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## INFORMATION NOTE REGARDING THE REGULATION FOR IMPLEMENTATION OF INTERNATIONAL LABOUR FORCE LAW

*The Regulation for Implementation of International Labour Force Law (“Regulation”) was published in the Official Gazette dated 02.02.2022 and numbered 31738 pertaining to the International Labour Force Law (“Law”). With the Regulation, some unclear points in the Law were clarified and detailed provisions were introduced regarding the procedures and principles of work permits. Additionally, the Regulation repealed the Regulation for Implementation of the Law on Work Permits of Foreigners, Law No. 4817 on Work Permits of Foreigners which had been in effect until now.*

### I. INTRODUCTION

Within the scope of the Regulation, determination, implementation and monitoring of policies regarding international labour and the procedures and principles regarding the work permits and work permit exemptions to be granted to foreigners, authorities and responsibilities, rights and obligations in the field of international labour are regulated.

The Regulation covers foreigners working in Turkey, receiving vocational training, doing internship, providing cross-border services or applying for a work permit or work permit exemption within the scope of the international labour force, and real and legal persons that employ or apply to employ these foreigners.

### II. MATERIAL PROVISIONS OF THE REGULATION

Some of the material provisions of the Regulation can be summarized as follows:

- The principles regarding the policy document to be prepared by the General Directorate of International Labour Force (“**General Directorate**”) for determination of the international labour force policy have been regulated. It has been stated that annual evaluation reports will be prepared by the General Directorate in order to monitor and evaluate the international labour force policy. In addition, the General Directorate is authorized to determine the procedures and principles regarding the promotion offices to be opened.
- Details regarding the electronic system in which work permit applications are evaluated have been set forth. Accordingly, it is also envisaged that data on all business and transactions related to monitoring the effects of labour mobility from abroad to Turkey and from Turkey to abroad are collected and stored electronically over the system.

- Under Article 14 of the Regulation, it is emphasized that "*blue card holders*" who lose their Turkish citizenship by obtaining a leaving permit do not need a work permit, but upon request they can be provided with a document (free of charge) showing that they can work in Turkey.
- Under Article 15/4 of the Regulation, it is stated that foreigners must hold a valid residence permit for a period of minimum of six months to be able to apply for a work permit domestically. Under Article 15/3 of the Regulation however, it is stated that foreigners to be determined by the General Directorate, who are legally in Turkey, can apply for a work permit through the system without a valid residence permit. Accordingly, the General Directorate has been authorized to update these conditions in semi-annual periods and publish them on its official website.
- Evaluation of work permit applications will be made by the General Directorate in accordance with the criteria to be determined by the Ministry of Labour and Social Security ("**Ministry**") in accordance with the Law, in line with the decisions of the International Labour Policy Advisory Board. The said criteria are regulated in detail under Article 22 of the Regulation and the persons to be exempted from the evaluation criteria are listed. The following are included in the relevant criteria: the education level of the foreigner, the position they will take at the workplace, their professional knowledge and experience, the harmony between the duty they will take at the workplace and their professional knowledge and experience, their wage, languages they know, the paid-in capital of the legal entity where the foreigner is a partner or to be employed; its equity, gross sales, export and investment amounts, field of activity, the sector in which it operates; bilateral or multilateral agreements and international agreements to which Turkey is a party, and other similar criteria.
- It is envisaged that the turquoise card, independent work permit and indefinite work permit will be issued on behalf of the foreigner, without depending on an employer, unlike other work permits.
- It has been regulated that foreigner, on whose behalf a work permit extension application has been made, may continue to work during the evaluation of the application without exceeding 90 (ninety) days, provided that the work and the workplace stays the same, and that the rights and obligations of the foreigner and the employer arising from the work permit during this period will stay the same.
- Indefinite work permit documents will be renewed at the end of every 5 (five) years as of the start date of the work permit. The application for renewal of documents must be made within 6 (six) months preceding the expiry of the 5 (five)-year period, and in any case before the expiry of the period. The application procedure and the required documents will be determined by the General Directorate and published on the official website.
- The principles required for a foreigner who has been granted a work permit to work in a different position at the workplace of the same employer or in other branches of the said employer in the same line of business, are regulated in detail.
- The employer must notify the Ministry at least 1 (one) day in advance of the suspension of the employment or service agreement through unpaid leave and the cease of the unpaid leave. In case

of suspension of the work permit, the right to work arising from this work permit cannot be exercised following suspension date of the permit and the right of residence cannot be exercised starting from the completion of the 10 (ten)-day period following the suspension of the permit and until the end of the suspension. Professions and sectors where work permits can be suspended are to be determined by the General Directorate.

- Except for situations that make unpaid leave obligatory such as work accident, illness, maternity, compulsory public service, in the event that the employment or service agreement is suspended for a maximum of 90 (ninety) days by mutual agreement of the employer and the foreigner, the work permit will be suspended and will remain suspended during the unpaid leave, if such situation is notified.
  - If the indefinite work permit is not renewed at the end of the 5 (five)-year period, the indefinite work permit will be suspended and remain suspended until the document is renewed.
- Criteria for the determination of the qualified labour force and qualified investors have been introduced and it is stipulated that at least three of these criteria must be satisfied. Having studied at a reputable higher education institution, having an annual total salary equal to or above twelve times the upper limit of earnings based on premium determined by the Social Security Institution, and having advanced knowledge of foreign languages to be determined by the General Directorate other than native language can be cited as examples. It is stipulated that the work permits of foreigners, who are considered as qualified labour force and qualified investors, can be issued for up to 5 (five) years.

In the Article 33 of the Regulation, foreigners to be employed in certain projects are regulated. Accordingly, the work permits of foreigners employed in a project carried out by public institutions and organizations in Turkey for a certain period of time or which are considered by the General Directorate to make a high contribution to the country's economy or to create a high number of employment opportunities, can be issued for up to 3 (three) years, provided that such work permits do not exceed the duration of the employment or service agreement.

- The "cross-border service providers" in the Law are detailed under Article 45 of the Regulation. Two important criteria are stipulated for the foreign employee to be a cross-border service provider:
  1. The work to be done must be of a temporary nature.
  2. The fee must be paid by a person or entity outside of Turkey.

It is envisaged that a work permit for a maximum of 3 (three) years can be issued to those who will work in Turkey for periods exceeding the work permit exemption periods regulated under Article 48 of the Regulation (please see below), provided that period of a such permit do not exceed the agreement period of the foreigner. However, it is not possible to apply for a work permit extension for cross-border service providers.

- The period of work permit of a foreigner who is appointed to work as a manager in a company established in Turkey or for jobs requiring expertise within the scope of internal employee exchange while working in a workplace established abroad, in accordance with the provisions of the Turkish

Commercial Code, is up to 2 (two) years, provided that the term of the employment or service agreement is not exceeded. The work permit of a foreigner assigned to do internship at a workplace of a company established in Turkey within the scope of internal employee exchange while working in a workplace established abroad, in accordance with the provisions of the Turkish Commercial Code can be issued for up to 1 (one) year, provided that the internship period is not exceeded. Finally, within the scope of in-company employee exchange, the application for a work permit extension on behalf of the foreigner can be made only once and the work permit period can be extended up to 1 (one) year.

- Under Article 48 of the Regulation, different periods are stipulated for different groups regarding the work permit exemption. *For instance: Members of the board of directors of joint stock companies established in accordance with the Law No. 6102, partners of other type of companies who are not managers, and foreigners who are not partners in these companies but who are authorized to represent and bind the company at the highest level, and whose residence is not in Turkey and who will work in Turkey are entitled to benefit from work permit exemption for up to three months.* Accordingly, above-listed persons are entitled to benefit from the work permit exemption, in case they will work temporarily in Turkey as mentioned above, provided that they also meet the other conditions, and their applications are evaluated positively. In the following articles, some procedures and principles regarding the evaluation of the work permit exemption, *for example, an application for extension cannot be made for work permit exemption*, have been detailed.
- It has been emphasized that social security obligations regarding foreigners with work permit or work permit exemption must be fulfilled on the basis of the procedures and principles regarding the wages declared and promised, and the full-time work.
- After the issuance of the work permit, it is prohibited to make changes in the employment or service agreement, which envisages paying less than the wage declared in the work permit application or converting full-time work to part-time work.

### III. CONCLUSION

The important gap in the legislation, which was tried to be filled with the use of the Regulation for Implementation of the Law on Work Permits of Foreigners enacted as per the previously repealed Law No. 4817 on Work Permits of Foreigners, was filled with the promulgation of the Regulation for Implementation of International Labour Force Law. It is observed that the regulation provides details on the procedures and principles regarding the determination of policies regarding international labour force, work permit and exemption.

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*Should you have any queries on the above, please do not hesitate to contact us.*

*Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking and finance, energy, TMT and dispute resolution practices in Turkey.*

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