

10 January 2017

To our clients and friends

INFORMATION LETTER
**Concerning Amendments to Legislation on Foreign Labor Engagement and
Procedure for Foreigners' Stay in the RK Territory**

Starting 1 January 2017, Kazakhstan introduces an updated procedure for foreign labor engagement and for foreigners' stay in the RK territory, which is regulated by the normative legal acts, as follows:

- ✓ The key foreign labor engagement rules are defined in the new chapters of the Migration Law¹ (chapter 6) and Employment Law² (chapter 7).
- ✓ The rules and conditions for issuing job placement permits to foreign employees and foreign labor engagement permits to employers are approved by the updated version of the Order No. 559³, as provided for by the Order No. 1069⁴, and the Order No. 503⁵.
- ✓ The rules for quota allocation for foreign labor engagement, list of economy industries for intra-corporate transfer and list of persons whose labor activities may be carried out in the RK without permit obtainment are approved by the Decree No. 802⁶.
- ✓ Since permits will be issued on a fee-paid basis starting 1 January 2017, the rates of charges for issuing or extending permits are defined in the new chapter 68-2 of the Tax Code⁷ and Decree No. 459⁸.

¹ RK Law No. 477-IV "On Migration" dated 22 July 2011, as amended (hereinafter, the "Migration Law").

² RK Law No. 482-V "On Population Employment" dated 6 April 2016 (hereinafter, the "Employment Law").

³ Order No. 559 of the RK Acting Minister of Health and Social Development "On Approval of the Rules and Conditions for Issuing and / or Extending Foreign Labor Engagement Permits to Employers, and for Intra-Corporate Transfer" dated 27 June 2016 (hereinafter, the "Order No. 559").

⁴ Order No. 1069 of the RK Minister of Health and Social Development "On Introduction of Amendments into the Order No. 559 of the Acting Minister of Health and Social Development of the Republic of Kazakhstan of 27 June 2016 on Approval of the Rules and Conditions for Issuing and / or Extending Foreign Labor Engagement Permits to Employers, and for Intra-Corporate Transfer" dated 15 December 2016 (hereinafter, the "Order No. 1069").

⁵ Order No. 503 of the RK Minister of Health and Social Development "On Approval of the Rules for Issuing Certificates to Foreigners or Stateless Persons Concerning Their Qualification Conformity for Job Placement, List of High Priority Industries (Types of Economic Activities) and Professions in Demand Therein for Job Placement of Foreigners and Stateless Persons" dated 13 June 2016 (hereinafter, the "Order No. 503").

⁶ Decree No. 802 of the RK Government "On Approval of the Rules for Defining Quota for Foreign Labor Engagement in the Republic of Kazakhstan and Allocation Thereof among the Regions of the Republic of Kazakhstan, and for Determining the Lists of Economy Industries for Carrying Out Intra-Corporate Transfer, and Persons for Whose Labor Activities No Foreign Labor Engagement Permit from Local Executive Authorities is Required, and on Recognition of Certain Decrees of the Government of the Republic of Kazakhstan as Null and Void" dated 15 December 2016 (hereinafter, the "Decree No. 802").

⁷ RK Code "On Taxes and Other Mandatory Payments to the Budget" dated 10 December 2008, as amended (hereinafter, the "Tax Code").

⁸ Decree No. 459 of the RK Government "On Determination of Rates of Charges for Issuing and / or Extending Permits for Engagement of Foreign Labor in the Republic of Kazakhstan" dated 18 August 2016 (hereinafter, the Decree No. 459).



- ✓ The procedure for foreigners' stay in the RK territory and for exercising migration control will be implemented in accordance with the updated version of the Decree No. 1489.

The key novelties related to foreign labor engagement procedure were presented in AEQUITAS Information Letter of 1 November 2016 (please visit Press Center at www.aequitas.kz).

Since Kazakhstan introduced amendments into the Order No. 559 and adopted the new Decree No. 802 and Decree No. 838 in late December 2016, we would like to additionally point out the key changes, which comprise as follows:

1. The list of persons not covered by the statutory requirements on quota allocation and permitting procedure for foreign labor engagement is determined in paragraph 2 of Article 32 of the Employment Law and includes 9 points (including foreigners residing in the RK, i.e. those who have residence permits, and some other categories of foreigners primarily relating to the activities of EXPO 2017). Moreover, the Decree No. 802 determines an additional list of foreigners whose labor in the RK does not require permit obtainment. Such list consists of 18 points and embraces, among others, the following categories of foreigners:
 - ✓ citizens of the member states to the Eurasian Economic Union Treaty of 29 May 2014;
 - ✓ foreigners working as chief executive officers of branches or representative offices of legal entities;
 - ✓ foreigners sent on official business trips, duration of which does not exceed in total one hundred and twenty (120) calendar days within one calendar year.
2. The following changes took place with respect to procedure for foreign labor engagement permit obtainment, including in the framework of intra-corporate transfer, as provided for by the updated version of the Order No. 559, which:
 - ✓ Introduced a provision that, apart from the previously established cases, the requirements on local content in staff for the purposes of labor permit obtainment will no longer apply to representative offices and branches of foreign legal entities where the number of employees is below 30.
 - ✓ The issue of obtaining foreign labor engagement permit in a situation where foreign employees go to Kazakhstan under a civil law agreement was settled in a slightly different way. The initial version of the Order No. 559 stipulated that in a situation where a foreign company, which had no branch or a representative office in the RK, sent its employees to Kazakhstan to perform work under a civil law agreement, the obligation to obtain foreign labor engagement permits for such employees was borne by the host company in Kazakhstan, regardless of whether such host company was affiliated with the foreign company or not. From now on, such procedure for obtaining foreign labor engagement permits applies not only to the described situations, but also to situations where a foreign employer legal entity sends its employees to Kazakhstan to perform work / provide services to its subsidiary, representative office / branch of the foreign legal entity where such employer legal entity directly or indirectly owns shares or participation interests. Given the case, during the period of performing work / providing services the labor relations will be regulated by a document (letter of transfer or transfer agreement) to be agreed upon between a

⁹ Decree No. 148 of the RK Government "on Approval of the Rules for Immigrants' Entry and Stay in the Republic of Kazakhstan and Their Exit from the Republic of Kazakhstan and the Rules for Exercising Migration Control and Record of Foreign Citizens and Stateless Persons Illegally Crossing the State Border of the Republic of Kazakhstan and Illegally Staying in the Republic of Kazakhstan, and Persons Prohibited to Enter into the Territory of the Republic of Kazakhstan" dated 21 January 2012, as set out in the Decree No. 838 of the RK Government dated 23 December 2016 (hereinafter, the "Decree No. 838").

- foreign employee and foreign employer legal entity, from which the foreign employee was transferred.
- ✓ Cancelled the requirement on the Kazakh language knowledge when engaging foreign labor in the framework of intra-corporate transfer.
 - ✓ Cancelled the necessity to publish advertisements about vacancies in mass media in the framework of search for employees on the local labor market in the event of intra-corporate transfer. The search for respective candidates on the domestic labor market is now performed by an employer by sending data about the available vacant positions to the population employment center according to the place of carrying out labor activities by the foreign labor in accordance with the Employment Law. However, the local executive authority is to accept the employer's application for foreign labor engagement permit not earlier than fifteen (15) calendar days and not later than sixty (60) calendar days after submitting the data about the availability of vacant positions. This provision will remain in effect until 1 January 2021.
 - ✓ Cancelled the employer's obligation to notify the internal affairs authority concerning business trips of foreign employees and to obtain written commitments to comply with the RK migration and labor legislation from foreign employees.
3. As a pilot project intended to improve investment climate, which was launched in the RK in 2015, citizens of nineteen (19) countries showing the highest investment activities in Kazakhstan were granted a possibility of visa-free entry into Kazakhstan during the period from 16 July 2015 until 31 December 2017, if the duration of their stay in the RK did not exceed fifteen (15) calendar days. Adoption of the Decree No. 838 entailed the following changes:
- ✓ the list of countries falling under the visa-free regime was expanded to embrace up to forty-six (46) countries¹⁰;
 - ✓ the term of visa-free stay of citizens of the above countries was increased from fifteen (15) to thirty (30) calendar days of the moment of crossing the RK state border;
 - ✓ the limitation of the term of this regime (until 31 December 2017) was cancelled.

Should you have any additional questions in connection with this Information Letter, we would be happy to provide you with more detailed information.

Best regards,
AEQUITAS Law Firm

¹⁰ These countries are the Commonwealth of Australia, United States of America, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, United Arab Emirates, Federal Republic of Germany, Hellenic Republic, Kingdom of Denmark, New Zealand, Japan, State of Israel, Republic of Ireland, Republic of Iceland, Kingdom of Spain, Italian Republic, Canada, Republic of Cyprus, Republic of Korea, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Hungary, Malaysia, Republic of Malta, United Mexican States, Principality of Monaco, Kingdom of the Netherlands, Kingdom of Norway, Republic of Poland, Portuguese Republic, Romania, Republic of Singapore, Slovak Republic, Republic of Slovenia, Republic of Turkey, United Kingdom of Great Britain and Northern Ireland, Republic of Finland, French Republic, Republic of Croatia, Czech Republic, Republic of Chile, Swiss Confederation, Kingdom of Sweden and Republic of Estonia.