

Recognition of Statuses of Residence in the “Third Report for Promotion of Regulatory Reform” released from the Council for Regulatory Reform

As the report has raised questions on statuses of residence and the links between “Investor/Business Manager”, “Engineer”, “Specialist in Humanities/International Services” and “Intra-Company Transferee”, an explanation is provided as follows.

1. Status of Residence “Investor/Business Manager”

- (1) If a foreign national stays in Japan under the status of residence of “Investor/Business Manager” as listed in the lower column of the investor/business manager section, Annexed Table I-II of the Immigration Control and Refugee Recognition Act, such foreign national may engage in the following activities in Japan: activities to commence management of international trade or other business in Japan; or to invest in and manage such business already existing in Japan or to engage in supervision of such business; or to manage or supervise such business on behalf of a foreign national (including a foreign juridical person, hereinafter in this section referred to as “foreign national”) who has commenced management of such business in Japan or has invested in such business already existing in Japan (excluding activities to engage in management or supervision of business which is not permitted without legal qualifications as listed in the lower column of the Legal/Accounting Services section in the said Annexed Table).
- (2) The status of residence “Investor/Business Manager” applies to foreign nationals, who intend to enter or stay in Japan in order to participate in business management of a corporation or similar entity for the purpose of making a significant investment and of maintaining or expanding such investment. From this viewpoint, the foreign national needs to make a sufficient investment that would effectively influence business management of such corporation.
- (3) Therefore, if a Japanese national originally commenced the business, but a foreign national makes a significant investment in such business and effectively manages the said business, then the foreign national is entitled to the status of residence of “Investor/Business Manager”. However, if the foreign national acquires shares in such corporation temporarily, or makes an insufficient investment, or engages in the business management or supervision as a third party other than the foreign national investor or a representative acting on behalf of the foreign national investor, the foreign national does not qualify for the status of residence of “Investor/Business

Manager”.

- (4) The meaning of “a significant investment” would vary depending on the corporate size, but it must be large enough to effectively influence the corporation’s business policies. In this sense, a foreign national must make an investment of at least ¥5 million.

The immigration control authorities evaluate “investment” based on the amount of such investment effectively put into such business rather than the mere value of the shareholdings.

In addition, a foreign national’s investment of at least ¥5 million in starting a new business would represent the total amount of money that the foreign national has put into managing the business. The investment in this context would include necessary expenditures for managing such business. For example, the investment would also mean the costs for land, building, rent thereof or cost for office equipment. In general, the investment does not necessarily include corporate debts even though they are business funds. However, if there are some special circumstances such as the foreign national investor having provided a personal guarantee on the debts, the immigration control authorities may regard it as part of the foreign national’s investment.

- (5) A foreign national applicant does not necessarily have to invest ¥5 million or more every year. It is sufficient as long as the foreign national maintains the investment of ¥5 million or more without recouping it.

If a foreign national makes the investment of ¥5 million or more in this manner, the foreign national is regarded as satisfying the requirement of “employing two or more full-time employees who are residing in Japan (except for foreign nationals residing under the statuses of residence as stated in the upper column of Annexed Table I of the Act) other than those involved in managing or supervising the business” as stipulated in the MOJ Ordinance that Stipulates the Criteria of Article 7, Paragraph 1, Item 2 of the Immigration Control and Refugee Recognition Act (hereinafter, referred to as “Criteria Ordinance”) in terms of the status of residence “Investor/Business Manager”. This rule applies even if the foreign national does not actually employ two or more full-time employees in this manner.

- (6) Corporate management or supervisory work may sometimes require knowledge of natural sciences or humanities. In this case, some aspects of the work may have some overlap with the activities for the status of residence of “Engineer” or “Specialist in Humanities/International Services” excluding the parts in parentheses. The description in the parentheses in the lower column of Annexed Table I of the

Immigration Control Act sets forth priorities in cases where these statuses of residence overlap with one other.

Therefore, “Investor/Business Manager” is prioritized over “Engineer” or “Specialist in Humanities/International Services”. However, if the foreign national applicant is deemed not to come under the activities as listed in the lower column of the Annexed Table for the status of residence of “Investor/Business Manager”, the applicant may come under the status of residence of “Engineer” or “Specialist in Humanities/International Services” (in each case, examination is made of whether or not he or she satisfies the applicable Criteria Ordinance for each status of residence) and he or she may be permitted to enter or stay in Japan under either one of these statuses of residence.

- (7) If a foreign national is staying in Japan under the status of residence “Engineer” or “Specialist in Humanities/International Services” as an employee of a certain firm and then is appointed as a top manager or supervisor in the same firm before his or her present status of residence expires, the foreign national does not have to immediately change his or her status of residence to “Investor/Business Manager”. However, if a foreign national is appointed anew (or re-appointed) as a top manager or supervisor in a different firm before his or her present status of residence expires, or regardless of being in the same or a different firm, when his or her present status of residence expires, in principle, the foreign national needs to change his or her status of residence to “Investor/Business Manager”.

2. Status of Residence “Intra-Company Transferee”

- (1) If a foreign national stays in Japan under the status of residence “Intra-Company Transferee” as listed in the lower column of the intra-company transferee section, Annexed Table III of the Immigration Control and Refugee Recognition Act, such foreign national may engage in the following activities in Japan: activities as listed in the lower column of the “Engineer” section or “Specialist in Humanities/International Services” section of this Table, which stipulates the activities of an employee in a foreign business office of a private/public entity that has its headquarters, branch or other business office in Japan if such employee is to be transferred to such office in Japan within the company for a fixed term.

In this regard, the activities for the status of residence “Intra-Company Transferee” differ from those for “Engineer” or “Specialist in Humanities/International Services” in that with “Intra-Company Transferee” the authorized activities that an intra-company transferee may engage in while in Japan

are for a fixed duration, the intra-company transferee may only engage in these activities at the designated business office to which he or she has been assigned, and the intra-company transferee may engage in activities which come under both the statuses of residence of “Engineer” and of “Specialist in Humanities/International Services”. Otherwise, the activities for “Intra-Company Transferee” will come under either the activities of “Engineer” or the activities of “Specialist in Humanities/International Services”.

- (2) According to Item I of the Criteria Ordinance on intra-company transferees, a foreign national must have been engaged in the tasks listed in the lower column of the engineer section or the specialist in humanities/international services section of Annexed Table III of the Immigration Control Act in the foreign headquarters, branch or other business office for one year or more immediately before the foreign national was transferred to a business office in Japan. However, if the foreign national has not been engaged in these activities for one year or more (in other words, the foreign national does not satisfy the criteria for the status of residence of “Intra-Company Transferee”) but meets the landing permission criteria for the status of residence “Engineer” or “Specialist in Humanities/International Services”, then the foreign national may enter Japan under the status of residence “Engineer” or “Specialist in Humanities/International Services”. (This rule will apply in the case, for example, of a foreign national being assigned to a business office in Japan for an indefinite term.)

To acquire the status of residence “Engineer” or “Specialist in Humanities/International Services”, a foreign national must engage in his or her work under “a contract with a public or private entity in Japan”. The term “contract” in this context does not exclusively represent an employment contract but does include many contract forms such as a mandate, outsourcing or non-regular employment contract. However, since a foreign national must be expected to continuously engage in his or her activities related to the applicable status of residence, the aforementioned contract must be a standing contract with a certain entity (or entities).

- (3) Note that if a foreign national has not engaged in the aforementioned tasks for one year or more and intends to enter Japan under the status of residence of “Engineer” or “Specialist in Humanities/International Services”, the foreign national must engage in his or her activities in accordance with “a contract with a public or private entity in Japan” as already mentioned above. However, the same requirement will also apply to the status of residence of “Intra-Company Transferee”. In this case, the

foreign national has already concluded an employment contract with an employer in a foreign country before being transferred to its business office in Japan, and such employment contract would fall under “a contract with a public or private entity in Japan”. In this sense, the foreign national will not need a new contract when the foreign national is transferred from a foreign office to an office in Japan. This is not simply restricted to the status of residence of “Intra-Company Transferee” for if a foreign national intends to enter Japan under the status of residence of “Engineer” or “Specialist in Humanities/International Services”, and is transferred from a foreign business office to a business office in Japan within the same company, the foreign national does not need a new employment contract in relation to such headquarters or branch office of the foreign company in Japan.

3. Expediting and Simplifying Examination of Applications for Certificates of Eligibility for Statuses of Residence

- (1) If a foreign national is employed by a private or public entity in Japan and files an application form in order to engage in his or her tasks at such entity in Japan, the immigration control authorities have been making efforts to complete applicable application procedures within two weeks of receiving the application form, as long as the public or private entity where the foreign national applicant will engage in business does not have a past record of non-issuance or non-approval in the past three years, is a public company listed on the Tokyo Stock Exchange (TSE), or has a similar size to such TSE-listed public companies.
- (2) In addition, when a supporting document on the public or private entity where the foreign national applicant will engage in business is required, the applicant does not need to submit the supporting document as long as the applicant has submitted the same document in the past year and there have been no changes in the descriptions. However, this will not apply if the immigration control authorities regard it necessary for the applicant to submit the same document again.