

Amendments to the Aliens Act

The bases for the entry of aliens into Estonia, their temporary stay, residence and employment in Estonia and their legal liability for violation of obligations provided for by law are regulated by the Aliens Act.

For the purpose of attracting talents which bring added value to the Estonian society and economy, the Ministry of the Interior in cooperation with other ministries and social partners initiated in 2013 amendment to the Aliens Act. The first stage of amendments entered into force on 1 September 2013 and the second stage of amendments in January 2016. Considering the constantly changing environment and the resulting new needs, and taking into account the objectives established in various national development plans, a third package of amendments were developed.

The new amendment package of the Aliens Act entered into force on 17 and 18 January 2017. **The aim of the amendments is to facilitate and simplify the temporary stay, residence and employment of talented and entrepreneurial people in Estonia.** The amendments will allow aliens flexible access to the Estonian labour and business market, while also minimising possible risks of misuse. At the same time, the European Union Directives concerning seasonal workers and intra-corporate transferees were transposed into national law.¹

An overview of the more significant amendments to the Aliens Act that have entered into force in January 2017 is presented below:

1. Amendments related to temporary stay in Estonia

1.1 Authorised stay of intra-corporate transferees of other European Union Member States in Estonia

Pursuant to the amendments, **the residence permit of an intra-corporate transferee issued by a competent agency of a European Union Member State serves as a legal basis for staying in Estonia²** during the validity of that permit, if the person is staying in Estonia for the purpose of performing work within the framework of intra-corporate transfer or for moving to another EU Member State via Estonia for the purpose of intra-corporate transfer. Staying in Estonia on the basis of an intra-corporate transferee issued by a competent agency of another EU Member State is therefore not subject to the restriction stipulated in paragraph 44 of the Aliens Act, pursuant to which it is permitted to stay in Estonia on the basis of a

¹ Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and Directive 2014/66/EU of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

² A permit issued on the basis of Directive 2014/66/EU of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1-22).

residence permit issued by a competent agency of a member state of the Schengen Convention for up to a total of 90 calendar days within the period of 180 days.

1.2 Legal basis for stay in the country upon extension of period of stay or review of application for long-term visa

While previously the submission of an application for an extension of the period of stay granted under visa did not provide a legal basis for staying in the country, the amendments make the stay of an alien in the country legal during the review of the alien's application, provided that:

- the extension of the period of stay is applied for during the temporary period of stay;
- the extension of the period of stay granted under a visa is applied for during the period of validity of the visa;
- a long-term visa is applied for in accordance with the procedure stipulated in paragraph 91¹ of the Aliens Act.

1.3 Long-term visa

Several changes were introduced into the regulation of long-term visas:

- It is now possible to issue a long-term visa **for a period of stay of up to 365 days** within twelve consecutive months instead of the former 180 days.
- The **maximum period of stay** on the basis of a long-term visa is now stipulated – the total period of stay on the basis of a long-term visa must not exceed **548 days within 730 consecutive days**, unless a foreign agreement stipulates otherwise.
- Aliens who are staying in the country legally can now **apply for a long-term visa while in Estonia**. In order to do that, the alien or his/her representative has to personally appear at the Police and Border Guard Board.

The amendments also stipulate the automatic expiry of a visa when the alien is issued a residence permit by a competent agency of Estonia.

1.4 Formalisation of period of stay arising from expiry of period of validity of temporary residence permit

As of January 2016, aliens have a temporary right of stay upon the expiry of their temporary residence permit in Estonia. As a rule, the temporary right of stay applies within the 90 days following the date of expiry of the period of validity of the residence permit. Aliens with a temporary residence permit for study or employment as a researcher/lecturer have a temporary right of stay of 183 days upon the expiry of the period of validity of their residence permit.

Pursuant to the amendments entered into force in January 2017, aliens who have a temporary right of stay in Estonia upon the expiry of the period of validity of their temporary residence permit can, if they wish, formalise that right of stay as a long-term visa at the Police and Border Guard Board. In order to formalise the right of stay, the alien or his/her representative must personally appear at the Police and Border Guard Board.

1.5 Extension of period of stay

The extension of a period of stay is generally only allowed as an exception, e.g. for humane reasons or in the event of force majeure. The amendments also allow the extension of a period of stay granted by a long-term visa in the following cases:

- for the purpose of short-term employment in Estonia, provided that the period of stay under a long-term visa does not exceed 548 days within 730 consecutive days;
- for the purpose of start-up entrepreneurship, provided that the total period of stay under a long-term visa does not exceed 548 days within 730 consecutive days.

The amendments also allow the aforementioned alien's spouse, minor child, and adult child who is not able to cope independently due to health condition or disability, to extend their period of stay on the same terms.

2. Changes related to short-term employment

2.1 Registration of short-term employment

While short-term employment without a residence permit was previously allowed only in certain cases, the amendments allow the **registration of short-term employment in various positions and sectors**, thereby expanding the aliens' possibilities of working in Estonia on a short-term basis.

The amendments also extended the **maximum period of short-term employment in Estonia** from the former six months a year to **nine months a year**. Certain specified categories can work throughout the duration of their period of stay. The maximum limit of nine months of employment does not apply in the following cases.

- employment as a teacher in Estonia in an educational institution which complies with the established by legal acts;
- research activities if the alien has appropriate professional training or experience, or employment as a lecturer in Estonia in an educational institution which complies with the requirements established by legal acts;
- employment as a top specialist if the alien has an appropriate professional qualification;
- employment in a start-up company;
- employment as an intra-corporate transferee. Aliens can work in Estonia for intra-corporate transfer purposes on the basis of a residence permit of an intra-corporate transferee of another EU Member State throughout the period of validity of the residence permit.

The amendments also established an additional specification to the requirement for registration of short-term employment. **The registration of short-term employment is not required, if the duration of employment is up to five days** within thirty days.

The **bases for refusal from and revocation of registration of short-term employment have also changed**. While previously the bases for refusal and revocation were imperative, the amendments give administrative bodies a greater margin of discretion in the case of

certain grounds for refusal, which allows them to better consider the specific situations of employers and aliens.

2.2 Remuneration requirements upon short-term employment

The requirements for the remuneration paid to aliens working in Estonia on a short-term basis and under a residence permit for employment, establishing the **Estonian average gross monthly salary requirement**.

Certain specified categories continue to be exempt from the salary requirement established in the Aliens Act. In addition to the previously applicable list, **the salary criterion exemption also applies to seasonal workers and aliens taking up employment in start-up's**.

2.3 Simplified application process

In order to make application processes more flexible and simple, the number of documents to be submitted upon the registration of short-term employment was considerably reduced. As a result of the amendment, **applicants have to submit considerably fewer documents**. That makes the submission of an application more convenient and quicker. Among other things, applicants are no longer required to submit a document that certifies the professional preparation or qualification of an alien, a copy of a volunteer service contract, a certificate from the posting student organisation or educational institution or, in the case of temporary agency work, a document certifying the existence of a deposit. At the same time, the submission of fewer mandatory documents does not alter the terms and conditions and prerequisites of the registration of short-term employment, and therefore the Aliens Act grants the PBGB the right to request additional data and documents to assess the fulfilment of terms and conditions, if necessary.

2.4 Seasonal workers and season-dependent sectors

In accordance with Directive 2014/36/EU, the amendment established the definition of seasonal workers and the **conditions of registration of the short-term employment of seasonal workers** in the Aliens Act. **Seasonal workers are also not subject to the salary criterion stipulated in the Aliens Act**.

In order for an employer to be able to register the short-term employment of an alien as a seasonal worker:

- the work must be of seasonal nature. This means that it must be related to a specific time of year when demand for labour is significantly higher than usual;
- the alien must commence work in an area of activity dependent on season as listed in the Government of the Republic Regulation. Pursuant to the Regulation, the following areas of activity are dependent on season: crop and animal production, hunting and related service activities; forestry and logging; fishing and aquaculture; accommodation; food and beverage service activities; and works in the areas of the manufacture of food products and soft drinks;
- the employer has to have entered into a short-term employment contract with the alien before the submission of an application for registration of short-term employment or made a job offer by which the employer expresses his or her will to be legally bound

by the employment contract to be concluded and undertakes to employ the alien on the conditions determined in the concluded contract or the job offer made;

- the accommodation of the alien during the stay in Estonia must be ensured in a dwelling or accommodation establishment which complies with the requirements established in legal acts.

Those seasonal workers, who have previously worked in Estonia as seasonal workers in the preceding five years and have not violated the conditions of stay or employment in Estonia, can have their **short-term employment registered in an accelerated procedure**.

A specification is also made for seasonal workers with regard to the maximum period of stay on the basis of a long-term visa. Although generally the total period of stay under a long-term visa cannot exceed 548 days within 739 consecutive days, the restriction does not apply to seasonal workers who have previously stayed in the country under a long-term visa for purposes other than seasonal work.

3. Changes related to residence permits

3.1 Amendment of requirement of permanent residence in Estonia and abolition of requirement to register absence from Estonia

The requirement to permanently reside in Estonia was changed – the obligation to stay in Estonia for at least 183 days a year on the basis of a residence permit or the right of residence was abolished. Instead, the purposeful use of an alien's residence permit or right of residence is assessed. In connection with the above, the regulation of registration of absence from Estonia is repealed, which means that aliens residing in Estonia on the basis of a residence permit no longer have to register their absence from Estonia that lasts for more than 183 days.

3.2 Specification of immigration quota

The amendments **expanded the list of categories of persons to whom the immigration quota does not apply**. In addition to the previously applicable specifications, the immigration quota does not apply to the following persons pursuant to the amendments:

- aliens who are issued a residence permit for employment in a specialised position in the area of information and communication technology;
- aliens who are issued a residence permit for enterprise related to start-up business;
- aliens who are issued a temporary residence permit for employment in a start-up;
- aliens who are issued a temporary residence permit for engagement in enterprise as a large investor.

3.3 Simplified application process

In order to make application processes more flexible and simpler, the number of documents to be submitted upon applying for or extending a residence permit was considerably reduced. As a result of the amendment, **applicants have to submit considerably fewer documents** than stipulated in the applicable regulation, which makes the submission of applications more convenient and quicker. Among other things, applicant are no longer required to submit a

document certifying legal income, a document certifying professional training or qualification, or a document certifying health insurance.

Instead of the additional documents to be submitted upon application, the applicant or the sponsor confirms the fulfilment of the conditions and the existence of the necessary documents by signing the application/invitation.

At the same time, the submission of fewer mandatory documents does not alter the terms and conditions and prerequisites of the registration of short-term employment, and therefore the Aliens Act grants the PBGB the right to request additional data and documents to assess the fulfilment of terms and conditions, if necessary.

3.4 Transition to proceedings based on follow-up checks

An important change related to residence permits is the transition from proceedings based on extending residence permits to **proceedings based on follow-up controls**. Supervision over whether persons have settled in Estonia and whether their activities correspond to the conditions and objective of holding a residence permit will be strengthened. The relevant amendments are scheduled to enter into force on 1 October 2017.

In connection with the focus shifting to follow-up controls, the period of validity of residence permits will be extended. Initial residence permits will generally be issued for up to 5 years, and extended for up to 10 years.

4. Changes related to labour mobility

4.1 Remuneration requirements

The requirements for the remuneration paid to aliens have changed. Instead of the former product of average salary and the coefficient of 1.24, aliens working on the basis of a residence permit for employment must be paid **remuneration which is at least equal to the Estonian average gross monthly salary**. Certain specified categories continue to be exempt from the salary requirement established in the Aliens Act. In addition to the previously applicable specifications, the salary criterion specification will also be applied to aliens commencing work in a start-up company as well as aliens who have obtained a fourth and fifth level vocational education in Estonia.

4.2 Change of positions at same employer

Procedures related to labour mobility are made more flexible, **allowing aliens to change positions at the same employer without having to apply for a new residence permit for employment or a permit from the Estonian Unemployment Insurance Fund**, provided that other conditions determined in the residence permit remain unchanged and the same professional and qualification requirements apply to working in the new position.

4.3 Equity capital requirements for employment as top specialist

The amendments specify the requirements for equity capital upon the registration of a residence permit for employment as top specialist, applying the specifications established for them. The amendments stipulate that in order to apply for a residence permit for employment

as a top specialist on more favourable terms, the company must have at least 65,000 euros worth of paid-in equity capital for which real estate property, machinery or equipment has been acquired in Estonia and recorded as property, plant and equipment, or with which an investment has been made in another company which has been entered in the Estonian Commercial Register and carries out actual economic activities in Estonia, or in an investment fund created or founded on the basis of the Investment Funds Act.

4.4 Temporary residence permit for intra-corporate transfer

A new sub-category of residence permits has been established: ‘**temporary residence permit for intra-corporate transfer**’. The said residence permit can be applied for by an executive, specialist or trainee employee with higher education upon intra-corporate transfer. The maximum term of transfer is three years for executives and specialists and one year for trainees with higher education. Aliens can apply for a residence permit of an intra-corporate transferee for transfer to a company which is located in Estonia and belongs to the same group of companies with company located outside the European Union or is a branch of such a company in Estonia. An intra-corporate transferee must also have a valid employment contract with the company located outside the EU Member State, as well as previous length of employment at the company from which the alien was transferred to Estonia.

5. Changes related to start-up business

In order to allow start-up companies with strong potential to come to Estonia and Estonian start-ups to recruit foreign labour on more favourable terms in the interests of Estonia’s economic development, the amendments included specifications for both start-up entrepreneurs coming to Estonia and Estonian start-ups recruiting foreign labour.

- An entrepreneur can apply for a short-term visa or a long-term visa for establishing or developing a start-up company in Estonia. Upon applying for a visa, the income requirement is lower for start-up entrepreneurs – they must have income in the extent of one subsistence limit per every month stayed in Estonia.
- Upon applying for a residence permit for enterprise, start-up entrepreneurs do not have to fulfil the investment requirements.
- Upon recruiting foreign labour, start-up companies are exempt from the salary criterion established in the Aliens Act. There is also an exemption for start-up companies with regard to the requirement for applying for a permit from the Unemployment Insurance Fund.

In order to apply for a visa or residence permit or register short-term employment on favourable terms, an expert committee must provide an opinion that the company really is a start-up company in the meaning of the Aliens Act. In order to receive the expert committee’s opinion, the alien or the employer has to submit an electronic application. The expert committee’s opinion does not need to be applied for, if the start-up entrepreneur comes to Estonia on the basis of visa to take part in a reliable accelerator programme. There are currently two such programmes:

- Buildit Accelerator OÜ (registry code 12489199) accelerator programme Buildit Accelerator;

- Wise Guys Hoding OÜ (registry code 14081077) accelerator programme Startup Wise Guys.

The expert committee's statement is also not needed if the company has already been recognised as a start-up under a directive of the Minister of the Interior.

6. Temporary residence permit for enterprise for large investors

In order to create a better environment for foreign investors and to attract foreign investments, the amendments allow the issue of temporary residence permits to **large investors**. A large investor is understood to mean an alien who has made **a direct investment of at least one million euros** in an Estonian company which invests resources mainly in the Estonian economy, or an investment in an investment fund the investment policy of which is to primarily invest the fund's resources in companies entered in the Estonian Commercial Register. **For a large investor to be granted a residence permit, his or her actual place of residence does not have to be in Estonia and he or she does not have to register his or her place of residence in the Estonian Population Register.**

The movement of the family members of large investors to Estonia together with the large investors is also facilitated. The spouse and close family members of a large investor are also not required to have their actual place of residence in Estonia or to register their place of residence in the Estonian Population Register.

7. Changes related to student mobility

The amendment concerning student mobility will enter into force on 1 April 2017.

7.1 Incentives established for doctoral students

In order to facilitate student mobility, the amendments establish a specification for aliens who have received a temporary residence permit for doctoral studies. Pursuant to the Aliens Act, a temporary residence permit for study may be annulled if an alien has failed to complete the study programme to the extent required for holding a residence permit for study, has terminated his or her studies or has failed to perform to a significant extent another obligation arising from the Aliens Act or any other legislation. However, applying that requirement to persons engaged in doctoral studies is not reasonable and therefore a specification was established for foreign doctoral students to the effect that a **residence permit for study shall not be annulled if their participation in studies under a partial workload is justified.**

In addition, **aliens who have obtained a doctoral degree can apply for a temporary residence permit on simpler term and conditions.** The general requirement that in order to apply for a temporary residence permit for settling in Estonia an alien has to have resided in Estonia for at least three years in the preceding five consecutive years does not apply to aliens who have a doctoral degree. In order for a temporary residence permit to be applied for, the conformity of the document certifying the alien's higher education with a doctoral degree must be assessed by an institution competent to assess the foreign and cross-border qualifications and study periods that allow access to higher education in accordance with the conditions and procedure for the assessment and academic recognition of documents attesting

education completed in a foreign state, as well as the conditions and procedure for the use of a title of qualification acquired in the educational system of a foreign state as established by a Government of the Republic Regulation on the basis of Subsection 28¹ (2) of the Republic of Estonia Education Act.

7.2 Incentives established for vocational students

The amendments extended the incentives established for applied higher education students also to aliens engaged in **fourth and fifth level vocational studies**.

Pursuant to the amendments, a fourth or fifth level foreign vocational student's spouse, minor child, or adult child who is not able to cope independently due to health condition or disability, can be issued a visa on the same terms and conditions as the aforementioned alien. There is also a **specification** for vocational students **with regard to the salary requirement** in the case of a residence permit for employment. In addition to those aliens who have obtained higher education in Estonia in applied higher education or bachelor's studies, studies based on an integrated bachelor's or master's study programme, master's studies or doctoral studies, the amendments stipulate that the salary criterion established in the Aliens Act will also not be applied to aliens who have obtained a vocational education in Estonia in fourth or fifth level vocational studies. **They are also exempt from the requirement for the permit of the Unemployment Insurance Fund.**

In addition, the amendments establish **provisions to facilitate family mobility also to the family members of aliens engaged in vocational studies**. Just like in the case of higher education students, the requirement for a place of residence and the existence of an actual dwelling is not applied, if the spouse for settling with whom the residence permit is being applied for has obtained a residence permit for study in fourth or fifth level vocational studies within the framework of an international cooperation programme or treaty or an international cooperation agreement of an educational institution, or if the alien has been assigned a scholarship which is financed by the Estonian state or internationally recognised.

7.3 Other changes related to student mobility

The amendments specified that a temporary residence permit for study is issued for the completion of a study programme of an educational institution **on a full-time basis in the meaning of the Universities Act**.

The amendments also stipulate **an additional basis for refusal to issue a temporary residence permit for study, if there is reason to doubt the reliability** of the educational institution for studying in which the temporary residence permit is being applied for, the institution conducting practical training, the international student organisation which mediates the practical training of the alien in Estonia, or the institution or association for the voluntary service in youth project or programme of which the temporary residence permit is being applied for. If the educational institution, student organisation or institution or association mediating voluntary service has repeatedly allowed a misuse of residence permits and again submits a request for the issue of a residence permit for an alien, refusal to issue a residence permit shall be justified.

The period of validity of temporary residence permits issued for study are also extended. While previously residence permits for study could be issued for up to one year, the amendments stipulate that as of 1 April 2017 a temporary residence permit for study may be issued for a validity term of up to the end of the nominal study period under the study programme, but not for longer than the expected duration of the studies. A temporary residence permit issued for study may be extended until the end of the nominal study period under the study programme or, if the nominal study period has expired, until the end of the expected duration of studies.

8. Changes related to family mobility

The amendments **abolished the requirement pursuant to which an alien's spouse for settling with whom the temporary residence permit is being applied for must have previously resided in Estonia for at least two years under a residence permit.** When an alien is applying for settlement with a spouse residing in Estonia, the spouse is still required to have a registered place of residence and an actual dwelling in Estonia.

Just like in the previously applicable procedure, the requirement for a registered place of residence and an actual dwelling does not apply, if the spouse for settling with whom the residence permit is being applied for has obtained a residence permit for enterprise, or a residence permit for employment in the cases listed in Subsection 140 (2) of the Aliens Act. In addition to the previously applicable specifications, the requirement for an actual dwelling does also not apply if the residence permit for employment is issued for employment in a start-up company.

Further information:

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Ministry of Foreign Affairs homepage <http://www.vm.ee/et/pikaajalise-d-viisa-taotlemine>

Startup Estonia homepage <http://www.startupestonia.ee/visa>