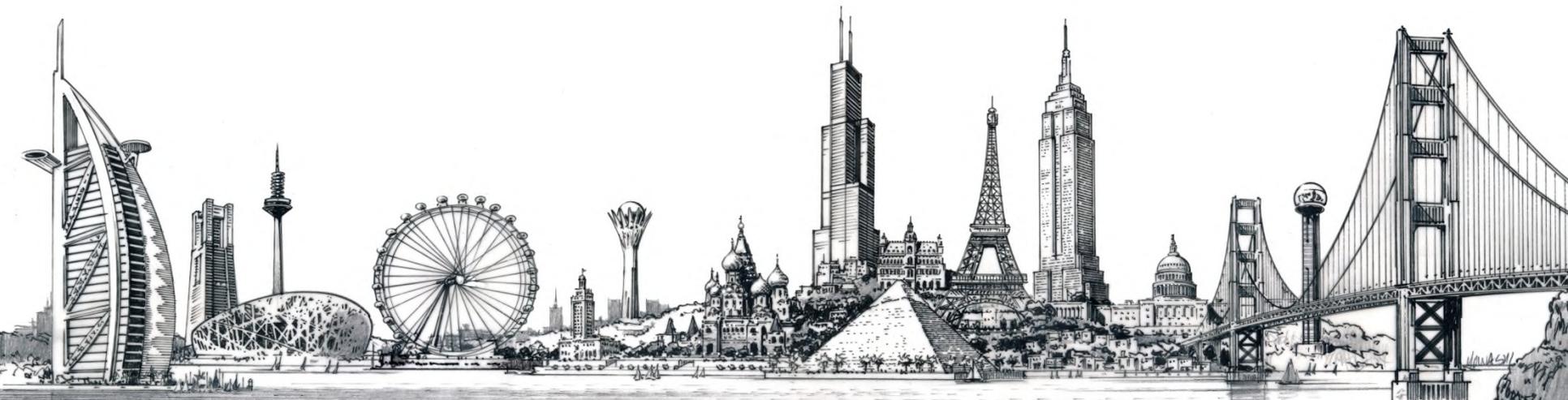


**Morgan Lewis**

# **IMMIGRATION UPDATE: CONSIDERATIONS FOR EMPLOYERS**

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Tuesday 19<sup>th</sup> April 2016



# Overview

- Tier 2 – raising the bar
  - Salary thresholds
  - Intra-Company Transfers
  - Immigration Skills Charge
  - Immigration Health Surcharge
  - Allocation requests
  - Application fees
- Indefinite Leave to Remain
- Evidencing your right to work and rent
- Brexit
  - Contingency planning
  - EU nationals – permanent residence
  - Dual nationality

# Tier 2 – Raising the Bar

- The Migration Advisory Committee (MAC) recently completed a review of Tier 2
- UK Government has announced significant reforms to Tier 2
- UK Government has implemented the majority, but not all, of the MAC's recommendations
- Will not affect the overall structure of Tier 2
- Significantly more costly
- Implemented in two stages
- Review HR, recruitment and global mobility policies, processes and procedures to see whether any amendments need to be made in advance of these changes being implemented.

# Tier 2 – Salary Thresholds

- Increase in Tier 2 (General) minimum salary threshold
- First to £25,000 in autumn 2016 and then to £30,000 in April 2017 for experienced workers
- Certain professions exempt from new threshold until 2019
- Has potential to distort the local labour market
- More difficult for new entrants to be able to continue in their roles on a long term basis since they are required to meet this threshold once they have been sponsored for three years.

# Tier 2 – Intra-Company Transfer (“ICT”)

- Single minimum salary threshold for all Tier 2 (ICT) routes
- In autumn 2016:
  - the Tier 2 (ICT) Short Term route will increase to £30,000;
  - the Tier 2 (ICT) Skills Transfer category will be abolished; and
  - the Tier 2 (ICT) Graduate Trainee route will reduce to £23,000 and the number of places will increase to 20.
- In April 2017:
  - the Tier 2 (ICT) Short Term category will be abolished;
  - all Tier 2 (ICT) migrants will have to be paid a minimum annual salary of £41,500; and
  - 12 months experience requirement will be removed where the salary is £73,900.
- Huge impact on companies that currently transfer large numbers of individuals to the UK for short periods under the Tier 2 (ICT) Short Term route.

# Immigration Health Surcharge

- Recently introduced for Australian and New Zealand nationals
- From autumn 2016 Tier 2 (ICT) migrants will be required to pay
- £200 per applicant, per year
- Personal to individual and is not refundable

# Immigration Skills Charge

- Introduction of the Immigration Skills Charge
- £1,000 (£364 for small and charitable sponsors) per person per year from April 2017
- PhD roles, Tier 2 (ICT) Graduate Trainees and Tier 4 to Tier 2 switchers will be exempt
- Likely to have the largest impact on employers
- In addition to the Apprenticeship Levy which is also due to be introduced in April 2017

# Allocation Requests

- New allocation year 6 April 2016
- Automatic/ submitting a request
- Push back on annual allocations
- Details of specific individuals required
- Additional allocation details required:
  - Individual's name
  - DOB
  - Nationality/ passport number
  - How they have been identified
- Delayed processing times
- Uncertainty

# Increased application fees

<b><u>OUTSIDE THE UK</u></b>		
<b>Application Type</b>	<b>Previous fee</b>	<b>Lead applicant</b>
Tier 2 ICT Short Term Staff	£445	£454
Tier 2 General/ICT – up to 3 years	£564	£574
Tier 2 General/ ICT – up to 5 years	£1128	£1151
Priority processing	£120	£150
<b><u>INSIDE THE UK</u></b>		
Tier 2 ICT Long Term Staff	£445	£454
Tier 2 General/ ICT – up to 3 years	£651	£664
Tier 2 General/ ICT – up to 5 years	£1302	£1328
ILR	£1500	£1875
Premium Service	£400	£500

# Indefinite Leave to Remain (“ILR”)

- Eligible to apply for ILR once they have completed 5 years continuous residence in the UK
- Can spend up to 180 days out of the UK each calendar year – this limit cannot be exceeded
- From 6 April 2016 Tier 2 (General) Migrants applying for ILR must earn at least £35,000
- Shortage occupation and PhD exempt
- Minimum salary threshold to increase each year through 2020 to £36,200
- Tier 2 Intra-Company Transferees who were granted entry clearance on or after 6 April 2010 cannot apply for ILR and cannot apply to work for another Tier 2 sponsor once they are in the UK

# Biometric Residence Permits

- Individuals entering the UK for more than 6 months issued with Biometric Residence Permit (“BRP”) following their arrival in the UK
- 30 day travel visa and approval letter allows them to travel to the UK
- Letter of approval will designate Morgan Lewis or a Post Office branch as collection point
- Must collect BRP within 10 days of arrival into the UK
- BRP evidences an individual's right to work in the UK and employers will be required to request and copy their BRP
- Employers must check an individual's right to work in the UK **before** they start work and where the document contains an expiry date, again before their permission expires
- Individuals arriving from overseas are strongly encouraged to collect their BRP before they start work

# Expired Passports

- You can no longer accept a valid UK visa and expired passport together with a current passport to evidence someone's right to work in the UK
- Where you do not ask for the visa to be transferred into the new passport or for the migrant to apply for a biometric residence permit, you do not have a statutory excuse if the documents turn out to be fraudulent
- Individual should make a transfer of conditions application to have the visa transferred onto a BRP

# Employer Checking Service

- When an individual cannot supply the mandatory documents to prove a right to work because the individual has an outstanding application or appeal with the Home Office the employer checking service must be used to obtain a positive verification notice
- Employee checking service must now be used within 28 days
- Previously sufficient to have documentation held on file to show that you genuinely believed the individual had filed an application in time
- If employer receives a negative verification employer is required to dismiss the individual as that person does not have a pending application

# Right to Rent Checks

- Introduced nationwide on 1 February 2016
- Landlords must request documents that confirm prospective tenants' right to reside in the UK
- Individuals who provide a BRP as evidence of their right to rent in the UK will need to present the permit to their landlord before they can occupy a property

# Brexit - Overview

- 23 June 2016
- Largely lacks definition
- “Leave” vote could have significant impact on employee mobility
- Overnight change unlikely
- Could limit immigration inside and outside EEA and support pledge to reduce net migration
- Unlikely to be complete end to free movement
- Impact on EU nationals living in the UK unclear
- May allow EU citizens a specified period of time to remain after which visa or residency required

# Brexit – Contingency Planning

- Audit workforce to help plan for restrictions that could result from Brexit
- Identify UK nationals working elsewhere in the EU
- Identify EU nationals working for you in the UK
- Check duration of stay aboard or in the UK
- Check the date they can apply for permanent residence
- Encourage employees who are eligible to apply
- Applying for citizenship may also be an option

# EU Nationals - Permanent Residence

- Exercising treaty rights for at least five years
- Automatically conferred after this time
- Must hold permanent residence for a further 12 months and permanent residence document before applying for British citizenship
- Cement status ahead of vote
- Open dialogue with EU workers now
- Seek legal advice based on specific circumstances

# Biography



## **Tracy Evlogidis**

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Tracy Evlogidis is a partner and Head of the immigration practice in London. With more than 18 years of experience practicing immigration and nationality law, Tracy helps corporate and individual clients navigate the complexities of the UK immigration system. Multinational companies in the financial services, technology, retail, education, media, and legal services sectors are among Tracy's clients. She counsels companies on employee relocation programs and international assignments, guides them through the process of obtaining visas, permanent residency, and/or British citizenship, and helps develop internal immigration policies and practices.

# Biography



## **Nick Hobson**

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Nick Hobson counsels employers and private clients on UK immigration law. Nick advises clients on UK immigration strategy and compliance, including how to prevent illegal working, sponsorship license applications, and the full range of UK immigration permissions. Representing lead applicants and their dependents, he also helps them prepare applications for entry clearance, further leave to remain, settlement, and nationality.

# Biography



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Jenni Connolly advises businesses on the full range of UK immigration permissions. This includes prevention of illegal working, Tier 2 of the points-based system, sponsor license applications, business visitors, and other UK employment-related immigration categories. Jenni is a member of the Economic Migration Subcommittee of the Immigration Law Practitioners Association. She trained at an international City law firm in London.

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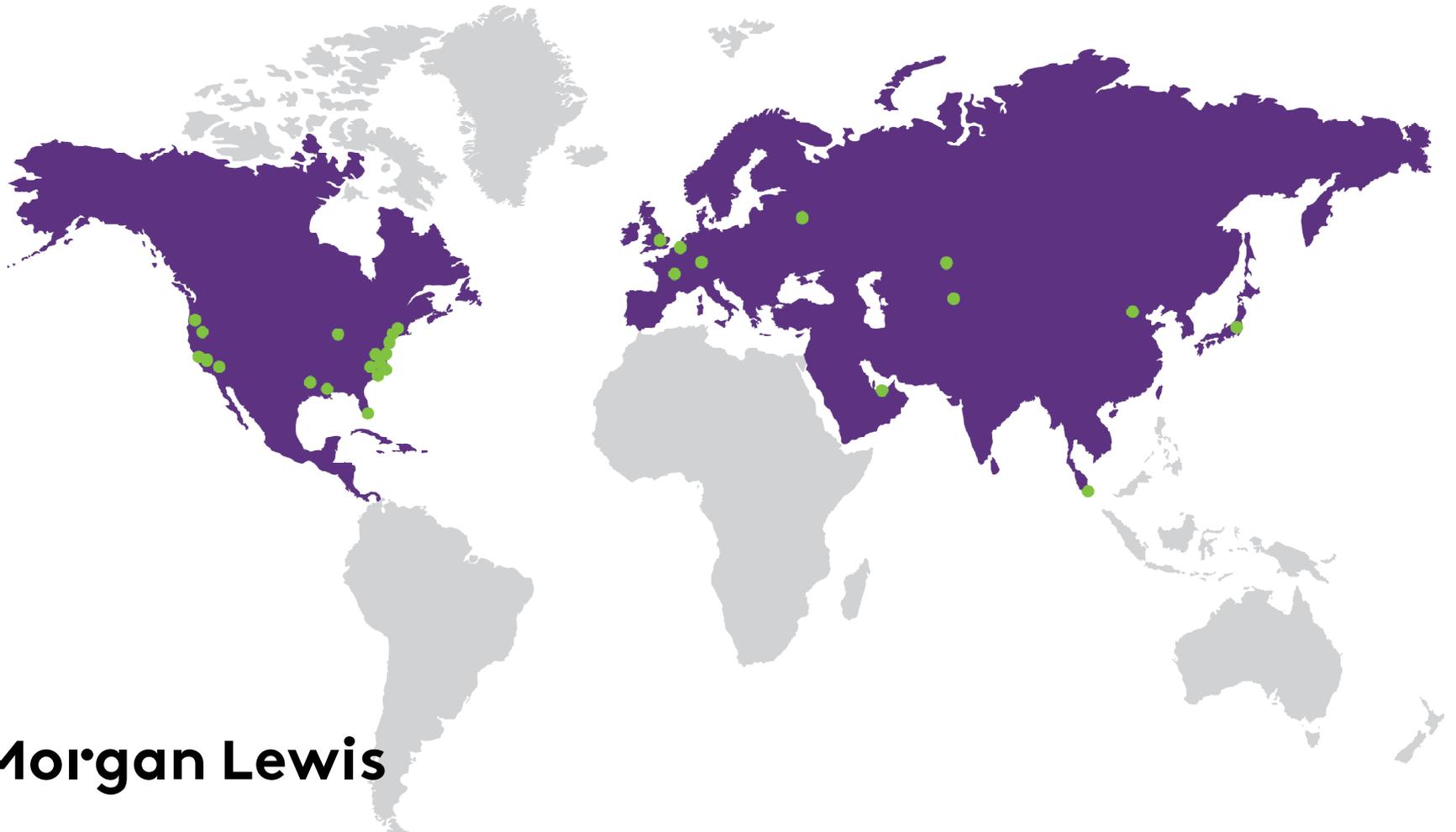
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