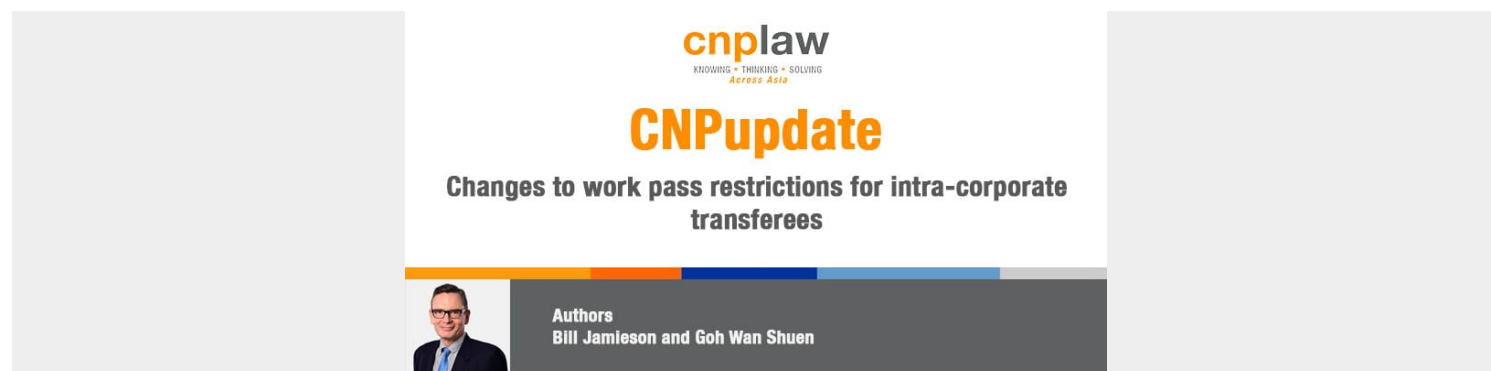


CHANGES TO WORK PASS RESTRICTIONS FOR INTRA-CORPORATE TRANSFEREES

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A. Overview of the changes

Family members of Employment Pass (“EP”) holders have traditionally been allowed entry to Singapore if they satisfy the criteria for obtaining a dependant’s pass or long-term visit pass. However, the Ministry of Manpower (“MOM”) has recently clarified its stance on this and has distinguished intra-corporate transferees (“ICTs”), which form a small subset of EP holders, from other EP holders.

The MOM has also made clear that ICTs are only allowed entry into Singapore for a limited period, and are not eligible for future employment in Singapore upon the expiry or termination of their work pass.

B. Definition of an intra-corporate transferee

An ICT generally refers to a foreign employee transferred to Singapore from an overseas office of a multinational corporation. Such foreign employees may apply for an EP in Singapore as an ICT, assuming that they satisfy the definition of an ICT under either the World Trade Organisation’s (“WTO”) General Agreement on Trade in Services (“GATS”), or an applicable free trade agreement (“FTA”) to which Singapore is party.

Under the WTO GATS for example, an ICT must be in a manager, executive or specialist role, and must have worked for the company outside Singapore for at least 1 year before being posted to the company’s branch, affiliate or subsidiary in Singapore.

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C. Entry for ICTs granted only for a limited period

ICTs are only allowed entry into Singapore on a temporary basis. This means that the maximum period of time they are permitted to stay in Singapore is strictly limited to the provisions of the applicable FTA. For example, the WTO GATS limits entry into Singapore for these ICTs to a three-year period that may be extended for up to two additional years, for a total term not exceeding five years.

Furthermore, unlike regular EP holders, ICTs are generally not eligible for future employment in Singapore upon the expiry or termination of their work pass, or for permanent residency.

D. Work pass restrictions relating to family members of ICTs

ICTs are also no longer able to bring their families along with them to Singapore. Unlike family members of regular EP holders, family members of ICTs are no longer eligible for dependant's passes or long-term visit passes unless they are specifically covered by an applicable FTA and meet the prevailing criteria for consideration.

One example of an FTA that permits ICTs to bring along their spouse and dependants (subject to the satisfaction of prevailing dependant's pass or long-term visit pass criteria) is the Singapore-Australia Free Trade Agreement ("SAFTA").

Article 18 of Chapter 11 of the SAFTA states that "for natural persons of either Party who have been granted the right to temporary entry under this Chapter as contractual service suppliers, independent executives or intra-corporate transferees and who have a spouse and dependant, a Party shall, upon application, grant the accompanying spouse or dependant who otherwise meets its criteria for the grant of an immigration formality the right of temporary entry, movement and work for an equal period to that granted to the natural person. For greater certainty, grant of temporary entry and work under this Article is subject to the accompanying spouse or dependant meeting the granting Party's prescribed application procedures and requirements for the relevant immigration formality and meet all relevant eligibility requirements for temporary entry and work or extension of temporary stay and work".

While the India-Singapore Comprehensive Economic Cooperation Agreement ("CECA") also contains provisions on the spouse or dependants of ICTs, it appears that the scope of these provisions are limited to granting the ICT's spouse or dependants the right to work as managers, executives or specialists (subject to any licensing, administrative and registration requirements) upon application, provided that the ICT has been allowed to bring in their spouse or dependants.

On the other hand, Singapore's FTAs with Japan, which include the Japan-Singapore Economic Partnership Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and the ASEAN-Japan Comprehensive Economic Partnership, do not contain any provisions permitting the spouse or dependants of Japanese intra-corporate transferees to work or apply for dependant's passes or long-term visit passes in Singapore.

E. Conclusion

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Despite these developments, employers could still avail themselves of the option to apply for an EP via the regular EP route, rather than applying for an EP on the basis that the employee is an ICT.

While this means that the employer will not be able to enjoy the benefits offered under the intra-corporate transfer route, such as the exemption from MyCareersFuture.sg advertising requirements under the Fair Consideration Framework (“FCF”), the new developments highlighted above may be significant enough to deter EP applications via intra-corporate transfers from being made. In this regard, foreign employees who wish to bring family members into Singapore but are not permitted to do so under an applicable FTA, may find that the limitations of an intra-corporate transfer outweighs its benefits.

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