

THE CORPORATE  
IMMIGRATION  
REVIEW

NINTH EDITION

Editor  
Chris Magrath

THE LAWREVIEWS

THE  
CORPORATE  
IMMIGRATION  
REVIEW

NINTH EDITION

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# PREFACE

As immigration lawyers based in the United Kingdom, it is easy to believe that the world outside our shores no longer exists. Over the past year, the country has become so consumed by the constitutional, political and procedural dramas of the Brexit process that it is difficult to focus on the larger picture of change and development in global mobility or even identify the emergence of a clear long-term strategy for immigration and border control. The Brexit timetable has shifted from 29 March to 12 April to 30 June and finally to 31 October 2019. Who knows what the timetable will look like by the time this ninth edition of *The Corporate Immigration Review* is published.

The points-based system, which is the central framework of UK immigration control for investors, workers and students, remains in place. The only significant change so far in 2019 has been the introduction of new routes for innovators and start-up entrepreneurs, which, at the time of writing, have gained little traction and generated plenty of confusion. Focus and resources at the Home Office have shifted to ensuring the protection of EU citizens' rights under the EU settlement scheme, deal or no-deal – a major task given that there are approximately 3.2 million EU nationals residing in the United Kingdom in exercise of their treaty rights. The protection of citizens' rights is one of the central aims of the Withdrawal Agreement that has been negotiated between the United Kingdom and the European Union and is, at the time of writing, before parliament in Westminster as a 'meaningful vote' pursuant to the European Union (Withdrawal) Act 2018. Despite three such votes there is little indication so far that the legislature will ratify the Withdrawal Agreement.

The EU Settlement Scheme has had a generally successful launch. In excess of 90 per cent of applications have been approved without hitch. So far, it has met its aim of being transparent, easy to navigate, digital and quick to respond. Only 10 per cent of qualifying residents have so far applied, so there is a long way to go. No amount of technology, however, can dispel the disdain that many resident EU citizens have for a process that they do not believe they should have had to engage with. For many, the emotional impact of Brexit has been more significant than the legal consequences, most of which have yet to take effect.

Regardless of whether we enter a transitional phase following ratification of the Withdrawal Agreement in both the British and EU parliaments, or a no-deal 'cliff-edge' Brexit is the outcome, the British government is committed to an orderly transition to a new set of immigration arrangements, likely to be launched in January 2021. Central to these new arrangements will be measures to 'take back control' of the border as the United Kingdom leaves the single market.

With this in mind, in December 2018, following an extensive piece of research by the Migration Advisory Committee (MAC), the government published a White Paper on 'The UK's future skills-based immigration system'. Anticipating the country's departure from the

freedom of movement pillar of the single market, the new post-Brexit policy approach will be based on a 'one world' system with no preferential access for EU citizens. An autonomous immigration policy will also give government the control mechanisms necessary to enable net migration to be reduced to 'sustainable levels' (for many years defined as below 100,000 per annum). This was, after all, one of the central arguments of the leave campaign as well as being a core policy of the incumbent Prime Minister since she entered government as Home Secretary in 2010.

The government proposes to engage with stakeholders over the course of the next 12 months before refining its proposals into a new set of immigration rules. In tandem, the government is working on a simplification project that aims to change the current set of labyrinthine rules into a new user-friendly, transparent scheme.

Although the current intention is to adopt a 'one-world' approach, this position may change as the negotiations on the future relationship get under way. Much will depend on the character of the United Kingdom's future political leadership. Some form of EU preferential scheme may be the price of a close trading relationship.

It will certainly be necessary to expand the ambit of the United Kingdom's youth mobility and temporary worker schemes to maintain a flow of labour into the United Kingdom to take the 'lower skilled' jobs that will not meet the proposed £30,000 salary threshold under the formal sponsorship scheme. Employers in healthcare, hospitality and construction are particularly concerned about the impact the United Kingdom's withdrawal from the single market will have on their ability to recruit key workers.

At the time of writing, it is uncertain whether the United Kingdom will leave the European Union with or without a deal in place, or indeed whether the United Kingdom will leave at all. It is unclear whether the current political leadership has sufficient authority to remain in place for much longer. In this context, individual Member States across EU27 are making their own domestic arrangements for the regularisation of resident British citizens in their countries in the event of a no-deal 'hard' Brexit. This is because, in the absence of a Withdrawal Agreement containing pan-European provisions on citizens' rights, it falls to individual Member States to implement domestic immigration laws for third-country nationals. Fortunately, most Member States appear to be developing a soft approach to protect the British citizens that have chosen to make their homes across the European Union.

In the United States, immigration policy continues to be a lightning rod for the Trump administration and, with the 2020 election in sight, is anticipated to be a primary strand of the president's attempt to reignite the support of his base. The shift in approach to immigration issues that resulted from the new US political settlement and its focus on protectionist policies has impacted the broad sweep of business and investment routes of entry to the United States, and is not limited to illegal or irregular migration trends.

Key to this is the Buy American Hire American (BAHA) Executive Order, which came into force in 2017 and seeks to protect US economic interests and provide greater employment prospects for US workers.

BAHA refers to the body of law and policy concerning how immigration, visa and guest worker programmes are operated to ensure proper protections for American workers. The executive branch is required to 'rigorously enforce and administer the laws governing entry into the United States of workers from abroad'. Specifically, BAHA demands that the Attorney General, the DOS, the US Department of Homeland Security and the Department of Labor 'as soon as practicable, and consistent with applicable law, propose new rules and issue new

guidance if appropriate, to protect the interests of United States workers in the administration of the immigration system, including through the prevention of fraud or abuse’.

As a result, lawyers in the United States have seen a significant shift in the administrative approach to immigration applications, even if the legislative framework itself has not changed substantially. This has distilled into a culture of refusal from the US authorities, notably at the consular level. Practitioners have witnessed an increase in denial rates coupled with ever-growing requests for further evidence, often for indefinable reasons. The application process has become more document- and detail-oriented with additional representations or evidence being the norm rather than the exception. The consequence is that each application now requires substantially more preparation and outcomes are difficult to predict given the lack of consistency in approach to decision-making. Client expectation management is crucial for US immigration practitioners in such an uncertain landscape.

Around the world, national security and border protection continue to be integral issues in the development of immigration policy. Joined-up government (easily sharing data and intelligence across government agencies and public bodies) is a cross-jurisdictional trend. For example, in Australia, a federation of independent security and law enforcement agencies, including the Australian Border Force has been brought together under the Home Affairs Portfolio and the Department of Home Affairs. This whole government approach to security has had an impact on all aspects of immigration with greater scrutiny and monitoring by Australian Border Force Officers. The restrictive reforms that we see in Australia, including an increased focus on the security of systems, use of metadata and a whole-of-government approach are trends that can be seen worldwide.

As ever, immigration practitioners around the world are at the centre of a complex web of political, legal, compliance and regulatory developments. The contributors to this text are leaders in the field.

We would like to thank all of the contributors to this latest edition of *The Corporate Immigration Law Review* for their sterling input.

**Chris Magrath and Ben Sheldrick**

Magrath Sheldrick LLP

London

May 2019

# PERU

*Iván Blume Moore*<sup>1</sup>

## I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

### i Overview

Peru's economy has experienced significant growth in the past decades. With a rapidly growing industry, a vibrant business environment, a wealth of natural resources and unique tourist attractions, the country has become a common destination for multinational companies and foreign professionals, as well as tourists.

In the past year, as a consequence of the deterioration of the economic and social situation in Venezuela, there have been an increasing number of Venezuelan citizens entering Peru. As of December 2018, more than 635,000 Venezuelans have entered the country.

To travel to Peru, whether for work, business or tourism purposes, foreigners must obtain the appropriate immigration status to enter and remain in the country. The recently Legislative Decree No. 1350 (the New Immigration Law), together with its implementing Regulations, approved by Supreme Decree No. 007-2017-IN, governs the different immigration categories that apply to foreign nationals seeking to enter, do business or work in the country. We will briefly describe below the main visas available for foreign citizens' use for business or work purposes.

### *Tourist visa*

This visa is suitable for foreign citizens entering the country for recreational purposes only – tourism or similar – without the intention of residing in Peru. Once in the country, however, it is possible to request a change of immigration status from tourist to work visa. In such cases, a special permit must be requested from the immigration authority so that the foreign citizen can sign his or her employment agreement; foreign citizens in Peru on a tourist visa are not allowed to sign contracts. As a general rule, tourist visas are obtained in the airport upon arrival in Peru or at Peruvian border crossings.<sup>2</sup>

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<sup>1</sup> Iván Blume Moore is a senior associate at Rodrigo, Elías & Medrano Abogados.

<sup>2</sup> This rule has the following exceptions: Cuba, El Salvador, Guatemala, Haiti, Nicaragua, the Dominican Republic, African nations (except South Africa), Afghanistan, Saudi Arabia, Bangladesh, Bahrain, Bhutan, Cambodia, United Arab Emirates, Iran, Iraq, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Lebanon, Mongolia, Morocco, Myanmar, Nepal, Qatar, Pakistan, Democratic People's Republic of Korea, Laos, Sri Lanka, Syria, Tajikistan, Turkmenistan, East Timor, Uzbekistan, Vietnam, Yemen, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina and Georgia. Before entering Peru, foreign citizens from these countries will have to obtain a tourist visa in the Peruvian consulate with jurisdiction over the city where they normally reside.

### ***Business visa***

Foreign citizens who enter the country for corporate, legal, contractual, or specialised technical assistance activities or similar purposes, without seeking residency, must request a business visa.

A business visa entails compliance with two requirements: temporary status (up to 183 calendar days per year without time extensions); and the reason for entering the country must be corporate, legal, contractual, for specialised technical assistance or similar activities.

Generally, to obtain a business visa, foreign citizens must contact in person the Peruvian consulate with jurisdiction over the city where they normally reside. They must take their original passport and a letter stating their reasons for going to Peru with a business visa. The visa is processed quickly – in most cases it takes less than one day – and entails payment of a relatively low consular fee.<sup>3</sup>

Foreign citizens coming from countries that have signed international agreements concerning business visa waivers with Peru will be granted this migratory status at immigration or border control offices. These countries include Brazil, Bulgaria, Chile, China,<sup>4</sup> Colombia, Croatia, Cyprus, Iceland, India,<sup>5</sup> Indonesia, Liechtenstein, Mexico, Norway, Panama, Romania and Switzerland, as well as Member States of the European Union that belong to the Schengen Area.

### ***Work and designated employee visas***

Foreign citizens hired by a domiciled company require a work visa. This immigration status is granted to any foreign national coming to Peru for the purpose of carrying out remunerated or lucrative activities, either as an employee or independently, by virtue of an employment contract, administrative relationship or services agreement.

On the other hand, foreign employees may be sent to Peru by their non-domiciled employer for the purpose of executing in its name some services for a domiciled company. In this scenario, a very different immigration status is required: the designated employee visa. The New Immigration Law distinguishes between two types of designated employees: the temporary designated employee, who can stay for up to 183 calendar days per year, renewable for the same amount of time; and the permanent designated employee, who can stay for up to 365 days, which can be renewed.

Both types of visas – work and designated employee – will be discussed in detail in Section IV.

### ***Investor visa***

The immigration status afforded by an investor visa is suitable for those foreign citizens who enter the country to settle, develop or manage one or more investments. This visa will be addressed in Section V.

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3 Some Peruvian consulates demand additional requirements such as photos, flight tickets, local identity documents, etc. For convenience, foreign citizens should call the Peruvian consulate before going, to ensure that they take all the documents required by that particular consular office.

4 Chinese citizens must have a valid visa of at least six months from the Schengen Area, Canada, the United States or the United Kingdom.

5 Indian citizens must have a valid visa of at least six months from the Schengen Area, Canada, the United States or the United Kingdom.

### ***Family member visa***

Spouses, parents, children under 18 years old and dependants that enter Peru following their working relatives may request a family member visa. This visa is meant to extend the immigration status of the Peruvian citizen or foreign resident in Peru to their foreign family members or dependants. After a foreign citizen has obtained the proper immigration status, the corresponding visas for his or her family may be processed.<sup>6</sup> The most important change to this immigration status for family members is the recent introduction of the ability to work or render services in Peru, which was contested in the past.

### ***Permanent visa***

The permanent visa is the only immigration status that allows an indefinite stay in Peru. To qualify for this category of visa, the foreign national needs to provide before the immigration authorities evidence of at least three consecutive years of permanent residence in Peru, without having left the country for more than 365 consecutive days. Family members of foreign permanent residents in Peru may also obtain this permanent migratory status. Even if this visa allows an indefinite stay in Peru, permanent residents must renew their foreign identity card every five years (children and teenagers must do it every three years).

There are no quotas applicable to the visas listed above, but hiring foreign employees is subject to two types of limitation: (1) only 20 per cent of the employer's workforce, and (2) no more than 30 per cent of the payroll may be foreign nationals. This rule has several exceptions that will be reviewed in detail in this chapter.

In summary, the regulations that govern immigration in Peru for business purposes are not numerous and their application requirements are straightforward. Employees' migration, on the other hand, does imply a number of issues, such as employment matters, immigration provisions and payroll taxes. This chapter covers Peruvian immigration policy and practice, focusing on information regarding business and work-related visas.

## **ii Legislation and policy**

The New Immigration Law states several basic rules with which foreign nationals must comply, especially when carrying out business or work-related activities in the country.

These principles are covered in the New Immigration Law, which, along with its Regulations, sets the requirements for and impediments to the entry of foreigners into the country; these range from identity documentation requirements to exclusion based on criminal activity. All visas are for a specific purpose and a specific term. All foreign nationals seeking entry to Peru should hold the correct immigration status for their intended activities and length of stay. Article 29 of the New Immigration Law sets out the residence or stay period allowed for each immigration status, including the permanent category, which allows indefinite residence.

Foreign residents may exit and re-enter Peru and retain their immigration status and visa as long as they comply with the requirements and deadlines set out by the law. A foreign

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<sup>6</sup> To this effect, they should provide the necessary documents that evidence the family bond or dependent status (e.g., marriage certificate or children's birth certificates). In all cases, the documents must be legalised before the Peruvian consulate or apostilled. If legalised before a Peruvian consulate, these documents must be certified by the Ministry of Foreign Affairs in Peru. If the documents are written in a foreign language, they must be translated into Spanish by an official translator. The translation, for a limited number of languages, may be done in Peru.

resident may lose his or her immigration status in Peru if he or she leaves the country for more than 183 days in any 12-month period (except for permanent residents, who will lose their immigration status only if they leave the country for more than 365 days).

If a foreigner violates the terms of the New Immigration Law, Article 54 provides for the application of fines, forced exit and expulsion, which would result in the cancellation of the migratory status. The forced exit and expulsion of a foreigner require a resolution issued by the National Immigration Agency.

Violations of Peru's New Immigration Law can have significantly adverse consequences for the individual, his or her sponsor, or both. For instance, in the case of the work visa, failure of the foreign employee to maintain lawful status may subject both the individual and the sponsor to sanctions. The failure of the sponsor's employees to act in accordance with the terms and conditions of their respective immigration status designations (including engaging in activities outside the scope of their status) can result in fines for the individual and for the employer.

### **iii The immigration authorities**

The New Immigration Law and its related procedures are implemented by various agencies that enforce the regulations and policies applicable to all foreign nationals entering Peru; the following are the main agencies:

- a* the National Immigration Agency, which regulates, monitors and controls immigration policy in Peru. The issuance of visas and foreign identity cards is one of its main responsibilities. Immigration violations are investigated by the National Police (immigration division) and sanctioned by the National Immigration Agency. Immigration representatives are always present at airports, seaports and land borders. The National Immigration Agency has offices in the main cities of the country, including Lima, Arequipa, Cusco and Tacna;
- b* the Ministry of Foreign Affairs, whose responsibilities include the issuance of visas outside Peru. This includes, most notably, the business visas that cannot be obtained at the National Immigration Agency once the foreign national has entered Peru; and
- c* the Ministry of Labour, which is in charge of the approval of employment contracts with foreign citizens. The approval of the employment contract is a first step towards applying for a work visa. The Ministry of Labour also regulates and monitors the compliance of employment laws applicable to foreign employees.

### **iv Exemptions and favoured industries**

There are no immigration exceptions or favoured industries in relation to particular visas. Nevertheless, exceptions do exist from an employment law perspective when dealing with the hiring of foreign employees.

Generally, it is mandatory for a foreign citizen willing to work in Peru to first sign an employment or a services agreement with a Peruvian employer. As an exception to this rule, the foreign citizens of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay and Uruguay are not required to sign employment contracts beforehand, which the Ministry of Labour must approve. The law stipulates that the term of the contract should not exceed three years, although both parties may indefinitely extend it.

Moreover, as previously explained, the hiring of foreign employees is also subject to two types of limitation: (1) only 20 per cent of the employer's workforce, and (2) no more than

30 per cent of the payroll may be foreign nationals. However, foreign citizens are exempted from the percentage limitations when they are professional and specialised personnel or management personnel of new companies.

In addition, no restrictions apply to:

- a* foreign citizens with a permanent visa;
- b* individuals married to Peruvians or with Peruvian children, parents or siblings;
- c* foreign investors with permanent investments in Peru; and
- d* nationals of a country with which Peru has a reciprocal labour agreement, double nationality agreement (e.g., Spain) or bilateral or multilateral agreement (e.g., the Andean Community (CAN)).

## II INTERNATIONAL TREATY OBLIGATIONS

Peru has executed five important international instruments that have an impact on the immigration of foreign nationals wishing to work in the country. These are the following: (1) Andean Community Decision No. 545; (2) the Dual Nationality Agreement with Spain; (3) the Immigration Covenant with Argentina; (4) the Mercosur Agreement on Residence; and (5) the Pacific Alliance Framework Agreement.

CAN is a four-country (Peru, Colombia, Bolivia and Ecuador) community with the aim of achieving more rapid, balanced and autonomous development through regional integration.<sup>7</sup>

CAN has issued a series of community decisions in recent years aimed at guaranteeing the freedom of movement of people within the territories of the Member States. Most notably, for the purpose of this chapter, the Andean Labour Migration Instrument, adopted in June 2003 through Decision No. 545, provides for the progressive and gradual movement of Andean nationals throughout the subregion for dependent job purposes under conditions of equal treatment and opportunities.

As a consequence, CAN Member States, such as Peru, whose national legislation provides that only a given proportion of foreign employees may be hired per company, insofar as the number of employees or remunerations are concerned, shall consider Andean migrant workers as national employees for calculating those percentages.

Consequently, labour limits for hiring foreign personnel do not apply to nationals of Colombia, Bolivia and Ecuador. They are treated as Peruvians for labour law purposes.

The same criteria apply for Spaniards, since Legislative Decree No. 689 (the Foreigner Employees Employment Law) establishes that citizens of countries that have executed dual nationality agreements with Peru, like Spain, will be treated as Peruvians.

These treaties operate as an exemption to the limitations applicable to foreign employees. Nevertheless, this works for labour matters but not for immigration purposes. In practical terms, these treaties make it easier for Colombian, Bolivian, Ecuadorian and Spanish nationals to obtain employment contracts, because no limitations apply and no approval from the Ministry of Labour is required. Regardless of this, they will still have to apply for a work visa just like any other foreigner.

Likewise, under the Immigration Covenant entered into with Argentina in 2008, Argentinean nationals can obtain temporary resident status before being hired in Peru. In this manner, Argentinean nationals have a specific and simpler procedure to apply for and

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<sup>7</sup> [www.comunidadandina.org/ingles/who.htm](http://www.comunidadandina.org/ingles/who.htm).

obtain a work visa, and can do so without executing an employment contract beforehand. For Argentinian nationals, this residency lasts two years but it can be made permanent if they demonstrate their economic viability and prove that they have no criminal record in Peru.

By virtue of the Mercosur Agreement on Residence, the same rule applies to Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay and Uruguay, whose nationals can obtain a work visa without being hired beforehand. These treaties make it easier for nationals of the aforementioned countries who want to work in Peru as they can obtain a work visa even before having a sponsor in the country.

The Pacific Alliance is a four-country (Peru, Colombia, Chile and Mexico) trade bloc with features of further integration formed in April 2011. On 6 June 2012, the parties executed the Master Agreement liberalising trade and allowing free movement of citizens among the four countries. As a consequence, Peru enacted Supreme Decree No. 024-2014-RE by virtue of which foreign citizens of Chile, Mexico and Colombia are not required to obtain business visas before entering the country.<sup>8</sup> It is likely that the Pacific Alliance will result in even greater ease for those travelling to Peru for business or work purposes.

In the same vein, Peru issued Supreme Decree No. 003-2015-RE by virtue of which citizens of Panama will not be required to obtain business visas before entering Peru.

### III THE YEAR IN REVIEW

The past year has been marked by increasing numbers of Venezuelan citizens entering Peru and the implementation of virtual systems for handling the filing of foreign employee documents.

As regards the first issue, the Peruvian government enacted Supreme Decree No. 007-2017-IN, implementing a temporary permission of permanence (PTP) visa, specifically applicable to Venezuelan citizens, which allows them to live, study and work in Peru for a year. Likewise, the Immigration Authority issued the Resolution No. 0000165-2018-MIGRACIONES granting an extraordinary provisional work permit to Venezuelan citizens that are processing their PTP. The aforementioned disposition allows Venezuelans to develop activities and work legally for a period of one month, susceptible of automatic extension, until the PTP is issued. On 23 January 2018, the Supreme Decree No. 001-2018-IN approved guidelines for the special resident visa for Venezuelans, which was applicable for Venezuelans under PTP and allows them to stay for in the country for an additional year, subject to a renewal.

As to the second issue, on 14 November 2018 the Ministerial Resolution No. 291-2018-TR was enacted, which modifies the Law on the Hiring of Foreign Employees, approved by Supreme Decree No. 014-92-TR and creates a virtual system of contracts for foreign employees. This virtual platform seeks to streamline the approval, extension and modification of employment contracts with foreign employees. In addition, the Immigration Authority is offering a number of online services, including visa renewals, permits to temporarily leave the country and the of signing contracts.

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8 <http://alianzapacifico.net/en/>.

## IV EMPLOYER SPONSORSHIP

Foreign citizens who enter Peru seeking employment are subject to the provisions of, inter alia, the New Immigration Law, its Regulations and Legislative Decree No. 689 (the Foreign Employees Employment Law). This section addresses the most common visas that may be obtained by foreign citizens coming to work in Peru.

### i Work permits

#### *Work visa*

Work visas are granted to foreign nationals coming to Peru for the purpose of carrying out remunerated or lucrative activities by virtue of an employment contract, administration relationship or services agreement.<sup>9</sup> This rule applies to foreigners coming to the country to provide subordinated or independent services to a domiciled employer, either from the public or private sector. In either case, the foreign employee will be subject to pay the applicable income tax. The subordinated foreign employee's remuneration will be additionally subject to pension contributions and social security contributions.

The procedure to be followed to obtain said immigration status consists of two stages. For subordinate foreign employees, the first stage is processed before the Ministry of Labour, which is in charge of approving the employment contract executed between the employee and the employer. The procedure is initiated through an application by the employer addressed to the Ministry of Labour. The application should include the following documents:

- a the employment contract: the law stipulates that the term of the contract must not exceed three years; however, it may be extended by both parties indefinitely. The foreign employee may sign the employment contract in Peru if he or she enters the country with a business visa, which allows him or her to sign agreements in Peru and, additionally, makes the immigration procedure easier. Alternatively, the employee can obtain a special authorisation for signing contracts if he or she entered with a tourist visa;
- b a sworn statement indicating that the hiring of the foreign employee fulfils all the requirements set forth in Legislative Decree No. 689 (e.g., the limiting percentages, the assumption of costs of the return tickets for the foreign employee and his or her family to their country of origin, among other things) and that the employee is trained or has the working experienced required by the employer.

Although the current Legislative Decree No. 689 does not require the employer to present the employee's diploma or employment certificate confirming he or she has the necessary experience for the job position for which he or she is being hired, employers should still be in possession of the employee's professional degree or diploma, which must be certified by the Peruvian consulate with jurisdiction over the city where it was issued or apostilled. The employment certificate need not be certified, as long as it is written in Spanish. The foreign employee's present or previous employers may use their own forms to extend the employment certificate, but in all cases the employment certificate should accurately describe the work

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<sup>9</sup> Note that foreign citizens of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay and Uruguay are not required to sign an employment contract beforehand.

that the employee performed for the employer. If possible, the document should certify that the work was performed for at least three years. Approval of the employment contract takes five working days.

Foreign employees who come to the country to provide independent services are solely required to have an active and valid taxpayer's registration number.

The second stage is processed by the National Immigration Agency. After completing the first stage, the foreign employee must request the change of his or her immigration status from non-immigrant temporary (business or tourist) to non-immigrant resident (work visa).<sup>10</sup> For foreign employees, this is only possible when the employment contract does not include a probation period. The application must be submitted to the National Immigration Agency together with several documents that can be obtained in Peru.<sup>11</sup>

After a procedure that takes approximately six weeks, the National Immigration Agency accepts the requested change of immigration status and grants the foreign national identification card. Once the foreign national identification card is issued, the foreign citizen can start rendering either subordinated (by entering the employer's payroll) or independent services.

### ***Designated employee visa***

On the other hand, if a non-domiciled employer sends a foreign employee to Peru to execute some services in its name, the designated employee visa is applicable. This is very different from the work visa.

This mechanism entails the existence of two companies. The first company should be domiciled in Peru and should carry out work in the country. The second company should be domiciled abroad.

Both companies should execute an agreement for the provision of services by virtue of which the company domiciled abroad agrees to provide certain types of services to the company domiciled in Peru. These services should be of such a nature as to justify transferring individuals to Peru to carry out the total or partial execution of the contractual obligations assumed by the company domiciled abroad in the services agreement.

In this sense, the foreign employee transferred should arrive in Peru with a tourist or business visa and request locally to change his or her immigration status.

For that purpose, it is necessary to submit to the National Immigration Agency – along with several documents obtainable in Peru – a certified copy of the services agreement. Likewise, it will also be necessary to submit the assignment document by virtue of which the non-domiciled company transfers its foreign employees to work in Peru, expressly indicating the term of the transfer. All documents must be legalised before the corresponding Peruvian consulate or apostilled. If legalised by the Peruvian consulate, these documents must be certified by the Ministry of Foreign Affairs in Peru. If the services agreement is executed in Peru, it is not necessary to legalise said document. In addition, a letter issued by the Peruvian entity is also required.

After a procedure that takes approximately six weeks, the National Immigration Agency accepts the change from tourist or business visa to employee of a non-domiciled company.

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10 The work visa allows the foreign citizen to stay in Peru for a year, which can be extended. If the foreigner stays in the country for a shorter period, a temporary visa could be requested.

11 The International Exchange Form, which applies for resident employees, is one of these documents and is obtained through an interview at Interpol in Peru.

The New Immigration Law distinguishes between two types of designated employees: the temporary and the permanent designated employee.

On one hand, the temporary designated employee visa will be granted to those foreign citizens sent to Peru by a foreign employer to carry out a specific task or to perform a work requiring professional, commercial or specialised technical knowledge, for up to 183 calendar days per year, renewable for the same amount of time. This type of visa does not entitle the employee to obtain a Peruvian resident visa and, therefore, his or her family may not request a family member visa. Foreign employees under this immigration status should pay income tax on their Peruvian-sourced income (while they are considered to be non-resident in Peru for tax purposes).

On the other hand, the permanent designated employee visa will be granted to those highly specialised foreign citizens who are sent to Peru by an international corporation for the repair or maintenance of machinery, systems or mechanisms that are technically complex or advanced, as well as for corporate audits and international certifications, for up to 365 days, which can be renewed. This type of visa entitles the employee to obtain a Peruvian resident visa and, therefore, his or her family may request a family member visa.

If there is advance knowledge of the foreigner's intended arrival (typically no less than three months before), the immigration procedure for the work permit or designated employee visa may be started in Peru, with the foreign national obtaining the corresponding visa before arriving in the country by picking it up at the Peruvian consulate elected by them.

## **ii Labour market regulation**

If a legal immigrant obtains a work visa, he or she acquires the legal right to work in Peru. Working foreigners have the same labour rights as Peruvian employees. Note that foreign nationals are not allowed to be entered on a Peruvian employer's payroll or entitled to perform work assignments for an employer without first obtaining a work visa. Preliminary meetings or visits are allowed.

Work discrimination on the basis of nationality is prohibited in Peru. The Constitution of Peru states that all people have equal rights before the law and that no one may be discriminated against for reasons of national origin, race, sex, language, religion, opinion, socio-economic or other status. It also states that in labour relations the principle of equal opportunity without discrimination is to be respected. Peru ratified ILO Convention No. 100 on Equal Remuneration on 1 February 1960, and ILO Convention No. 111 on Discrimination (Employment and Occupation) on 10 August 1970.

The Ministry of Labour is the entity responsible for investigating alleged discrimination and it has authority to fine companies that have violated this principle of law. Judicial disputes regarding acts of employment discrimination are typically handled by labour courts. Cases involving constitutionally defined rights, including equal rights before the law and the prohibition on discrimination, may be submitted directly to the constitutional courts. On the other hand, the National Immigration Agency oversees enforcement of the New Immigration Law, including the legal right to work.

## **iii Rights and duties of sponsored employees**

As a general rule, working foreigners have the same labour rights and obligations as Peruvian employees. Nevertheless, there are some specific responsibilities deriving from the work permit and the residence status of the foreigner.

In practice, the work visa can allow for an indefinite stay in the country, provided it is diligently renewed every year. If the foreign national stays for more than three years, however, it is advisable to apply for a permanent visa. This immigration category allows an indefinite stay in Peru, without having to renew the residence status annually.

## **V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS**

The immigration status of investor is suitable for those foreign citizens who enter the country to settle, develop or manage one or more legal investments.

To obtain the immigration status of investor, it will be necessary to evidence that the investment is equal to or greater than 500,000 sol. The foreign citizen will only be able to be manager or director of a domiciled employer, for which he or she must comply with the applicable labour and tax laws. This particular foreign status will not be counted for purposes of the quotas set out in Legislative Decree No. 689. In any event, the foreign national will not be able to prove the investment through a transfer of stock ownership.

The application should be submitted to the National Immigration Agency together with additional documents easily obtainable in Peru. After a procedure that takes approximately six weeks, the National Immigration Agency orders the change to the foreign citizen's immigration status, thereby granting the investor visa.

The foreign investor who follows the aforementioned procedure will obtain the immigration status of investor, which allows him or her to stay for 365 days, which can be extended.

## **VI OUTLOOK AND CONCLUSIONS**

In the past year, efforts have been made to streamline the filing of foreign employees' documentation via virtual platforms and consolidate the implementation of the New Immigration Law enacted the previous year. Although the National Immigration Agency is still in the process of fully implementing these changes, some improvements are already evident. Visa renewals, and permits to leave the country and sign documents, which are often required by foreign citizens, can now be electronically obtained through the National Immigration Agency.

The Immigration Authority has also made efforts to accommodate the increasing number of Venezuelan citizens entering the country by creating a legal pathway for them to live and work in the country.

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