

Corporate Immigration

Contributing editor
Julia Onslow-Cole



2019

GETTING THE
DEAL THROUGH

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Corporate Immigration 2019

Contributing editor
Julia Onslow-Cole
PwC LLP

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Preface

Corporate Immigration 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Corporate Immigration*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Slovenia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Julia Onslow-Cole of PwC LLP, for her continued assistance with this volume.

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DEAL THROUGH 

London
August 2018

Bermuda

Fozeia Rana-Fahy

MJM Limited

Overview

1 In broad terms what is your government's policy towards business immigration?

The government of Bermuda allows business immigration. The mission of the Department of Immigration, which operates through the Ministry of Home Affairs, is to 'improve the economy by addressing the needs of the local and international business community and the career aspirations of Bermudians'.

With a change in government in 2017, minor changes have been made to reform immigration. One such change includes an amendment to section 8 of the Bermuda Immigration and Protection Act 1956 (the Act) to provide for provisions to the Act, 'to operate and have effect, notwithstanding the Human Rights Act 1981,' as stated by the Minister of Home Affairs (the Minister). Additionally, the government has appointed a Consultative Immigration Reform Working Group that was 'tasked with recommending the principles by which new immigration policies will effect legislation in relation to: mixed families, permanent resident certificates and Bermudian status'.

Although no new changes have been introduced by the new government to the current Work Permit Policy (the Policy), a more stringent interpretation is being adopted towards the implementation of the Policy.

The Act requires that all non-Bermudians must obtain specific permission (by way of work permits) if they are to engage in gainful occupation in Bermuda. In most cases, the main criterion in assessing whether or not to grant foreign nationals permission to work in Bermuda is whether there is a suitably qualified Bermudian, spouse of a Bermudian or permanent resident certificate (PRC) holder who has applied for the role. Additional guidance regarding the requirements that non-Bermudians must meet in order to obtain permission to work in Bermuda is set out in the Policy. The Policy contains various protections for the Bermudian workforce, including, for example, requirements to ensure that employers have conducted bona fide searches for qualified locals to fill the position.

The Department of Immigration cannot force an employer to hire Bermudians, spouses of Bermudians or PRC holders. It can only prevent the hiring of foreign nationals by refusing to grant a work permit – if the requirements are not met.

Immigration legislation and the Policy are enforced by the government. Amendments to the Act in 2013 provided greater powers to the Chief Immigration Officer to enforce the requirements of the Act and the Policy (eg, the Chief Immigration Officer can now impose civil penalties (up to Bda\$10,000) on employers who abuse immigration policy).

Short-term transfers

2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

For the purposes of this chapter, it should be noted that 'visa' is interpreted as work permit permission. See question 5 with respect to formal visa requirements.

Short-term business travellers under the Policy will generally fall into one of three categories:

- a 'business visitor' who is a non-resident, who visits Bermuda to undertake certain limited business purposes;

- a 'short-term work permit' holder, who is employed to work in Bermuda for a period of up to six months; or
- a 'periodic work permit' holder, who is someone engaged by an employer who will make multiple visits to the island (for no more than 30 days per visit, with a maximum of 180 days per year).

Work permits are obtained by application to the Department of Immigration for the permit that best suits the needs and requirements of the traveller.

3 What are the main restrictions on a business visitor?

Business visitors do not need work permit permissions if they have a return ticket, their stay does not exceed 21 days and they are undertaking certain types of activities. A full list of such activities is included in the Policy. By way of example, a short-term business traveller visiting Bermuda for less than 21 days is able to do the following without work permit permission:

- attend broker, director or shareholder meetings;
- attend general business meetings with a Bermuda company where the business traveller is not being remunerated by the Bermuda company;
- present at business seminars not open to the general public;
- attend a job interview;
- attend a conference;
- make presentations in response to a request for a proposal if not being remunerated; and
- international dispute resolution work, carried out by lawyers, clients, witnesses, experts and administrative support professionals.

Note that this is not an exhaustive list and advice must be sought to determine if a business traveller can enter Bermuda without work permit permissions. An extension to the 21 days can be obtained under the Policy.

Short-term work permits or periodic work permits are required by those individuals whose activities in Bermuda fall outside the permissible activities for a business visitor (as summarised above) or are required to last more than 21 days, or both.

Short-term work permit applications are accepted for three to six months and may be extended for up to a further six months. The primary obstacle to obtaining a short-term permit is the requirement to advertise and vet qualified Bermudians, spouses of Bermudians and PRC holders. However, employers may be exempted from the requirement to advertise in certain circumstances (eg, where the intended work permit holder works for an overseas subsidiary or affiliate of the Bermuda employer). The Policy should be consulted for further details.

A periodic work permit holder is able to stay in Bermuda to conduct work that he or she is contracted to provide to the employer for a period of no greater than 30 days per visit. Periodic work permit holders are not permitted to be in Bermuda for more than a total of 180 days per calendar year. This type of permit is for individuals who work for an overseas office of the Bermuda company or for an individual who is a service provider contracted to work for the Bermuda company.

There are no restrictions with respect to remuneration for short-term work permit holders. Permissible activities are limited to those duties that the short-term work permit holder is contracted to perform and which were detailed in the work permit application.

4 Is work authorisation or immigration permission needed to give or receive short-term training?

An individual can enter Bermuda for up to 21 business days without a work permit for training in techniques and work practices, provided that the training is conducted by a company affiliated by an ownership relationship and that the training is limited to observation, familiarisation and classroom instruction. Training in other circumstances will require immigration permission (either via a short-term work permit or a periodic work permit).

5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

As of 1 March 2014, Bermuda entry visas and visa waivers are not required for tourist and business visitors and work permit holders. It should be noted, however, that travellers who require a multi re-entry visa (MRV) for Canada, the UK or the US will need to present the valid MRV upon arrival in Bermuda.

Long-term transfers

6 What are the main work and business permit categories used by companies to transfer skilled staff?

The three primary, non-temporary business permit categories are as follows:

Standard work permits

The purpose of a standard work permit is to allow all organisations in Bermuda to employ foreign nationals provided that they can demonstrate that a Bermudian, spouse of a Bermudian or PRC holder was not suitably qualified or available to be hired. Employers may apply for standard work permits of a one to five-year period.

Employers are permitted to apply for standard work permits for jobs that are in the open, special or restricted category. Applications for standard work permits are not allowed for closed category jobs. Closed category jobs include, but are not limited to, labourers, sales people and receptionists. Restricted category jobs include, but are not limited to, bank tellers, bartenders, administrative assistants, general masons and photographers. These categories are generally designed to protect the local workforce.

Global work permits

The global work permit allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position so long as the position being filled is not a pre-existing position. Global work permits are granted for periods of time similar to standard permits (ie, one to five years). However, if an employer wishes for a global work permit holder to continue working in Bermuda after the expiry of the worker's global work permit, they will be required to apply for a standard work permit.

Applications will be automatically approved in respect of individuals who have been employed for longer than one year and who earn a gross salary greater than Bda\$125,000 per year. Applications in respect of individuals employed for less than one year or those earning less than Bda\$125,000, or both, will be considered on a case-by-case basis and approval will depend substantially on demonstrating that the addition of the global work permit holder will add value to Bermuda. A global work permit is not applicable to positions listed in the closed or restricted categories.

New business work permit

A new business work permit allows an exempted company (per the definition in the Companies Act 1981) that is new to Bermuda to receive automatic approval of work permits for the first six months of obtaining the first new business permit. There is no need to advertise the positions (which is the requirement of the standard work permit). New section 114B companies to Bermuda (per the ability to be licensed under section 114B of the Companies Act) will be granted new business work permits; however, these will be limited to five new business work permits within the first six months of obtaining the first new business work permit. New business work permit holders may be employed in any job category provided that their position is not an entry-level position, a graduate position or trainee position or specified in a closed or restricted category. However, if the new business permit holder falls

within a job category where a statutory council must be consulted, this must still be done.

Fintech business work permit

On 4 May 2018, the Minister announced a new immigration policy for fintech start-up companies. The Minister has stated that the new policy, 'which almost mirrors immigration's new business work permit policy, allows a fintech company that is new to Bermuda to receive immediate approval of five work permits within the first six months of obtaining the first fintech business work permit'. One significant caveat to this new policy is the requirement that 'for a fintech business to be eligible for automatic approvals under this policy they must also present plans for the hiring, training and development of Bermudians in entry level or trainee positions'. Standard work permit policies apply after the initial terms of the fintech business permit expires.

7 What are the procedures for obtaining these permissions? At what stage can work begin?

Standard work permit applications require the employer (who must be a Bermuda-based individual or company) to:

- advertise the vacancy in Bermuda as per the requirements in the Policy;
- properly consider any Bermudian, spouse of Bermudian or PRC holder who meets the minimum qualifications of said advertisement;
- with the assistance of the work permit applicant, complete the relevant work permit application form and submit all necessary and relevant documentation; and
- where necessary, send the application to the relevant statutory body regulating the profession of the applicant (eg, doctors and lawyers).

Work cannot begin until the application has been approved by the Department of Immigration.

With respect to the standard work permit, the global work permit and the new business permit, if employers are able to qualify for the waiver of advertising per the Policy, the first two steps identified above do not need to be followed. The employer need only complete the relevant work permit application form and submit all necessary documentation.

8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

This is one to five years. Renewal permits can be applied for when standard work permits expire – as long as all the relevant requirements of the Policy continue to be met. The general restriction of work permit holders not working in Bermuda for longer than a six-year period was removed by the government.

9 How long does it typically take to process the main categories?

Standard work permits typically take 20 working days to process and global or new business work permits take 10 working days. These periods are subject to change if the Department of Immigration experiences a high volume of submissions.

10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

Employers and employees have certain obligations with respect to social insurance contributions, payroll tax, pension and medical insurance. Employers must ensure that the employee has the legislative minimum health insurance cover (although it is common for corporate employers to provide enhanced insurance coverage), pension and social insurance. Accommodation is optional for employers to arrange and pay for.

11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The Policy is fairly detailed and provides certain objective criteria for eligibility for the various applications. However, the Policy cannot be described as entirely objective.

The Policy itself states that the Minister may exercise his or her discretion per the Immigration legislation to waive specific policies

upon written request or justification for the same. This is particularly the case in respect of specialised roles where there is a known shortage of Bermudians, spouses of Bermudians and PRC holders. The Minister has no discretion to waive any fees. In this way, there is flexibility within the Policy to accommodate complicated cases.

In practice, the Minister and the Immigration Board (appointed by the Minister), which reviews the applications, do possess discretion with respect to interpretation of various issues. For example, if a Bermudian, spouse of a Bermudian or PRC holder has applied for the job upon advertising and has been refused the job in favour of the work permit applicant, the Board and the Minister will exercise subjective analysis of whether the consideration of the Bermudian, spouse of Bermudian or PRC holder was fair.

It should also be noted that if an application is refused, the application can be appealed to the Minister.

12 Is there a special route for high net worth individuals or investors?

Under the global entrepreneur work permit, the Minister will grant a permit to an individual for a one-year period to work and reside in Bermuda (in respect of an exempted company or a section 114B start-up), if he or she is satisfied that the applicant is a bona fide investor or business person that is likely to domicile a company in Bermuda. The work activities may include business planning, seeking appropriate government or regulatory approval, meeting compliance or financial requirements or raising capital.

High net worth individuals are able to apply for permission to reside on an annual basis but such permission does not permit them to work in Bermuda.

13 Is there a special route for highly skilled individuals?

There is no special application for highly skilled individuals. Employers of highly skilled individuals may, however, be able to seek a waiver to the requirement to advertise the position on the following basis:

- that the applicant is uniquely qualified for the position;
- the position would not exist in Bermuda if it were not for the applicant filling the job;
- the success of the business would be detrimentally affected if the person were to leave the business; or
- the employee is integral and key to income generation.

It should be noted that the posts of CEO and other chief officers are automatically granted waivers from advertising.

14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

There is no special route for high net worth individuals for residence permission for Bermuda.

Economic citizenship and investment visas were initially investigated and discussed by the previous government as an initiative to attract foreign investment in Bermuda but such discussions have not progressed further.

15 Is there a minimum salary requirement for the main categories for company transfers?

There is no minimum salary requirement for the main categories for company transfers. However, if the individual moving to Bermuda wishes to bring dependants to Bermuda, there are minimum salary requirements that must be proven.

Upon application, sponsored dependants of the work permit holder may be given permission to reside with the work permit holder and seek employment provided that the sponsor submits proof of financial support for the sponsored dependants. The following thresholds must be demonstrated:

- a two-person household requires remuneration of Bda\$60,000 per annum;
- a three-person household requires remuneration of Bda\$100,000 per annum; and
- a household of four or more persons requires remuneration of Bda\$125,000 per annum.

16 Is there a quota system or resident labour market test?

There is no quota system in Bermuda.

As discussed, all positions (unless the employer is eligible to seek a waiver to the requirement to advertise) must be advertised. If a Bermudian, spouse of a Bermudian or PRC holder applicant meets the requirements of the advertised position, such an applicant should be interviewed. Results of any interviews must be included with the work permit application submission.

17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

No.

18 What is the process for third-party contractors to obtain work permission?

Work permits must be obtained by the Bermuda employer. If someone is required to work as a contractor or consultant for another company or individual, that other company or individual must also apply for the work permit, identifying that the employee will be working as a contractor or consultant.

19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

Formal assessments or testing to confirm skills and qualifications is not required. It is the responsibility of the employer to provide a written declaration in the application form that they have thoroughly screened the applicant and to the best of their knowledge and belief the applicant is of good character, possesses the qualifications purported in the application, is in good health and does not have a criminal record.

The Policy does, however, state that the Minister shall consult with the statutory body that regulates matters dealt with by that profession. A full list can be found in the Policy and includes, but is not limited to, statutory bodies relating to architects, lawyers, dentists, nurses, psychologists, accountants and engineers.

Extensions and variations

20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Tourists are unable to apply for a work permit while physically in Bermuda. This does not prevent the tourist visitor from returning to his or her home country and thereafter applying for a Bermuda work permit.

A business visitor can apply for extensions beyond 21 days. This is done by way of application.

A business visitor can apply for a short-term work permit if it becomes obvious that the activities being conducted fall outside the activities permitted under the business visitor policy. It would, however, be advisable for the employer to identify at the outset whether a short-term work permit is needed based on the anticipated activities.

At the conclusion of a short-term work permit for three, four, five or six months, the holder will be expected to leave Bermuda, unless an extension has been sought within the proper processing period. Short-term work permit holders will not normally be granted permission to reside and seek employment.

A short-term work permit holder can, by way of application, seek to obtain a standard work permit. This must be done within 45 days of obtaining the short-term work permit. An explanation must also be provided as to why the standard work permit application was not made at the outset.

21 Can long-term immigration permission be extended?

Yes, indefinitely for up to five years with each application. There is no requirement to leave as long as all requirements as to advertising are met upon renewal (or alternatively a waiver is sought).

22 What are the rules on and implications of exit and re-entry for work permits?

Persons with permission are required to carry the document granting said permission when they travel. Otherwise they may be subject to fines – they are not at risk of being denied entry into Bermuda.

Dependants must also carry re-entry documents when exiting and re-entering Bermuda.

23 How can immigrants qualify for permanent residency or citizenship?

The Incentives for Job Makers Act 2013 and amendments to the Act in 2013 sought to make it easier for companies to obtain work permit exemptions for certain senior executives, and for certain senior executives to be eligible to apply for permanent residency.

The employing company must first obtain designation as a company whose senior executives can apply for exemption. This involves having to show that the company has at least 10 Bermudians on its staff, that Bermudians are employed at all levels of the company and that entry-level positions, development programmes and promotion possibilities are available for Bermudians.

Where a designation is granted to a company, a qualifying senior executive of that company is then eligible to apply for exemption. The exemption application must demonstrate that:

- the applicant is indeed a person in a senior executive position;
- the applicant is responsible for making decisions that are critical to the continuity of the company in Bermuda;
- the continued presence of jobs with the company in Bermuda for Bermudians must be dependent on the applicant remaining in Bermuda;
- the applicant will continue to be employed in the company for the duration of the exemption; and
- the company must continue to meet the requirements of a designated company.

The designation and exemption application costs Bda\$20,000. A qualifying exempt senior executive may apply for permanent residency at the appropriate time. Such an application involves having to demonstrate the following:

- the applicant has been eligible for exemption for a period of at least 10 years (this involves showing that the designated employing company was also eligible as a designated company for a period of 10 years);
- the applicant has been ordinarily resident in Bermuda for a period of at least 10 years; and
- the applicant has been ordinarily resident in Bermuda during the two years immediately preceding the application.

The PRC application costs Bda\$50,000 for the executive and Bda\$3,000 for each qualifying dependant.

24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Employers are required to submit a written notice of termination to the Department of Immigration within seven working days of the work permit holder's last day of employment. The notice must identify, among other matters, the date on which the employee left, or is planning to leave, the island and the reason for termination.

The employer must also return the work permit paper document and the work permit card to the Department of Immigration.

25 Are there any specific restrictions on a holder of employment permission?

A holder of employment permission is restricted from undertaking any duties or responsibilities not expressly approved and noted on his or her work permit. By way of example, an insurance broker cannot start working as a paid photographer for his or her employer.

Work permit holders are able to advance their professional development through further studies without obtaining permission.

Work permit holders can be promoted. The employer must first obtain permission from the Department of Immigration. While the employer is not required to advertise the post externally before applying by letter for permission to promote or otherwise transfer an employee internally, evidence of consideration of internal Bermudian, spouses of Bermudians and PRC holder candidates must be submitted to the Department.

The salary of a work permit holder can be changed. The Policy is silent regarding whether permission must be obtained regarding salary increases. The practical approach is that incremental salary

adjustments do not require permission. Significant increases could be seen as a 'promotion' and permission should be obtained.

A work permit holder can work for an additional employer, but each employer must obtain a work permit for the individual. A work permit cannot be transferred to another employer (unless the reason for the transfer relates to a merger, acquisition or amalgamation – in which case permission by way of letter must be obtained). The new employer must apply for a separate work permit.

It should be noted that a work permit holder has the ability to seek alternative employment without permission during the course of the work permit. However, the work permit holder is not normally permitted to change employers during the first two years of employment with an initial employer. Thereafter there is no limitation on the number of job changes.

Dependants

26 Who qualifies as a dependant?

Spouses (same-sex or otherwise), long-term partners (same-sex or otherwise – an affidavit swearing to a genuine and subsisting relationship will be required) and dependent children (under 18 or up to 25 if in full-time education) qualify as dependants.

Extended family applications can be made. However, as they fall outside the immigration policy, they are decided at the Minister's discretion on a case-by-case basis. It will be essential that such dependants demonstrate they can independently financially support themselves or that the work permit holder has sufficient finances to support the additional family member.

27 Are dependants automatically allowed to work or attend school?

Spouses and partners of work permit holders who are in receipt of re-entry documents are automatically granted permission to seek employment but are still subject to work permit restrictions.

Dependants are permitted to attend school but permission to seek employment does not extend to children. Child dependants are required to make their own application for permission to seek employment when they turn 18.

28 What social benefits are dependants entitled to?

Children get free basic health coverage known as HIP.

Other matters

29 Are prior criminal convictions a barrier to obtaining immigration permission?

These are decided on a case-by-case basis. Factors considered include the severity and nature of the crime, number of convictions and how recently the offence occurred. Spent convictions such as driving violations will not normally be a barrier to obtaining a work permit.

30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Employers and employees are subject to fines and cases of non-compliance may jeopardise future work permit applications for the employer.

Individuals may also have their work permits revoked and be subject to deportation.

31 Are there any minimum language requirements for migrants?

The Policy states that persons coming to work in Bermuda under the Portuguese Accord, as well as those employed in the construction industry, are required to have a working knowledge of the English language.

32 Is medical screening required to obtain immigration permission?

Employers of individuals coming to Bermuda for the first time are required to submit a medical certificate of good health. As referred to in question 19, it is the responsibility of the employer to ensure that the applicant is in good health.

However, individuals who have ever resided for two months or more in a country on the WHO 'High Risk of TB' list must submit a certificate of general good health from a doctor, as well as an original chest X-ray, with the work permit application.

33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

There is no specific procedure. Employees on secondment must obtain a work permit before commencing a secondment in Bermuda. Generally, the company utilising the services of the seconded employee is responsible for obtaining the work permit.



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