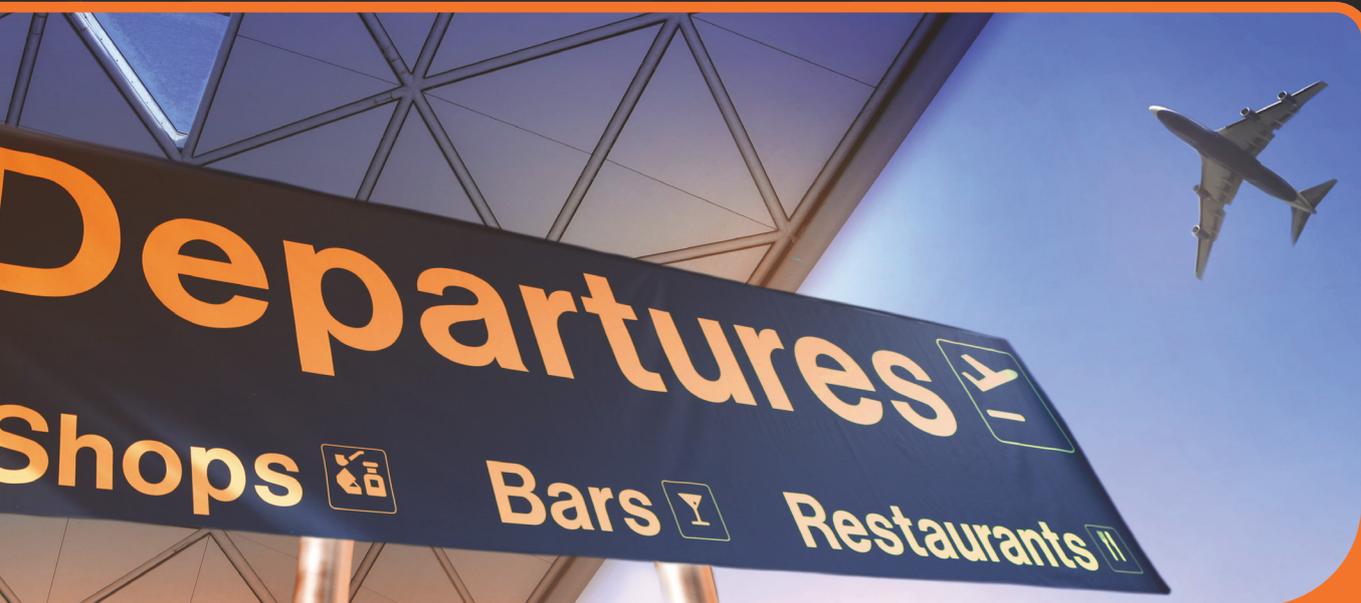


**International
Comparative
Legal Guides**



Practical cross-border insights into corporate immigration law

Corporate Immigration 2022

Ninth Edition

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Kingsley Napley LLP**



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Marcel A.G. Reurs

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The backbone of Dutch immigration law is in Acts of Parliament: the Immigration Act 2000 (*Vreemdelingenwet*); the Work by Foreigners Act 1995 (*Wet arbeid vreemdelingen*); and the Nationality Act 2003 (*Rijkswet op het Nederlanderschap*). These Acts provide decision-making power to the State Secretary of Justice and Security regarding immigration (Immigration Act) and naturalisation (Nationality Act) and to the Minister of Social Affairs and Employment regarding work permits and sanctions for illegal working (Work by Foreigners Act). All these acts are implemented by secondary legislation, made by the government: the Immigration Decree (*Vreemdelingenbesluit*); the Decree on the Execution of the Work by Foreigners Act (*Besluit uitvoering wet arbeid vreemdelingen*); and the Decree on acquisition and loss of Dutch nationality (*Besluit verkrijging en verlies Nederlanderschap*).

Of great practical importance are the legislations' hands and feet: the policy rules on how the competent government agencies (the Immigration and Naturalisation Service (*Immigratie-en Naturalisatiedienst*; IND) and the Employment Insurance Institute) must interpret the legislation and exercise discretionary powers; the Aliens Circular (*Vreemdelingencirculaire*); the Executive rules to the Work by Foreigners Act (*Regeling uitvoering Wan*); the Penalty Scheme for the Work by Foreigners Act (*Beleidsregels boeteoplegging Wan*); and the Guidance to the Netherlands' Nationality Act (*Handleiding bij de toepassing van de RvN*).

It must be noted that the Netherlands is a Member State of the EU. This means that the rights provided for in the TFEU and EC Regulations are applicable automatically (e.g. the Schengen Border Code) and EC Directives are to be transposed into national law. Notable examples are: Directive 2004/38 (on the right of free movement); Directive 2003/86 (on family reunion for third-country nationals); Directive 2003/109 (on long-term residence for third-country nationals); Directive 2009/50 (on highly skilled workers (European Blue Card; EBC)); and Directive 2014/66 (on intra-corporate transfer). European law is increasingly becoming the head and the heart, the determining factor for our national immigration policies.

Finally, there are treaties that provide immigration rights, e.g., the Treaty of Friendship, Commerce and Navigation between the Netherlands and the USA, the Treaty of Commerce and Navigation between the Netherlands and Japan and the EEC-Turkey Association Agreement.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The corporate immigration system is administered by the IND, which is an agency of the Ministry of Justice and Security. The agency decides on applications for residence permits, entry visas (MNVs) and recognised sponsor status, maintains the public register of recognised sponsors and is authorised to issue penalties to sponsors who violate sponsor duties.

In addition, 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 (GVVA) 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.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

The Netherlands is a Member State of the EU and part of the Schengen Area.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

The Netherlands is part of the Schengen Area. This area of 22 EU States, four non-EU States and three European micro-States functions as a single area for international travel purposes. This means that there are no internal border controls within the Schengen Area, although, in exceptional cases, Member States may temporarily reintroduce internal border control. Visitors who require a Schengen visa will receive a visa for the area as a whole rather than for an individual Member State. In exceptional cases, Member States may issue a visa that is limited to a specific Member State. Citizens of the EU, EEA and Switzerland do not need a visa. For others, the EU has a common list of countries whose citizens must have a visa when crossing the external borders and a list of countries whose citizens are exempt from that requirement. These lists are set out in Regulation (EU) 2018/1806. Currently, the latter list consists of:

Albania; Andorra; Antigua and Barbuda; Argentina; Australia; Bahamas; Barbados; Bosnia and Herzegovina; Brazil; Brunei; Canada; Chile; Colombia; Costa Rica; Dominica; El Salvador; Holy See; former Yugoslav Republic of Macedonia; Georgia; Grenada; Guatemala; Honduras; Israel; Japan; Kiribati; Saint Kitts and Nevis; Saint Lucia; Marshall Islands; Malaysia; Mauritius; Mexico; Micronesia; Moldova; Monaco; Montenegro; Nauru; New Zealand; Nicaragua; Palau; Panama; Paraguay; Peru; Saint Vincent and the Grenadines; Samoa; San Marino; Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)); Seychelles; Singapore; Solomon Islands; South Korea; Timor-Leste; Tonga; Trinidad and Tobago; Tuvalu; Ukraine; UAE; UK; USA; Uruguay; Vanuatu; and Venezuela.

In addition, individuals holding a long-stay visa or residence card issued by a Schengen Member State may enter without a Schengen visa.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Citizens of the EU, EEA and Switzerland are permitted to enter as a visitor for a period of three months without having to satisfy any specific conditions. They are able to prolong their stay provided that they meet certain conditions, and must then register as residents in the local Population Register. Others are subject to the conditions of the Schengen Border Code, which permits a stay of a maximum period of 90 days within any given 180-day time window. ‘Any given’ implies a ‘rolling’ 180-day period. A visitor cannot be in the Schengen Area for more than 90 days, counting back 180 days from each day of the stay. This means that only an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days. Only days in the Schengen Area with visitor status are relevant for the 90 days calculation. Days spent in a Schengen country on the basis of a residence permit or long-stay visa for that country are not included in this calculation, but days in other Schengen countries during that period (where the applicant does not hold a residence permit or long-stay visa) are included. The EC has developed a ‘Schengen Calculator’ tool enabling visitors to calculate their remaining visitor days in Schengen, available for the public at <http://www.ec.europa.eu>.

Visitors can be permitted to extend their visitor stay up to another 90 days if there are weighty personal or business reasons; however, the additional stay is limited to the territory of the Netherlands.

In addition, the Netherlands has bilateral agreements with certain countries, permitting citizens of those countries a visitor stay of three months. This permits a visitor who has used Schengen days in other Schengen countries to remain in the Netherlands for a full three months.

2.3 What activities are business visitors able to undertake?

Citizens of the EU, EEA and Switzerland are permitted to carry out any type of work without a work permit or other authorisation being required.

Others will need a work permit, unless the work 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, this will be meetings and discussions regarding the company and its development. Productive activities in the context of the company’s business activities are never considered business meetings.

- 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 are permitted to 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 the enhancement of the company culture is also included in this waiver. 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.
- Providing a service (max. 90 days; notification required).

Citizens of the UK are permitted to carry out certain activities listed in the EU-UK Trade Agreement.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Yes, the categories include ‘providing a service’, ‘ICT-Permit holder’ and ‘visitors under the International Trade Regulation’, mentioned under question 2.3.

2.5 Can business visitors receive short-term training?

Yes, please see question 2.3. Conducting training requires a work permit.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Two government agencies are responsible for compliance inspections and are authorised to issue penalties for violations:

- The Inspectorate of the Ministry of Social Affairs and Employment inspects compliance with labour laws, including the Work by Foreigners Act.

- The IND inspects compliance with sponsor duties set out in the Immigration Act.

The Inspectorate typically conducts visits, announced and unannounced, and the IND typically runs checks by cross-checking government databases and requesting disclosure of employee documents.

3.2 What are the rules on the prevention of illegal working?

Employers are required to verify the identity of any candidate whom they seek to employ and whether he or she is permitted to work in the Netherlands on the basis of an appropriate identity document. The Ministry of Social Affairs and Employment has published guidance on verification of identity. If the guidance is properly implemented and executed with the employer, this could mitigate a penalty for illegal working.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

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 permit 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 GVVA category if the employing sponsor received a relevant penalty in the five years immediately prior to the application.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Only employers who have recognised sponsor status are listed in a public register, which is published on the website of the IND. Recognised sponsor status is required in order to sponsor migrants under certain immigration categories, e.g. highly skilled migrant (HSMP) category or study of exchange programmes. In other categories, the sponsor does not need to have recognised sponsor status and there is no published list or register of those sponsors.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

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 the conditions for eligibility.
- Record-keeping duties – sponsors must keep documents and information for up to five years after the 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 intra-company transfer (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.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

This is not a general requirement. Only work permits or residence permits in a GVVA category issued after a resident labour market test or under the Asian Chef Scheme can be made conditional to such a commitment.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

The Netherlands does not require this.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

The *Inspectie SZW* and the IND perform random checks, which include site visits, announced and unannounced, and sponsors are required to cooperate with enforcement officials. We recommend that the sponsor designate a protocol and a response team for an immigration audit, similar to tax-, competition- and privacy-related audits. The response team should be educated and trained to act on an unanticipated and unannounced audit. Besides the response team, employees who are most likely to come into contact with inspectors (e.g. receptionists) must be included in the protocol and educated on how to act and respond to questions.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The Netherlands does not maintain a skilled occupations list. Whether a job qualifies as 'skilled' under the skilled worker categories (HSMP and EBC) is mainly determined by a salary threshold scheme and the need for the salary to be in accordance with Dutch market level.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

The Executive rules to the Work by Foreigners Act lists a number of sectors and occupations that are exempt from the resident labour market test, including: athletes in the highest level of competition; professional soccer players; religious workers; teachers in international education; Asian chefs; trainees and interns; musicians; performing artists; and conservators and restorers working for a museum that is a member of the Association of Museums.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

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

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Only in the category of 'MBO-interns' can the number of sponsored interns not exceed 10% of the sponsor's workforce, with a minimum of two.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Applicants for an orientation year permit who are eligible under the graduate scheme due to completing a Master's or post-Master's programme or having obtained a Ph.D. at a designated international educational institution must demonstrate that they have achieved a minimum score of 6.0 for the International English Language Testing System (IELTS) or a comparable minimum score in another accepted English language test (TOEFL, TOEIC and Cambridge English grades and scale) set out in the Code of Conduct for international students in Dutch higher education. This does not apply if they can submit a diploma, certificate or document listed in the Civic Integration Decree or if the academic programme was taught in English or Dutch. Further, applicants for permanent residence who are not Turkish nationals must pass a Civic Integration Test, which includes a Dutch language test.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

When arriving in the Netherlands after their first admission, applicants for a residence permit must undergo a TB-test unless they are from a country that is listed as exempt.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

All residents of the Netherlands, including sponsored and non-sponsored migrants, are required to have valid Dutch health insurance unless they are legally waived. In that case,

they still must have health insurance covering medical costs in the Netherlands as without sufficient health insurance, a residence permit can be revoked or an extension can be refused.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

This depends on the type and category of their work or residence permit.

Holders of a residence permit as a HSMP are permitted to be seconded to a client site to perform a service while remaining under the supervision and control of their employer. If they are made available to the client, i.e. they will work under the supervision and control of the client, this is only permitted if the employing sponsor is registered with the Labour Standards Register (SNA) and has an appropriate registration in the Chamber of Commerce in accordance with the Act on Placement of Personnel (WAADI).

The same applies to holders of an EBC with the exemption of the need for an SNA registration. This only applies if the employing sponsor is a recognised sponsor.

Holders of a GVVA or work permit are permitted to be seconded to provide a service or to be made available if this is covered by the work permit or the work authorisation as part of their GVVA. If they are made available, their employer must have an appropriate registration in the Chamber of Commerce in accordance with the WAADI.

Holders of an ICT-Permit are permitted to be seconded to provide a service but are not permitted to be made available to a client.

Holders of a residence permit that is not sponsored by their employer are permitted to be seconded to provide a service and can be made available to a client, provided that their employer has an appropriate registration in the Chamber of Commerce in accordance with the WAADI.

4.14 Does the work permit system require the sponsoring employer to have a physical office space at which employees are required to be physically present?

The ICT EU requires that the sponsor is an undertaking that is economically active in the Netherlands.

4.15 Does the work permit system allow employees who hold work permits to work remotely including work from home?

This is generally permitted. In the GVVA category, the home address should be on the work permit or additional document (the work authorisation document with the residence permit) as a work location.

5 Non-Sponsored Highly Skilled, Exceptional or Extraordinary Talent Visas

5.1 Is there an immigration category which covers highly skilled individuals (including those who are not sponsored by a company)?

Citizens of the EU, EEA and Switzerland are permitted to remain in the Netherlands and work in any capacity without any immigration permission being required. The Netherlands has three schemes available for skilled workers, which are exempt from the resident labour market test. These are:

- (a) HSMP.

- (b) EBC.
(c) ICT.

In addition, under the GVVA scheme, certain categories of workers as well as 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.

5.2 Is there an immigration category which allows those with exceptional or extraordinary talent in their specialist field to obtain a work visa?

The Netherlands does not have an exceptional or extraordinary talent scheme.

6 Remote Working Visas

6.1 Is there a visa category which allows employees of overseas companies who remain employed outside your jurisdiction to work remotely in your jurisdiction without the need to obtain a standard work permit?

Citizens of the EU, EEA and Switzerland are permitted to remain in the Netherlands and work in any capacity without any immigration permission being required. For others, if a person is employed abroad and seeks to live in the Netherlands while working from home, their employment abroad is not able to sponsor them in an employment-based category as this requires the employer/sponsor to be based in the Netherlands. 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.

6.2 To what extent do your visitor rules explicitly permit temporary remote working, for example where the employee of a foreign company cannot leave your territory due to health or other emergencies?

Our visitor rules do not explicitly permit an employee to work remotely.

7 Investment or Establishment Work Permits

7.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

Citizens of the EU, EEA and Switzerland are permitted 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 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 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 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 are not permitted to enter into employment although they can be

employed with their own company as a Director-Major Shareholder (DGA). Dependants, however, are permitted to work in any capacity, without restrictions.

Foreign investors can be eligible under the investor category if they invest an amount of €1.25 million in an innovative business or certain funds. They are permitted to work in any capacity without restrictions, as are their dependants.

8 Temporary Work Permits

8.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Citizens of the EU, EEA and Switzerland are permitted to remain in the Netherlands and work in any capacity without any immigration permission being required. For others, the Netherlands has multiple temporary worker schemes, which include:

- Working holidaymakers.
- Interns and trainees.
- Orientation year for graduates searching for a skilled job.
- Intra-company trainees.

Residence permits in these categories are valid for one year and cannot be extended.

8.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

Work permits and GVVA's can be issued for seasonal work for a period of up to 26 weeks to allow work in agriculture.

9 Group or Intra-Company Transfer Work Permits

9.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

The Netherlands has implemented EC Directive 2014/66 (on intra-corporate transfer), which is now, but for a few exceptions, the mandatory immigration category for ICTs within an international group of companies.

9.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

In order to be eligible under the ICT-Scheme, the migrant worker:

- must be residing outside the EU at the time of the application;
- must have been employed within the international group for at least three months at the time of the transfer;
- must earn a salary at Dutch market level;
- must qualify as a 'manager', 'specialist' or 'trainee'; and
- must hold a Master's degree to qualify as a trainee.

The host entity must be economically active and must **not** be incorporated for the (main) purpose of facilitating the entry of migrant workers. It must not have received any relevant penalties in the five years prior to the application.

A salary that meets the following thresholds (for 2022) is deemed at market level:

- Thirty years or older: €5,228 gross per month (inclusive 8% holiday allowance).

- Twenty-nine years or younger: €3,833 gross per month (inclusive 8% holiday allowance).
These amounts are amended on 1 January of each year.

9.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Please see question 9.2 for long-term transfers of more than three months.

For transfers or visits of less than 90 days, UWV can issue a work permit if the employee earns a salary in accordance with the threshold.

9.4 What is the process for obtaining a work permit for an intra-company group employee?

For long-term applicants (over 90 days), the procedure is as follows: recognised sponsors can file online with the IND. Others must file a paper application. The processing time is 90 days. If the sponsor is recognised, the IND makes an effort to decide within two weeks, which effort is met in the vast majority of applications. Applications from regular sponsors are typically processed in five to seven weeks.

Applications from ordinary sponsors are submitted to UWV for advice, whereas applications from recognised sponsors are adjudicated and decided without such advice. Only in the case of doubt as to whether the conditions are met will the IND request advice from UWV.

When decided, the IND will send a notice of decision to the sponsor. If the application is granted, the employee will be issued with a biometric residence card, valid for the duration of the assignment up to a maximum of three years. Citizens from certain countries must visit a Dutch consulate to collect an MVV before entering the Netherlands.

For visitors (up to 90 days), applications are filed as a paper application with UWV. The processing time is five weeks. When decided, UWV will send a paper work permit to the host company. Visa nationals will need to apply for a Schengen visa in addition to the work permit.

9.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

See question 9.4 above.

9.6 How long does the process of obtaining the work permit and initial visa take?

See question 9.4 above.

9.7 Is there a maximum period of validity for initial intra-company transfer visas, can they be extended and is there a maximum period of stay in this category?

Residence permits under the ICT can be issued for a maximum period of three years or extended to a maximum of three years. Upon completion of the three-year period, the applicant must leave the EU for at least six months before he is able to reapply under the ICT category. Alternatively, the applicant can choose to stay in the Netherlands, converting to another immigration category, such as HSMP or EBC. An EBC will require a local contract. For an HSMP after a three-year ICT, this is not necessary according to the current IND practices.

9.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

Yes, this is possible in the Netherlands. The category is Permanent Residence on National Grounds.

9.9 What are the main government fees associated with this type of visa?

The amounts as at January 2022 are: €345 for the employee; €207 for a partner or spouse; and €69 for a minor child. Please note that government filing fees are amended periodically. Citizens of San Marino and Israel do not pay government filing fees for MVV applications or TEV applications (combined MVV and residence permit applications). They do, however, need to pay a fee for residence permit applications. Citizens of Turkey pay a moderated fee.

10 New Hire Work Permits

10.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The most common categories for skilled workers are the HSMP and the EBC schemes.

10.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

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

10.3 Are there any exemptions to carrying out a resident 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, such as: athletes in the highest level of competition; professional soccer players; religious workers; teachers in international education; Asian chefs; trainees and interns; musicians; performing artists; and conservators and restorers working for a museum that is a member of the Association of Museums.

10.4 What is the process for employers obtaining a work permit for a new hire?

The HSMP is the most common and popular scheme for sponsoring skilled workers. The HSMP is only available to recognised sponsors. The key requirements are that the migrant worker:

- must be employed with the sponsor on a local employment contract;
- must earn a salary that meets the relevant threshold; and
- must be able to demonstrate that the salary is in line with Dutch market level.

The salary requirements for 2022 are:

- Thirty years or older: €4,840 gross per month (exclusive 8% holiday allowance).

- Twenty-nine years or younger: €3,549 gross per month (exclusive 8% holiday allowance).
- Graduate scheme: €2,543 gross per month, regardless of age. These amounts are amended on 1 January of each year.

The application must be filed by the employing sponsor, exclusively, either online or on paper. The processing time is 90 days; however, the IND makes an effort to decide within two weeks, which is met in the vast majority of applications. When decided, the IND will send a notice of the decision to the sponsor. If the application is granted, the employee will be issued with a biometric residence card, valid for the duration of the assignment up to a maximum of three years. Citizens from certain countries must visit a Dutch consulate to collect an MVV before entering the Netherlands. The residence permit is issued for the duration of the employment contract and is extendable and permits the holder to be eligible for permanent residence and citizenship after five years.

The EBC is a less common category and would typically be used for sponsoring skilled workers if the sponsor does not hold recognised sponsor status. The requirements are that the migrant worker:

- must be employed with the sponsor on a local employment contract that is valid for at least 12 months;
- must earn a salary that meets the relevant threshold (for 2021: €5,670 gross per month (exclusive 8% holiday allowance)); and
- must have a diploma of post-secondary education (e.g. Bachelor's or Master's) which was obtained after an education programme of at least three years and which is positively evaluated by IDW.

In addition, the sponsor may not have received any relevant penalties in the five years prior to the application.

The procedure is the same as for an HSMP. The processing time is 90 days. If the employing sponsor is a recognised sponsor, the IND will make an effort to decide within two weeks.

If the employer seeks to sponsor the new hire under the HSMP and the new hire already holds a residence permit under the HSMP, the employer does not have to apply for a new residence permit but must notify the IND within four weeks from hiring that he is taking over sponsorship. The same applies to the EBC.

10.5 What is the process for the employee to obtain a visa as a new hire?

See question 10.4 above.

10.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 10.4 above.

10.7 How long are initial visas for new hires granted for and can they be extended?

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.

10.8 Is labour market testing required when the employee extends their residence?

When a GVVA or work permit is issued after a labour market test, this test will also be required as a prerequisite for the extension until the employee has completed a non-interrupted stay on a residence permit allowing employment of at least five years.

10.9 Can employees coming as new hires apply for permanent residence?

The HSMP, EBC and GVVA provide an avenue to permanent residence in the category of EU Long Term Resident and the category of Permanent Residence on National Grounds.

10.10 What are the main government fees associated with this type of visa?

The amounts as at January 2022 are: €345 for the employee; €207 for a partner or spouse; and €69 for a minor child. Please note that government filing fees are amended periodically. Citizens of San Marino and Israel do not pay government filing fees for MVV applications or TEV applications (combined MVV and residence permit applications). They do, however, need to pay a fee for residence permit applications. Citizens of Turkey pay a moderated fee.

11 Conditions of Stay for Work Permit Holders

11.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Holders of an employment-based residence permit must remain employees in order to continue their residence. If they cease to work for their sponsor, the sponsor must inform the IND and this will normally result in a withdrawal of the residence permit. Holders of an HSMP and EBC who lose their job are granted a three-month search period to find a new skilled job, provided that their residence permit is still valid for at least three more months counting from termination of employment.

11.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Everyone who enters the Netherlands for a stay of four months in a six-month time window is legally required to report at the Population Register of their municipality to register as a resident. This equally applies to citizens of the Netherlands, the EU, EEA, Switzerland and others.

12 Dependants

12.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The spouse, registered partner, unmarried and unregistered partner and children below the age of 18 qualify as dependants. A child between the ages of 18 and 25 is considered eligible under a dependant 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, and if the interest of the child to accompany or join its parents outweighs the general interest of the State. Others, notably parents of the applicant, are normally not considered eligible and must anticipate to be refused unless they can demonstrate very exceptional parent-child ties with their adult children, involving an exceptional dependency. Special, more lenient rules apply to family members of citizens of the EU, EEA or Switzerland and parents of Dutch children.

12.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes. Civil/unmarried and same-sex partners qualify as family members and are treated in the same way as heterosexual married couples.

12.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Under the HSMP, EBC, ICT, self-employed and wealthy migrant schemes, dependants are permitted to work, in any capacity, without immigration restrictions, provided their sponsoring family member remains sponsored under the scheme.

12.4 Do children have access to the labour market?

Under the HSMP, EBC and ICT, children who are dependants have full access to labour. However, they must observe and comply with employment laws.

13 Permanent Residence

13.1 What are the conditions for obtaining permanent residence?

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.

13.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, it is possible to convert to another category while in-country. The conversion must be filed in a timely manner to ensure that the legal residence remains uninterrupted to count towards the required five years of continuous stay. Non-visa nationals can convert from visitor status to residency. If the person holds a visitor visa and requires an MVV, they must return to their home country or country of residence and await the outcome of the application under the other category. This absence will be considered a breach of the required five years of continuous stay.

14 Bars to Admission

14.1 What are the main bars to admission for work?

Besides the criminal antecedents mentioned under question 14.2, the application can be refused if the employee or the sponsor submitted any incorrect information or withheld relevant information in the context of the application or during previous immigration procedures.

14.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal convictions are grounds to refuse any residence permit for first admission if they entail a sanction for a criminal violation that qualifies as a crime (as opposed to a misdemeanour) under Dutch penal law.

Sanctions can be:

- imprisonment;
- a custodial measure;
- community service;
- an unconditional fee;
- accepting an out-of-court settlement; or
- a penalty order by the public prosecutor.

Without a criminal conviction or even prosecution or indictment, an application can be refused if the IND suspects the applicant of committing any act referred to in Article 1F of the 1951 Refugee Convention (a crime against peace, a war crime, a crime against humanity, a serious non-political crime (for example, murder or terrorism), or acts contrary to the purposes and principles of the United Nations (for example, terrorist acts)).

First-time offenders are able to reapply after five years from the antecedent, provided that, at that time, they have not received any of the above sanctions for committing another crime.



Marcel A.G. Reurs is an immigration attorney with over 24 years of experience. His practice encompasses a broad range of business immigration work for corporate clients across the globe. Marcel is a frequent lecturer, a contributing co-editor to the leading commentary on the Dutch Immigration Act, the previous editor-in-chief of the *Journal on Dutch Immigration Law*, and chief of the editorial board of *Jurisprudence on Immigration Law*, the Dutch immigration jurisprudence series. He teaches and examines the Dutch National Bar Association's course on immigration law in the mandatory professional education programme for trainee attorneys and he served the Ministry of Justice as an expert adviser in the immigration policy reform, Modern Migration Policies. Marcel is a member of the IBA and the Dutch specialist associations for immigration lawyers, SVMA and WRV. He is an international associate to AILA and a member of the Steering Committee of AILA's Global Migration Section. Marcel is annually listed in *WWL: Corporate Immigration* as a leading individual and was recognised as a 'thought leader' in the recent editions.

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Everaert was founded in 1982 as the first Dutch law firm exclusively dedicated to immigration law. The firm's lawyers are at the forefront of immigration law and policymaking and have litigated landmark cases before the national courts and the European Court of Justice, including *Jany and Others* (2001), *S. and G.* (2014) and *Essent* (2014). The firm's practice continues to cover the whole field of immigration law, with an emphasis on business immigration, nationality, and arts & entertainment.

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