

# New Swiss work permit legislation for non-European Union (EU) foreigners

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# Scope of application – Who?

- Applicable to all non-European Union (EU) citizens
- Applicable if the foreigner's legal statute is not ruled by any other federal regulations or international treaties;
- Applicable to EU citizens, if not ruled by the bilateral agreements or if the new law grants more rights, for example: trans-border services over 90 days

# Structure of the new law – What?

- Today, the new law is simplified in structure, which makes it easier to understand.
- The provisions of application (ordinances) are more specific in definition and explanation of terms: (art. 1 to 4 “Ordonnance relative à l’admission, au séjour et à l’exercice d’une activité lucrative” (OASA)):
  - 1) self-employment
  - 2) employment by a company
  - 3) trans-border services

Certain terms however remain unclear, for example “of preponderant scientific interest”

# Three regimes, according to nationality:

## PART ONE

### **Regime for European Union:**

Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, U. K. + Malta + Cyprus

- Bilateral agreements with EU on free movement of persons

### **Regime for European Free Trade Association (EFTA):**

Iceland, Norway, Lichtenstein

- Bilateral agreements with EFTA on free movement of persons

# Three regimes, according to nationality:

## PART TWO

### **EU citizens (8 new countries):**

Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, Hungary, Czech Republic

- Bilateral agreements with EU, transitional period

# Three regimes, according to nationality:

## PART THREE

### Non-EU citizens (rest of the world):

- New law

# PART ONE

## **Regime for European Union and European Free Trade Association (EFTA) (20 countries in total):**

- The right to work in Switzerland
- Simple procedure: announce your intention at the commune where you live
- Provide employment agreement, and copy of passport
- Right to begin work immediately

# PART TWO

## **Regime for EU citizens (8 new countries):**

- Transitional period of 5 years (until 2011)
  - Visa no longer required
  - No automatic authorization to work in Switzerland
  - Progressive yearly quotas
  - Priority granted to local workers (Swiss citizens, holders of B or C permits)
  - Employment conditions correspond to Swiss standards i.e. salary, general work conditions, etc

# PART THREE

## Regime for non-EU citizens

- The new law applies to this category.
- New : self-employment is now accepted (under certain conditions)
- Principle: Switzerland favours highly qualified professionals like you
- Two ways of exercising a professional lucrative activity in Switzerland:
  - a) Employed activity
  - b) Self-employed activity

# PART THREE: a) EMPLOYMENT **ACTIVITY**

## **Definition**

Definition of lucrative activity: « All employed and self-employed activities which usually would procure a gain, even if they are exercised for free » (art. 11 § 2 LEtr)

Definition of employment activity: « Any activity exercised for an employer who has a registered office in Switzerland or abroad, irrespective of whether the salary is paid in Switzerland or abroad or the activity exercised on an hourly, daily or temporary basis » (art. 1 § 1 OASA).

Examples of employment activity: « Also includes activities such as apprentice, trainee, volunteer, sportsperson, social worker, missionary, artist, or au pair .... » (art. 1 § 2 OASA)

# Conditions (art. 18 LEtr)

- Must be in the economic interest of Switzerland
- Employer must make the application
- Quotas: art. 20 LEtr
- Priority to local and EU workers (art. 21 LEtr)
- Salary corresponding to local standards (art. 22 LEtr)
- Professional qualifications (art. 23 LEtr)
- Satisfactory housing (art. 24 LEtr)

# FIRST CONDITION: economic interest of Switzerland

How to interpret the notion?

- The admission of foreigners for a lucrative activity must serve the interest of the Swiss economy. Long-term integration into the Swiss employment market and in the Swiss social environment is required. The cultural and scientific needs of Switzerland are taken into consideration». Art. 3 LEtr.
- « The integration of foreigners favours the coexistence of Swiss and foreign communities on the basis of constitutional values, as well as mutual respect and tolerance. In this respect foreigners must be acquainted with Swiss society and way of life and, in particular, know a national language »; Art. 4 LEtr.

# First condition: Criteria of the federal directives

- a) State of the employment market
- b) Long-term economic environment
- c) Capacity of foreigner to integrate into Swiss society
- d) Highly qualified workers with high salaries
- e) No favouritism for individual interests
- f) No competition with local workers (no dumping)

# THIRD CONDITION

## Quota

### Non-EU quotas for 2008

- VD :158 (including self-employed activity);
- CH : 2,000 (+ 2,000 reserve quota)

# FOURTH CONDITION

## Priority

Priority granted to local and EU workers (art. 21 LETr):

- Local workers: Swiss citizens, B and C permits
- EU workers: employer must prove that no EU citizen is available on the EU market for the contemplated activity

# FOURTH CONDITION

## How to Convince Cantonal Authorities

- The employer must carry out recruitment advertising: public and specialised newspapers, employment service, internet - The European Job Mobility Portal (EURES), etc.
- Authorities are not particularly formalist...

The better you can prove that your professional activity is specific and requires high-level qualifications, the easier it will be to obtain an authorization to work

# Fourth condition: MY ADVICE

- Provide a specific, extensive description of your professional activity
- The more your employer can demonstrate that the activity is specific, requires high qualifications, and is linked to your studies, the lesser the number of requirements by authorities
- Make it perfectly obvious that no other Swiss or EU professional on the job market is capable of exercising this activity
- Start planning early!

# FIFTH CONDITION

## Personal qualifications: art. 23 LEtr

- Principle : managers, specialists and other qualified professionals (Students or PhDs meet requirements if working in their field of study)
  
- Authorities' criterion: your long-term integration into the Swiss market
  
- Derogations possible for:
  - 1) Investors and entrepreneurs who create employment
  - 2) Renowned personalities in science, culture or sports
  - 3) People with specific qualifications or knowledge, special needs in specific areas (scarcity of workforce)
  - 4) Managers transferred by international companies

# MY COMMENTS ON EMPLOYMENT ACTIVITY

- As students with high qualifications, you meet most of the legal requirements (as long as you work in a field of activity linked to your studies)
- Learn at least one national language!
- The most difficult condition is the priority granted to local and EU workers
  - a) As mentioned, preparing a file is of utmost importance
  - b) The more specific the description of your activity, the easier it is to convince the Authorities

# PART THREE: b) SELF-EMPLOYED ACTIVITY

## General definition

- « All activity exercised by a person within his/her own organisation, freely chosen for a lucrative purpose, submitted to his/her own material instructions and personal risks. This organisation may be a commerce, manufacturing, services, industry or other » (art. 2 § 1 OASA)
- « also the exercise of a liberal profession, such as lawyer, doctor or fiduciary agent » (art. 2 § 2 OASA)

# **PART THREE: b) SELF-EMPLOYED ACTIVITY**

## **Conditions (art. 19 LEtr)**

- Serves the economic interest of Switzerland
- The financial conditions and requirements related to the exploitation of the enterprise are fulfilled
- Cantonal quotas
- Professional qualifications
- Satisfactory housing

# CONDITION ONE

## What is “of economic interest”?

Present a business plan:

- Concise
- Description of the activity
- Turnover and profit
- Market analysis: benchmarking, competition, business opportunities
- Short, mid and long-term projection
- Planned hiring of employees
- Description in simple terms

Other criteria presented in relation with an employment activity remain valid.

# CONDITION TWO

## Financial conditions

- You must convince Authorities that your project is financially viable
- Prove economic stability
- The business plan is the deciding factor

# CONDITION THREE

## Priority

- No priority granted to local and EU workers!

# CONDITION FOUR

## Quota

- Quota: Same as for an employment activity

# CONDITION FIVE

## Professional qualifications

- Same criteria as for an employment activity
- If the activity is linked to the knowledge acquired during studies => professional qualifications should be recognized
- If a self-employed activity creates new jobs => derogation should be admitted

## **PART THREE: c) General derogations to the conditions of admission for a lucrative activity (art. 30 LEtr)**

**It is possible to obtain a derogation for :**

- students having completed their studies:
  - Art. 30 § 1 lit. i LEtr: « facilitates the exercise of a professional lucrative activity for holders of a Swiss university diploma, if the activity has a preponderant scientific interest »

## **PART THREE: c) General derogations to the conditions of admission for a lucrative activity (art. 30 LEtr)**

How is this notion interpreted by the legislator?

(art. 47 OASA): “work permits may be granted if:

- a) A lucrative activity has a preponderant scientific interest and serves in particular the fundamental research or application of new technologies”;
- This applies to:
    - Fundamental and applied (?) research
    - R & D
    - Activities linked to new technologies as long as they have a preponderant scientific interest

- b) The employer applies for a work permit (employment activity) / the financial conditions and requirements related to the exploitation of the enterprise are fulfilled (self-employed activity)
- c) The quotas are respected
- d) The remuneration corresponds to the employment market conditions
- e) Satisfactory housing

# PART FOUR: CONCLUSIONS

- The legislation related to employment activity corresponds largely to the previous legislation.
- Self-employed activity is not subject to priorities granted to local and EU workers.
- Consequently, Switzerland favours entrepreneurship and the creation of new companies.
- If you have a « valid project », the best opportunity is to become an entrepreneur.
- General derogations are noteworthy.
- Start planning early!