



Green Light
and
Green Cards

DILLON  EUSTACE

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GREEN LIGHT AND GREEN CARDS

Introduction

The financial services sector has over the past twenty years been one of the pillars of the Irish economy while it has enjoyed unprecedented growth. Since its inception the investment funds industry alone has funds under management with a net asset value in excess of one trillion Euro. Having experienced 35% growth in 2005 and in excess of 20% during 2006 the growth is set to continue during 2007. There are currently over 9,000 people employed in the investment funds industry in Ireland and this combined with increased employment levels in other financial services areas reaffirms the importance of the sector to the Irish economy.

One consequence of any growing industry is a subsequent increase in demand for appropriately skilled labour to meet the high levels of service demanded by clients. While recruitment of staff from other EU Member States has provided for some of the shortfall it is necessary to tap into the pool of potential candidates in non-EU countries to ensure the continued delivery of excellent service.

Industry representative bodies made submissions to the Department of Enterprise, Trade and Employment (the "Department") prior to the publication of the Green Card Permit Scheme announced by the Minister for Enterprise, Trade and Employment (the "Minister") on 24th January, 2007. No doubt those bodies will be heartened to see their wish list of occupations faithfully reproduced in the published guidelines. These efforts should ensure that the continued growth and capacity of the financial services sector will not be jeopardised by an inability to recruit sufficient numbers of suitably qualified employees.

Details of the Green Card Permit Scheme and other recently announced initiatives are set out below.

Green Card Permits

The new Green Card Permit scheme allows a foreign national to be employed by a named employer in a specified occupation. The new arrangements will also allow employees to

apply for immediate family reunification and will permit applications for permanent residency after two years. The usual “market needs” test will not be applied.

Where the annual salary (excluding bonuses) is €60,000 or more, the Green Card is available for all occupations. Where the annual salary ranges from €30,000 - €59,999 a Green Card is available for a restricted number of important occupations. There are a wide number of occupations relevant to the financial services sector included in this list of important occupations which cover many if not all of the occupations that might be currently vacant in the sector. These occupations include, *inter alia*, chartered and certified accountants, actuaries, underwriters, claims assessors, investment managers, fund accountants, fund administrators, custody specialists, transfer agents, hedge fund specialists, compliance specialists, tax specialists and common law jurisdiction lawyers with relevant financial expertise.

It will be necessary for the foreign national concerned to have the relevant qualifications, skills or experience and the applicant must have a job offer from a bona fide employer registered with the Companies Registration Office and the Revenue Commissioners.

Green Cards will only be issued in respect of job offers of two years duration. The fee for the initial application will be €1,000 and there will be a €1,500 renewal fee, after two years, when the Green Card may be renewed indefinitely.

Foreign nationals who are already working in Ireland on the basis of a work permit can apply for a Green Card Permit. Employees will be required to stay in their initial employment for a period of at least 12 months before they may be considered for permission to move to a different employer on the basis of a new application for a Green Card Permit.

Spouses and dependants of Green Card Permit holders are free to seek employment and apply for a spousal/dependent work permit provided they are legally resident in the Ireland. Where a foreign national is granted a Green Card Permit they must then get an entry visa from their local Irish Embassy/Consulate and on arrival in the country they should register with the National Garda Registration Office to obtain the necessary permission and correct immigration status to remain in Ireland.

Intra-Company Transfer Permits

The Intra-Company Transfer Permit allows for the transfer of key personnel who are foreign nationals from an overseas branch of a multi-national corporation to its Irish branch. The

programme is limited to senior management, key personnel or those undergoing a training programme and earning a minimum salary of €40,000. In addition the employee must have been working for at least 12 months with the overseas company. The period allowed by the permit would be a maximum of 24 months but may be extended subsequently by up to a further 3 years. The employee is restricted to working for the named company and when the employment is terminated the employee must return to their country of origin. The Department has indicated that the number of intra-company transfers should not exceed 5% of the total Irish workforce although it does say that in exceptional circumstances (small firms/start up companies) a higher percentage may be permitted on a temporary basis.

Spouses/Dependants

This new scheme will allow spouses and dependant children under the age of 18 to apply for work permits without a market needs test. There will be no fee in respect of any such application. The applicant must be legally resident in the Ireland on the basis of being a dependant of the employment permit holder.

Graduate Scheme

The Graduate Scheme allows non EEA students who have acquired a primary, masters or doctorate degree from an Irish institution to apply to remain in Ireland for six months after the receipt of their exam results. During this period they may seek employment and if appropriate then apply for a Work Permit or Green Card Permit.

Work Permits

Individuals who do not qualify under any of the schemes referred to above may apply for an employment permit under the Employment Permits Act 2003 (the “2003 Act”), as amended by the Employment Permits Act 2006 (the “2006 Act”) which essentially prohibits individuals who are not Irish citizens from entering the service of an employer in Ireland or being employed in Ireland without a valid employment permit. This requirement applies whether or not the employment results from the individual being employed in Ireland directly by an individual or being employed by a contractor located outside Ireland to work in Ireland under an agreement with the contractor and a third party.

The prohibition does not apply to certain defined categories of foreign nationals such as refugees or their families, persons entitled to be employed in Ireland by virtue of their citizenship of another EU State (other than Bulgaria or Romania) or who otherwise has permission from the Minister to be employed in Ireland.

The 2006 Act requires the Minister to give preference to applicants from EU States and applicants from Bulgaria or Romania and makes some further provisions regarding Bulgaria and Romania.

The application for the employment permit can now be made either by the prospective employer, a contractor, or by the foreign national themselves provided that they have a written offer of employment in Ireland. Regardless of who applies, if a permit is granted it is granted to the foreign national.

The applicant must provide a full and accurate description of the employment including the terms and conditions (the place of employment, remuneration and any agreed deductions in respect of board or accommodation as well as weekly hours and the duration of the employment). The application must describe the qualifications, skills or experience required for the job and must provide evidence of the foreign national's qualifications, skills or experience.

The original employment permit is granted to the foreign national and a copy is issued to the employer.

Where an application is made by anybody other than the foreign national themselves, a employment permit will not be granted unless the applicant satisfies the Department that they have taken all reasonable steps to offer the employment to an individual who does not require an employment permit and at the time of the application more than half of the applicant's employees are citizens of the EEA or the Swiss Confederation or a combination of both.

It is an offence for a person to employ a foreign national without a valid permit or forge an employment permit or alter it or use an employment permit with intention to deceive.

The 2006 Act also prohibits an employer from making any deductions from the remuneration of an employment permit holder concerning any charge, fee or expense arising out of or concerning the application for the work permit (or its renewal) or the recruitment of the holder or any amount previously paid to the holder in respect of travelling expenses incurred by him in connection with taking up the employment in Ireland. Where the foreign national made

the application for the permit themselves, the person who made the offer of employment must not make any deductions in respect of those matters either.

Neither an employer nor somebody acting on their behalf may keep any personal document belonging to the holder of an employment permit and anyone who breaches this prohibition is guilty of an offence.

The 2003 Act prohibits penalisation of an employee with regard to any term or condition of employment where a person complains to the Gardaí or the Minister under the 2003 Act or gives evidence or gives notice of their intention to give evidence under the 2003 Act.

The 2006 Act provides for penalties ranging from €5,000 and/or 12 months imprisonment on summary conviction to €50,000 and/or imprisonment for up to 5 years for convictions on indictment.

The 2006 Act provides that where an offence is committed by a company and where there is proof that the offence was committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other officer or person who was purporting to act in any such capacity then that person as well as the company is guilty of an offence and may be prosecuted.

In recent times, serious concerns had been expressed by the advertisement requirement which had to be complied with before a work permit could be applied for. This placed serious administrative obstacles in the path of employers and created considerable delays in the recruitment process. This frustrating roadblock has now been by-passed.

Conclusion

The changes introduced under the 2006 Act should provide a streamlined process far more suited to the needs of and to the mutual advantage of employers and employees. It is expected that these new provisions will enable the current vacancies in the financial services sector to be filled with appropriately skilled personnel.

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