



# GOVERNMENT TO TIGHTEN UP RULES ON EMPLOYING **SKILLED FOREIGN WORKERS**

In November 2008, the work permit scheme was replaced by Tier 2 of the government's points-based system ("PBS"). Tier 2 enables skilled migrant workers from outside of the European Economic Area ("EEA") to take up employment in the United Kingdom ("UK") provided that they have a job offer from a UK employer, the employer is a registered sponsor and they meet essential requirements in relation to qualifications, prospective earnings, competence in English language and maintenance funds.

However, in response to the worsening economic situation and the increase in unemployed British workers, the government has recently accepted all 16 recommendations of the Migration Advisory Committee (a non-departmental public body which advises on labour market shortages and other immigration matters) in relation to Tier 2 ("MAC").

As a result, it is envisaged that the following key changes will be implemented in 2010:

## **Resident Labour Market Test (RLMT)**

- ||| In order to satisfy the RLMT, employers will need to advertise all job vacancies in a Job Centre Plus for four weeks instead of two weeks before being able to legally employ a migrant worker from outside of the EEA.

- ||| The introduction of a separate ICT scheme for graduates, which would require them to have three months' prior experience with the overseas company but which would limit their stay in the UK to 12 months.

**"Overseas workers who want to transfer to work at their company's base in the UK will have to have worked for that company for at least one year"**

## **Intra-Company Transfer (ICT)**

- ||| Overseas workers who want to transfer to work at their company's base in the UK will have to have worked for that company for at least one year, rather than six months as it is at present, before they can transfer.
- ||| The ICT route will not lead to a right to permanent residence, which means that migrants would eventually have to leave the UK unless they could extend their leave to remain under another Tier of the PBS.

## **Points for earnings and qualifications**

- ||| In relation to prospective UK earnings, the minimum salary that will allow a migrant to qualify as a skilled worker under Tier 2 and be eligible to work in the UK will rise from £17,000 to £20,000 per annum. A migrant will be awarded 5 points for earnings of at least £20,000 and 20 points for prospective earnings of at least £32,000 (rather than the current figure of £24,000).



||| A migrant possessing a Master's degree will be awarded 15 points instead of 10 points to reflect the higher skill level.

#### Comment

These measures are the first step in altering the Tier 2 programme that replaced the old work permit scheme in November 2008. Whilst the recommendations should give British workers a better opportunity of filling vacancies before they are offered to migrant workers, it is evident that some of these will also make it harder for employers to take on skilled foreign workers under Tier 2. For example, the extended advertising period will place further cost and administrative burdens on employers, as they will need to assess job applications received over a longer period. Employers are advised to prepare for the changes now in the ways suggested below:

||| Communicate the changes to anybody who is involved in the recruitment of staff as soon as possible in order that applications under Tier 2 can be submitted before the rules change in 2010;

||| Identify any workers who are due to transfer under Tier 2 (ICT) at the end of 2009 or the beginning of 2010 to ensure that they will have sufficient service to qualify;

||| Consider an alternative to Tier 2 (ICT) if seeking to employ valuable intra company transferees in the UK on a long-term basis. Employees who were previously considering transferring to the UK under this route will no doubt reconsider this option now that the possibility of permanent residence in the UK after 5 years will no longer be available; and

||| Review the salary packages of potential Tier 2 migrants in light of the increased minimum thresholds set out above.

**The bulletin contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.**

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