

Mobility: Immigration alert

February 2021



Singapore

Intra-corporate transferees – Exemption from job advertisement

Executive summary

The Singapore Ministry of Manpower (MOM) has recently refined the features of an intra-corporate transferee (ICT) for the purposes of the job-advertisement exemption under the Fair Consideration Framework (FCF).

The MOM has also set out the conditions under which approval of an ICT may be given.

Fair Consideration Framework

The FCF was introduced by the MOM to strengthen and develop a Singaporean core workforce by setting out requirements for all employers in Singapore to fairly consider candidates for job opportunities. Under the FCF, employers are required to adopt fair employment practices and improve labour market transparency by advertising for the position on the designated portal (i.e. MyCareersFuture.sg) for 28 calendar days. Employers are required to fairly consider all candidates before an Employment Pass (EP) or S Pass application can be submitted.

A vacancy to be filled by an ICT may however be exempt from the job advertisement under the FCF.

Definition of an ICT

An ICT must meet the definition that is specifically provided for under the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS) or any applicable Free Trade Agreement (FTA) to which Singapore is a party.

In general, the definition of an ICT as per the WTO's GATS or other relevant FTAs is understood to be someone who has worked at least one year in a related overseas firm and falls under one of the following categories:

1. Executive
 - Primarily directs the management of the organization
 - Exercises wide latitude in decision-making
 - Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business
2. Manager
 - Primarily directs the organization or a department or sub-division of the organization
 - Supervises and controls the work of other supervisory, professional or managerial employees
 - Has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization)
 - Exercises discretionary authority over day-to-day operations
3. Specialist
 - Possesses knowledge at an advanced level of expertise
 - Possesses proprietary knowledge of the organization's service, research, equipment, techniques or management

The MOM has set out the conditions under which the approval of an ICT may be given:

- Dependants allowed only if covered by an applicable FTA - Family members of an ICT will not be eligible for Dependant Passes or Long-Term Visit Passes, except where they are specifically covered by an applicable FTA and meet the prevailing criteria for consideration.
- Cap on pass duration - An ICT will only be allowed entry on a temporary basis, for a period strictly limited to the provisions under WTO or an applicable FTA. For WTO, the maximum duration that a pass can be granted and renewed for is up to 5 years. If there is an applicable FTA, the maximum duration will be according to the relevant FTA.
- Not eligible for future permanent employment or permanent residency - An ICT will not be eligible for future employment in Singapore upon the expiry/termination of the work pass, or for Singapore Permanent Residency. This means that the ICT employee may not apply for an Employment Pass (non-ICT) or any other type of work pass upon the expiry/termination of the existing work pass to pursue future employment in Singapore.

In addition to the above conditions, an ICT would also need to satisfy the general eligibility criteria of an EP before an application can be submitted to the MOM for their consideration.

Impact to employers

- Should a foreign employee not meet the definition of an ICT or not be agreeable to the features of an ICT, an EP may still be obtained through the non-ICT option. That is, a 28-day job advertisement will be required before the EP application can be submitted.
- Employers must ensure that proper documentation on the hiring and recruitment process is maintained for records purposes.
- Employers are reminded to practice fair hiring and consider all applicants on an equal basis in accordance with the FCF.
- Employers may need to consider alternative long term stay passes for accompanying dependants of ICT.

Should you have any queries or require further information, please reach out your local EY advisor or one of the contacts below.

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