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The Legal 500 Country Comparative Guides

The Netherlands

CORPORATE IMMIGRATION

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This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in The Netherlands.

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THE NETHERLANDS CORPORATE IMMIGRATION



1. What are the relevant government entities relating to immigration in your jurisdiction?

The Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst; IND*) is an agency of the Ministry for Justice and Security which is competent to decide on applications for residence permits, entry visas and recognised sponsor status. The IND maintains the public register of recognised sponsors and is authorised to issue penalties to sponsors who violate sponsor duties. Other government agencies are involved, often in an advisory capacity, such as the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland; RVO*) and the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen; UWV*), which advises on employability in applications in the Single Permit category. UWV also issues work permits. The Immigration Police and IND supervise the departure of illegal migrants, and the Inspectorate of the Ministry of Social Affairs and Employment (*Inspectie SZW*) issues penalties for illegal working. Our embassies and consulates-general are competent to accept visitor (Schengen C) and entry visa (Schengen D; MVV) applications and to issue those visa.

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

The Netherlands has three schemes available for skilled workers. Applications under these schemes are not subject to a resident labour market test. These are:

- Highly skilled migrant (HSMP)
- European Blue Card (EBC)
- Intra-Company Transfer (ICT).

Under the Single Permit scheme (GVVA), certain categories of workers and certain occupations are exempt from the resident labour market test on grounds that they require a certain capacity or skills which are

scarce, such as athletes, performing artists and religious workers.

In addition, the Single Permit scheme allows for application which are subject to a resident labour market test.

The legal set processing time is 90 days. The IND makes an effort to decide within 2 weeks if an application has been filed by a sponsor with recognised sponsor status.

3. What are the primary options available for unsponsored work and investment in your jurisdiction?

Citizens of the EU, EEA and Switzerland are allowed to remain in the Netherlands and work in any capacity without any immigration permission being required. Citizens of the United States, Japan and Bolivia are eligible for a residence permit to work as a self-employed if they incorporate a company, invest an amount of at least €4,500 and own at least 25% of the company. Citizens of Turkey are eligible for a residence permit as a self-employed if they meet specific criteria, related to making sufficient profit and to protecting the Dutch labour market. Others may be eligible for a residence permit as a self-employed if they score sufficient points under the points-based system for self-employed or if they qualify for a start-up visa.

Under the above-mentioned categories, applicants who are not citizens of the EU, EEA or Switzerland are not allowed to enter employment although they can be employed with their own company as a Director-Major Shareholder (DGA).

Foreign investors can be eligible under the investor category if they invest an amount of €1,250,000 in an innovative business or certain funds. They can work in any capacity without restrictions, as are their dependents. The investment category is anticipated to be abolished in the second half of 2021.

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

A sponsor can be any company, legal body, or an establishment thereof, registered in the Trade Register, who made a written statement confirming to be sponsoring a particular migrant worker.

Organisations can apply for 'recognised sponsor status'. Recognised sponsor status is required to sponsor migrants under certain immigration categories e.g., highly skilled migrant, study, or exchange/au pair. In other categories, the sponsor does not need to have recognised sponsor status.

All sponsors must comply with sponsor duties. Certain sponsor duties apply to all sponsors, whilst others are specific to recognised sponsors.

Sponsor duties applying to all sponsors are Reporting duties (sponsors must report certain events to the IND within two or four weeks, such as moving office, termination of employment, departure and if the migrant worker ceases to meet conditions for eligibility) and record keeping duties (sponsors must keep documents and information for up to five years after termination of sponsorship. For employment-related categories, this includes the employment contract or transfer letter and payslips). In addition, recognised sponsors must comply with a duty of care which means that they must ensure a careful recruitment and selection process of migrant workers in the HSMP or ICT categories, which process must include providing information to candidates about the conditions for admission and residence and their rights and duties as a migrant worker under the Immigration Act.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

Normally, applications are prepared on paper or filed by post. In certain categories, applications can be filed electronically. Visa are issued as a passport sticker and residence permits are issued as a biometric residence card, which serves as the holder's official ID.

6. Is an in-person attendance/interview required as part of the visa/work permit

application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as part of the visa/work permit process?

In the employment-based categories, there is normally no interview. Entry visa applicants must visit the embassy or consulate which covers their jurisdiction to enrol their biometrics (digital photo, fingerprints, and signature) and to collect their visa. Residence permit applicants must visit an IND desk to enrol their biometrics and collect their biometric residence card. In some cases, residence cards are delivered to the holder's address by courier.

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

When a citizen of the EU, EER or Switzerland lawfully resides in the Netherlands and meets the conditions for residency under EU free movement, set in Directive 2004/38, the following persons will qualify as their dependant: the spouse, the registered partner, the unmarried and unregistered partner, and children below the age of 21, or others who meet certain additional conditions.

When sponsored by a citizen of the Netherlands or a person, lawfully residing in the Netherlands: The spouse, the registered partner, the unmarried and unregistered partner, and children below the age of 18 qualify as dependents. A child between the ages of 18 and 25 is considered eligible under a dependent category if he or she is younger than 25, still lives with his or her parents in the core family, does not provide for him or herself and has not started a family of his or her own. Others, notably parents of the applicant, are not considered eligible and would normally be refused unless they can demonstrate very exceptional parent-child ties with their children, involving an exceptional dependency.

Dependents of a citizen of the EU, EER or Switzerland and dependents of a permit holder under the HSMP, EBC, ICT, or self-employed and investor schemes can work, in any capacity, without immigration restrictions, provided their principal remains within one of these schemes.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored

and unsponsored business-related immigration?

The Netherlands has two categories of permanent residence:

- EU long-term resident.
- Permanent residence on national grounds.

To be eligible under the category of EU long-term resident, the applicant must:

have been residing in the Netherlands for a continuous period of five years on a valid residence permit without being away from the Netherlands for more than six consecutive months, or more than 10 months in total.

hold a residence permit for a non-temporary purpose at the time of the application for permanent residence.

- have passed the civic integration exam.
- have sufficient and durable income; and

have had a residence permit for a non-temporary purpose throughout the five-year period. Student permits count for 50%. For example, if you held a residence permit for studies for four years, two years would count towards the five-year period.

To be eligible under the category of permanent residence on national grounds, the applicant must:

- have been living in the Netherlands for a continuous period of five years on a valid residence permit without being away for any continuous period of more than six months or more than eight months in any 12-month period.
- have a valid residence permit for a non-temporary purpose at the time of the application for permanent residence.
- have passed the civic integration exam; and
- have sufficient and durable income.

9. What productive type activities can a business visitor undertake and for how long?

Citizens of the EU, EEA and Switzerland can carry out any type of work.

Others will need a work permit unless the work which they will be carrying out is exempt from this requirement. The following are only the most notable activities, common to general business visitors outside specific categories such as international transport, sports

and entertainment, military, education, and sciences:

- Business meetings (max. 13 weeks in 52 weeks; multiple entry):
- Business visitors are permitted to conduct or attend business meetings. Typically,
- Hardware/software (max. 12 weeks in 36 weeks; single entry):
- Business visitors are permitted to assemble or repair equipment, machines or devices that were delivered by their home country employer, or to give instructions on how to operate them. Further, business visitors can install, implement, or adjust software that was delivered by their home country employer or to give instructions on how to operate it.
- Exhibition or stand (max. 12 weeks in 36 weeks; single entry):
- Business visitors are permitted to prepare, decorate, build, or dismantle an exhibition or stand on behalf of a foreign principal.
- Receiving training or instructions (max. 12 weeks in 36 weeks; single entry):
- Business visitors are permitted to receive training or to receive operational instructions regarding goods that were manufactured in the Netherlands or services that will be performed in the Netherlands. Training and receiving instructions must be limited to observation, getting accustomed to company culture, and receiving instructions in a classroom or in a similar setting that is clearly for instructional purposes (and not for productive work) and under guidance of an instructor/teacher. It must be clear from the setting of the training that it is training and not a group of employees carrying out productive work. This means that the training should not take place at the work floor. Attending meetings for enhancement of the company culture is included in this waiver as well. Please note that the waiver only covers being a recipient of training. It does not cover being a conductor/trainer. Those activities require a work permit.
- Intra-EU cross border service provision: max. 90 days; notification required):
- Intra EU mobility under the ICT scheme: max. 90 days; notification required

10. Can remote work be carried out from your country?

Citizens of the EU, EEA and Switzerland can remain in the Netherlands and work in any capacity without any

immigration permission being required. This includes living in the Netherlands while being employed by a company outside the Netherlands. For others: If a person is employed abroad and seeks to live in the Netherlands while working from home, their employer abroad is not able to sponsor them in an employment-based category as this requires the employer/sponsor to be based in the Netherlands and registered in the Dutch Trade Register. Alternatively, the employee could be sponsored by a payrolling company in the Netherlands who sponsors them and makes them available to the company abroad to work for that company from the Netherlands, remotely.

11. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

No. We have no indications that the government is considering this.

12. How easy is it to switch visa categories/jobs/employer from within country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

Permit holders can apply to convert their residence permit to another category in-country. Moreover, permit holders under HSMP, EBC and GVVA can seek for a new job/sponsor during a period of 3 months following the termination of employment.

13. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

Most issues arise from companies being unaware of the scope of the work permit requirement when allowing foreign nationals who are not from the EU, EER or Switzerland to carry out work or being unaware of the scope of their sponsor duties.

The following penalties can be imposed for illegal working and additional violations:

- Illegal working: €8,000.
- Failure to provide a copy of ID to enforcement agents within 48 hours: €8,000.
- Failure to notify work that must be notified: €1,500.

- Failure to provide the secondary employer with a copy of ID: €1,500.
- Failure of the secondary employer to verify ID: €1,500.
- Failure of the secondary employer to keep a copy of ID on record: €1,500.

Employers who are an individual or a foundation or non-profit association which has had work carried out outside a business scope will normally receive a penalty of 50% of the amount. 'Outside business scope' means that the work carried out must be non-profit by nature.

The Work by Foreigners Act and the penalty scheme allow the Labour Inspector to lower the amount by 25%, 50% or 75% if there are mitigating factors or to raise the amount by 50%, 100% or 200% in the case of recidivism, depending on the circumstances and the nature of the violation.

In addition, UWV can refuse work permit applications if the person or legal body applying for a work permit has been issued with a penalty in the five years prior to the application.

Further, UWV can advise the IND to refuse employment-based residence permits in the Single Permit category if the employing sponsor received a relevant penalty in the five years immediately prior to the application

For violation of sponsor duties, The IND can impose a penalty of € 3,000 per violation, which amount can be increased in case of repetition or mitigated if there are mitigating factors.

14. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

Organisations can apply for recognised sponsor status. The legal set processing time is 90 days, but if the sponsor is recognised, the IND makes an effort to decide within two weeks, which effort is met in most applications.

15. What are the recent trends, both political and social (including COVID-19 pandemic), that have impacted your jurisdiction with regard to immigration policy and law? How will this shape the immigration landscape moving forward?

N/A

16. Are there any anticipated changes in the immigration laws of your jurisdiction?

The government has announced that the scheme for foreign investors and high net worth individuals will be abolished in the second half of 2021. The reason is that the scheme is not popular: since the introduction in 2013, between 10 to 20 residence permits have been issued, under the scheme.

17. How do you see technology developing and evolving to support immigration process in the future?

We anticipate that the technological developments will increase online filing and for communications with the IND shifting from paper to pc.

18. What are the Right to Work requirements in your jurisdiction?

Employers are legally required to verify the identity and right to work of their employees before they commence to work. Employers are recommended to read and implement the *Stappenplan Verificatieplicht* (A Step-by-step on Verifying Identity of Workers) in their company policies. This is a set of guidelines published by the Ministry of Social Affairs and Employment informing employers on how to conduct identity and right to work verification in 5 steps. It is published online and can be found here:

<https://www.inspectieszw.nl/onderwerpen/stappenplan-verificatieplicht> . It is only available in Dutch.

19. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

The following penalties can be imposed for illegal working and additional violations:

- Illegal working: €8,000.
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- Failure to notify work that must be notified: €1,500.
- Failure to provide the secondary employer with a copy of ID: €1,500.
- Failure of the secondary employer to verify ID: €1,500.
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copy of ID on record: €1,500.

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20. Are there any quota and / or labour market testing requirements in your jurisdiction and if so, what do they involve?

There are annual limits for Asian cuisine chefs and working- holidaymakers from Argentina, Hong Kong, Taiwan or Uruguay (100, divided between the countries), Japan (200) and South Korea (100).

Work permits and Single Permits (GVVA) are subject to a resident labour market test. The skilled-worker categories (HSMP, EBC and ICT) are exempt from the labour market test.

The skilled-worker categories (HSMP, EBC and ICT) are exempt from the resident labour market test. In addition, certain categories of workers and occupations are exempt. These exemptions include athletes in the highest level of competition; professional soccer players; religious workers; teachers in international education; trainees and interns; musicians; performing artists; and conservators and restorers working for a museum which is a member of the Association of Museums.

21. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

The individual must deregister from the Population Register municipality where they are residing and return their residence card. If the individual is sponsored, the sponsor must notify the IND that are ceasing to be the individual's sponsor.

22. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

Nationals of certain countries must take a TBC-test upon arrival.

23. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

Applicants under EBC must always have a local employment contract with their sponsor. Applicants under HSMP will normally need a local employment contract, however there are some exceptions. Applicants under ICT must remain in home country employment. Applicants under GVVA may have a local contract or be employed abroad, depending on the rules that apply to their situation.

These are the salary thresholds to be met:

HSMP

- 30 years or older: €4,752 gross per month (exclusive 8% holiday allowance).
- 29 years or younger: €3,484 gross per month (exclusive 8% holiday allowance).
- Graduate scheme: €2,497 gross per month, regardless of age (exclusive 8% holiday allowance).

Moreover, the salary must be in according with Dutch market level.

These salary thresholds are amended per 1 January of each year

EBC

- € 5,567 gross per month (exclusive 8% holiday allowance).

This salary threshold is amended per 1 January of each year.

GVVA

- a market level salary (minimum: the legal set minimum wage: € 1.701,00 gross per month, exclusive 8% holiday allowance)

This salary threshold is amended per 1 January and 1 July of each year.

24. What are the maximum periods of stay for individuals on an employment based visa / work permit?

Under the HSMP, the residence permit is issued for the duration of the employment contract, to a maximum of five years and is extendable for such periods. Under the EBC, the residence permit is issued for the duration of the contract for at least three months to a maximum of four years and can be extended. Under the ICT, the residence permit is issued for the duration of the assignment for at least three months to a maximum of three years and cannot be extended beyond three years. A new ICT permit can be issued after a cooling off period of 6 months outside the Netherlands. A GVVA is issued for the duration of the employment agreement or assignment to a maximum of 1 year or 3 years, depending on the rules that apply to the applicant's situation.

25. What are the most positive aspects of your immigration system compared to the rest of the world?

The most positive aspect of our system for employment-related immigration is its predictability on outcome. The key conditions of the HSMP, EBC and ICT are objective and non-discretionary for the IND, which allows for a very predictable assessment of the outcome of an application.

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