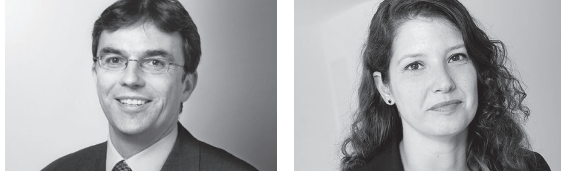




V Things worth Knowing about Swiss Employment Law



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Swiss employment law is liberal in comparison to that of other European countries. Nevertheless, there are numerous legislative frameworks to consider which regulate the contractual relationships of the parties, as well as working hours, rest periods and health & occupational safety.

The employment contracts for employees of foreign companies in Switzerland are normally governed by Swiss law. However, it must be noted that even in the exceptional circumstances where the employment relationship is governed by foreign law mandatory Swiss law provisions on working hours and rest periods still apply.

A

Hiring

1 Employment Contracts

There is no prescribed form for employment contracts. It is however advisable at an early stage to agree in writing on the most important elements of the employment contract (identity of contracting parties, start date, position, salary and any wage premiums, weekly working hours). The employer is required to inform the employee of these essentials no later than a month after the commencement of the employment relationship, even where the parties do not conclude a written employment contract.

2 Collective Bargaining Agreements

So-called collective bargaining agreements are concluded between an employer, or an employers' association and employees' associations. The parties usually adopt rules which are more favorable than those provided by the law and establish mini-

mum standards which may not be undercut in individual employment contracts. Some collective bargaining agreements define minimum pay, but this is unusual in Swiss law.

Collective bargaining agreements apply to the contracting parties and their members; under special conditions, they can be extended by declaration to be binding for an entire industry.

B

Working Hours

In the majority of Swiss companies, the normal weekly working hours under an employment contract or a collective bargaining agreement are between 40 and 44 hours. The legal maximum weekly working hours are 45 for industrial workers, office, technical and other employees including salespersons in large retail stores; for all other commercial enterprises, the legal maximum weekly working hours are 50. The difference between the normal weekly working hours and the maximum weekly working hours is important for distinguishing between overtime and excess working hours.

1 Overtime

Overtime is defined as hours worked in excess of the normal weekly working hours but less than the legal maximum weekly working hours. An employee is obliged to work more than the normal working hours to the extent that the employee can be reasonably expected to do so in good faith and is able to do so. By law, overtime must be compensated with an additional premium of 25%. It is permissible to agree in writing that overtime work will not be compensated with an additional premium or even not compensated at all. It is also possible, subject to the employee's consent, for overtime to be com-



compensated by time off, of at least equivalent duration. Contracts with management-level employees usually completely waive any right to compensation for overtime, either by payment or time off.

2 Excess working hours

Excess working hours are the hours worked in excess of the legal maximum weekly working hours. To safeguard an employees' health, the Labor Act prohibits more than two hours per day excess working hours per employee; in a calendar year, an employee may not work more than 170 excess working hours (where the weekly maximum is 45 hours) or 140 excess working hours (where the weekly maximum is 50 hours). Excess working hours must always be compensated by an additional premium of 25%, unless the employee consents to take an equivalent amount of time off as compensation, within a given time period.

3 Daytime and Evening Work

Daytime work is work performed between 6 am and 8 pm; evening work is work performed between 8 pm and 11 pm. Evening work does not require special permits but an obligation to work in the evening can only be imposed after consulting with the employees' representative body, or, if none exists, after consulting with the affected employees.

4 Night Time Work; Work on Sunday and Public Holidays

Night time work (between 11 pm and 6 am) and work on Sundays and public holidays is, as a rule, prohibited. Such work is subject to prior exceptional approval by the authorities, if it is absolutely necessary for technical or economic reasons. Temporary night time work or Sunday work are subject to approval by the cantonal authorities; night or Sunday work on a permanent or regular basis is subject to approval by the federal authorities. Employees cannot be made to work at night or on Sundays without their consent.

An additional premium of 25% must be paid for temporary night time work (up to a maximum of 24 nights per calendar year). For permanent or regular night time work, the employee is entitled to compensation by time off of 10% of the night time working hours. For temporary Sunday work, an additional premium of 50% must be paid. In addition to this premium, an employee who performs up to

five hours work on a Sunday must be compensated by equivalent time off in lieu; any further hours worked on a Sunday entitle the employee to a substitute rest day (of 24 consecutive hours) immediately following the daily rest period of 11 hours.

C

Paid Absences

The minimum paid annual vacation entitlement in Switzerland for all employees is four weeks. Young employees up to the age of 20 years are entitled to five weeks' vacation per year. Vacation must be used and cannot be compensated by payment; compensation of vacation by payment is permissible only at the end of an employment relationship. For the duration of their vacation, employees are entitled to the same pay as if they were working. Part-time employees and employees paid on an hourly basis are entitled to pro-rated vacation time.

Many collective bargaining agreements provide for additional annual vacation for employees aged 50 or above and more annual vacation is generally granted to management-level employees.

Additionally, depending on the canton in which they work, employees enjoy between five and fifteen public holidays per year. Whenever a public holiday falls on a work-free day, employees are not entitled to a substitute day off. A public holiday is not deducted from the vacation entitlement, whenever it falls within the vacation of an employee.

The Swiss Code of Obligations directs employers to grant their employees additional "usual" days of leave. These include leave for special circumstances (wedding, death in the family, etc.). The law does not define this obligation in detail, but many collective bargaining agreements and staff regulations do.

D

Remuneration

1 Pay Levels

It is up to the contracting parties to agree on the remuneration, unless collective bargaining agreements set out minimum thresholds. The legal limitations are essentially threefold:

- Men and women have a right to equal remuneration for the same work. Violations of this principle entitle the affected employee to claim the difference.
- Employees of foreign employers who are seconded to Switzerland under foreign employment contracts have a right to be paid in accordance with pay levels prescribed by any applicable, binding Swiss collective bargaining agreements.
- Pay levels usually applicable in Switzerland may not be undercut as a result of the Free Movement of Persons between the EU/EFTA countries and Switzerland. The authorities are obliged to monitor pay levels and may impose fines and other sanctions in the event of violations.

2 Bonus, variable remuneration

Many employers ensure that their employees (particularly at management level) share in the company's profits as an (additional) reward for their performance and as an incentive for the future (usually by paying a bonus). Such remuneration can be granted on a voluntary basis (e. g. at year's end), at the employer's discretion. The employer may agree on performance targets with an employee, which depend on a company's annual results and sometimes on additional factors. If the performance targets are met, the employer is obliged to pay the agreed bonus. Some discretionary compensation payments may become obligatory over time if bonus payments are made with a certain degree of predictability.

3 Continued Payment of salary in event of Inability to Work

Employees who are unable to work for reasons beyond their control (such as illness or accident) are, after four months' of employment, entitled to continue to receive their salary for a limited period of time. The statutory entitlement for continued pay is at least 3 weeks in the first year of service and for an appropriately longer period thereafter. The extent of the obligation to grant continued pay depends on the employee's length of service and the specific circumstances of the individual case.

Many employers have concluded daily sickness allowance insurance. In such cases, the employer continues to pay the employee's salary during an interim period of the employer's choosing; thereafter, the insurance pays the so-called daily sickness

allowance, usually for a period of 720 days (minus the interim period). As a rule, the daily sickness benefits amount to 80 % of the salary; at least half of the insurance premiums are borne by the employer.

In the event of temporary inability to work due to an accident, the mandatory accident insurance will pay 80 % of the insured salary from the third day. The cap on the insured salary covered by the mandatory accident insurance scheme is currently CHF 126,000; salaries in excess of this amount can be covered by voluntary insurance.

Employees are entitled to maternity benefits for a period of 14 weeks following the birth of a child. The insurance covers 80 % of the salary earned prior to childbirth, up to a cap of CHF 196 per day. Collective bargaining agreements, and staff regulations adopted by employers usually provide more generous schemes which are funded by the employer. Employees with children have no statutory right to a reduction in their working time upon their return to work after maternity leave. In practice, however, employers are often flexible. Under Swiss law, there is no statutory right to parental leave.

E

Termination

1 Principle

As a rule, both parties to an employment contract may terminate the employment agreement at any time, subject to either the statutory or contractual notice period; without the need to fulfill any statutory grounds for termination. The party issuing the termination must however provide a written explanation of the termination, upon the other party's request.

There is no obligation to pay any severance in case of termination by the employer, unless specifically provided in an agreement. .

The principle of freedom to terminate the employment contract is limited in two ways:

There are certain periods, during which it is prohibited to terminate an employee's employment (restricted periods). Restricted periods apply, in particular, in cases of illness, accident, pregnancy and military service. A notice of termination given during a restricted period is null and void. Where a re-

strictive period starts after notice of termination was given, the notice period is extended for the duration of the employee's incapacity to work, or for the duration of the maximum restricted period, whichever is shorter. The length of the restricted periods depends on the reason for the employee's inability to work; in case of sickness or accident, the length of the restricted periods depends on the years of service.

The freedom to terminate is limited by the prohibition of wrongful dismissal. The Code of Obligations details circumstances, in which termination is regarded as wrongful. For example, it is wrongful to terminate an employment, if the employee has exercised his or her rights under the employment contract in good faith (retaliatory termination). It is also wrongful to terminate an employment with the sole aim of preventing certain rights from vesting in the employee under the employment contract (e. g. anniversary presents, bonus). The cases provided by the law are not exhaustive; a termination may even be deemed wrongful, if it is notified in a manner which is needlessly derogatory.

In the event that a dismissal is found to be wrongful, the terminating party must compensate the other party the levels of which are subject to judicial discretion but may not exceed an amount equivalent to the employee's six months' remuneration.

F

Non-competition Clause

It is in the employer's interest to ensure that employees who leave the company do not use privileged knowledge gained during the course of their employment to cause harm to the employer, in particular with regard to qualified employees who have access to the customer database or manufacturing or commercial secrets.

The employer can prevent such harm by concluding a written post-employment non-competition prohibition agreement for a period of no longer than three years. To be successfully enforceable such a restriction must be proportionate and the agreement must define the subject matter, geographical scope and duration of the prohibition in detail.

The non-competition prohibition may be secured by liquidated damages. If an employer wishes to obtain a court order to ban a former employee from en-

gaging in competing activities, such an option must be explicitly stated in the non-competition clause.

It is not mandatory to compensate an employee for the prohibition in order to mitigate its economic effects, although this may increase the agreement's enforceability.

G

Various

1 Short Time Work

A temporary reduction in working hours (short time work) can minimize salary costs in situations where an employer experiences a poor incoming order situation. Short time work is where the contractually agreed working hours are reduced by at least 10%, and is subject to the employee's consent. Unemployment insurance subsidizes the lost working time with short work time compensation, equivalent to 80% of the lost working time, calculated on the basis of the insured salary which is currently capped by law at CHF 126,000 per annum. The employer however is required to pay this 80% of lost working time to the affected employees on the regular pay day, and can only claim it back from the unemployment insurance scheme at the end of a reporting period. The maximum duration for short time work compensation is 18 months; this maximum duration applies until 31 December 2012.

2 Mass Redundancy

Mass redundancies are notices of termination, which are given by the employer to a (legally determined) large number of employees of a particular business within 30 days of each other, for reasons not pertaining personally to the employees.

The employer must comply with certain statutory obligations when implementing mass redundancies and must inform and consult with the employees, and inform the cantonal labor office. Terminations may only be issued after the consultation procedure is completed. Any legally enforceable rights (to sick leave etc.) apply to mass redundancies.

Swiss law does not provide for mandatory redundancy programs (so-called social plans); however, in practice they are implemented quite frequently. The extent of any benefits granted by an employer in cases of mass redundancies depends on the em-

ployer's financial means and the employees' circumstances (level of education, age etc.).

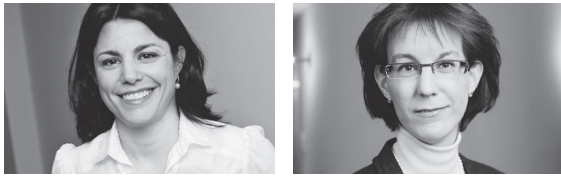
3 Employee Participation

Swiss law provides for the employees' participation, but not for co-determination (defined as the employer's obligation to obtain the employees' consent). Employees' participation is governed by the Participation Act, which applies to all private businesses in Switzerland. In businesses with at least fifty employees, they may elect one or more representatives from among their number. These elected representatives exercise participation rights.

The employer must notify the employees of any relevant circumstances and inform them at least once per year on the effects of the company's results on employment and on the employees. Employees also participate in the area of occupational health and safety.

Employees are entitled to be informed in the event of a change in ownership of the business (e. g. pursuant to a merger) and to be consulted if it adversely affects the terms and conditions of their employment, as well as on mass redundancies but they cannot prevent or delay a change in ownership, if all legal procedures and requirements have been duly observed.

VI Social Security in Switzerland



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In the Melbourne Mercer Global Pension Index 2011, Mercer compared the retirement income systems of 16 countries based on some 40 different criteria. In this study, the Swiss retirement income system was ranked fourth behind the Dutch, Australian and Swedish systems. With its closely-knit net of mandatory insurance schemes, the Swiss social security system offers broad protection, particularly against old-age and disability, sickness, accident, and unemployment.

A Old-age and Disability

For protection against the risks of old-age and disability, Switzerland has a “three pillar” system. The first pillar consists of the old-age and survivors insurance scheme (Altersund Hinterlassenenversicherung, or AHV) and the disability insurance scheme (Invalidenversicherung IV), both of which aim to cover basic financial needs in old-age and in the event of disability. The second pillar comprises occupational pension schemes (Berufliche Vorsorge, or BV) which are aimed at enabling employees to maintain their standard of living upon retirement. Lastly, the third pillar is composed of voluntary, partly tax-privileged, private savings.

1 Old-age and Survivors Insurance (AHV) and Disability Insurance (IV)

Old-age and survivors insurance and disability insurance are mandatory, state administered insurance schemes for all people living or working in Switzerland. Under pay-as you-go financing, today’s pensioners are financed by the current economically active population.

The old-age and survivors pension pays benefits during retirement and to survivors. Benefits under

the disability insurance scheme are paid to individuals who are unable, or only partially able, to earn an income from employment due to birth defects, sickness or accident. A pension is only paid to individuals who can no longer be integrated or reintegrated into the labor market, and its amount varies, depending on the degree of disablement.

Individuals contribute 10% of their income (regardless of level), payable in equal parts by the employer and the employee, to the old-age, survivors and disability pension schemes during the contribution period. Self-employed individuals pay the entirety of the contributions themselves. Even individuals not gainfully employed who have not yet reached pensionable age are required to contribute, with their assets used as the basis for determining the contributions due. Unlike other areas of the social security system, there are no upper contribution limits.

Pension benefits, however, are subject to upper limits depending on, inter alia, the number of years an individual has contributed to the scheme. In 2012, the maximum monthly pension was CHF 2,320 or CHF 3,480 for a married couple.

2 Occupational Pension Scheme (BV)

Occupational pension schemes fall within the State governed insurance system as an addition to the old-age, survivors and disability pension schemes but are provided by a multitude of private institutions and State funds. All employers must join a provider of their choosing or set up their own pension fund, however, under no circumstances are they entitled to access the pension funds. Unlike the old-age and survivors insurance scheme, every employee has his or her own individual retirement account with the pension fund chosen by their employer. Accordingly, the benefits paid by pension funds generally depend on the contributions paid in.

As a rule, only those pay components between CHF 24,360 (coordination deduction) and CHF 83,520 (the maximum insured annual pay) are subject to mandatory cover under the occupational pension scheme. The legally prescribed coordination deduction takes into account the fact that part of an employee's pay is already insured under the old-age and survivors insurance scheme. Pension funds are also free to insure pay components both below and above the insured annual pay (so-called "supplemental insurance"). Contributions are generally paid in equal parts by both the employer and the employee, and usually amount to between 10 and 15% of an individual's gross salary. The contributions reduce an individual's taxable income and they can therefore be used for tax planning purposes particularly when paying missing contributions. Occupational benefit insurance is optional for the self-employed.

B

Sickness and Accident

All people residing or working in Switzerland are required to obtain mandatory medical insurance coverage. Medical insurance covers treatment costs in the event of sickness, maternity or accident. Loss of income is not insured. Medical insurance schemes are financed by the premiums paid by the insured and by public funds. People who receive insurance benefits, must in addition, contribute to payment of their treatment costs by means of a deductible. Medical insurance is the responsibility of each individual and employers do not pay any contributions. People with limited financial means benefit from State support via premium reductions.

In the event of employee sickness or accident the employer is required to continue paying the employee's wage for a limited period of time. In order to mitigate this risk, many employers take out daily sickness allowance insurance. The premiums may be paid in equal parts by the employer and the employee.

Employers must obtain mandatory work-related and non-work-related accident insurance for all of their employees in Switzerland. The premiums for work-related accident insurance are paid entirely by the employer whereas the premiums for non-work-related accidents can be fully passed on by the employer to the employee. The premium amounts vary depending on the industry sector. Self-employed individuals are not subject to mandatory insurance but can take out insurance on a

voluntary basis. Accident insurance covers both the necessary diagnosis and treatment costs and loss of income due to an accident, up to a maximum of approximately CHF 100,000.

C

Unemployment

All employees in Switzerland, and people who are both active abroad for Swiss companies and paid from Switzerland, are subject to mandatory unemployment insurance against the economic consequences of unemployment, short-time work, weather-related work-stoppage and employer bankruptcy. Unemployment insurance contributions are paid in equal parts by the employer and the employee. Up to a ceiling of CHF 126,000, the aggregate contributions amount to 2.2% of the determinant annual pay, up to a ceiling of CHF 315,000 they amount to 1%. Over and above this ceiling, no contributions are collected. Self-employed individuals may not insure themselves against unemployment. People who have paid contributions for at least 12 months in the two years preceding registration with an unemployment office or who are by law relieved of the obligation to make contributions, are entitled to benefits. Benefits can be received for a maximum of 520 days.

D

Social Security in an International Context

Where foreign nationals, or people whose place of residence is abroad, are employed in Switzerland, or where a Swiss employee works abroad temporarily, the question arises in which country the individual is required to pay social security contributions, which insurance provides benefits, and whether these benefits can also be claimed abroad.

1 In the EU/EFTA Context

The relationship between Switzerland and employees from the EU and EFTA is governed by various agreements, in particular the Agreement on the Free Movement of Persons with the EU. Three principles in particular stand out in these agreements:

- equal treatment;
- the single State principle; and
- partial pension payouts.

Under the principle of equal treatment, each Member State must treat citizens of other Treaty States as it treats its own. If, for example, an accident occurs in another Member State, the affected individual will receive benefits from the accident insurance in the country where the treatment is provided as if the insurance applied to the individual there. Individuals who become unemployed before they complete the statutory prescribed minimum contribution period are entitled to have any period of employment in an EU/EFTA country added to the time worked in Switzerland.

Under the single State principle, only one State at a time is responsible for collecting social security contributions. As a rule, the State in which the individual works is the responsible State (place of employment), not the Member State of residence. For people who pursue gainful employment in more than one State at a time there are special rules and various exceptions. In certain cases, this can lead to unexpected outcomes for the individual concerned. For example, in Switzerland – unlike many other countries – the activities of a board member or executive officer are not considered to be self-employed activities. If the director only carries out self-employed work abroad his non-self-employed work as a director will be liable to social security deductions in Switzerland as will any such work carried out abroad

Where an individual has worked in more than one country, upon retirement a partial pension will be paid out of each of the different countries in which the individual was professionally active, provided contributions were paid in each country for at least one year and the minimum contribution periods of the participating countries have been met. The insurance periods of all the countries are taken into account. Pensions are thus essentially exported abroad. The occupational pension scheme represents a special case: Where an individual leaves Switzerland for good, it is generally possible to request payment of the vested pension benefits. There can be exceptions from the Social Security Insurance Agreement in Switzerland. For example, the amount accumulated under mandatory insurance cannot be paid out when the insured is subsequently subject to a mandatory occupational pension plan in an EU/EFTA country.

2 Special Cases in the EU/EFTA Context

Swiss citizens and EU/EFTA nationals residing in a third country can join the voluntary old-age, survivors and disability insurance schemes provided

they were insured under these schemes for at least five years immediately preceding their move. Subject to the same conditions, individuals in the EU/EFTA who work for an employer whose registered office is in Switzerland may also join the voluntary scheme.

Special rules apply to medical insurance. Generally all people residing in Switzerland or who are gainfully employed in Switzerland are subject to mandatory medical insurance regardless of whether they are already insured in another EU/EFTA country. Under certain circumstances, however, exemption from mandatory Swiss medical insurance can be obtained.

Finally, expatriates working in Switzerland on secondment are also subject to special rules. Secondment status is time-limited under social security law (24 months, or a maximum five to six years by special agreement). At the end of this period, the individual is governed by the social security rules in force at the place of employment.

3 Relations with Third Countries

With regard to the rules applied in Switzerland to third-country nationals, the relevant international treaties should be consulted. Switzerland has entered into social security treaties with the following countries: Australia, Chile, Israel, Canada/Quebec, Croatia, Macedonia, the Philippines, the Republic of San Marino, Turkey and the USA. Since 2011 Japan has been added to this list. For Bosnia, Herzegovina, Montenegro and Serbia, the treaty with the former Yugoslavia is still in force and valid.



VII Foreign Employees in Switzerland



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In Switzerland, international companies tend to employ many foreign workers in addition to Swiss nationals. As a rule, foreigners engaging in any form of gainful employment in Switzerland require a permit. The specifics of immigration law must be carefully considered in advance to ensure successful staff management.

A

Some Basic Principles

1 Free Movement of People versus a Strict Immigration Regime

Immigration law in Switzerland is characterized, on one hand, by the Agreement on the Free Movement of Persons within the European Union (EU) and, on the other, by a relatively strict immigration regime for employees from all other countries (third-countries).

The Agreement on the Free Movement of Persons has been in force between Switzerland and the EU since 2002. The objective of the Agreement is to achieve free movement of people and to enable gainful employment in the territory of the Agreement, under application of the national treatment principle which prohibits discrimination against EU citizens. The Agreement currently applies to the fullest extent possible to all citizens of the EU-17

and of the EFTA countries, while it is restricted for the remaining EU countries (EU-8 and EU-2)

The Swiss Federal Council decided on April 18th 2012 to apply the so called valve clause to the EU-8 countries. This means that the number of available residency permits B for citizens of those countries continue for the time being to be limited (for the period between May 1st 2012 and end of April 2013 – 2180 permits).

In addition, Switzerland has decided to continue, for the time being, to maintain its existing labor market restriction for citizens of the EU-2 countries Bulgaria and Romania, e.g. quotas, priority to Swiss or EU/EFTA nationals and control of the salary and work conditions. The transitional regulations remain in force until the 31st of May 2016. However, for stays without gainful occupation (retirees, students, etc.) and accompanying family members the one set of regulations apply to citizens of all EU- or EFTA countries.

Nationals of third-countries outside of the EU and EFTA are subject to a relatively strict immigration regime under which very limited quotas of work permits are issued on a very restricted basis, to the most highly qualified specialists, in a context of very limited quotas, primarily with the aim of protecting the Swiss labor market. Highly qualified employees are, in the opinion of the federal government (the Federal Council), more likely to integrate into the Swiss workforce and society than

EU-17 / EFTA

Austria, Belgium, Cyprus, Denmark, Germany, Finland, France, Greece, Ireland, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Sweden, Spain and United Kingdom

EU-8

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

EU-2

Bulgaria and Romania



people with more basic qualifications. The objective is to protect Switzerland against unemployment, the presence of too many foreigners and over-burdened social services.

2 Permit Types

The various permit types for both EU/EFTA nationals and nationals of third countries, govern both permission to reside and to engage in gainful employment in Switzerland:

- L permit: The L permit is also known as the short-term permit. As a rule, it is valid for a period of one year. It can be extended for a maximum period of 12 months. L permits generally tend to be issued to people with fixed-term employment contracts of up to one year.
- B permit: The B permit, also known as the residence permit, is issued to people who have an employment contract of indefinite duration or a fixed-term employment contract for more than one year. Residence permits are valid for five years and can be extended for an additional five years, provided the employment relationship is also extended.
- C permit: The C permit, or permanent residence permit, allows its holder to reside in Switzerland and pursue gainful employment for an unlimited time. C permits are issued to citizens of EU-17/EFTA countries provided they have lawfully resided, without interruption, in Switzerland for five years. For citizens of the remaining EU countries as well as third-country nationals, a residency period of at least ten years is generally required.
- Cross-border commuter permit: No cross-border commuter permits are available for third-country nationals. The cross-border commuter permit allows nationals of EU-17/EFTA and the EU-8 countries to engage in gainful employment either independently or as an employee, throughout Switzerland, subject to their maintaining their primary domicile in an EU or EFTA country. The cross-border commuter must return to his or her foreign place of domicile at least once per week. Employment contracts with a duration of up to three months are exempt from permit requirements; the only requirement being that they register with the authorities for control purposes. While employment contracts with a longer duration require a permit, there is a legal right to be issued with such a permit. The old border-zones have

been eliminated. There are still restrictions in place for citizens of the EU-2 countries.

- Trainee permit: Switzerland has concluded bilateral treaties with approximately 30 countries, thus enabling young people to gain experience in different countries through trainee programs. Applicants are required to have completed an education degree/vocational training and have a maximum age of 30-35, depending on the country agreement. As a rule, the permit is issued for a maximum of 18 months. Trainee permits are particularly well suited for the employment of trainees in international companies.
- Visa: People who are in possession of a work or residence permit do not require a separate visa to enter Switzerland. C, B or L permits also serve as Schengen visas. It is thus possible, for example, for a Russian national living in Switzerland holding a B Permit to travel freely as a tourist within the Schengen area for up to three months of any half calendar year. In addition, the adoption of the Schengen Treaty has facilitated travel particularly for tourists, visitors and business travelers from third countries subject to visa requirements.

There are, in addition, special permits for particular employee categories (e.g. athletes, au pairs, intra-corporate transferees under GATS etc.).

Close relatives such as spouses and under-age children may, depending on the type of permit, be allowed to join a permit holder in Switzerland. The permission granted to accompanying family members is limited to the duration of the permit of the primary permit holder.

B

Nationals of EU and EFTA Countries

1 Requirements for Obtaining a Permit

Because the Agreement on the Free Movement of Persons guarantees complete freedom of movement for nationals of the EU-17/EFTA countries, the requirements for obtaining a permit are minimal. Employees from these countries must have medical insurance, suitable living accommodation and sufficient financial means (savings or income) to feed themselves and their family.

2 Permit Procedure

The procedure for obtaining a permit is easy for EU-17 and EFTA nationals. Upon taking up domicile in Switzerland, they must register in person with the competent resident registration authorities and produce a residential lease or deed of purchase as well as an employment contract. This must be done within 14 days of entering Switzerland and at least 8 days prior to taking up gainful employment.

An application for a foreign resident ID card is made with the resident registration authorities. The foreign resident ID card is issued by the cantonal immigration authorities but the applicant is allowed to take up gainful employment before it is received.

3 Special Case: Secondment

Secondment is where a foreign employee is temporarily transferred by a foreign employer to a business in Switzerland. The employee remains employed by the foreign employer. This is typically the case for foreign service providers who provide services at a business in Switzerland, such as installing an IT system, or who work in construction.

A simplified and expedited registration procedure can be completed online for short-term assignments of up to a maximum of 90 working days per calendar year. Longer assignments are only allowed subject to the filing of the appropriate application and the issue of a work permit, since secondments are not covered by the Agreement on the Free Movement of Persons. As a result, the principles governing third-country nationals apply, such as giving priority to Swiss nationals (or the equivalent) and the use of quotas. In cases such as these, particularly involving EU-17/EFTA nationals, it is worth considering the possibility of finding employment with a Swiss employer.

c

Rules for Third-Country Nationals

1 Permit Application Requirements

The number of permits available to third-country nationals is strictly limited in order to protect the Swiss labor market. In practice, only those highly

qualified specialists and experts urgently needed by the Swiss economy are admitted. Third-country nationals (and the Swiss employers with whom the third-country national intends to work) have no legal right to obtain a permit; the decision rests wholly within the discretion of the authorities. In particular, the work permit is subject to the following conditions:

- Quota availability: The Federal Council determines the number of L and B permits the cantons are allowed to distribute annually. The size and population density of the cantons as well as the economic situation in the relevant labor market are all taken into account. In addition to the cantonal quotas, there are also federal quotas which are set aside for specific purposes (e.g. diplomats, politicians etc.). In 2012, the Federal Council released 8'500 short-term permits and 3'500 residence permits for the whole of Switzerland. The available quotas are usually exhausted by autumn, at least in economically powerful cantons such as Zurich. Applications for work permits are rejected in such cases, even if the other permit conditions have been met. It is therefore recommended to submit applications in the first six months of the year and to inquire in advance with the authorities about the quota fill level.
- Priority to Swiss or EU/EFTA nationals: Employees from third countries are only issued a work permit if it is not possible to find a Swiss or EU/EFTA national for a position. Work-permit applications for third-country nationals must specifically show that it was not possible to recruit Swiss or EU/EFTA nationals to fill a position. The position must therefore be advertised both in Switzerland and in the European vacancies database EURES. The vacancy notice is often drafted in such a manner that it corresponds to the desired third-country candidate. It is advisable to plan the issue of the vacancy notice in detail before the start of the application procedure and to coordinate the two. In certain cases it is possible to convince the authorities that a vacancy notice is unlikely to succeed, for example, where a CEO position at headquarters which have been relocated to Switzerland cannot be filled by anyone other than the current (US) CEO.
- Highly qualified employees: Switzerland only allows highly qualified workers from third countries to enter its labor market. As a rule, a university master's degree is required. The applicant must also have the necessary pro-

essional experience. Comprehensive language skills, further education and awards can be highly beneficial.

Highly qualified employees from third countries must also be paid a reasonable wage by their Swiss employer. The labor market authorities tend to require an annual salary of at least CHF 100,000.

2 Permit Procedure

Obtaining a work permit for a third-country national is a complicated and lengthy process. A good three months may elapse between filing the application and the issue of the permit. It generally takes around two weeks to prepare the application as many documents (e.g. a detailed curriculum vitae, copies of diplomas, job references, job descriptions, proof of no criminal record) must be collated, and, where necessary, translated. The employee may not reside or enter Switzerland for the entire duration of the application procedure, neither as a tourist nor even for short meetings. Failure to comply can result in a refusal to issue the permit or even the imposition of an entry-ban for a number of years.

The application passes through three approval stages by three separate authorities.

- Cantonal labor market authority: The cantonal labor market authority is where the application is filed on behalf of the employer. An examination of the relevant labor market is carried out. If the application is approved, it is automatically transferred to the competent federal government agency. The applicant receives an interim decision.
- Federal Office of Migration: The Federal Office of Migration is responsible for assuring the relevant immigration law provisions are applied uniformly nationwide. Approval from the Federal authorities is usually the biggest hurdle. If the application is approved, it is automatically transferred to the cantonal migration authorities. The applicant receives another interim decision.
- Cantonal Office of Migration: The Cantonal Office of Migration issues the permit if both previous authorities have given their approval. The only criteria examined at this stage relate to immigration (e.g. whether the applicant is the subject of an arrest warrant or has a criminal record).

The applicant must register in person with the competent authorities at the new place of domicile in Switzerland within 14 days of entering the country.

A foreign resident ID card can only be issued by the resident registration authorities. This generally takes three to four weeks, during which time the foreign employee is already allowed to reside and pursue gainful employment in Switzerland.

D

Sanctions

Illegally entering or leaving Switzerland, residing in Switzerland illegally or pursuing gainful employment without a permit are all punishable by imprisonment of up to one year or fines. The same sanctions can be imposed on people who aid or abet foreigners without a permit to illegally enter, leave or reside in Switzerland. In cases involving minor infractions, small fines may be imposed.

Both the foreign employee and the Swiss employer are punishable if they fail to comply with the applicable provisions under immigration law. Employees or employers found guilty of having committed such infractions find it difficult to subsequently obtain work permits.