

THE

CORPORATE
IMMIGRATION
REVIEW

SEVENTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

THE CORPORATE IMMIGRATION REVIEW

The Corporate Immigration Review

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Corporate Immigration Review, - Edition 7
(published in June 2017 – editor Chris Magrath)

For further information please email

Nick.Barette@thelawreviews.co.uk

THE CORPORATE
IMMIGRATION
REVIEW

SEVENTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

PUBLISHER
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGERS
Thomas Lee, Joel Woods

ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall, Sophie Emberson, Laura Lynas

MARKETING AND READERSHIP COORDINATOR
Rebecca Mogridge

RESEARCHER
Arthur Hunter

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anna Andreoli

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2017 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of May 2017, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-910813-61-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW
THE LIFE SCIENCES LAW REVIEW
THE INSURANCE AND REINSURANCE LAW REVIEW
THE GOVERNMENT PROCUREMENT REVIEW
THE DOMINANCE AND MONOPOLIES REVIEW
THE AVIATION LAW REVIEW
THE FOREIGN INVESTMENT REGULATION REVIEW
THE ASSET TRACING AND RECOVERY REVIEW
THE INSOLVENCY REVIEW
THE OIL AND GAS LAW REVIEW
THE FRANCHISE LAW REVIEW
THE PRODUCT REGULATION AND LIABILITY REVIEW
THE SHIPPING LAW REVIEW
THE ACQUISITION AND LEVERAGED FINANCE REVIEW
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW
THE TRANSPORT FINANCE LAW REVIEW
THE SECURITIES LITIGATION REVIEW
THE LENDING AND SECURED FINANCE REVIEW
THE INTERNATIONAL TRADE LAW REVIEW
THE SPORTS LAW REVIEW
THE INVESTMENT TREATY ARBITRATION REVIEW
THE GAMBLING LAW REVIEW
THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW
THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW
THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW
THE ISLAMIC FINANCE AND MARKETS LAW REVIEW
THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW
THE CONSUMER FINANCE LAW REVIEW
THE INITIAL PUBLIC OFFERINGS REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOCAAT LAW PRACTICE

ARIAS, FÁBREGA & FÁBREGA

BAYAT LEGAL SERVICES

CHOW KING & ASSOCIATES

ELVINGER HOSS PRUSSEN

ENRIQUE ARELLANO RINCÓN ABOGADOS SC

FASTMIGRATION

FISCHER & SCHICKENDANTZ

GIBNEY, ANTHONY & FLAHERTY LLP

GLOBETROTTERS LEGAL

HARVEY LAW GROUP (HLG)

IBN IMMIGRATION & BUSINESS SOLUTIONS

IMMIGRATION SOLUTIONS LAWYERS

KAN-TOR & ACCO

KHATTARWONG LLP

KING & WOOD MALLESONS

KROES ADVOCATEN IMMIGRATION LAWYERS

LENZ & STAEHELIN

McNAMARA & CO, ATTORNEYS AT LAW

MAGRATH LLP

MALHOTRA & MALHOTRA ASSOCIATES

MICHELS.PMKS RECHTSANWÄLTE PARTNERSCHAFT MBB

MIFSUD & MIFSUD ADVOCATES

MITCHAM & BENJAMIN

NAKAI IMMIGRATION SERVICES LPC

PWC TURKEY

ROBERTS & CO, ATTORNEYS AT LAW

RODRIGO, ELÍAS & MEDRANO ABOGADOS

VEIRANO ADVOGADOS

VWEW ADVOCATEN VOF

CONTENTS

PREFACE.....	vii
<i>Ben Sheldrick</i>	
Chapter 1	ANTIGUA AND BARBUDA..... 1
<i>Sir Clare K Roberts QC and Sam M Bayat</i>	
Chapter 2	AUSTRALIA..... 5
<i>Anne O'Donoghue, Tamanna Hashemee, Kelli Schatkowski and Anwen Price</i>	
Chapter 3	BELGIUM 27
<i>Henry Hachez</i>	
Chapter 4	BRAZIL..... 41
<i>Maria Luisa Soter and Gabriela Lessa</i>	
Chapter 5	CHINA..... 51
<i>Jiang Junlu and Pei Xiu</i>	
Chapter 6	DOMINICA..... 63
<i>Colleen Felix-Grant and Sam M Bayat</i>	
Chapter 7	GERMANY..... 67
<i>Gunther Mävers</i>	
Chapter 8	GHANA 87
<i>Paa Kwesi Hagan</i>	
Chapter 9	GRENADA..... 97
<i>Sam M Bayat and Margaret Wilkinson</i>	
Chapter 10	HONG KONG 109
<i>Eugene Chow</i>	

Contents

Chapter 11	INDIA	122
	<i>Ranjit Malhotra and Anil Malhotra</i>	
Chapter 12	ISRAEL.....	139
	<i>Tsvi Kan-Tor, Amit Acco and Yoav Noy</i>	
Chapter 13	JAPAN	148
	<i>Masahito Nakai</i>	
Chapter 14	KENYA.....	158
	<i>Franz Josef Leipfinger and Andreas Krensel</i>	
Chapter 15	LITHUANIA.....	169
	<i>Linas Kliukas</i>	
Chapter 16	LUXEMBOURG.....	181
	<i>Pierre Elvinger and Philippe Hoffmann</i>	
Chapter 17	MALTA.....	197
	<i>Malcolm Mifsud</i>	
Chapter 18	MEXICO	207
	<i>Enrique Arellano Rincón</i>	
Chapter 19	MYANMAR.....	219
	<i>Jean-François Harvey and Bastien Trelcat</i>	
Chapter 20	NETHERLANDS	228
	<i>Jelle A Kroes</i>	
Chapter 21	NIGERIA.....	238
	<i>Adekemi Sijuwade</i>	
Chapter 22	PANAMA.....	253
	<i>Vivian Holness and Mónica Mendoza</i>	
Chapter 23	PERU.....	260
	<i>Iván Blume Moore</i>	
Chapter 24	SINGAPORE.....	270
	<i>Leon Kwong Wing</i>	

Contents

Chapter 25	SOUTH AFRICA	282
	<i>Andreas Krensel</i>	
Chapter 26	ST KITTS AND NEVIS	292
	<i>Constance V Mitcham and Sam M Bayat</i>	
Chapter 27	ST LUCIA.....	297
	<i>Jonathan McNamara and Sam M Bayat</i>	
Chapter 28	SWITZERLAND	300
	<i>Rayan Houdrouge</i>	
Chapter 29	THAILAND	309
	<i>Jean-François Harvey and Bastien Trelcat</i>	
Chapter 30	TURKEY.....	317
	<i>Ekin Altıntaş and Cumbur Dülger</i>	
Chapter 31	UNITED KINGDOM	326
	<i>Chris Magrath and Ben Sheldrick</i>	
Chapter 32	UNITED STATES	354
	<i>Stephen J O Maltby and Ellen L Poreda</i>	
Chapter 33	URUGUAY	369
	<i>Federico Formento</i>	
Chapter 34	VIETNAM.....	380
	<i>Jean-François Harvey and Bastien Trelcat</i>	
Appendix 1	ABOUT THE AUTHORS.....	391
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	409

PREFACE

Who would have thought it? Twelve months ago we considered a most unlikely scenario whereby the UK votes to leave the European Union and Donald Trump is elected President of the United States. This presented fascinating material for journalists to debate and for lawyers to analyse as a theoretical outcome – but hardly likely to trouble the status quo in reality. This ‘double whammy’ started the year as a fanciful possibility and yet became, over time, a harsh reality. 2016 was certainly eventful. Momentous may be a better word.

For UK immigration practitioners, the Brexit vote has been both a gift and a curse. Endless hours have been spent discussing the Article 50 process, the content of the negotiations that follow and the potential outcome for Britain’s new place in the world. Will we opt for a Norway-type solution – ‘EU light’ with access to the single market and the retention of free movement? Or is a hard Brexit the only way of bringing back control and assuaging popular concerns around excessive immigration? The Prime Minister has made it clear, both in her Lancaster House speech and subsequent Brexit White Paper that cake cannot be both had and eaten – immigration control in respect of EU migrants has been mandated by the people and we will not therefore seek to remain in the single market. Forty years of hard work by successive British Prime Ministers, both Labour and Conservative, has been dismissed in a single letter to the President of the European Council.

If change and uncertainty is good for lawyers, then Brexit is all of our Christmases at once. We have written copious articles, addressed endless conferences, published briefings, updates, articles and alerts, advised our clients on their Brexit action plans and tried to mollify disgruntled EU workers with talk of residence documentation, retained rights and certification of permanent residence. And yet one truth remains: nothing has in fact changed (yet) and nobody knows what the final outcomes will be in terms of immigration control, least of all the government.

Theresa May has been clear that the rights of EU migrants to remain in the UK, and British migrants on the continent, must be a priority in the discussions. She had hoped to deal with this issue even before Article 50 was invoked but was rebuked by her EU counterparts. Now that the Article 50 process has started, the issue will be at the top of her agenda. For EU leaders, however, the primary topic will be financial – how much does the UK have to pay for this divorce? A figure of about £50 billion has been posited as the starting point.

There is no doubt that a sensible, calm, ordered solution will have to be found to the position of those EU migrants who may not have been exercising treaty rights for a full five years once the UK eventually leaves (we can call it B-day). To require large numbers of EU migrants, quietly exercising their rights to work, study or be self-sufficient, to suddenly leave the UK would be both politically toxic and administratively impossible. Furthermore, EU migrants are a fundamental part of the UK’s working economy across a wide range of sectors

and regions – the hospitality and catering sector in London is just one example of supreme reliance on young EU workers.

It is likely that an agreement will be reached enabling EU workers to settle in the UK on condition that they were in the country exercising a treaty right prior to the Brexit date. Indeed it is entirely possible that a further transitional period will apply enabling some form of EU free movement even beyond the date of departure. Businesses across the country rely on EU migrant workers in a range of sectors and a hard landing with an immediate cut off of workers from Europe may not be a workable outcome.

Over the course of the next two years the government must design and implement a completely new immigration regime. This will include new schemes not just for EU workers, the self-sufficient, self-employed and students but is likely to include a substantial review of the existing routes of entry for non-EU (third-country) nationals. Mrs May is already on record as saying that a points-based system, such as the Australian model, will not suffice. This position appears strange given that she has advocated such a system as Home Secretary and Prime Minister since 2010. So what can we expect?

The government is presented with a major challenge: how to reduce net migration to meet the target they have missed by far, while at the same time providing UK businesses with the high and low-skilled workers that are required to fuel the economy? Immigration control necessitates the adjudication of all individual applicants for entry to the country against a set of clear criteria. The design of a new system is a huge undertaking. By the time this new edition of *The Corporate Immigration Review* is published, the government will have launched a consultation, perhaps through the Migration Advisory Committee, on the scope and parameters of new schemes. Initial discussions have focused on the possibility of regional and sectoral schemes. London, for example, will have very different requirements to the south west of England. Hospitality and care sectors have specific requirements. Seasonal programmes, for example in agriculture, may apply. A work permit scheme is likely to follow. Given the enormity of the task of administering a new scheme will the Home Office have the resources, following a period of austerity and public sector cuts, to roll out the new arrangements in 2019?

In the UK one thing is certain: lawyers will have much to discuss and speculate about over the months and years to come.

President Donald Trump. Where do we start? It is often said of politicians that they campaign in poetry and govern in prose. President Trump's campaign rhetoric was anything but poetic. However, his somewhat inarticulate and blunt style certainly struck a chord with voters. Like the UK Brexit vote, a link between immigration and national decline, whether on economic or security grounds, was identified and hammered home. It was suggested that the incumbent administration had lost control of the borders and that a hard nationalist, protectionist approach was the only solution to the country's ills. A suggested link between weak border security, particularly in respect of majority-Muslim countries, and terrorism was the major focus. The fact that scores of innocent Americans had been killed over the preceding eight years as a consequence of the lack of domestic gun control was not mentioned. A wall was to be built on the southern border with Mexico in order to combat illegal entry.

In government, President Trump has found that there is a limit to presidential power and authority. On two occasions his executive orders regarding the ability of individuals from specific Muslim countries to enter the US have been successfully challenged in the courts. At the time of writing, there have been no significant changes to the US immigration framework, although the new President clearly has change in his sights. He will have learned in a sharp

way, however, particularly through his failure to revoke and replace Obamacare, that change often requires compromise and consent. Even with a Republican-controlled Congress he will need to develop pacts and alliances, carefully spending his political capital, if he is to secure fundamental change. Work on the southern border wall is still due to commence.

The outcome of the French presidential election has also created new hurdles for the UK and its Brexit negotiations. President Macron is a committed Europhile and judging by the comments he has already made, he is unsympathetic to Brexit and equally unsympathetic to the UK's apparent negotiating position. Once the issue of British citizens living in EEA countries and EEA nationals living in the UK has been resolved, a 'hard' Brexit deal is more likely than not.

Immigration policy has created major political hurdles for Angela Merkel in Germany. Until recently, Mrs Merkel was considered the unassailable *de facto* president of Europe pushing at the open door of a fourth term as Chancellor. However, her decision to admit one million Syrian refugees into the country and the subsequent difficulties for social cohesion has made her politically vulnerable for the first time. Her language has shifted in respect of immigration and border control and at the time of writing we are several months ahead of the election – the result will be one to watch.

Of course, for immigration practitioners, wherever in the world we practise, much of our focus day to day is on more prosaic matters than sweeping political change. We navigate constantly changing regulations and procedures, we deal with central authorities and anxious clients and we try to innovate and develop new lines of business. Immigration lawyers also collaborate with each other, share information and cross refer clients, perhaps more than in many other legal disciplines. The purpose of *The Corporate Immigration Review* is to share information across borders, identify global trends and provide practical insights into the immigration regimes of many significant jurisdictions. We hope that it is a valuable resource material for practitioners around the globe. We are very grateful again this year to all of our esteemed writers for their hard work and contributions.

Ben Sheldrick

Magrath LLP

London

April 2017

MYANMAR

*Jean-François Harvey and Bastien Trelcat*¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

In the past decades, the Republic of the Union of Myanmar (formerly known as the Union of Burma) has been marked by political turmoil. As a result, the Myanmar economy remained closed until 1988, and has slowly started to open up to foreign direct investment (FDI) in the past 20 years.

Countries such as China, Korea and Thailand have played a significant role in this process, developing several sectors such as oil and gas, power, mining, and manufacturing.

As of now, Myanmar is a relatively untapped market of 52.8 million people (with 33.4 million people constituting the workforce), and the generally positive outlook on the economy is attracting more and more foreign investors. Economic isolation and political instability have been receding over the past 20 years and the country is now embracing a path towards more transparency and more stability. The National Election held on 8 November 2015, along with the announcement of the easing of American economic sanctions on 7 October 2016 are seen as key milestones towards security and stability.

The introduction of the Yangon Stock Exchange (YSX), which formally opened in mid-December 2015, with actual market trading having started on May 2016 is also a significant step showing that the country is opening up. As such Myanmar is well positioned to become an attractive investment destination in the coming years. However, while Myanmar has seen an inflow of US\$9.4 billion in foreign investments in the past two years, the country still faces challenges in terms of development.

i Legislation and policy

The government of Myanmar adopted its first law on immigration, the Foreigners Act, on 12 February 1864. Since then, some 15 acts, excluding amendments, have entered into force over the years, which shows the government's intent to adapt its legal framework to attract foreign investment. In addition to the Constitution of the Republic of the Union of Myanmar, adopted on 29 May 2008, which prescribes the legal and regulatory scheme for entering Myanmar's territory and the right to reside, the principal laws on Immigration that should be considered are the Myanmar Immigration Act of 13 June 1947 (Emergency Provisions) and its Amendment Act.

This legislation is supported by additional statutes, enacted by the government of Myanmar, which includes the Burma Citizenship Law published on 15 October 1982 and the Permanent Residence of a Foreigner Rules, which came into force on 18 November 2014.

¹ Jean-François Harvey and Bastien Trelcat are partners at Harvey Law Group (HLG).

Moreover, the Foreign Investment Law (FIL) and the Citizens Investment Law (CIL), respectively enacted on 2 November 2012 and 29 July 2013, played a key role in dictating the processes to be used for corporate immigration. These two laws have been combined and are being replaced by the Myanmar Investment Law, which was released on 18 October 2016 and will take effect on 1 April 2017.

ii The immigration authorities

The current legal framework is empowered through several authorities working in tandem in order to make determinations on applications of entry and visas, extensions of stay, and leave to remain. The Ministry of Immigration and Population (MOIP), established on 15 June 1995, through its Immigration and National Registration Department, administers the immigration system, along with the support of the Ministry of Foreign Affairs.

Depending on the grounds for the business-related endeavour, additional permits may be required from other entities to facilitate entry, including the Myanmar Investment Commission (MIC), the Directorate of Investment and Company Administration (DICA), and the Ministry of Labour, Employment and Social Security.

iii Exemptions and favoured industries

No specific industries have been earmarked by the government of Myanmar to promote the use of foreign nationals working in Myanmar. To the contrary, several industries are actually restricted from foreign ownership, and as such the State-Owned Economic Enterprises Law (SOEEL) restricts ownership of industries to Myanmar nationals in the following sectors:

- a* exploration, extraction, production and sale of petroleum and natural gas;
- b* postal and telecommunications services;
- c* banking and insurance services;
- d* broadcasting and television services; and
- e* electricity generation services.

While these sectors are restricted to ownership by Myanmar nationals, the country suffers from a lack of skilled local personnel. Consequently, many of the senior level management and key positions in local companies are filled with foreign workers.

II INTERNATIONAL TREATY OBLIGATIONS

International treaties play a significant role in the country's development. Myanmar owes its recent growth mostly to the access to the Association of South-East Asian Nations (ASEAN) and to the conclusion of multiple bilateral investment treaties (BITs) in Asia. Furthermore, Myanmar has been actively negotiating further treaties and trade agreements, and now has agreements with the European Union, the United States and the adjacent areas of the Bay of Bengal.

These treaties and trade agreements provide the basis of a legal framework intended to stimulate the economy and encourage a boost in growth in the short term, and to allow fully fledged economic cooperation thereafter.

i ASEAN

ASEAN was formed by the signing of the ASEAN Declaration on 8 August 1967 in Bangkok by five countries: Indonesia, Malaysia, the Philippines, Singapore and Thailand. With aims

of creating a single market, the Association will celebrate its 50th birthday at the end of this year, and is now, more than ever, seen by stakeholders as the European Union of South East Asia. Various other countries have also joined this single market, such as Brunei, Laos, Cambodia and Vietnam.

Myanmar became a member on 23 July 1997 allowing the country to eventually take advantage of the benefits offered by the ASEAN Economic Community (AEC). Established on 31 December 2015, AEC represents an architecture for integration and economic development. Being the seventh largest economy in the world, the AEC market constitutes the essential vehicle towards the growth of its developing states. The Community is based on the elimination and reduction of tariff barriers, as well as the implementation of a Free Trade Area in which products and services can circulate in addition to the workforce movement's facilitation, thanks to specific recognition and rights to practise among the area for skilled workers.

As a consequence, companies incorporated within ASEAN are able to import or export goods from and among ASEAN states while reducing their costs and increasing their competitiveness.

ii Bilateral investment treaties (BITs)

Myanmar has entered into several BITs stimulating FDI since 1998. As of today, six BITs are in force and have been respectively concluded with China, India, Japan, Laos, Thailand and the Philippines. Four other BITs have since been agreed with Israel, Kuwait, South Korea and Vietnam.

iii US-Myanmar Trade and Investment Framework Agreement

A Trade and Investment Framework Agreement has been signed on 21 May 2013 between Myanmar and the United States of America. The aim of this agreement is to promote an attractive investment climate, and to diversify and expand the trade of products and services between the two nations.

At this stage, both countries are still identifying opportunities and issues in trades in order to reduce impediments to business activities between the countries.

iv EU's Generalised System of Preferences (EUGSP)

The European Union (EU) has set a system allowing developing countries to access the EU market. In essence, the EUGSP entitles companies from selected nations exporting qualifying products to one of the EU Member States to pay less custom duties, and in some cases no custom duties at all.

The European Parliament and EU Council have repealed the restrictions affecting Myanmar imposed in Council Regulation (EC) No. 552/97,² which have been in force for almost 20 years, now enabling Myanmar to be part of this preferential system. The Regulation effecting this change was signed on 12 June 2013.³ As a result, Myanmar is now entitled to take advantage of the incentives offered through access to the European market.

Further to the above treaties and cooperation agreements, Myanmar is taking active measures in implementing and participating in Free Trade Areas (FTAs).

2 Council Regulation (EC) No. 552/97 of 24 March 1997.

3 Regulation (EU) No. 607/2013 of the European Parliament and of the Council of 12 June 2013.

v Bay of Bengal Initiative for Multi-Sector Technical and Economic Cooperation

The Bay of Bengal Initiative for Multi-Sector Technical and Economic Cooperation (BIMSTEC) was established on 6 June 1997 between Bangladesh, Bhutan, India, Nepal, Sri Lanka and Thailand. Myanmar subsequently joined BIMSTEC on 22 December 1997. The whole area represents around 1.5 billion people – around 22 per cent of the world's population – and has a GDP of US\$2.7 trillion.

BIMSTEC is aiming for cooperation in 14 sectors, notably trade and investment, transport and communication, energy, and agriculture. Focusing on trade and investment, in February 2004 all members committed to establishing a free trade area facilitating the circulation of goods and products within the area at lower and reduced tariffs. This area has a huge potential in terms of growth and developments in the coming years. The FTA is expected to be implemented during 2017.

vi Migrants' mobility

More than having an impact on the countries' economies, international treaties are also seen as the necessary steps and tools towards the improvement of individuals' mobility. The basis of a freedom of movement community can already be witnessed among SEA countries. Thanks to ASEAN, various mutual recognition agreements (MRAs) have been concluded that allow some workers to consider working and living among the region's territories.

The path towards a single market where people could freely settle, as in the EU single market, remains the sought-after goal. However, a lot of challenges are still pending. In fact, only a few sectors are covered by MRAs and those agreements have done little to overcome other barriers such as nationality requirements.

Qualifications predominate when it comes to crossing borders for employment matters. This demonstrates that South East Asia is not yet ready for the implementation of an open borders system. While setting up the basis for the movement of workers, SEA countries currently act more as gatekeepers than facilitators, which impedes the integration of states' workforces, and currently, only specific types of jobs are being given more flexibility in terms of mobility.

MRAs apply under particular conditions, requiring applicants to have a minimum number of years of experience and practice. Medical practitioners, engineers and architects are some of the high-skilled jobs illustrating this situation. Dental and medical practitioners are required to be in active practice for no less than five continuous years in the country of origin before being eligible to apply. Engineers have to demonstrate seven years' experience after graduation, of which two years involve significant engineering work. Architects must have been in practice for at least 10 years. While it is crucial to enhance workers' mobility, such criteria show that the ASEAN states are considering a slow and step-by-step process when it comes to the free flow of workers.

Indeed, new possibilities are only given to skilled workers while 87 per cent of ASEAN manpower is made up of unskilled or low-skilled labourers. This trend might change in the coming 10 years notably since more and more students from the ASEAN region are pursuing their education, especially university degrees, in developed countries such as the United States, Canada or European countries.

Bilateral labour agreements (BLAs) and memoranda of understanding (MOUs) will play also a role in this labour market access in the coming years. As of now, labour mobility

remains congested and ASEAN countries still need to find an actual operating model to allow an effective workforce flow. The priority is still given to local resident workers in the first instance, and as such working among the region remains a challenge.

SEA country regulations show significant differences in their policies towards foreign employment. Some states accentuate their mutual cooperation. For instance, the diplomatic relations between Myanmar and Thailand have led to new agreements strengthening the ties of these countries. No fewer than 16 MOUs have been agreed on or before 2 February 2017, including notably a money transfer services agreement (MTSA) for Myanmar migrants working in Thailand.

III THE YEAR IN REVIEW

The year 2016 witnessed several significant changes, especially following the election of President Htin Kyaw on 30 March 2016, which was seen as a milestone towards stability. A major change was the lifting of the US sanctions against Myanmar on 7 October 2016. These economic sanctions have affected Myanmar since May 1997. Since then, the Office of Foreign Assets Control (OFAC) implemented a strict framework with the effect of blocking transactions between Myanmar and the United States notably with regards to property or interests in property of a legal entity or an individual.

With the evolution of the country, the US has slowly lifted the sanctions in effect, ending with the Barack Obama's executive order entitled the Termination of Emergency with respect to the Actions and Policies of the Government of Myanmar. As a result, there has been an increased inflow of American FDI and an easing of money remittance procedures. Furthermore, better access to e-banking services is expected in the coming years.

With regards to foreign workforce and mobility, 2016 has seen changes to employment law to gradually liberalise access to foreign workers. Indeed, the Companies Act (CA) is now under reform and a new Myanmar Investment Law (MIL) is being implemented, and two new laws have been released during the fourth quarter last year, the Foreign Workers Law (FWL) and the Law Concerning Foreigners (LCF).

According to the current provisions of the FWL, foreigners will be entitled to apply for work permits for up to four years. It shall also ease the issuance of the foreigner's registration certificate (FRC). There are 12 categories of multiple-entry visas – including workshop, seminar, meeting and research visas, and business and employment visas – are now available following the notification of the Ministry of Labour, Immigration and Population published on 2 December 2016 giving foreigners the possibility to apply for longer stays in Myanmar for temporary business purposes.

The permanent residency system (PRS) of 2014 will also be affected by new changes. Since its implementation, only 262 applicants have been granted with the right to remain as a permanent resident in Myanmar. Conditions required to be met to obtain permanent residence remain difficult to achieve. Emphasising the need to ease restrictions, the Vice-President of Myanmar, U Henry Van Thio, urged officials in December 2016 to seek ways to provide more flexibility for foreigners to obtain permanent residence.

IV EMPLOYER SPONSORSHIP

i Work permits

The current law in force does not provide a formal work permit system in Myanmar. While there are no restrictions with regards to the number of foreign staff that may be employed by a legal entity set up under the Company's Act, the procedure to be granted with the right to work in Myanmar under the FIL is complex. Companies registered under the FIL wishing to employ foreign staff will have to apply for a work permit on behalf of the employee, and comply with specific ratios applicable to their staff, hence to their business development on a larger scale.

FIL companies are given a six-year period in order to fulfil the government's objectives of employing local workforce.

Such objectives outline that Myanmar citizens must make up 25 per cent of the workforce within the first two years, at least 50 per cent within the third and fourth years, and at least 75 per cent during the fifth and sixth years of operation of the foreign company.

Once granted with a work permit, a foreign worker must also obtain a multiple entry business visa and a stay permit. Without such documents, the work permit holder will not be entitled to stay in Myanmar for more than 70 days and must exit and re-enter the country multiple times. Furthermore, any foreign individual wishing to stay more than 90 days in Myanmar must hold a FRC.

From a practical standpoint, such complexity in the current system leads foreign workers to operate only under a business visa only. The new FWL and the MIL will help to set more comprehensive regulations. As an illustration, the ratios of Myanmar citizens to be hired in a company will be repealed and no commitment will be placed on employers.

Finally, with regards to intra-company transfers, given that Myanmar does not have an established work permit system, there is no specific immigration category that exists for intra-company transfers within international groups of companies.

ii Labour market regulation

Main employment regulations

With regards to employment, a company employing new staff, whether foreign or local individuals, will have to enter into an employment agreement within 30 days of the date of employment.

A minimum wage has been established with the implementation of the Minimum Wages Law (MWL) in 2013. Since 28 August 2015, the minimum wage for local workers is set at 3,600 kyats per day calculated at an hourly rate of 450 kyats.

Staff turnover remains high in Myanmar, particularly for unskilled positions and office employees, and it is difficult to recruit staff with good English language skills.

Employers are able to terminate an employee who does not comply with their obligations after having formally provided three warnings to such employee.

Severance payments upon termination shall not be due where an employee failed to comply with his or her duties. In other cases, up to five months' salary shall be due depending on the contract's duration.

Myanmar special economic zones

Following the Myanmar Special Economic Zone Law enforced on 23 January 2014, special economic zones (SEZs) for trading activities by foreign investors have been set in Myanmar. Such areas are designed to create a favourable investment environment due to significant benefits granted to investors.

The Thilawa SEZ, located 16 miles from South Yangon, allows foreign investors to be granted several incentives. Investing in Thilawa will allow foreign investors to import without custom duties to Myanmar and sell products to its domestic markets. Tax reduction and exemptions also apply. No tax shall be due by qualifying investors for five to seven years, and a 50 per cent tax exemption may also apply for another five years after such period.

Several companies from China, Europe, Japan and Singapore have already invested in this SEZ.

iii Rights and duties of sponsored employees

Sponsored employees have the same rights and obligations as any other foreign worker in Myanmar.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

Myanmar has not set any classic immigration-by-investment routes for investors and entrepreneurs yet and the government is not ready to consider implementing such schemes in the coming years.

Investors and entrepreneurs have to deal with the general foreign worker framework offered to foreigners wishing to enter Myanmar's market. Skilled workers are particularly needed in Myanmar. Based on the data of the Ministry of Labour, Employment and Social Security, Myanmar's workforce is approximately 33.4 million, however, there are only about 500 skilled workers who meet international standards.

Thanks to ASEAN, skilled migrants can freely operate among the member states. Hence, medical practitioners, engineers, architects from countries that enjoy a higher level of development can operate and set up their activities in Myanmar.

When it comes to investing in the territory, entrepreneurs and investors are required to incorporate a legal entity.

Practically, an investor has two choices: incorporating a company under the Company Act (CA) of 1914 or a legal entity that has received approval from the Myanmar Investment Commission (MIC).

Registering an MIC company will allow the investor to be eligible for investment incentives under the FIL while CA companies are not. Income tax exemptions may be provided for up to five consecutive years, and the right to pay income tax on the income of foreign employees at the rates applicable to Myanmar citizens, as well as exemption or reduction from income tax on the profits of the business, may be granted to investors.

In terms of entitlement of stay, while a multiple-entry business visa with validity from three months to one year from the date of issue may be considered, such visas are generally only awarded after the applicant has received three single-entry business visas. An applicant may only receive a business visa valid for 70 days, single entry, through the e-visa programme.

i Permanent residency

Following Notification No. 1/2014, obtaining permanent residence is currently allowed for two categories of individuals, namely foreigners and ex-Myanmar citizens. A foreigner can apply as an expert, as an individual who desires to invest and operate a business, or as someone who is under the responsibility of a Myanmar citizen.

An applicant granted permanent residency shall have an initial length of stay of five years, which can be renewed at five-year intervals thereafter. Permanent residents will then be entitled to specific rights, including the right to stay and work in other areas, except the restricted or prohibited area officially declared by the state, to apply for Myanmar citizenship and to purchase an apartment.

Individuals desiring to invest and operate a business must comply with the following conditions. Firstly, they must hold a valid visa (e.g., a business visa) and apply for permanent residence after having resided in Myanmar for at least three years. They must not have left Myanmar during that time for over 90 consecutive days within a year. Secondly, they need to be financially able to invest, pay tax and submit official documentation proving such finances according to the laws and regulations in force. Thirdly, applicants can neither be international refugees or someone who has political asylum in another country, nor have a criminal record. Finally, applicants must be in good health and free of contagious diseases.

For those applying for permanent residence as 'experts', proof of experience and qualifications are required in addition to the conditions specified above.

VI OUTLOOK AND CONCLUSIONS

Despite six years of unabated liberalisation, Myanmar is still in the early stages of opening itself up to the world.

There have already been massive strides, such as the liberalisation of the telecommunications industry in 2014, which resulted in an explosion in the mobile phone penetration rate in the country: from less than 10 per cent in 2012 to 54.6 per cent by June 2015. Many foreign investors took this as an example of the untapped potential of the Myanmar market, and the termination of the Department of the Treasury's Office of Foreign Assets Control (OFAC)'s Specially Designated Nationals and Blocked Persons (SDN) List has allowed many previously reticent foreign investors to come into play. As such, we can expect to see continued foreign interest in Myanmar.

Until the national education system can be effectively overhauled, being understood that such process can essentially take a generation to come to fruition, Myanmar still suffers from a dearth of indigenous talent to fulfil the skilled roles that have been created by such investment. For the short and medium term, Myanmar will no doubt have to rely on foreign talent while building up its own pool of skilled workers. The Myanmar government is well aware of this and has embarked on a long and arduous process of rationalising its approach to corporate immigration.

This process is marred by the same challenges that are present in other areas of government reforms. Despite winning a landslide victory at the end of 2015, the NLD government finds its democratic mandate hampered by the 25 per cent of the Hluttaw that is reserved for serving members of the Tatmadaw. This is in addition to the residual presence of Union Solidarity and Development Party ministers in the current Cabinet. Attracting foreign direct investment is high on the government's list of priorities. The issue of corporate

immigration, while no doubt related, might not fare so well in comparison with more pressing matters of education reform, investment in infrastructure, and the resolution of the various ethnic insurgencies currently affecting the country.

Thanks to massive efforts, Myanmar is now at a crossroads and fundamental changes will allow the country to boost both its economy and growth. Major steps were taken in 2016 to set the stage for modernisation and liberalisation. With the reforms of the country's legal framework, 2017 is expected to be the year of concrete and effective implementations.

Myanmar has huge potential in terms of development, providing that the focus is set on the market's key sectors. Strategic investments remain the communications, transportation, urban development and technology sectors.

Myanmar is slowly laying the groundwork to become one of South East Asia's leading economies; as it was in the early 1960s.

ABOUT THE AUTHORS

JEAN-FRANÇOIS HARVEY

Harvey Law Group (HLG)

Jean-François Harvey founded Harvey Law Group (HLG) in Montreal, Quebec in 1992. He completed a bachelor of laws degree from the University of Ottawa and was appointed to the Quebec Bar in 1992, and is a member in good standing of both the Quebec and Canadian Bar Associations.

Jean-François is recognised internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high net worth individuals.

He also brings extensive experience in commercial legal matters, and in particular has advised on many high-value due diligence and merger and acquisition activities for a broad range of international and multinational industries.

BASTIEN TRELCAT

Harvey Law Group (HLG)

Bastien Trelcat obtained his master in business law and corporate taxation from the Law School of Aix-en-Provence University, France in 2002. During his studies, he was ranked among the 10 best business law students by Freshfields Bruckhaus Deringer in 2001 and won the first edition of the Landwell Award (PwC) in 2002. The following year, in 2003, he received his LLM in international business law from the City University of Hong Kong. In 2004, Mr Trelcat became a member of the Paris Bar.

In 2004, Bastien Trelcat relocated to Shanghai where he advised several leading companies throughout China and Europe in their M&A transactions, including structuring and negotiation of joint ventures.

Mr Trelcat is a partner of HLG and acts as the managing partner of HLG Thailand. He also plays an important role in the development of the South East Asia market.

HARVEY LAW GROUP (HLG)

6/F, Hledan Centre
Corner of Pyay Road and Hledan Road
Kamayut Township
Yangon
Myanmar
Tel: +95 9 513 5346

jfharvey@harveylawcorporation.com
btrelcat@harveylawcorporation.com
www.harveylawcorporation.com