



## Amendment to the Act on Foreigners

**The amendment is aimed primarily at introducing the Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals (from outside the EU) in the framework of an intra-corporate transfer. The Act also improves the legal framework for managing migrations in Poland. The amendment to the Act on Foreigners will enter into force on 12 February 2018.**

In order to implement the Directive (2014/66/EU), **two new types of temporary residence permits have been introduced into the Act on Foreigners:**

1. for the purposes of working in the framework of an intra-corporate transfer;
2. in order to exercise the right to long-term mobility, also in the framework of an intra-corporate transfer.

**The legislator has also added provisions governing residence and work in Poland in the framework of short-term mobility** of foreigners holding residence documents issued by other EU Member States and bearing the acronym “ICT”.

**The purpose of the stay of a foreigner holding one of these permits** or exercising the right to short-term mobility will be to work as a manager, specialist or trainee employee at a host entity established in Poland. Such a foreigner will be temporarily seconded to it by his/her parent employer, established outside the territory of the European Union Member States, the European Free Trade Agreement (EFTA) States, parties to the Agreement on the European Economic Area or the Swiss Confederation.

**The host entity will have to maintain certain capital and organizational relationships** with this entity – first of all, it will have to be a branch or representative office of the parent employer or belong to the same group of undertakings as the parent employer. The term “group of undertakings” has been defined separately in the Act.

**One of the characteristics of the new types of temporary residence permits will be the principle providing that only the host entity in which the foreigner is to work will be entitled to apply for them.** This entity will also be the sole party involved in the procedure for granting these permits. A separate model of the application form, adapted to the specific characteristics of the new types of permits, has been provided. In the case of a temporary intra-corporate transferee permit, the foreigner will have to stay outside the territory of the EU Member States. Having been granted a permit, the foreigner will be able to obtain a visa to use the permit, and upon arrival in Poland, he/she will be delivered a residence card bearing the acronym “ICT”.





Obtaining a temporary intra-corporate transferee permit in Poland **will entitle the foreigner exercising the right to mobility to work** (as a manager, specialist or trainee employee) in other host entities in the other EU Member States. This will be possible during the period of the permit's validity.

**The following two forms of mobility are envisaged: short-term one** – up to 90 days in any period of 180 days, in each EU Member State, and **long-term one** – for a period of more than 90 days in a given EU Member State. The above forms of mobility will be possible in those EU Member States that have implemented Directive 2014/66/EU (the Directive has not been implemented by the United Kingdom, Ireland and Denmark). The method of exercising the right to mobility in the different Member States will depend on the solutions adopted in these countries to implement the Directive.

Similarly, a foreigner holding a residence permit bearing the acronym “ICT”, issued by another Member State of the European Union, **will be able to exercise the right to mobility in Poland** within a period not longer than the period of the permit's validity. **To be allowed to exercise the right to short-term mobility** (up to 90 days in any period of 180 days) in Poland, it will be necessary to notify beforehand the Head of the Office for Foreigners of one's intention to exercise the right to this form of mobility. Information will be provided by the host entity from the first Member State that has issued a document bearing the acronym “ICT”. The Office for Foreigners will be the national focal point for the purposes of exercising the right to mobility. **To be entitled to exercise the right to long-term mobility in Poland, the applicant will have to obtain a new type of temporary residence permit.**

**The amendment introduces also a number of changes in the provisions of the Act on Foreigners,** which are to streamline the implementation of procedures and result in a partial alteration in the requirements for granting the various residence permits or in clarification of provisions whose wording could so far arise doubts in practice. For example:

- the formal requirement to attach to the application information from the staroste on the inability to satisfy the employer's staffing needs relying on registers of the unemployed and jobseekers, or an unsuccessful recruitment organized for the employer, will be waived. It will also be possible to submit this document in the course of the procedure. The above change concerns applications for temporary residence and work permits and for temporary residence permits for the purposes of highly qualified employment;
- in order to streamline the procedures, provisions restricting the catalogue of parties involved in the various procedures conducted under the Act on Foreigners will be introduced;
- the requirement for the graduate of a Polish university seeking job to have a source of stable and regular income sufficient to cover the cost of living of the graduate and his/her family members while applying for a temporary residence permit will be abolished. It will be required, for example, to have financial means sufficient to cover the cost of living;



- the requirements for being granted an EU long-term residence permit will be complemented with an obligation to demonstrate fluency in Polish at least at the B1 level, confirmed with a relevant certificate. This requirement will not apply to minors who, by the date of submitting an application for an EU long-term residence permit, are under the age of 16.

**The Act introduces also a number of changes in return procedures involving foreigners**, which are supposed to streamline their implementation, and in the provisions concerning:

- determination of the costs associated with the issuance and enforcement of a return decision;
- detention of foreigners, their placement in guarded or remand centers for foreigners;
- social assistance, medical and psychological care for individuals released from guarded centers or remand centers for foreigners or for those who are not placed in guarded centers or remand centers for foreigners on health grounds.

**The amendment to the Act provides also for special grounds for granting a temporary residence and work permit to a foreigner who is to stay in Poland to pursue a profession desirable for the Polish economy.** These professions can be specified in a regulation of the minister competent for labor in agreement with the minister competent for economy. As regards this permit, it will not be required to demonstrate that the entity entrusting work is not able to meet its staffing needs on the local labor market. As in the case of a temporary residence permit for the purposes of highly qualified employment, a foreigner who holds this special permit for temporary residence and work will be safeguarded against its revocation in case of being unemployed. Special grounds will also be provided for granting permanent residence permits to foreigners holding such permits, already after four years of their uninterrupted stay in Poland. **The provisions regarding this special type of temporary residence and work permit will come into force on 1 January 2019 and will apply to determine, by way of regulation to the Act, professions desirable for the Polish economy.**

The new Act provides also for legal grounds for the optional determination of limits in a given calendar year for:

- temporary residence and work permits,
- temporary residence permits for the purposes of highly qualified employment,
- temporary intra-corporate transferee permits,
- temporary residence permits for business purposes for a foreigner working as a board member in a company in which he/she holds shares or as a proxy or general partner in a limited partnership or partnership limited by shares.

These provisions will be complementary to their counterparts on the grounds of work permits, seasonal work permits and declarations on entrusting work contained in the Act on Employment



Promotion and Labor Market Institutions. These provisions will make it possible to specify in a flexible manner, by way of regulation, one or multiple limits, with a possible division into voivodships, professions, the types of contracts under which work is to be performed and the types of business conducted by entities entrusting work. This will allow – in the future, as cognitive tools corresponding to the situation on the Polish labor market are developed – for effective counteracting of negative phenomena on the labor market. **These provisions will come into force on 1 January 2019.**

The Act of 24 November 2017 amending the Act on Foreigners and Certain Other Acts (Dz. U. z 2018 r., poz. 107) is the first such an extensive amendment to the Act on Foreigners of 12 December 2013 (Dz. U. z 2017 r., poz. 2206, z późn. zm.) in force since 1 May 2014.

