

07.03.2017

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Work permit requirements for foreign board members

Dear Sir or Madam,

This article deals with the compulsory registration and express approval for foreign members of a board of directors of Swiss stock companies, for their presence during a board meeting in Switzerland.

Foreign members of a board of directors whose presence in Switzerland on behalf of their company exceeds eight days must comply with the regulations of the registration process. A company that is a significant player in its industry very quickly has four to six board meetings per year, each lasting between one and two days, occasionally followed by committee meetings on top of those board meetings. Through this, the grace period of eight working days can easily be exceeded, and as a consequence, a company is then required to apply for registration or approval. For any members of the board that are not citizens of an EU country, such registrations and approvals need to be applied for even earlier.

Switzerland, like most countries in the world, has regulated the working activities of foreign employees within its borders. Therein are unilateral and bilateral agreements, particularly the agreements with the European Union. Across Switzerland over 360'000 cross-border commuters were employed in Switzerland in the first quarter of 2016, around 40'000 in Basel. Their importance for the economy is huge.

The Agreement on Free Movement of Persons (AFMP) between Switzerland and the EU governs cross-border provisions of services (whether by a deployed employee or by a self-employed person). No comprehensive deregulation exists for up to 90 actual working days per calendar year. Approval is not required; however, registration is mandatory. The 90 working days per calendar year both refers to the company deploying and to the deployed person.

The following persons can carry out gainful activities in Switzerland over a period of not more than three months – or 90 days within a calendar year – within the framework of the registration procedure:

- Citizens of EU-27/EFTA countries that take up a job in Switzerland which is limited to three months.
- Deployed employees of a company domiciled within EU-27/EFTA, irrespective of their citizenship. Third-country nationals, before being deployed to Switzerland, need to have gained permanent approval for the regular labour market either in a member state of the EU or of an EFTA member state (i.e. they need to have been in possession of a residence card or a permanent residence card for at least 12 months).
- Self-employed service providers (citizens of EU-27/EFTA) domiciled in an EU-27/EFTA member state.

With all other persons the registration procedure will not come into effect. For the provision of a service over more than 90 days per calendar year, a work permit is required. No legal rights exist.

Eight days exempt of registration

The activities of deployed employees and of self-employed service providers are subject to registration if, overall they exceed more than eight working days within a calendar year. A number of industries do not grant such a period of grace.

Registration period of eight days (before the start of work in Switzerland)

Any activities by either a deployed employee or by a self-employed person need to be registered in Switzerland at least eight days before the designated start of these activities. Only in very clearly defined emergency situations (e.g. repair work, accidents, natural disasters or other non-foreseeable incidents) can work be taken up before the eight-days registration period.

Registration from day one

For citizens of non-EU countries, registration is mandatory from day one. Any activity as a member of a board of directors or of a foundation board is considered gainful employment at a Swiss employer. This activity is not considered a business meeting of short duration, but as gainful employment which is subject to approval from 1 July onwards. The company can – and must – apply for the relevant approval.

Voluntary activity for foundation board

In the interest of a controlled admission policy for the labour force from third countries, the term gainful employment (non-self-employed and self-employed activity plus cross-border provision of services) has been interpreted as loosely as possible. Accordingly, any self-employed or non-self-employed activity will be regarded as gainful employment according to paragraph 11, section 2 Foreign Nationals Act and paragraphs 1-3 ASEO if they are generally undertaken for a fee. However, it is irrelevant whether the activity in a specific case is fully non-remunerated, or whether just a small compensation has been paid out to cover just the bare necessities of life (food, accommodation).

Conclusion

An international board meeting will quickly require work permits!

Source: Notification procedure for short-term work in Switzerland, last update 26 Jan 2017
https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta/meldeverfahren.html

Kind regards

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