

THE CORPORATE
IMMIGRATION
REVIEW

TWELFTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

THE
CORPORATE
IMMIGRATION
REVIEW

TWELFTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Chris Magrath

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Isabelle Gray

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Louise Robb

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
© 2022 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at May 2022, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-075-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADDERS LEGAL & BUSINESS

ARIAS, FÁBREGA & FÁBREGA

CHOW KING & ASSOCIATES

GARSON IMMIGRATION LAW

GIBNEY, ANTHONY & FLAHERTY, LLP

GLOBETROTTERS LEGAL

IMMIGRATION SOLUTIONS LAWYERS

JADEK & PENZA

LENZ & STAEHELIN

MAGRATH SHELDRIK LLP

MALHOTRA & MALHOTRA ASSOCIATES

MICHELS.PMKS RECHTSANWÄLTE PARTNERSCHAFT MBB

NAKAI IMMIGRATION SERVICES LPC

RODRIGO, ELÍAS & MEDRANO ABOGADOS

SSEK LEGAL CONSULTANTS

TILIA LAW

CONTENTS

PREFACE.....	v
<i>Ben Sheldrick</i>	
Chapter 1 AUSTRALIA.....	1
<i>Anne O'Donoghue, Sophie Gao, Palwasba Nawabi and Diane Markantonakis</i>	
Chapter 2 BELGIUM	18
<i>Henry Hachez</i>	
Chapter 3 CANADA.....	34
<i>David L P Garson and Jessica N Ravenburst</i>	
Chapter 4 GERMANY.....	44
<i>Gunther Mävers</i>	
Chapter 5 GHANA	64
<i>Paa Kwesi Hagan</i>	
Chapter 6 HONG KONG	74
<i>Eugene Chow</i>	
Chapter 7 INDIA	90
<i>Ranjit Malhotra and Anil Malhotra</i>	
Chapter 8 INDONESIA.....	114
<i>Stephen Igor Warokka and Yan Diaz M Siregar</i>	
Chapter 9 JAPAN	124
<i>Masahito Nakai</i>	
Chapter 10 PANAMA.....	134
<i>Vivian Holness</i>	

Chapter 11	PERU.....	141
	<i>Iván Blume Moore</i>	
Chapter 12	SINGAPORE.....	152
	<i>Ben Sheldrick</i>	
Chapter 13	SLOVENIA.....	164
	<i>Aljaž Cankar, Nina Bakovnik and Eva Milošič</i>	
Chapter 14	SWITZERLAND.....	176
	<i>Rayan Houdrouge</i>	
Chapter 15	UNITED KINGDOM.....	186
	<i>Chris Magrath and Ben Sheldrick</i>	
Chapter 16	UNITED STATES.....	223
	<i>Stephen J O Maltby, Ellen L Poreda and Bryan Young</i>	
Chapter 17	URUGUAY.....	241
	<i>Federico Formento</i>	
Appendix 1	ABOUT THE AUTHORS.....	253
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	263

PREFACE

This book is a guide to the systems, processes, policies and constraints that apply to the lawful movement of people for work purposes into key business destinations around the world. Leading practitioners from across the globe kindly donate their time and energy to updating their chapters every year and we are, as ever, very grateful to them for their considerable contributions to this year's edition.

It has, yet again, been a very challenging year for business immigration professionals, whether private practice immigration lawyers or in-house global mobility specialists. The pandemic that started in early 2020 and imposed a seismic shock on the international movement of people throughout 2020 and 2021 continues to reverberate. Governments took exceptional and unprecedented measures to control the spread of the virus and, in so doing, interfered in the freedoms of businesspeople to travel in ways that are unprecedented in peacetime. Much has been written about the appropriateness and legality of such state intervention in long-accepted freedoms. The impact on the global economy has been deleterious.

Fortunately, two years after the start of the first national 'lockdowns', borders have begun to open again, and travel normalcy is starting to return. The United States of America, the world-leading liberal economy, opened its borders to transatlantic travel in November 2021. Various constraints, including mask wearing, testing and endless 'passenger locator' forms continue to burden international travellers around the world, but the trend, thankfully, is towards a return to pre-pandemic activity. Even Singapore, a country guided by caution, rules and acquiescence in state authority, has begun to lift travel restrictions. We all hope that the worst of the coronavirus crisis is behind us and that immigration practitioners will be able to focus on legal mechanisms for attracting international talent and investment rather than the regulations that prevent movement.

Of course, as soon as one crisis subsides, another one develops. The war in Ukraine is an extraordinary shock to world order and the international economy. It has been described by some leading economists as 'the end of globalisation'. This may turn out to be an over-statement, but the fact remains that sanctions imposed on Russia, combined with the withdrawal of some international businesses from the Russian economy, will have impacts far beyond the geographical boundaries of the conflict. In addition to the war, general inflation, the energy crisis and political tensions all contribute towards an unsettled global environment.

More significant, and urgent, is the global community's response to the refugee crisis on Ukraine's border. Many countries have responded with generosity to the extraordinary situation that displaced Ukraine citizens find themselves in. Of note is the EU's adoption of the EU Temporary Protection Directive. This enables Member States to move rapidly to offer shelter and rights to people in need of immediate protection and to avoid overwhelming

national asylum systems in cases of mass arrivals of displaced persons. Although invoked in the past, the directive has never been activated before. Russia's military aggression prompted a unanimous decision in the European Council to grant temporary protection (for an initial period of one year) to people fleeing war in Ukraine. This temporary protection may be extended automatically by two six-monthly periods, for a maximum of one further year.

In the UK (no longer a member state of the EU), alternative measures have been put in place including the Homes for Ukraine scheme and the Ukraine Family Scheme. Critics argue, with some justification, that these schemes are less generous than the EU Temporary Protection Directive. At the time of writing, about 4 million people have been displaced by war. Most, inevitably, find themselves seeking humanitarian relief in the countries that border Ukraine. Sadly, it seems that this tragic scenario has a long way to run.

What, you may ask, has all this to do with Corporate Immigration? First, geopolitical events have a major impact on the global economy and, in turn, international investment and the movement of investors, executives and entrepreneurs. Immigration laws adapt accordingly. Second, and more importantly, we have been struck this year by the response of immigration specialists, including many of the contributors to this book, to the humanitarian crisis. Many immigration law firms have been agile in expanding their pro-bono offering in response to these appalling events. We commend them for it.

Despite the many global challenges, immigration reforms continue apace. Of note is the introduction of new routes of entry to the United Kingdom – many of which will have come into force by the time this new edition of *The Corporate Immigration Review* is published. The Global Mobility Route is described as 'a new route for overseas businesses seeking to establish a presence here or transfer staff to the UK under the existing sponsorship system'. On closer analysis, it appears that much of the scheme is a repackaging of existing routes of entry (such as the Intra-Company Transfer) under new branding. There are some innovations that may be cause for optimism for practitioners seeking solutions for private clients, such as the High Potential Individual scheme and the Scale-Up arrangements. Alterations to the Sole Representative category (renamed the UK Expansion Worker) are welcome and overdue. We can report next year on the success, or otherwise, of the various schemes.

Singapore also has changes afoot. The Ministry of Manpower will use a new points-based evaluation framework called the Complementarity Assessment Framework (COMPASS) for new Employment Pass (EP) applications starting in September 2023 and EP renewals starting in 2024. Under COMPASS, applicants will need to score at least 40 points under core criteria, such as salary and qualifications. There will be employer-generated points for levels of national diversity and support for local employment. The trend towards points-based methodologies for determining entry to labour markets appears to be growing.

We recommend this 12th edition of *The Corporate Immigration Review* to our readers, and we thank our contributors for their valuable insights.

Ben Sheldrick

Magrath Sheldrick LLP
London
April 2022

INDONESIA

Stephen Igor Warokka and Yan Diaz M Siregar¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Immigration matters in Indonesia are overseen by the Directorate General of Immigration (DGI), which is under the auspices of the Ministry of Law and Human Rights. Indonesian immigration laws and regulations recognise four types of visas that allow the entry of foreigners into Indonesia, namely diplomatic visas, service visas, visit visas and limited stay visas. These visas serve as the basis for foreigners to obtain stay permits once they have entered Indonesia. There are five types of stay permits recognised under Indonesian immigration laws and regulations, namely diplomatic stay permits, service stay permits, visit stay permits, limited stay permits and permanent stay permits. Different types of visas and stay permits allow different types of activities.

i Legislation and policy

Immigration matters in Indonesia are governed under various laws, regulations and circular letters issued by the Ministry of Law and Human Rights or the DGI, or both. For the employment of foreign workers, the Ministry of Manpower (MOM) is the government institution authorised to issue work permits for employers to employ foreigners in Indonesia, and the visa process for these foreign workers commences once the work permit application is submitted to the MOM. Especially after the integration of the MOM's and DGI's online systems in 2018, the process of obtaining a work visa (a limited stay visa for working purposes) has become more efficient and straightforward.

Below are the main laws and regulations valid as at the time of writing, setting forth rules for immigration and foreign workers in Indonesia:

- a* Law No. 11 of 2020 dated 2 November 2020 regarding Job Creation (Job Creation Law);
- b* Law No. 6 of 2011 dated 5 May 2011 regarding Immigration, as amended by the Job Creation Law (Immigration Law);
- c* Law No. 13 of 2003 dated 25 March 2003 regarding Manpower, as amended by the Job Creation Law (Labour Law);
- d* Government Regulation No. 34 of 2021 dated 2 February 2021 regarding the Utilization of Foreign Workers (GR 34/2021);
- e* Government Regulation No. 48 of 2021 dated 2 February 2021 regarding the Third Amendment to GR No. 31 of 2013 regarding the Implementing Regulation of the Immigration Law (GR 48/2021);

¹ Stephen Igor Warokka is a partner and Yan Diaz M Siregar is an associate at SSEK Legal Consultants.

- f* Minister of Law and Human Rights (MOLHR) Regulation No. 34 of 2021 dated 15 September 2021 regarding the Granting of Visas and Stay Permits During the Period of Handling the Spread of Corona Virus Disease 2019 and National Economic Recovery (MOLHR Reg. 34/2021);
- g* MOM Regulation No. 8 of 2021 dated 1 April 2021 regarding the Implementing Regulation of Government Regulation No. 34 of 2021 regarding the Utilization of Foreign Workers (MOM Reg. 8/2021);
- b* MOLHR Regulation No. 24 of 2016 dated 27 July 2018 regarding Technical Procedures for the Application and Granting of Visitor Visas and Limited Stay Visas, as amended by MOLHR Regulation No. 51 of 2016 dated 15 December 2016;
- i* MOLHR Regulation No. 16 of 2018 dated 27 July 2018 regarding Procedures for the Issuance of Visas and Stay Permits for Foreign Workers;
- j* MOLHR Decree No. M.HH-02.GR.01.05 of 2021 dated 22 September 2021 regarding the Types of Activities for Foreigners in the Framework of the Granting of Visas during the Period of Handling the Spread of Corona Virus Disease 2019 and National Economic Recovery, as amended by MOLHR Decree No. M.HH-03.GR.01.05 of 2021 dated 13 October 2021 (MOLHR Decree M.HH-02.GR.01.05 as amended);
- k* MOM Decree No. 228 of 2019 dated 27 August 2019 regarding Positions Allowed to Be Occupied by Foreign Workers (MOM Decree 228/2019);
- l* MOM Decree No. 349 of 2019 dated 31 December 2019 regarding Positions Prohibited to Be Occupied by Foreign Workers (MOM Decree 349/2019);
- m* MOM Circular Letter No. M/11/HK.04/IX/2021 dated 24 September 2021 regarding Foreign Manpower Utilization Plan Ratification Service during the Period of Handling the Spread of Corona Virus Disease 2019 (CL 11/2021); and
- n* Director General of Immigration Guidelines No. IMI-0241.GR.01.01 of 2022 dated 4 February 2022 regarding the Granting of Visas, Entry Stamps, and Immigration Stay Permits during the Period of Handling the Spread of Corona Virus Disease 2019 and National Economic Recovery (Immigration Guidelines).

ii The immigration authorities

As mentioned above, the DGI, led by the Director General of Immigration, is responsible for overseeing immigration matters in Indonesia.

The DGI has a duty to carry out the formulation and implementation of policies in the field of immigration in accordance with the applicable laws and regulations. In carrying out this duty, the DGI formulates, implements, provides technical guidance, supervises, monitors, evaluates and reports policies relating to the enforcement of immigration law and security, immigration services and facilities, border crossing and foreign immigration cooperation, and immigration information technology. The DGI also implements the administration of the DGI and performs other functions assigned by the MOLHR.

The DGI's organisational structure consists of the following:

- a* Secretariat of the Directorate General;
- b* Directorate of Immigration Traffic;
- c* Directorate of Immigration Stay Permit;
- d* Directorate of Immigration Intelligence;
- e* Directorate of Immigration Control and Enforcement;
- f* Directorate of Immigration Cooperation; and
- g* Directorate of Immigration Information Systems and Technology.

There are immigration offices in regencies, municipalities and districts across Indonesia to implement immigration functions. Officers assigned to such immigration offices must already have completed a special immigration education course and possess technical immigration expertise, and have the authority to carry out duties and responsibilities pursuant to the Immigration Law. Certain immigration officers and immigration civil servant investigators are also authorised by law to carry out criminal investigations related to immigration.

iii Exemptions and favoured industries

There are 169 countries whose nationals are, in normal times, eligible for a visit visa exemption when entering Indonesia. However, as a result of the pandemic and as set forth in MOLHR Regulation 34/2021, the granting of this exemption is suspended until the covid-19 pandemic is declared to be over by the government. At the time of writing, the Ministry of Manpower, through CL 11/2021, has limited new work permit applications for foreign workers who have not yet entered Indonesia. New applications are only permitted for:

- a* activities related to national strategic projects and strategic or national vital objects based on a recommendation or special permit from the relevant ministry or institution (i.e., the Coordinating Ministry of Maritime and Investment Affairs); or
- b* specific and urgent reasons based on the recommendation of the relevant ministry or institution (i.e., the Ministry of Investment or Investment Coordinating Body).

A list of national strategic projects can be seen in Presidential Regulation No. 109 of 2020 regarding the Third Amendment to Presidential Regulation No. 3 of 2016 regarding the Acceleration of the Implementation of National Strategic Projects (PR 109/2020). The list of projects can also be accessed at <https://kppip.go.id/>. If a project is not included in PR 109/2020, companies may request a recommendation and statement letter from the Coordinating Ministry for the Economy or the Coordinating Ministry for Maritime and Investment Affairs.

II INTERNATIONAL TREATY OBLIGATIONS

On 15 August 2002, Indonesia joined the APEC business travel card scheme, which was introduced on 1 May 2004. The Asia-Pacific Economic Cooperation (APEC) is an organisation of Asia-Pacific countries established in Canberra in November 1989 with the aim of building and strengthening economic cooperation among member states. The APEC business travel card scheme aims to simplify entrance into participating countries (including Indonesia) by utilising the ‘apply once, information used for multiple purposes’ approach. Further details on this scheme can be found on the Asia-Pacific Economic Cooperation website.²

III THE YEAR IN REVIEW

As part of the government’s goal to make Indonesia more investment-friendly through the enactment of the Job Creation Law, a new government regulation (GR), GR 48/2021, was issued and came into force on 2 February 2021.

² <https://www.apec.org/groups/committee-on-trade-and-investment/business-mobility-group/abt.c>

While the principal provisions relating to the presence of foreigners in Indonesia under the previous laws and regulations remain in force, GR 48/2021 introduces some significant changes, as outlined below.

i Change in validity of limited stay permit

One of the biggest changes introduced by GR 48/2021 is the legally permissible length of a foreigner's limited stay permit (ITAS). Previously, an ITAS was granted for a maximum period of two years and could be extended for maximum two-year periods up to an aggregate stay of six years in Indonesia, after which the foreigner was required to process a new ITAS.

GR 48/2021 now provides that an ITAS is valid for a maximum of five years and can be extended under the condition that the aggregate stay of the foreigner in Indonesia does not exceed 10 years. GR 48/2021 also further clarifies that an ITAS for work purposes that is valid for no more than 90 days can be extended under the condition that the aggregate stay of the foreigner in Indonesia does not exceed 180 days.

ii Change in validity period of visit stay permits

Simplification is a big theme of GR 48/2021, with the regulation revising provisions of older regulations to be more straightforward and easier to comprehend. For example, in the case of a visit stay permit issued based on entry to Indonesia under a single-entry visit visa, GR 48/2021 now provides that such visit stay permit is valid for a maximum period of 180 days and is non-extendable. The validity period used to be 60 days and it was extendable inland four times up to an aggregate stay of six months.

Meanwhile, visit stay permits issued based on entry under a multiple-entry visit visa are granted for a maximum period of 180 days and are extendable up to an aggregate stay of no more than 12 months in Indonesia.

Another big change is the validity period of stay permits issued based on entry under a visit visa on arrival, which used to be 30 days and extendable for another 30 days. Under GR 48/2021, the maximum validity period of this stay permit is no more than 30 days and it is no longer possible to be extended.

iii Introduction of the second home category

GR 48/2021 introduces a new category to Indonesian immigration rules, whereby foreigners can now obtain a limited stay visa (VITAS) for non-work purposes for the purpose of having Indonesia as a second home. Foreigners must have settled in Indonesia for five to 10 years and fulfil certain requirements to qualify for this new visa category. This second home category replaces the category for elderly tourists, who were eligible for a non-work VITAS in previous regulations. GR 48/2021 provides that a non-work VITAS already issued for elderly tourists shall remain applicable as a non-work VITAS for foreigners in the second home category.

iv Additional requirements to obtain a VITAS

GR 48/2021 adds two requirements for a VITAS application, namely: (1) a statement letter of good standing from the relevant authorities or the embassy or consulate of the foreigner's country of origin; and (2) a health examination letter stating that the foreigner is free from any contagious disease that could endanger public health.

v Pre-investment and requirements for obtaining a visit visa

GR 48/2021 adds a new eligibility category for both single and multiple-entry visit visas (i.e., pre-investment activities). These are activities in conjunction with starting a business, such as activities related to field surveys and feasibility studies. In relation to the required guarantee letter from a guarantor for a visit visa application, if a foreigner does not have a guarantor then the guarantee letter can be replaced with a proof of payment of an immigration guarantee, as discussed below.

vi Immigration guarantee

GR 48/2021 requires certain foreigners in Indonesia to have a guarantor responsible for the presence and activities of said foreigners during their stay in Indonesia, and for reporting any change in the civil status, immigration status or address of such foreigners. This guarantor requirement does not apply to foreigners legally married to Indonesians, foreign investors or citizens of countries that reciprocally waive guarantee requirements.

Foreign investors, 'second home' foreigners and foreigners engaged in pre-investment activities may make an official payment to a Directorate General of Immigration bank account that will be treated as an immigration guarantee payment that replaces the guarantor requirement. This payment will be used, if necessary, to cover the cost of repatriation or deportation, overstay or any other outstanding immigration costs that must be paid by the relevant foreigner. If the immigration guarantee is not used to pay immigration obligations, the full amount of the payment shall be returned to the foreigners once their stay permit expires.

vii Conversion of stay permits

Another significant change introduced by GR 48/2021 is the possibility for foreigners themselves to apply to the relevant head of immigration office or appointed immigration official for the conversion of a visit stay permit to an ITAS, or an ITAS to a permanent stay permit (ITAP). Previously, only guarantors could submit these applications.

The covid-19 pandemic has forced countries around the world to reconsider their international travel policies, including Indonesia. Based on the latest policy as at the time of writing, foreigners cannot travel to Indonesia from abroad (either direct travel or in transit) unless they fulfil certain criteria, such as complying with the provisions of MOLHR Regulation 34/2021, having qualified for the travel corridor arrangement scheme, or having obtained a special consideration or permit in writing from the relevant Indonesian ministry or institution.

MOLHR Regulation 34/2021 provides that foreigners with a valid visa or stay permit may enter Indonesia after fulfilling the required health protocols regulated by the relevant health authority. Foreign nationals can apply for all types of visas and stay permits, with the exception of the visit visa exemption as mentioned above and a visa on arrival (VOA), which are still suspended until the pandemic is declared over by authorities. In addition, while not explicitly stated, it appears that multiple-entry visit visas are also not yet open for applications. However, immigration restrictions are now being progressively eased. There is a new exemption for VOA and visit visa applications. The Director General of Immigration issued Circular Letter No. IMI-0549.GR.01.01 of 2022 (effective as of 5 April 2022) allowing the nationals of 43 countries to apply for a VOA and the nationals of nine countries (ASEAN member states) to apply for a visit visa exemption. Both the VOA and visit visa exemption are for tourism purposes only.

The VOA is only granted at seven airports (in Jakarta, Bali, North Sumatra, East Java, South Sulawesi, North Sulawesi and Yogyakarta), eight harbours (all in Riau Islands) and four transborder posts or cross-border checkpoints (in West Kalimantan, North Kalimantan and East Nusa Tenggara).

Save for the above exemption, specifically for visit visas, only applications for a single-entry visa are allowed at this time. As noted above, it appears that multiple-entry visas are not yet open for applications. The following are the permitted activities under a single-entry visit visa based on MOLHR Decree M.HH-02.GR.01.05 as amended:

- a* tourism;
- b* performing emergency and urgent work;
- c* attending business meetings;
- d* conducting purchase of goods;
- e* filming;
- f* government duties;
- g* visiting for the purpose of developing the marina (yachting) industry;
- h* government duties in conjunction with meetings related to the Indonesian Presidency of the G20 or the International Assembly of the 144 Assembly of the Inter-Parliamentary Union;
- i* performance of probationary work by a foreign worker;
- j* providing medical and food-related support; and
- k* catching a transportation connection located in Indonesian territory.

Meanwhile, based on MOLHR Decree M.HH-02.GR.01.05 as amended, a VITAS may be obtained for the following work and non-work activities to be performed in Indonesia:

- a* work activities:
 - as an expert;
 - working on a vessel, rig or installation operating in Indonesian waters;
 - performing a quality check on goods or production;
 - inspecting or auditing a branch office in Indonesia;
 - providing after-sales service;
 - installing and repairing machines;
 - performing construction-related temporary work;
 - performing activities for filming purposes that are commercial in nature after obtaining the relevant permit from the authorised institution; and
 - a foreign job candidate performing probationary work;
- b* non-work activities:
 - conducting foreign investment (for one or two years);
 - family reunification; and
 - participating in education.

viii Application requirements

To obtain approval for a visit visa and VITAS (visa telex), the guarantor of the foreigner in Indonesia must submit an application through the relevant online system, attaching the following documents:

- a* a health certificate containing a statement in English issued by the relevant authority in the foreigner's country of origin that the foreigner is covid-19 free;

- b* a statement letter in English stating the foreigner's willingness to quarantine or obtain medical treatment at his or her own expense, or both, if, upon arrival in Indonesia, he or she has a positive polymerase chain reaction test or shows symptoms of covid-19;
- c* a statement letter affirming the foreigner's willingness to be medically monitored during any quarantine period; and
- d* evidence of health or travel insurance participation that encompasses medical coverage, a statement letter regarding the foreigner's willingness and ability to pay for his or her own treatment if he or she becomes infected with covid-19 during his or her stay in Indonesia, or both.

Additionally, guarantors for visit visa applicants shall be in the form of a corporation. Specifically for visit visa for tourism purposes, the guarantor must be either a travel agent or a hotel.

Foreigners who hold a visit stay permit, ITAS or ITAP that can no longer be extended but are unable to return to their home countries can be granted a new stay permit after first obtaining a visa telex.

The visa telex for foreigners who currently reside in Indonesia as discussed above consists of a visit visa telex or a VITAS telex. To obtain a visa telex, the foreigner or guarantor must submit an application online and pay for visa telex and visa fee. The applicant must also submit supporting documents for the visit visa and VITAS application as discussed in Section I above. An additional document is required for new stay permit applications, namely proof of the last stay permit for visit stay permit applicants and proof of Exit Permit Only for ITAS or ITAP holders. Once issued, the visa telex will serve as an e-visa.

The visit visa telex will automatically serve as a visit stay permit, while the VITAS telex will become an ITAS when the foreigner has processed it at the relevant local immigration office.

The Immigration Guidelines provide that the application for a new stay permit must be submitted before the applicant's stay permit expires. In the case of stay permits that have been expired for less than 60 days, the relevant foreigner must first settle the administrative fines imposed for overstaying before they can complete the process of obtaining a new visa and stay permit. Foreigners who (1) overstay for more than 60 days; (2) have been issued a deportation order; or (3) have had their stay permit application rejected based on the laws and regulations will not be granted a new stay permit and are obliged to immediately leave Indonesia.

Foreigners who are now outside Indonesia whose visa telex or visa has expired are required to apply for a new visa before entering Indonesia.

Foreigners who fail to apply for or extend their stay permit while residing in Indonesia may be subject to overstay fines as regulated under the applicable laws and regulations.

IV EMPLOYER SPONSORSHIP

The Immigration Law and Labour Law require foreigners to be employed by an Indonesian employer to legally work in Indonesia. It is the employer, and not the employee, who is required to obtain a work permit to allow its foreign worker to legally work in Indonesia. The

employer must apply for the work and immigration permit through an online system called the TKA online system,³ which is managed by the Ministry of Manpower. Applications for visas that are not for work purposes can be submitted through the DGI's online visa system.⁴

i Work permits

Any employer who employs foreign workers in Indonesia must obtain a proper work permit issued by the central government (the MOM). Previously, employers were required to obtain a work permit in the form of a foreign worker utilisation plan (RPTKA) and notification approved and issued by the MOM prior to employing foreign workers. Now, following the issuance of GR 34/2021, a notification is no longer required. It has been replaced by a procedure called the RPTKA appropriateness assessment (RPTKA assessment). During the RPTKA assessment, the MOM will determine within two business days upon receipt of complete application documents whether the submitted information and documents are sufficient.

Once the MOM issues the RPTKA assessment result, applicants are required to submit personal information and documents of the foreign workers. Pursuant to GR 34/2021 and MOM Regulation 8/2021, this personal information and documents will be verified by the MOM within no more than two business days.

Upon the verification and the payment of the DKP-TKA (the foreign worker utilisation compensation fund) by the employer of the foreign worker for each month that the foreign worker is expected to work in Indonesia in an amount of US\$100 per month (paid in advance), the MOM will issue the RPTKA approval. Government institutions, international bodies and foreign state representatives are exempted from the requirement to undergo the RPTKA assessment.

After the issuance of the RPTKA approval, the TKA Online System will send the relevant data to the DGI for further processing of the VITAS for working purposes, which will grant entry of the foreign workers to Indonesia.

Based on MOM Regulation 8/2021, there are certain job positions that are exempted from the obligation to obtain ratification of work permit. These positions are:

- a* members of the board of directors or board of commissioners with a certain share ownership in the company or shareholders in accordance with the prevailing laws and regulations;
- b* diplomatic or consular officials at a foreign state representative office; or
- c* foreign employees that are required by the employer in connection with a production activity that has ceased as a result of emergency circumstances, vocational activities, a technology startup, business visits, or research for a set period of time.

ii Labour market regulation

Indonesia's local workforce and job opportunities are mainly protected through limitations on positions that can be occupied by foreign workers. In 2019, the MOM issued Decree Nos. 228 and 349, which list those positions that can be occupied by and those that are restricted for foreign workers in Indonesia. By virtue of these Decrees, the government prioritises Indonesian workers to fill positions that can be filled by local workers.

³ <https://tka-online.kemnaker.go.id/>.

⁴ <https://visa-online.imigrasi.go.id/>.

Further, prior to issuing a work permit, the MOM will carefully assess all the information and documents submitted by the Indonesian employer for the prospective foreign employee (e.g., curriculum vitae, certifications, job description) and determine whether the proposed employment is in line with the government's goal to encourage investment growth while also taking into consideration the availability of Indonesian workers. Employers in Indonesia are required to submit a minimum of one report (e.g., annual report) to the MOM on their employment of foreign workers. The report covers the implementation of foreign workers' employment, the education and training of Indonesian co-workers, and knowledge and technology transfer from the foreign workers to their Indonesian co-workers. Employers must also submit a report to the MOM when completing or terminating the employment relationship with their foreign workers. The template of the report is provided in the Attachment of MOM Regulation 8/2021.

iii Rights and duties of sponsored employees

Regardless of whether they are working, all foreigners in Indonesia have the obligation to provide any information requested by the DGI relating to their identity and they must also report any change of civil status, citizenship, job, guarantor or change of address to the local immigration office. All foreigners in Indonesia must also hand over their passport or stay permit if requested by a DGI official for immigration supervision purposes. Failure to comply with these requirements may result in the imposition of criminal sanctions. The Immigration Law sets forth other provisions that must be followed by foreigners in Indonesia to avoid criminal sanctions.

From an employment perspective, the regulations on the employment of foreign workers focus more on the obligations of the employers or sponsoring entities that employ foreigners in Indonesia. Some of the rights of the foreign employees can be inferred based on the employers' obligations stated in the regulations.

For example, employers are obligated to facilitate Indonesian language education and training for every foreign worker they employ. Therefore, it can be concluded that every foreign worker has the right to be provided with Indonesian language education and training while working in Indonesia. Further, employers are required to register their foreign workers with – and therefore foreign workers have the right to be covered by – a national insurance programme, BPJS, if they work in Indonesia for more than six months, and by private insurance that includes occupational accident benefits if working in Indonesia for less than six months. Employers are also required to appoint and implement education and work training for Indonesian co-workers (TKA) and foreign workers are expected to implement a transfer of knowledge and technology to the Indonesian co-workers.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

From an immigration perspective, the latest regulations provide the possibility of entering Indonesia for pre-investment purposes without having a sponsor, as discussed in Section III.

From a foreign employment perspective, in principle, all foreigners working in Indonesia must have a sponsor and the sponsor must obtain a work permit to allow the foreigners to work in Indonesia. There are certain foreigners whose employment is exempted from the obligation to obtain a work permit, including directors and commissioners who are

also shareholders, regular shareholders, foreign workers needed in cases where a production activity is suspended as a result of an emergency situation, and foreign workers for vocational activities, technology-based start-ups, business visits and research for a particular time period.

VI OUTLOOK AND CONCLUSIONS

With the covid-19 pandemic and the issuance of the historic Job Creation Law, which marks a significant legal reform in Indonesia, 2021 was a very dynamic year for immigration law and the investment climate in Indonesia. This dynamism promises to continue through the coming year. It is likely that policies on international travel and the employment of foreigners in Indonesia will continue to change and shift along with developments in the handling of the pandemic. However, the applicability of new regulations post the Job Creation Law, which promise greater ease for investors and foreign workers in Indonesia, while still adhering to health and safety protocols, indicates that the government is prepared to adapt to these difficult times.

ABOUT THE AUTHORS

STEPHEN IGOR WAROKKA

SSEK Legal Consultants

Stephen Igor Warokka is a partner at SSEK Legal Consultants and has more than a decade of legal experience. Stephen specialises in immigration, labour law, corporate law and M&A transactions, construction and shipping law.

In 2019, Stephen was heavily involved in the process of helping to shape the contents of an Indonesian Minister of Manpower decree on positions that can be held by expatriate employees in various business sectors, meeting with foreign business chambers in Jakarta to help coordinate their input on the draft decree and their communication with the Ministry of Manpower.

Stephen was named in the recent Asian Legal Business (ALB) '40 Under 40' list of Asia's best young lawyers. He was one of just three lawyers from Indonesia selected for inclusion. Stephen has been recognised as a 'Next Generation Lawyer' for shipping law by *The Legal 500: Asia Pacific*. Stephen graduated from the Faculty of Law at Atma Jaya University and earned his Master of Laws (LLM) from the University of California, Berkeley (Boalt Hall) School of Law.

YAN DIAZ M SIREGAR

SSEK Legal Consultants

Yan Diaz Maulana Siregar is an associate at SSEK. He earned his Bachelor of Laws in 2020 from the University of Indonesia, majoring in private international law, graduating with *cum laude* honours. Since joining SSEK, Yan Diaz has been involved in a variety of projects, with a focus on mergers and acquisitions, taxation, real estate, and general corporate and commercial law.

SSEK LEGAL CONSULTANTS

14th Floor, Mayapada Tower I
Jl Jend Sudirman Kav 28
Jakarta 12920
Indonesia
Tel: +62 21 5212038, 2953 2000
Fax: +62 21 5212039
stephenwarokka@ssek.com
yansiregar@ssek.com
www.ssek.com

ISBN 978-1-80449-075-4