

PROPOSAL

LAW ON EMPLOYMENT AND WORK  
OF ALIENS

December, 2007

## LAW ON EMPLOYMENT AND WORK OF ALIENS

### I BASIC PROVISIONS

#### Subject matter of the Law

##### Article 1

- (1) An alien may be employed, that is, work in Montenegro under the conditions stipulated by the Law, collective agreements, confirmed and published international agreements and generally accepted rules of international law.

#### Aim of the Law

##### Article 2

- (1) This Law shall set the conditions for a ~~red~~ flexible access of aliens to the labor market in Montenegro, with the aim to balance the supply and demand in that market.

- 5) Founders, proxy holders, members of management bodies and auditors of the company, who perform specific duties in that company, if the performance of those duties does not have the character of employment/ service;
- 6) Academic staff invited as a professor or lecturer and scientific worker participating in a scientific-research project important for Montenegro;
- 7) Members of international missions who perform the research activities in Montenegro, which was approved by the Government of Montenegro (hereinafter: the Government);
- 8) correspondents accredited in Montenegro or reporters of the foreign media;
- 9) artists and technical staff for opera, ballet, theatre, concerts, art exhibitions and other cultural events, if the persons are not staying in Montenegro for over 30 days, that is, three months, per year with interruptions;
- 10)



- 17) Certificate on the registration of work shall be the document that proves the work of the alien in Montenegro;
- 18) Business visitor shall be the alien staying in Montenegro in order to establish business connections, for maximum 90 days in one calendar year, starting from the date of first entry into Montenegro;
- 19) Executives shall be the alien employed in a foreign company, who gives guidelines to the company management, defines business policy and is referred to the organizational unit of that company registered in Montenegro;
- 20) Manager shall be an alien employed in a foreign company to perform company management, who is referred to the organizational unit of that company registered in Montenegro;
- 21) Specialist shall be an alien employed in a foreign company, who is referred to the organizational unit registered in Montenegro and who holds specialist knowledge for the provision of services within the scope of activity of that company;
- 22) Contractual service suppliers shall be an alien employed in a foreign company, who holds University degree, has specialist knowledge and minimum three years of experience in that field of specialty, and who performs contracted services in the company with the seat in Montenegro.

## II DETERMINATION OF THE NUMBER OF WORK PERMITS FOR ALIENS

Quota

Article 6

(1)

- 2) Employed in Montenegro on the basis of an international agreement, on the basis of reciprocity;
- 3) Providing teaching in the educational institutions, in the language and alphabet of the persons belonging to minority nations and other minority national communities;
- 4) Who is a professional sportsman or sports worker, who is working in Montenegro on the basis of the contract signed;
- 5) Family member of the Montenegrin citizen (spouse and children up to 21 years of age);
- 6) Family member of an alien who is permitted permanent residence in Montenegro (spouse and children up to 21 years of age);
- 7) Family member of a refugee (spouse and children up to 21 years of age);
- 8) Representative of a company, that is, entrepreneur;
- 9) Referred alien attending additional training and capacity building in Montenegro;
- 10) Referred alien (leader, specialist, that is, manager) and
- 11) Contractual service suppliers

#### Quota distribution

##### Article 8

- (1) Quota shall be determined for the following purposes:
  - employment of aliens
  - work of aliens.
- (2) Work quota is divided into the following:
  - seasonal work of the aliens;
  - referred aliens, who perform cross-border services in Montenegro, and
  - training and capacity building of the aliens.

#### Prioritizing

##### Article 9

- (1) The quota determined by the Government for specific purposes shall be divided according to the following sequence:
  - valid work permits,
  - work permits issued on the basis of the international agreements, which incorporate already agreed quotas,
  - new work permits.
- (2) Priority in the issuance of new work permits shall be granted to the following aliens:
  - family members of the alien with the residence permit in Montenegro (spouse and children up to 21 years of age);

- with expertise in the areas of activity where there is a large deficit of workers;
- work migrants.

#### Digressions from the determined quota

##### Article 10

- (1) The Government may limit or increase the number of work permits, that is, it may redistribute the number of working permits for specified purposes, if this is caused by the changes in the demand and supply in the labor market.

### III WORK PERMITS

#### Notion and types of work permits

##### Article 11

- (1) Work permit shall be a document on the basis of which an alien may be employed, that is, work in Montenegro.
- (2) Work permit shall be issued as a personal work permit, permit for employment and work permit.
- (3) For one and the same period of time, the alien shall be granted only one work permit.
- (4) Alien shall not perform the duties for which s/he has not signed the labor contract, that is, the civil law contract.

#### Assignment of duty to an alien

##### Article 12

- (1) The employer, legal entity, that is, organizational unit of the foreign company registered in Montenegro, may assign the alien only to the duties for which the work permit has been issued thereto.

#### Rejecting the application for the issuance of work permit

##### Article 13

- (1) The employer shall have the application for the issuance of work permit rejected in the following cases:
  - 1) If, prior to the submission of application for the issuance of work permit to an alien, s/he informed the Employment Agency of Montenegro (hereinafter: Employment Agency) that s/he will dismiss the employees, in accordance with the special regulation;
  - 2) if, six months prior to the submission of the application for the issuance of work permit to an alien, s/he has dismissed the employees who have been employed for

- an unlimited period of time (permanent employment), in accordance with the special regulation;
- 3) if s/he refused to hire an unemployed person from the record of unemployed persons kept in the Employment Agency, who met the requirements for employment, in accordance with the special regulation;
  - 4) if in the past three years, prior to the submission of the application for issuance of work permit to an alien, s/he was punished for an offense according to this law;
  - 5) s/he presented negative business results in previous year or has paid the salaries to the employees below the level stipulated in the collective agreement for that sector or did not fulfill the obligation on the basis of payment of taxes and contributions.
- (2) As an exception to Paragraph 1, Items 1, 2, 3 and 5 of this Article, the employer shall not have the application for issuance of work permit to an alien rejected in the case of the following aliens:
- 1) With University education, employed in managerial duties;
  - 2) Family member of a Montenegrin citizen (spouse and children up to 21



Invalidation of the work permit

Article 16

(1) The work permit shall be invalidated in the following cases:

1)

- (4) Application for the extension of the personal work permit shall be submitted by the alien no later than within 30 days prior to the expiry of the period of validity of the issued permit.

#### Cessation of validity

#### Article 19

- (1) Personal work permit shall cease to be valid:
  - 1) if the alien cancels the personal work permit;
  - 2) if the alien obtains Montenegrin citizenship;
  - 3) with the cessation of the refugee status;
  - 4) with the cessation of status of a person with additional protection, and
  - 5) in case of death of the alien.

## 2. EMPLOYMENT PERMIT



- (2) Cross-border services shall be performed on the basis of the contract signed between the foreign company and the legal entity with the seat in Montenegro, for whom the services are provided.
- (3) Foreign company may perform services with referred aliens employed in that company for minimum one year. The referred alien may be issued the work permit several times, but not for the period exceeding three months in one calendar year. If, due to objective reasons, the services cannot be provided within the period for which the permit is issued, it is possible to apply for permit extension of maximum one month.
- (4) Exceptionally, when the performance of services is of a special interest to Montenegro, the permit may be issued for a longer period of duration, but not exceeding one year.
- (5) Prior to the submission of an application for the issuance of work permit for the performance of services from Paragraph 4 of this Article, on the basis of the written explanation, the legal entity shall obtain the consent of the Ministry.
- (6) With the previously obtained consent of the ministries responsible for individual fields of activity, the Ministry shall decide on the justification of the performance of service..
- (7) The work permit shall be issued to alien within the quota for the specific cross-border service, at the request of the legal entity with the seat in Montenegro.

#### Additional training and capacity building

##### Article 27

- (1) Additional training and capacity building of the referred aliens may be executed if the legal entity with the seat in Montenegro and the foreign company are related on the basis of ownership or business relationship.
- (2) Additional training and capacity building of the employed with the employer in Montenegro may be executed by the referred alien, if the legal entity with the seat in Montenegro and the foreign company are related on the basis of ownership or business relationship.
- (3)

(2) Aliens who may be referred, in the sense of this Article shall be as follows:

- 1) Executives,
- 2) Managers, and
- 3) Specialists

Work permit for a referred alien from Paragraph 1 of this Article shall be issued at the request of the organizational unit of the foreign company, registered in Montenegro, for the period of up to one year.

(3) Exceptionally from Paragraph 3 of this Article, if the activities performed by the referred alien cannot be finished within the period for which the permit was issued, the work permit may be extended for the maximum period of two years.

c) Training and capacity building of aliens

Article 29

(1)

minimum one year prior to the signing of the contract from Paragraph 2 of this Article.

- (4) The work permit shall be issued to the legal entity from Paragraph 1 of this Article at the request of the legal entity from Montenegro, for the period of duration of the contract, but not exceeding one year.

#### Period of validity

##### Article 31

- (1) The work permit shall be issued for a temporary period, depending on purpose.
- (2) Upon the expiry of its validity, the work permit may be extended in the cases prescribed by this Law.
- (3) The application for the extension of the work permit shall be submitted by the employer, the legal entity, that is, the organizational unit of the foreign company registered in Montenegro, within 30 days prior to the expiry of the period of duration of the issued permit.

#### Cessation of validity

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- (2) The Employment Agency shall issue to the obligor of the duty to register the employment of an alien a certificate of work of the alien on the prescribed form.
- (3) The Ministry shall prescribe the procedure of reporting the initiation and cessation of employment of the alien, the evidence that must be submitted with the registration forms and the submission of data to the responsible authorities.

#### Cooperation of the responsible authorities

##### Article 35

- (1) The Employment Agency shall inform the state administration authority responsible for the affairs of movement and stay of aliens about the invalidation and cessation of validity of the work permit of an alien within eight days from the

(3) The employer, legal entity, that is, organizational unit of the foreign company



person in the organizational unit of a foreign company registered in Montenegro, for the offense of not having a work permit for the work of the alien in the business premises, that is, in the place of work (Article 38 Paragraph 3).

(2) The fine from Paragraph 1 of this Article shall be pronounced by the Labor inspector.