

# Magrath Sheldrick Immigration Insight



**GLOBAL FOCUS 2018**

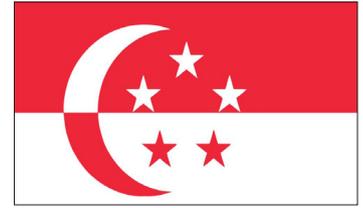


immigration

## SINGAPORE

### Raising the Bar and Building a Strong Local Core Workforce in Singapore

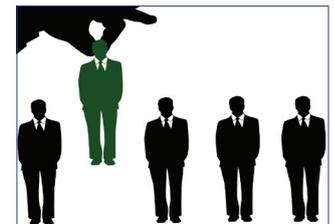
The Fair Consideration Framework reached its third anniversary in August 2017, as Singapore's evolving immigration policies continue to impact on businesses through increased scrutiny of foreign manpower profiles, Employment Pass applications and hiring practices.



The Framework was introduced in 2014 as part of the Government's overall strategy to promote fair employment practices and to strengthen the Singaporean core in the local workforce. Since then the practical measures designed to facilitate this have been increasingly felt by companies and individual foreigners. The Ministry of Manpower ("MOM") continues to emphasise that a quota for Employment Passes is not on the agenda and instead that foreign workforce growth must be moderated to ensure it functions as an enhancement to the local workforce in a sustainable manner. In essence, the measures aim to maintain the delicate equilibrium between protecting and nurturing the local workforce while also capitalising on available foreign talent to enable the longer term growth and expansion of the Singapore economy. Development of the local workforce is key, as unemployment rose slightly in 2016 with net growth in local employment still slow compared to levels seen in previous years. An employer's interpretation of the spirit of the Framework is therefore crucial in its active demonstration of commitment to these policies.

### Fair Employment and Hiring Practices

The requirement to advertise in the Government run Jobs Bank before filing new Employment Pass applications was a cornerstone initiative of the Framework when it was first introduced. The basic criteria being that an advertisement must be open to all Singaporeans and comply with the Tripartite Guidelines on Fair Employment Practices, and must run on the Jobs Bank for at least 14 calendar days. While certain exemptions continue to apply, the MOM encourages firms to advertise all their job vacancies, even those positions that technically qualify as exempt. The principles of Fair Employment and Hiring Practices encompass recruitment and selection on merit (including qualifications, experience or ability to perform the job) and regardless of race, gender, age, religion, disability, marital status or family responsibilities. It also requires the fair treatment of staff with equal opportunities for training and development based on their strengths and needs, and the incentivising and reward of employees commensurate with their ability, experience, performance and contribution. In November 2017, the MOM added several significant new questions to the Employment Pass application for the company sponsor to answer in relation to the outcome of its job advertisements and recruitment initiatives. These specifically require information about the number of Singapore citizens, permanent residents and foreigners who applied for the position, the stage they reached in the recruitment process and the reasons for not selecting a local candidate, and conversely the channels through which the foreign candidate was sourced and the reasons for ultimately selecting the foreign candidate over other applicants. Going forward, companies will be required to implement procedures to manage and track candidates through each stage of the recruitment process and be prepared to document the number of applications received as well as the reasons for eventually hiring a foreign candidate over a local candidate to support the application.



### Watch List

The MOM is increasingly demonstrating that it will not shy away from scrutinising a company's hiring practices and if necessary taking action in the form of curtailing work pass privileges, in circumstances where firms are found to have nationality based or other discriminatory HR practices. Around 300 companies are currently estimated to be on the Watch List and are required to work alongside the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) to demonstrate their commitment to improving internal hiring and employment practices. The term 'triple weak' has been used to describe companies not found to be actively nurturing a strong Singaporean core or demonstrating a strong relevance to Singapore's economy and society.

## Increased Employment Pass Processing Times

Once an employer has navigated the recruitment and jobs bank advertising criteria, the submission of an Employment Pass application itself is subject to increased examination. The strength of an application in some circumstances can hinge as much on the company's profile as the individual's personal credentials. This has led to the typical processing time of an application being revised from 1 to 3 weeks in 2017 in order to facilitate the additional scrutiny of supporting documents, company profile, qualifications, and potential exchange of information with other government agencies or overseas organisations. Further delays beyond the standard 3 weeks are also possible if additional information is requested or in the event of other unexpected complications.

## Adjustment of the Employment Pass Salary Criteria

The minimum monthly salary for an Employment Pass application rose to S\$3,600 in January 2017. This was in line with the gradual tightening of criteria in recent years calibrated against rising median wages for locals at the Professional Managerial Executive and Technical level ('PMET'). However it remains the case that the salary threshold is assessed in the context of the overall application profile, and in reality an individual applicant's basic salary may need to be considerably higher commensurate, for example, with their age and stated experience. With effect from 1st January 2018 the minimum monthly salary eligible to sponsor family members on a Dependant Pass increased to S\$6,000, and a minimum salary of S\$12,000 is now required to sponsor parents on a Long Term Visit Pass. These revisions apply to new Employment Pass applications only and will not be applied to the renewal of existing relevant passes.



## Career Support and Upskilling the Local Workforce

Encouragement and reward of companies in the form of generous Government supported schemes has been heavily promoted over the course of the last year. In the first and second quarters of 2017, two foreign employment agencies each began a two year MOM pilot initiative specifically designed to assist unemployed local white collar workers to re-enter the workforce. Job seekers must be referred through Workforce Singapore or the National Trades Union Congress as the focus shifts towards placing active jobseekers that are currently out of work as opposed to sourcing candidates in existing employment. The schemes are supported by organisations including the National Trades Union Congress, SPRING Singapore, and Workforce Singapore in addition to MOM. There is significant further emphasis on establishing leaner operations, through optimized manpower and higher productivity. Place and Train Programmes (often referred to as 'P-MAX') are designed to enhance the opportunities for matching SMEs with job seeking PMETs. Candidates who are placed through this scheme will receive additional support and training to assist them to remain competitive in their industry and in turn, the SME will receive support including Workforce Singapore providing up to 90% funding for the workshop training. Recognition of Singapore's aging population is central to these initiatives. In 2006 the ratio of the population over 65 years of age was 1:7. This rose to 1:5 in 2017 and is predicted to reach 1:3 by 2030. The WorkPro initiative now includes grants of up to S\$480,000 to incentivise the recruitment and retention of older workers and implement flexible work arrangements for all.

## Human Capital Partnership Programme

The flagship Human Capital Partnership Programme is a tripartite initiative designed to recognize and reward companies who excel in three key objectives: the strength of its Singaporean core workforce, the strength of 'complementarity' between foreign and local foreign employees and a demonstrated skills transfer from foreign to local employees to enhance capabilities. This aligns with the Government's wider commitment to assist Human Capital development in Singapore in recognition of the role it plays in facilitating better jobs, salaries and longer term careers and the resulting longer term benefit to the growth of the economy. Companies are encouraged to invite an assessment of its good practices and human capital development plans, and those awarded the prestigious status of HCP Partner will enjoy a number of benefits including a faster response to MOM transactions, recognition of their endorsement and better access to Government resources. The message therefore remains clear that a two way dialogue between Government and businesses will continue to be encouraged in the pursuit of raising the bar on these core strengths and foreign manpower policy must inevitably adapt to this longer term strategy.

## Human Capital Partnership Programme

In December Singapore launched an online permanent residence application process, replacing the manual process.

The new electronic permanent residence system, known as E-PR, allows applicants to submit an application with supporting evidence electronically. This means that applicants will no longer require an appointment with the Immigration and Checkpoints Authority (ICA).

## Singapore – the World’s Most Powerful Passport

According to a 2017 Passport Index by Artom Capital, citizens of Singapore hold the “most powerful passport” in the world, enjoying the most visa free travel around the globe. Singaporeans are able to travel to 159 countries without a visa, thereby edging out Germans who enjoy visa free access to 158 countries.

## THE UNITED STATES OF AMERICA

### President Trump’s Latest Travel Ban

On November 13, 2017, a Federal Appeals Court gave President Trump temporary permission to proceed with part of the third version of his travel ban policy.



A Ninth Circuit Court of Appeals panel granted a portion of the Justice Department’s request for an emergency stay of a Hawaii Federal Judge’s Order to ban the Trump administration from moving forward with plans to limit issuance of visas to individuals from six majority-Muslim countries: Chad, Iran, Libya, Somalia, Syria and Yemen. Applicants with a bona fide relationship with a US family member or entity, such as a US employer or university, will be excluded from the ban.

The Ninth Circuit’s Court Ruling is only a temporary stay and it is anticipated that the case will end up in the Supreme Court next year.

### Increased Worksite Inspections

According to a draft executive order on employment-based immigration, the Trump Administration is proposing to extend site inspections to L1B petitions in the short term and potentially to all immigration categories in the long term. USCIS’s Fraud Detection and National Security (FDNS) unit conducts unannounced inspections of the worksites of employers who sponsor foreign workers. FDNS has been making site visits since 2009, focusing primarily on H-1B and L-1A employers. The purpose of a site inspection is to verify the information provided in the non-immigrant petition and to ensure that the employees are complying with the terms of their admission to the United States. If there have been changes to the foreign employee’s job or conditions of employment since the approval of the petition, the employer may need to file an amended petition with USCIS.

During a site inspection, an FDNS officer will verify the contents of the immigration petition by visiting the work location of the employee. The officer may ask to speak to a human resources manager, the employee and their direct manager and may request to review the company’s public records and information about the petitioning organization. The employer can ask to have an attorney present during the site visit but it is unlikely the FDNS Officer will reschedule the interview to accommodate their request. They may, however, allow the employer to have counsel present by phone.

Employers are randomly selected for these visits and should ensure they are prepared by alerting receptionists and human resources personnel of the possibility of a visit from an FDNS officer. Foreign employees and their managers should also be advised of the possibility of a site inspection.

## New Measures to Improve Security Standards for Refugees Entering the United States

On October 24, 2017, President Trump announced the implementation of improved security procedures for refugees entering the United States. These new measures are designed to intensify screening to prevent individuals from exploiting the refugee process to enter the country. The US Government conducted a thorough review of the existing program over a 120 days halt of the refugee resettlement program.

Acting Secretary of Homeland Security Elaine Duke stated *"The security of the American people is this administration's highest priority, and these improved vetting measures are essential for American security"*

*"These new, standardized screening measures provide an opportunity for the United States to welcome those in need into our country, while ensuring a safer, more secure homeland."*

The US Government, including the Departments of State and Homeland Security, in consultation with the Office of the Director of National Intelligence, conducted a review of the US Refugee Admissions Program application and adjudication process to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States. Based on this review, the US Government is implementing enhancements to increase vetting and screening procedures, including: increased data collection to more thoroughly investigate applicants, better information sharing between agencies, and new training procedures to strengthen ability to detect fraud. Following the implementation of these improved measures, the administration will recommence refugee resettlement processing.



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The Trump Administration has also determined that additional in-depth review is needed with respect to refugees from 11 high-risk countries that is said to include Egypt, Iran, Libya, South Sudan, Yemen, Sudan, Iraq, Mali, North Korea, Somalia and Syria. Admissions from applicants from those countries will be adjudicated on a case-by-case basis during an additional 90-day review period and a standard admissions process may be implemented for applicants from those countries.

The new enhancements will be evaluated on an ongoing basis to determine whether any further measures are needed to safeguard security.

The State Department issued a statement following the announcement from the White House *"The United States will continue to resettle more refugees than any other country in the world, and we will continue to offer protection to the most vulnerable refugees while upholding the safety and security of the American People"*.

Refugees entering the US already face a rigorous vetting process. Refugee status is first granted by the United Nations and only the most vulnerable are referred for resettlement, accounting for less than one percent of refugees worldwide. The UN decides whether to refer the person for resettlement to the United States or to another country. The individuals are interviewed by State Department contractors and undergo background checks for criminal and terrorist history and their fingerprints are screened against FBI and Homeland Security databases. Cases are then reviewed at US immigration headquarters and an in-person interview is conducted by a Homeland Security officer. The applicants are also screened for contagious diseases. Due to the long duration of time between the initial screening and departure, officials conduct a final check before the refugee leaves for the United States.

# GLOBAL HOTSPOTS

## AUSTRIA AND CYPRUS

Legislation in each country was passed in October 2017 introducing the European Union Intra-Company Transfer (ICT) Directive, (2014/66EU of 15 May 2014). As a result both Austria and Cyprus have introduced a combined work and residence permit for intra-corporate transfers.

The holder of an Austrian or a Cypriot ICT permit may also benefit from Intra - EU Mobility, and is permitted to work in another EU member state for a company of the same group, for stays of up to 90 days in a 180 day period.

Although an additional work permit is not required, notification of the work and presence of the employee in the host country may be required.



## BELGIUM

Additional information is now required to be included in the "LIMOSA" declaration when notifying the Belgian authorities of the posting of workers to Belgium. This is a declaration given by certain foreign employers and employees, self-employed persons and trainees of their activities in Belgium to the authorities.



The Act implementing the updated regulations provides that employers must include the following additional information:

- Nature of services to be provided by the posted worker;
- Name, date of birth, address, email and telephone number of the person appointed to liaise with the Belgian inspection services concerning the posted worker.

The Act also enables the Belgian inspection services to request that the foreign posting employer provide any, or all of the following details / documents:

- Copy of the employment contract;
- Information concerning payment of salary, allowances and benefits, medical coverage and repatriation details;
- Working hours of the posted worker;
- Proof of payment of salary abroad.



## CHINA

Given the recent implementation of the Unified Work Authorisation Policy, employers and applicants alike are experiencing delays in the processing of the various steps required to be accomplished when applying for permission to work in China. For example:



### Gathering of Application Documents

Police clearance certificates are required which now need to be legalised for use in China, as do degree certificates.

Depending upon the origin of such certificates, the legalisation process could delay the gathering of documents by up to 2 months.

### Work Permit Application

The application processing time for many Chinese Expert Bureaux has increased from 5 working days to 15 working days

### Z Visa Applications

The requirement to provide biometrics at Chinese missions abroad is increasing. Therefore visa applicants should be prepared to receive a request to provide biometrics at their appointment.

## GERMANY

Germany has also introduced the European Union Intra-Company Transfer (ICT) Directive, (2014/66EU of 15 May 2014) permitting eligible third country nationals to be sent on assignment to Germany.



Foreign sending employers and transferees may take advantage of two categories of ICT permits:

### 1) The ICT Card

For transfers from outside the EU and where the stay in Germany is for more than 90 days.

### 2) Mobile ICT Card

For transfers from within the EU, where the employee already holds an ICT card in respect of the sending EU Company / EU employer and where the stay in Germany is for more than 90 days.

Conditions and eligibility criteria apply to the above.

For short term ICT assignments, a notification of presence is required, which permits a stay of less than 90 days in Germany.

For stays of less than 90 days it is not possible to apply for an ICT card for Germany.

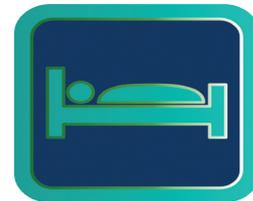
In such cases, the foreign EU employer/sending company of an employee holding an ICT card for the EU sending employer, is required to notify the Federal Office for Migration and Refugees in advance of the assignment .

## INDIA

With immediate effect, landlords and managers who provide accommodation to foreign nationals in Chennai, including all hotels, guest houses, private houses, university and hospital accommodation are required to register presence of the guest by way of completion and submission of Form C, with the Foreigner's Regional Registration Office (FRRO) within 24 hours of arrival. Previously registration was required within 14 days.



Effective October 2018, Indian migrants holding hand written Person of Indian Origin (POI) Cards will no longer be able to travel by air; such travel documents will become invalid.



The Overseas Citizen of India (OCI) Cards will be accepted as a travel document as such cards are machine readable.

In October 2017, the Government of India, Ministry of External Affairs, was informed by the International Civil Aviation Organisation that it will only accept machine readable travel documents.

As a result, Indian Missions abroad have announced that "It will be necessary for all existing POI Card Holders to obtain machine readable OCI Cards, in lieu of existing handwritten POI Cards before October 2018".

Indian Missions abroad are encouraging Indian migrants to convert their hand written POI Cards to OCI Cards by 31 December 2017, which up until this date will be converted on a "Gratis Basis".

## IRELAND

In September 2017, the Irish Government Department responsible for Employment Permits in Ireland changed its name from that of the Department of Jobs Enterprise and Innovation (DJEI) to that of the Department of Business Enterprise and Innovation (DBEI).



## NIGERIA

**Biometric Appointments** - The High Commission of Nigeria in London introduced biometric appointments for all visa applicants. Effective Thursday 14th September, all applicants must now visit the Nigerian visa application centre in London (operated by OIS), in order to have biometrics captured for visa purposes.



**National Identification Number** - Effective 01 January 2018, the Nigerian Immigration Service will not provide or renew a foreigner's Long Term Work and Residence Permit without provision of proof of the applicants Nigerian National Identity Number. Such numbers are issued by the National Identity Management Commission once the foreign employee has enrolled with the National Identity Database in Nigeria.

## PORTUGAL

Legislation has been introduced into national law in relation to eligible third country nationals entering Portugal under a new ICT residence permit. Details of eligibility are expected to be available shortly.



## SAUDI ARABIA

The Saudi government has once again amended the criteria concerning the eligibility requirements for work permits for engineers. In order to try and increase the number of Saudi nationals employed locally in the engineering industry, the Saudi Ministry of Labor together with Social Development, and the Saudi Council of Engineers has announced that foreign nationals must now demonstrate a minimum of 5 years of professional related working experience, as opposed to the previous requirement of 3 years. "Saudization" measures are on the increase and further changes are to be expected.



In the ongoing effort to encourage the recruitment of local citizens by companies registered in Saudi, the Saudi authorities have now reduced the validity period of the Block Visa from two years to one year.

The majority of companies in Saudi use the Block Visa scheme to employ foreign workers, whereby upon approval a Saudi employer receives a pre-approved "Block" of visas which they use to hire foreign workers.



Prior to the reduction in validity, a Saudi employer had two years to hire, recruit and arrange for work visas for each Block Visa employee. Under the new regulations they will only have one year to complete all such matters.

## UNITED ARAB EMIRATES

Although no official announcement to a change in immigration policy has been made, Typing Centres (Visa Application Centres) outside of the Free Zone in the UAE have begun to request official legalised Arabic translations of personal documents.



Previously, documents submitted in English, which had been legalised for use in the UAE would be accepted providing they had been further attested from within the UAE.

Such documents include long form unabridged birth certificates, marriage certificates and degree certificates.

It is understood that the need for immigration documents to be officially translated into Arabic, as well as being legalised for use in the UAE, is to standardize the requirement throughout the UAE.

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For further information on any of the topics discussed in this briefing or wider immigration issues please contact the head of the relevant practice group:

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## NOTES

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Recognised as a top-tier law firm by the principal legal directories, the firm specialises in all aspects of global mobility and investor migration. The firm has offices in London and Singapore and associate offices worldwide.

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