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