

GMS Flash Alert

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The Netherlands - Japanese Denied Unfettered Access to Dutch Labor Market

The Dutch Immigration and Naturalisation Service ("IND") announced on 21 June 2016, that Japanese nationals will no longer have free access to the Dutch labor market from 1 October 2016.¹

WHY THIS MATTERS

This is a surprising development since the Japanese were actually exempted from the obligation to obtain a work permit during the past two years.²

Since under current policy the Japanese are to be treated similarly to the Swiss, with the recent change to the interpretative statement prepared on the Netherlands-Switzerland Treaty of Friendship, Commerce and Establishment ("the Treaty"), that asserted that access to labor markets is to be governed by national legislation, this means the Swiss no longer have free access to the Dutch labor market by virtue of the Treaty³ and, therefore, Japanese nationals now also no longer have such rights.

Japanese nationals intending to relocate to the Netherlands for work purposes, as well as their global mobility or immigration advisers, must now take steps to apply for a work permit, so that they may work in the Netherlands.

Background

Pursuant to a decision dated 24 December 2014, by the Council of State on the trade treaty between the Netherlands and Japan, Japanese citizens must be treated in the same way as the Swiss with regard to their rights to work, stay, and even live in the Netherlands. By virtue of the Treaty, there were already no restrictions for the Swiss to work in the Netherlands. This was also the reason why the Japanese no longer required a permit to work in the Netherlands since last year.

Current IND Position

The IND now, however, has adjusted the policy in respect of Japanese citizens in response to an interpretative statement prepared on the Treaty. Both countries hereby state that residence, establishment, and access to the labor markets of both countries on the basis of the Treaty is governed by *national legislation*. This statement was published in the Treaty Series on 20 June 2016. Now that Swiss citizens no longer have free access to the Dutch labor market by virtue of the Treaty, the Japanese now also no longer have such rights. Therefore they again require a work permit to be allowed to work in the Netherlands.

Transitional Period

The Minister of Public Safety and Justice has agreed to a transitional period and will introduce the work permit requirement again from 1 October 2016. During the transitional period, Japanese citizens who are in possession of a residence permit with the labor market endorsement "Work freely permitted and a work permit will not be required" ("*Arbeid vrij toegestaan, TWV niet vereist*") may retain this permit as long as it is still valid. A renewal or a new application for a residence permit on or after 1 October 2016, in principle, however, will be subject to review under the Foreign Nationals Employment Act.

KPMG NOTE

Although it appears that this policy change will be implemented, Meijburg & Co. will closely follow developments in this area. In the meantime, affected parties should discuss this situation with their qualified immigration advisers.

FOOTNOTES:

1 For the announcement (in Dutch), see: <https://ind.nl/organisatie/nieuws/Paginas/Japanners-moeten-vanaf-1-oktober-2016-een-tewerkstellingsvergunning-aanvragen.aspx> .

2 For prior coverage, see GMS [Flash Alert 2015-034](#) (6 March 2015).

3 The Swiss still in fact have free access to the Dutch labor market, but this is no longer based on this specific Treaty, but based on a different treaty between the EU and Switzerland on the free movement of persons, which can be viewed (in Dutch) at: <https://zoek.officielebekendmakingen.nl/trb-2008-155.html> .

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Contact us

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