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### **The Netherlands – Work Permits No Longer Required for Japanese Nationals**

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## *flash Alert*

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The Netherlands Raad van State (Council of State) has ruled in the “Shofukan case”<sup>1</sup> making reference to the long standing trade treaty from 1913 between Japan and the Netherlands.<sup>2</sup> The ruling, made on December 24, 2014, has led to a striking change in the immigration position of Japanese nationals in the Netherlands.

### **Why This Matters**

The key effect of this ruling is that, according to the Council of State, no penalty can be imposed if a Japanese citizen works in the Netherlands without his/her employer having secured a work permit for him/her. Subsequent to the ruling, the Dutch Ministry of Social Affairs and Employment has confirmed this in writing, and hence, Japanese nationals are exempted from the work permit requirement, regardless of the nature of the work activities. For a long stay in the Netherlands (more than 90 days) Japanese nationals will continue to require a residence permit and must also still register in the population register after arrival.

The ruling results in a considerable improvement in the position of Japanese nationals in the Dutch labor market and is expected to lend support to the movement of Japanese workers to the Netherlands.

### **Background**

In 2012, the Inspectorate SZW of the Ministry of Social Affairs and Employment<sup>3</sup> (“Labor Inspectorate”) imposed severe penalties on the Dutch-based Japanese cultural center Shofukan, because a number of Japanese traditional carpenters were employed there for reconstruction projects without work permits. In its defense, Shofukan referred to the aforementioned trade treaty, which includes a “most-favored nation” clause. This clause implies that if the Netherlands concludes a treaty with another nation that contains more favorable provisions, these provisions will also apply to Japanese nationals. As it stands, the Netherlands and Switzerland have such a treaty (Swiss Tract 1878), which entitles Swiss citizens to live and work in the Netherlands with virtually no restrictions.

The remarkable conclusion that follows from this is that Japanese citizens, where their rights to live and work in the Netherlands are concerned, must be treated in the same way as the Swiss. Therefore, the Japanese now have the right of freedom of residence and establishment also.

### **The Council of State’s Ruling and Its Effects**

As an immediate result of the ruling, no penalties can be imposed on employers for employing Japanese nationals without a work permit being issued. But the government departments concerned still had to consider the substantive and procedural legal status of the Japanese nationals.

Now the Ministry of Social Affairs and Employment has confirmed that, effective immediately, a work permit will no longer be required for Japanese nationals. The relevant legislation will be amended to properly reflect this position.

Because the Japanese are not subject to a visa requirement for stays up to 90 days, this represents an immediate improvement for Japanese nationals coming to work in the Netherlands, particularly for short-term employment. However if they wish to reside in the Netherlands for more than three months (90 days), a Dutch residence permit for the purpose of paid employment must still be applied for. This permit will now include an official note that no work permit is required for paid employment. They are also still required to register in the population register within five days of their arrival.

#### KPMG Note

The immigration authorities have taken the position that a residence permit remains required for a long stay, including the standard legal fees of (currently) EUR 870. Further simplifications of the residence procedures for Japanese nationals are anticipated.

Furthermore, as in previous cases, there is some discussion of a possible challenge regarding the current amount for legal fees that could eventually require the authorities to reduce such fees to the same amount that applies to the European Union category, currently EUR 53.

Existing residence and work permits remain valid. Employers do not have to take any action for their existing Japanese staff. Japanese workers that currently hold a Netherlands residence permit with restrictions, for instance for employment on the basis of a work permit, could submit an official request to the immigration authorities to change their residence permit so that it will reflect the proper work authorization.

#### Footnotes:

1 Ruling of the Council of State (in Dutch): <http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=82080> .

2 See the 1913 Netherlands-Japan Trade Treaty, *Verdrag van handel en scheepvaart tussen het Koninkrijk der Nederlanden en Japan* (in French and Dutch) at: [http://wetten.overheid.nl/BWBV0005955/geldigheidsdatum\\_04-12-2012](http://wetten.overheid.nl/BWBV0005955/geldigheidsdatum_04-12-2012) .

3 In Dutch: Ministerie van Sociale Zaken en Werkgelegenheid (<http://www.rijksoverheid.nl/ministeries/szw>).

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*KPMG LLP (U.S.) does not offer immigration services.*

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