



ICLG

The International Comparative Legal Guide to:

Corporate Immigration 2014

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A practical cross-border insight into corporate immigration law

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General Chapters:

1	How the UK Outsourced Immigration – Nick Rollason, Kingsley Napley LLP	1
2	An Overview of the Immigration Act 2014 – Neil Paterson, Gherson	6

Country Question and Answer Chapters:

3	Albania	Gjika & Associates Attorneys at Law: Evis Jani & Krisela Qirushi	11
4	Argentina	PwC Legal SRL: Pedro Luis de la Fuente	18
5	Austria	Oberhammer Rechtsanwalt GmbH: Ewald Oberhammer & Petra Pardatscher	24
6	Belgium	Lexial: Emmanuel Ruchat	32
7	Canada	BartLAW Canadian Immigration Barristers and Solicitors: Jacqueline R. Bart & Carrie A. Wright	36
8	China	Fredrikson & Byron P.A.: Laura Danielson & Zhu “June” Cheng	44
9	Colombia	Godoy Cordoba Abogados: Rodrigo Tannus Serrano & Marcela Trujillo Villa	50
10	Denmark	Gorrissen Federspiel: Jacob Sand & Nina Kuhlmann Clausen	55
11	France	Karl Waheed Avocats: Karl Waheed	61
12	Germany	Allen & Overy LLP: Dr. Hans-Peter Löw	68
13	Greece	Kyriakides Georgopoulos Law Firm: Effie G. Mitsopoulou & Maria E. Alourda	75
14	Japan	Nakai Immigration Services LPC: Masahito Nakai	82
15	Mexico	Enrique Arellano Rincón Abogados, S.C.: Enrique J. Arellano	88
16	Nigeria	Bloomfield – Advocates & Solicitors: Olamide Soetan	95
17	Peru	Barrios & Fuentes, Abogados: Ariel Orrego-Villacorta Icochea & Evangelina Camborda Cruz	100
18	South Africa	Chris Watters Attorneys: Chris Watters	107
19	Spain	Scornik Gerstein LLP: Antonio Arenas	111
20	Switzerland	Lenz & Staehelin: Rayan Houdrouge & Matthias Oertle	118
21	Turkey	Bener Law Office: Maria Lianides Celebi	125
22	UAE	M/Advocates of Law: Yann Mrazek	130
23	United Kingdom	Kingsley Napley LLP: Nick Rollason & Ilda de Sousa	136
24	USA	Klasko Immigration and Nationality Law: William A. Stock	148

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Albania



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1 Introduction

1.1 What are the main sources of immigration law in Albania?

The most important Albanian regulations governing the immigration sector in Albania are:

- Law 108/2013 “On foreigners” (Law 108/2013);
- Law 9901/2008 “On entrepreneurs and commercial companies” (Law 9901/2008);
- Law 7995/1995 “On employment promotion” (Law 7995/1995);
- Decision of Council of Ministers (DCM) 513/2013 “On the determination of requirements, procedures and documentation of entrance, residence, and treatment of foreigners in the Republic of Albania” (DCM 513/2013);
- DCM 66/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for the highly skilled individuals of the type ‘A/KL’” (DCM 66/2014);
- DCM 69/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the permanent work permit of type ‘D’” (DCM 69/2014);
- DCM 74/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for voluntary services of type ‘A/SHV’” (DCM 74/2014);
- DCM 78/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit, for specific cases, of type ‘C’” (DCM 78/2014);
- DCM 79/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for independent professional activity, as an investor of type ‘B/I’” (DCM 79/2014);
- DCM 80/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for the family members of type ‘A/AF’” (DCM 80/2014);
- DCM 82/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for professional training of type ‘A/FP’” (DCM 82/2014); and
- DCM 85/2014 “On the determination of requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for the secondees within the companies of type ‘A/TN’” (DCM 85/2014).

1.2 What authorities administer the corporate immigration system in Albania?

The Ministry of Foreign Affairs, through its consular representation offices outside Albania, is the competent authority for granting entrance, residence and transit visas for foreigners (Section II (B) of DCM 513/2013).

The consular representation offices of other countries may grant entrance, residence and transit visas, if so stipulated in bilateral or multilateral agreements. In some particular cases, the relevant regional border and immigration authority is responsible for granting visas at the border, as well as for issuing the residence permits (Articles 23, 33, 61 of Law 108/2013).

Working permits are issued by the regional Labour Office where the employer exercises its activity, or the General Directorate of National Labour Service in case the employer exercises its activity in more than one region. Requests for working permits may also be filed with the diplomatic representations of the Republic of Albania in the country of origin of the foreigner, who then transfer the file to the General Directorate of National Labour Service (DCM 85/2014, DCM 80/2014 point 4).

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

Albania is not part of any multilateral agreement facilitating the movement of people for employment purposes.

2 Business Visitors

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

Business visitors are not treated as a specific category under Albanian Law with regard to visa requirements for foreign citizens. Business visitors are entitled to freely enter into the territory of the Republic of Albania provided that they are:

- citizens of the countries that are excluded from the obligation of applying for a visa, namely citizens of Andorra, Argentina, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Brazil, Canada, China, Chile, EU Member States, Holy See, Hong Kong, Israel, Japan, Kazakhstan, Kosovo, Malaysia, Macedonia, Monaco, New Zealand, Schengen Zone Member States, the USA, the Republic of South Korea, San Marino, Serbia, Singapore, Taiwan, and Turkey;

- holders of a Schengen visa with multiple entries, provided that the visa has been previously used in one of the Schengen Zone Member States or holders of a residence permit granted in one of the Schengen Zone Member States;
- holders of a visa with multiple entries, or a residence permit, granted from the USA, Great Britain or North Ireland, provided that the visa has been previously used; and
- citizens that are entitled to enter into and stay in the Schengen Zone Member States without a visa (Article 30 (1) of Law 108/2013, section II (2)(6) and Annex 3 of DCM 513/2013).

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

Business visitors/citizens of the countries that are excluded from the obligation of applying for a visas as well as business visitors holders of a visa of type 'C' are entitled to enter Albania for a maximum period of 90 days out of an 180-day period as of their first entrance date (Article 30 (2) of Law 108/2013).

2.3 What activities are business visitors able to undertake?

Business visitors are entitled to carry out negotiations for the purpose of establishing a commercial activity, to enter into agreements for the services offered, to manage a company or a department/section within a company and to supervise and control the employees (Article 3 (11) of Law 108/2013).

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

There is no any special visitor category. However, business visitors are entitled to stay in Albania up to one month per year for the purpose of their activity, without being subject to work permit requirements (Article 72 (b)(ii) of Law 108/2013).

2.5 Can business visitors receive short-term training?

Business visitors can receive short-term training provided that they have obtained a residence permit for unpaid training from the competent border and immigration authority. EU and Schengen Zone citizens are excluded from the obligation to obtain the above permit (Article 48 of Law 108/2013).

3 Immigration Compliance and Illegal Working

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

Employers who employ foreigners are subject to inspection by the Labour Inspectorate and the regional border and migration authority (Article 137 c of Law 108/2013).

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

In order to prevent illegal working, Law 108/2013 stipulates rules

to be observed by the employers, as well as, the right of the relevant authorities to inspect such employers. The employers should:

- request the foreign employee to provide a residence permit or other authorisation valid for the duration of the employment period;
- keep a copy of the residence permit or authorisation;
- notify the Labour Inspectorate and the relevant border and immigration authority within eight days as of the commencement or the termination of the foreigner's employment (Article 71 (7) and 137 of Law 108/2013);
- cover the expenses of repatriation for the foreign employee in case he/she is found to have been illegally working for the respective employer; and
- pay any outstanding amount related to the illegal work carried out by any foreign employee, i.e. social and healthcare contributions, administrative penalties, etc.

Failure to comply with the above may result into fines imposed on the employer of:

- from 350,000 Albanian Lek ("ALL") to 400,000 ALL per each person in case of illegal working;
- from 50,000 ALL to 100,000 ALL per each person in case of a failure to keep a copy of the residence permit or authorisation of the foreign employee;
- from 20,000 ALL to 30,000 ALL per each foreign employee in case of a failure to notify the relevant authorities on the commencement/termination of their employment (i.e. Labour Inspectorate and relevant border and immigration authority); and
- from 200,000 ALL to 300,000 ALL in case of a failure to comply with the obligations imposed by the Law on Foreigners, other than those listed above (Article 145 1(a, i, iii, g).

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

The organisations found to be employing foreign nationals without permission to work are subject to a fine amounting from 350,000 ALL to 400,000 ALL for each employee (Article 145(j) of Law 108/2013).

4 Corporate Immigration - General

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

Albanian Law does not provide for a general registration system for employers irrespective of whether the vacant position refers to nationals or foreigners (Law 7995/1995).

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

With the exception of notification to the relevant Labour Office and the border and immigration authority for the commencement and termination of the employment of a foreign citizen, such notification should be delivered within eight days as of the commencement of the work or upon termination. There are no other ongoing duties particularly applicable for the hiring of foreign nationals (Article 71 (7) of Law 108/2013).

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

The competent border and immigration authority is entitled to undertake routine inspections in order to verify immigration compliance. Unless otherwise evidenced by the employer, the employment relationship with illegal foreign workers shall be deemed to have been entered into at least six months prior to the day they were identified by the immigration authorities (Article 137 (3) of Law 108/2013).

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

There is no such formal list of skilled occupations which may be filled by foreign nationals.

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

Albanian Law does not provide for an occupation shortage list.

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

The annual employment quota is approved by the Council of Ministers every year before the 1st of October, upon the proposal of the Ministry of Labour, Social Affairs and Equal Opportunities (Article 82 of Law 108/2013). The annual employment quotas determine the activities and professions allowed for the employment of foreigners, as well as the maximum allowed for such professions.

Nevertheless, foreigners that are employed in one of the following sectors are excluded from the annual employment quota:

- immigrant employers on the basis of bilateral agreements;
- employers that hold key positions in companies, branches and representative offices;
- inter-company transferred employees;
- employees that are self-employed in a company that they totally own or in which they own more than 51% of the shares;
- service providers in the Republic of Albania on behalf of a foreign employer;
- teachers and lecturers in educational institutions that conduct teaching in language learning courses for national minorities;
- athletes and artists working in the Republic of Albania;
- employees that are remunerated for their work on a foreign non-profit organisation, registered in the Republic of Albania;
- members of a Board of Directors of a religious or humanitarian foundation registered in the Republic of Albania;
- employees in the context of youth exchange activities in the Republic of Albania in cooperation with other countries;
- scientific research employees in scientific research, educational institutions, or legal entities;
- university professors, lecturers, instructors and guest lecturers from other universities; and
- foreign employees that work on the basis of an international agreement (Article 83 of Law 108/2013).

4.7 Are employees who are sponsored to work in Albania required to demonstrate language proficiency?

There is not any language proficiency requirement for the purpose of working in Albania.

4.8 Are employees who are sponsored to work in Albania required to undergo medical examinations before being admitted?

Foreign employees are not required to undergo any special medical examination before being admitted to work in Albania, with exception to the requirements applied to particular occupations. This applies equally for Albanian nationals as well (Article 145 (1) of Law 108/2013).

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

Albanian Law does not prohibit the secondment of an employee to a client site.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Albanian Law does not provide for any category of highly skilled visas.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

A foreign investor is entitled to obtain a three-year work permit, provided that the following conditions are met:

- the value of investment amounts to at least 200,000 euros;
- the ratio of the employees should be 1:5 (one foreign employee and five Albanian employees; applicable to the governing bodies of the company as well);
- the salary paid to the employees should be at least equal to the average salary in Albania for the same positions during the previous year; and
- the foreign investor should prove that the company he invested in is not in loss, and has no outstanding amounts owed to tax authorities.

The foreign investor as well as the business visitors are entitled to obtain a permanent work permit provided that the value of the investment amounts to over 1 million euros and that more than 10 Albanian employees are employed (Article 100 of Law 108/2013).

7 Temporary Work Permits

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

There is an immigration category permitting the hiring of temporary workers for youth exchanges and voluntary services provided that

the activity at hand does not exceed a period of one year. In addition, Albanian Law also provides for another category of work permit in relation to foreign nationals wishing to undertake an internship in Albania; in such case the work permit is issued for a duration equal to the duration of the internship (Articles 93, 95 of Law 108/2013).

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

In relation to sector-specific temporary work permits, Albanian Law provides for seasonal employment category which enables foreigners to perform temporary work in Albania of up to six months per year (Article 88 of Law 108/2013).

8 Group or Intra-Company Transfer Work Permits

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

Albanian Law provides for a specific immigration category for inter-company transfers within international groups of companies, namely work permits of type 'A/TN' (Article 89 of Law 108/2013).

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

A company shall be considered as part of a group of companies provided that (a) it exercises its activity under the directions and instructions of another company, (b) at least 30% of the members of its Board of Administration or Supervisory Board or of its administrators are appointed by another company, or (c) at least 30% of votes at the General Meeting of Shareholders are held by another company (Article 207 of Law 9901/2008).

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

In order to obtain a work permit for an intra-company group employee, the employer, to whom the employee is transferred, should:

- not have fired an employee during the last six months;
- comply with the provisions of the Albanian Law in force;
- not have refused to employ those that are unemployed, proposed by the Albanian Labour Office;
- not have been subject to any penalties for non-compliance with the Employment Law and the provisions of Law on Foreigners during the last 12 months; and
- fulfil the obligations related to the payment of social and healthcare contributions and relevant taxes (Articles 77 and 89 (3) of Law 108/2013).

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

Application for a work permit is filed by the secondee itself, the employer where the secondee is transferred, or the duly authorised person with the relevant Labour Office, in the territory of which the employer exercises its activity, or with the General Directorate of

National Labour Service, in case the employer exercises its activity in more than one geographical regions or with the diplomatic representations of the Republic of Albania in the country of origin of the transferring company.

The following documents should be filed for purpose of obtaining a work permit:

- the application form signed by the secondee;
- an excerpt from the commercial register of the country where the foreign company is registered;
- the individual employment contract between the secondee and the foreign company, of a duration of at least 12 months prior to transfer for specific employee categories (i.e. administrator, specialists, professional training secondees, business service providers, contractual service providers, independent professionals offering contractual services), or the individual employment contract certifying the existing employment relationship for the other employee categories;
- the declaration of transfer, issued by the foreign company, certifying the transfer of the relevant secondee to a company within the group established in Albania, and determining also the duration and content of the work to be performed by the secondee, and identifying the employer where the relevant secondee shall be transferred;
- certificate and evidence of specialised qualifications and experience;
- a copy of the passport;
- an authorisation in case the application is submitted by a third person; and
- five identifying photos.

All documents should be original or certified copies translated into the Albanian language.

The work permit is issued within 10 days as of the date of the filing of the complete documentation.

In case the application is filed with the diplomatic representations of the Republic of Albania in the country of origin of the transferring company, the latter transfers the application to the Ministry of Social Welfare and Youth, through the Ministry of Foreign Affairs. The Ministry of Social Welfare and Youth examines the application through the relevant Labour Office or General Directorate of National Labour Service, and notifies the relevant diplomatic representations of the Republic of Albania, through the Ministry of Foreign Affairs, on the approval or refusal of the work permit (DCM 85/2014, Article 89 of Law 108/2013).

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

For the purpose of obtaining a visa, the secondee should file the following documents with the diplomatic representations or consular offices outside Albania:

- the application form of the visa;
- one photo of 47mm by 36mm, no older than six months before the filing of the application;
- a copy of the valid travel document, (valid for at least three months more than the period of validity of the requested visa);
- a travel health insurance policy;
- the invitation from the employer, where the secondee is transferred, as well as the excerpt issued from the register of commerce held by the National Registration Centre;
- documents proving the professional qualifications of the applicant in the country of origin; and

- a copy of the work permit issued by the competent Albanian authority (point 8 of DCM 513/2013).

If an application is being filed for the first time, the application should be filed personally by the secondee. For the following application, and if it is impossible for the secondee to file the application personally, it may be filed by an authorised person, provided that the application form is signed by the beneficiary of the visa.

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

The work permit is issued within 10 days from the application date, provided that all the required documents are submitted. The issuance of the visa takes 15 days from the acceptance of the application, and in exceptional cases it may take up to 30.

8.7 How long are visas under the “initial” category valid for, and can they be extended?

The visas under the “initial” category of type ‘D’ are valid for a one year period. The extension is possible only in case of *force majeure* or in humanitarian cases provided that the request for extension is filed prior to its termination and that the foreigner was unable to leave the Albanian territory prior to visa termination (Articles 22 and 27 of Law 108/2013).

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

An employee coming under the intra-company transfer route may apply for a permanent residence, provided that all the requirements for a permanent residence, listed in Section 12 here below, are fulfilled.

9 New Hire Work Permits

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

The Albanian Law does not provide for any immigration category for employers who wish to obtain work permits for new hires.

9.2 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?

Before a new work permit is issued, a labour market test is carried out in order to ensure that the vacant position cannot be filled by one of the following categories:

- Albanian unemployed job-seekers;
- foreigners who are family members of Albanian citizens;
- EU citizens and citizens of the Schengen Zone;
- family members of foreigners legally residing in Albania;
- citizens of the country with which Albania has entered into a bilateral or multilateral employment agreement; and
- foreigners that enjoy priority, as listed here below in question 9.3 (Article 84 of Law 108/2013).

9.3 Are there any exemptions to carrying out a resident labour market test?

The following categories of foreigners enjoy priority, and are exempted from labour market test for the purposes of obtaining a work permit:

- the spouse of an Albanian citizen holding a one-year residence permit;
- highly skilled professionals;
- the transferred employees of an intra-company group;
- a foreigner that has attended and completed public or private professional high school in the Republic of Albania; and
- a foreigner that has been employed pursuant to an international or intergovernmental agreement (Article 85 of Law 108/20130).

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

The process for obtaining a work permit for a new hire is the same as the process applied for an intra-company group employee described in question 8.4 above.

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

The process for obtaining a visa for a new hire is the same as the process described in question 8.5 above.

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

The time period for obtaining a work permit and visa for a new hire is the same as the time period for obtaining a visa under the intra-company group transfer category described in question 8.6 above.

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

Initial visas for new hires may be extended for the same time and under the same conditions as the visas under the “initial” category described in question 8.7 above.

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

In case of an extension of a residence permit, labour market testing is not required.

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

Employees coming as new hires may apply for permanent residence under the same conditions as the employees coming under the intra-company transfer route described in question 8.8 above.

10 Conditions of Stay for Work Permit Holders

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

Any foreigner, resident in the Republic of Albania on the basis of a work permit should comply with the conditions and the purpose of the work permit, and should notify immediately the Labour Office or General Directorate of National Labour Service, of any change in relation to the identity of the employer, the employment contract and the activity authorised to undertake as employee, and should obtain approval from the abovementioned authorities (Article 74 of Law 108/2013).

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

Work permit holders should notify within 10 days as of the entry into Albania the competent border and immigration authority of their address. As an exception, citizens of Australia, Andorra, Israel, Japan, Canada, Liechtenstein, San Marino, Holy See, the USA, New Zealand and EU and Schengen Zone Member States are excluded from the above obligation (Article 30 (5) and 134 of Law 108/2013, Annex 1 of DCM 513/2013).

11 Dependants

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

Qualified dependants of a person coming to work on a sponsored basis are the following:

- spouses;
- live-in partners with which the relationship has a stable and proved character;
- minors and unmarried children that are part of the family, including those in custody who are dependants of the person coming to work in Albania or adopted by the latter;
- adult unmarried children when they cannot fulfil their needs due to their state of health; and
- ancestors of first line, provided that are under the charge of the person coming to work in Albania, or his/her spouse, according to the law of the country of origin and who do not enjoy proper family support in the country of origin (Article 3 (14) of Law 108/2013).

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

By virtue of Albanian Law civil/unmarried partners are considered family members, provided that their relationship has stable and proved character, while same-sex partners do not qualify as such (Articles 3 (14), 69 (2) of Law 108/2013, Article 163 of Family Code).

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

Spouses and partners have access to the labour market through obtaining a one-year work permit on the basis of an employment

contract/employment certificate in the family business, provided that they have obtained a residence permit for family reunification purposes and that the dependant has resided with the foreigner on a regular basis and for a continuous period of at least three years. As an exception, dependants that are EU and Schengen Zone citizens are excluded from the obligation to obtain a work permit and therefore have access to the Albanian labour market under the same conditions as Albanian citizens (Articles 71 (9), 94 of Law 108/2013).

11.4 Do children have access to the labour market?

Minors of 16 years or older may be employed and undertake works that do not damage their health and development. Exceptionally, minors aged 14 to 16 years old may be employed only during the summer vacations and may undertake works that do not damage their health and development. The employment of minors from the age of 14 to 16 years old is subject to a prior authorisation from the Labour Inspectorate (Article 98, 99 of Labour Code) (Section C (4) of DCM 384/2006).

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

For the purpose of obtaining permanent residence a foreigner should:

- have legally resided in Albania for five consecutive years as of the first application for residence permit. For the purpose of calculating such time limit, it is allowed that the foreigner may be out of the territory of Albania for up to six consecutive months, but for no longer than 10 months in a five-year period. In case the foreigner has resided in Albania for the purposes of study or for professional training reasons, the above time limit is two-and-a-half years;
- have sufficient revenues and legal financial resources, ensuring the sustainability and continuity of his/her life, and of relevant dependants without needing to engage with the social welfare system;
- have in place health insurance coverage, in accordance with the health insurance system for Albanian citizens;
- have appropriate accommodation for him/herself and for his/her family in Albania;
- have fulfilled all the obligations toward the tax authorities;
- have refugee status in Albania (if it applies);
- have good knowledge of the Albanian language, recognised by a certificate; and
- not have been convicted (Article 61 of Law 108/2013).

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

A foreigner is entitled to obtain a permanent residence provided that the conditions stipulated above in question 12.1 are fulfilled. Therefore, in case a foreigner has obtained several temporary works visas, and complies with the rule of five consecutive years residence in Albania, as well as the other abovementioned conditions, he/she may be entitled to a permanent residence permit.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission for work are the following:

- the quotas determined every year by the Council of Ministers, with regard to the number of the foreign employees that may obtain a work permit in the Albania, and relevant sectors; and
- the rate of the employment of foreigners in a company, which should not exceed 10% of the total number of employed staff (Article 84 of Law 108/2013).



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She has long experience in providing legal counsel to domestic and international multinational companies, and is focused on business and commercial, tax and employment law, administrative and public procurement law, mergers and acquisitions, re-organisations, corporate governance, as well as litigation before Albanian courts.

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

By virtue of Albanian Law, the issuance of a work permit or visa may be refused in case the foreigner is considered to be a risk to public security. Therefore, criminal convictions may constitute a bar to obtaining both a visa and a work permit, but this is decided on a case-by-case basis (Articles 29 (1)(e), 77(g) of Law 108/2013).



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