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The International Comparative Legal Guide to:

Corporate Immigration 2019

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Indonesia



Arthur Wailan Sanger, S.H.



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SANDIVA Legal Network

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main source is Law No. 6 of 2011 regarding Immigration (“Immigration Law”).

1.2 What authorities administer the corporate immigration system in your jurisdiction?

It is under the Directorate General of Immigration of the Ministry of Law and Human Rights.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No, Indonesia is not part of the above-mentioned agreements. Indonesia is a member of the APEC agreement that facilitates the movement of nationals from certain jurisdictions: Australia; Brunei Darussalam; Chile; China; Hong Kong (China); Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Philippines; Russia; Singapore; Chinese Taipei; Thailand and Vietnam.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Every foreigner entering Indonesia shall hold a valid and applicable visa. Foreign visitors may obtain a Visit Visa Pass/Limited Stay Visa, which may be used for business purposes. There is a visa waiver programme for foreign visitors to enter Indonesian jurisdiction by obtaining a Visit Visa Pass, as long the visitor’s nationality is listed in President Regulation No. 21 of 2016 on Visit Visa Waiver.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum is 60 (sixty) days.

2.3 What activities are business visitors able to undertake?

Under Visit Visa Pass (Not for Employment Purposes), the following activities are permitted:

- (i) Tourism.
- (ii) Family visit.
- (iii) Social matters.
- (iv) Art and culture.
- (v) Government tasks.
- (vi) Non-commercial sports.
- (vii) A comparative study, short course/short training.
- (viii) Assisting/counselling for quality control for International marketing.
- (ix) Emergency job.
- (x) Journalistic (for the individual that holds the permit).
- (xi) Non-commercial film making (for the individual that holds the permit).
- (xii) Business discussion.
- (xiii) Purchase of goods.
- (xiv) Lecturing/attending a seminar.
- (xv) Attending an International exhibition.
- (xvi) Meeting in a representative office.
- (xvii) To audit/quality control/inspect the representative office.
- (xviii) Transiting.

Under Limited Stay Visa (Employment/Non-Employment Purposes), the following are the permitted activities and/or vocations that may enter Indonesia under this visa:

- (i) Experts.
- (ii) To join in Marine works.
- (iii) Clergymen.
- (iv) Activities related to a profession that receive payment.
- (v) Commercial film making activities (for the individual that holds the permit).
- (vi) Quality control and production supervision.
- (vii) To inspect/audit the representative office.
- (viii) After-sales services.
- (ix) Non-permanent work in construction.
- (x) Holds an Art, music and sports event.
- (xi) Health treatment.
- (xii) Expertise trials (for Foreign Worker Candidate).
- (xiii) Foreign investing activities.

- (xiv) To attend training/scientific research.
- (xv) Scholarship.
- (xvi) Family unification.
- (xvii) Repatriation.
- (xviii) Elderly tourists.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Under a Limited Stay Visa, a foreign visitor can undertake work if the work/services are related to their expertise.

2.5 Can business visitors receive short-term training?

Yes, a business visitor can have short-term training.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

No, they do not have a system of compliance. However, the Directorate General of Immigration under the Ministry of Law and Human Rights Republic of Indonesia and the Ministry of Manpower may occasionally, or due to a tip-off, conduct an inspection.

3.2 What are the rules on the prevention of illegal working?

Every employer that employs a foreigner must have the Foreign Manpower Utilization Plan (RPTKA).

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Under the Manpower Law, an employer who employs a foreign worker without the minister's permission/work permit, is subjected to imprisonment for at least 1 (one) year but not more than 4 (four) years, and/or, to be fined for at least IDR 100,000,000 but not more than IDR 400,000,000.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is a register of foreign national workers that can be accessed through the Online System for Foreign Workers Services as provided by the Ministry of Manpower. The processes of registration is as mentioned below:

1. register and sign up for an account at www.tka-online.kemnaker.go.id;
2. upload the Foreign Manpower Utilization Plan documents;
3. verification phase by the officials;

4. online interview of the applicant; and
5. then approval of the Foreign Manpower Utilization Plan (RPTKA) shall be issued.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Yes, the employers must ensure that their foreign workers are in possession of a valid working permit and their Immigration permission.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

Employers who hire foreign workers must appoint a companion worker (local worker) for each foreign worker to be trained by or learn a skill from the foreign worker.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

Employers are required to pay USD 100 for each foreign worker/job.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Inspection by the Immigration Authorities is not a routine activity, usually it is conducted because they receive a report/tip-off.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Yes, the Ministry of Manpower maintains a list of skilled occupations that can be filled by foreign workers in certain sectors.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

There is no such recognition.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There are no limitations/annual quotas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There is a maximum of 50 foreign workers.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, they are not. But the foreign workers must attend Indonesia's language training programme provided by the employers.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

No, they are not.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Employers must provide medical insurance for Foreign Workers with local insurance companies and enrol them in the public social insurance programme.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, it does, if the location of the client site is stated in the work permit. A foreign worker can work at a maximum of five different locations.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no such category in immigration. However, the categories are regulated by the Ministry of Manpower which lists highly skilled positions such as experts, specialists, etc., in certain sectors that may be filled by foreign workers.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Yes, for foreign visitors to set up a subsidiary/representative's office in Indonesia, they must apply for the Non-Employment Purposes Limited Stay Visa.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There is no specific category, but it will fall under Limited Visa Stay with Employment Purpose.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

No, there is not. Foreign workers are limited to the occupations that are open in certain industrial sectors.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

No, it does not exist within the jurisdiction of Indonesia.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable in Indonesia.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable in Indonesia.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable in Indonesia.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable in Indonesia.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable in Indonesia.

8.7 Is there a maximum period of validity for initial intra company transfer visas, can they be extended and is there a maximum period of stay in this category?

This is not applicable in Indonesia.

8.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

This is not applicable in Indonesia.

8.9 What are the main government fees associated with this type of visa?

This is not applicable in Indonesia.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The newly hired foreign workers may enter Indonesia's jurisdiction under the Limited Stay Visa for Employment Purpose which must be applied for by the employer before the worker enters Indonesia.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There is no labour market testing required.

9.3 Are there any exemptions to carrying out a resident labour market test?

No, there is not, as labour market testing is not required.

9.4 What is the process for employers obtaining a work permit for a new hire?

The work permit is obtained by the employer by applying for the Utilization Plan of Foreign Workers (RPTKA), which will be issued within two days, as of completing the relevant documents. The Employer will be required to pay a compensation fund for the utilization of a foreign worker (DKP-TKA). Within two days after payment, a Notification for Utilization of the Foreign Workers will be issued to the Employer.

9.5 What is the process for the employee to obtain a visa as a new hire?

The Limited Stay Visa for Employment Purpose is applied for and managed by the employer.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

Please refer to question 9.4 above. The Initial Visa is not applicable, based on the Notification, the Limited Stay Visa will be issued.

9.7 How long are initial visas for new hires granted for and can they be extended?

Initial visas are not applicable in Indonesia.

9.8 Is labour market testing required when the employee extends their residence?

Labour market testing is not applicable in Indonesia.

9.9 Can employees coming as new hires apply for permanent residence?

No, a permanent residence permit may be given only to foreign workers that hold Limited Stay Permits and have stayed in Indonesia for over three consecutive years.

9.10 What are the main government fees associated with this type of visa?

The government fees for the Limited Stay Visa are the following:

- 1) six months: USD 55 / person;
- 2) one year: USD 105 / person;
- 3) two years: USD 180 / person;
- 4) a maximum of five years in the special economic zone: USD 250 / person;
- 5) on arrival (30 days of stay): IDR 700,000; and
- 6) wired visas approval from the Indonesia Embassy (at the Applicant's/foreigner's point of origin): IDR 100,000.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Foreign workers who obtained work permits and that hold a Limited Stay Visa may obtain a Limited Stay Permit. Once the foreign workers obtain the Limited Stay Permit, the stay permission may be transferred to a Permanent Stay Permit, by request, for a foreign worker who holds a high ranking position in the company and/or chief of a foreign representative office operating in Indonesia, who has stayed in Indonesia for three consecutive years.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

No, they are not.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The immigration law does not define who qualifies as a dependant of a foreign worker. However, a spouse, and children under the age 18 who have not been married, may be given a Limited Stay Permit to conjoin the foreign worker.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

No, they do not.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

No, they do not. The spouses may only work if they hold a different work permit. The dependants shall have to convert their visas and stay permit from a dependant to a foreign worker.

11.4 Do children have access to the labour market?

No, they do not.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

A foreigner who can be granted a permanent stay permit are: a newborn child whose parents hold a limited stay permit, and foreigner who holds a limited stay permit, which are limited to:

1. Clergymen (who have stayed in Indonesia for three consecutive years).
2. Foreign workers (limited to foreign workers who hold a high ranking position in the company and/or chief of a foreign representative office operating in Indonesia, who has stayed in Indonesia for three consecutive years).
3. Investors:
 - a. if the foreigner holds a position in the company, the minimum investment is IDR 1,000,000,000 or its equivalent in foreign currency (and has stayed in Indonesia for three consecutive years); or
 - b. if the foreigner does not hold a position in the company, the minimum investment is IDR 10,000,000,000 or its equivalent in foreign currency (and has stayed in Indonesia for three consecutive years).
4. Foreign tourists over 55 years old (and has stayed in Indonesia for three consecutive years).
5. A spouse who conjoins with his/her spouse who holds a permanent stay permit (with a minimum of two years of marriage).
6. Unmarried children under 18 years old who conjoin their father and/or mother who hold a permanent stay permit.
7. A former Indonesian citizen.
8. A spouse who conjoins with his/her spouse who is an Indonesian citizen.
9. Children who have a father and/or mother who is an Indonesian citizen.
10. A child that formerly possessed dual citizenship.
11. Unmarried children under 18 years old who conjoin their father and/or mother who married an Indonesian citizen.

The following limited stay permit holder cannot be given a permanent stay permit:

1. Foreign worker in the maritime field.
2. An individual that holds a 90 days limited stay permit.
3. An individual that holds a limited stay permit upon arrival for 30 days.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

A temporary work visa / limited stay permit can be switched to a permanent residence / permanent stay permit. Please refer to question 12.1 above for the qualifications needed for a permanent residence/permanent stay permit.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The Ministry of Manpower shall have the full discretion to accept or reject a foreigner working in Indonesia.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

No, it does not. A foreigner is not required to declare past convictions.

Acknowledgment

The authors would like to thank Raiyan Maulana for his work on this chapter. Raiyan Maulana is a listed member of the Indonesian Bar Association (PERADI). He has handled various Immigration issues and has been trusted to lead the firm's immigration practices. He has also handled several Delay of Payment and Bankruptcy cases.

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