

UNDER AND ACROSS THE SEA, WHERE CETA WIDENS THE PATHWAY TO INCREASED LABOUR MOBILITY

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Our previous [bulletin](#) on the provisional application of the Canada-European Union *Comprehensive Economic and Trade Agreement* (CETA) and its many benefits highlights that labour mobility is one of the key focuses of this bilateral trade agreement. With CETA now provisionally applied, Canadian and EU businesses can turn their attention to the enhanced labour mobility mechanisms, such as the temporary entry and stay of natural persons for business purposes, and the mutual recognition of professional qualifications provisions. Coordination with international counterparts for flexible and reliable entry of highly skilled workers, and instruments in place that support mutual recognition of professional qualifications have become increasingly important for businesses looking to expand beyond their national borders. As a result, there is a need for innovation with respect to labour mobility. CETA provides this.

CETA removes labour mobility barriers through a two-facet approach. Canada and the EU recognized that both immediate and long-term changes to labour markets will truly enhance trade. Firstly, for immediate change upon provisional application, CETA enacted temporary entry provisions that eliminate time delays and administrative costs previously imposed on prospective business entrants to Canada and the EU. CETA's temporary entry provisions mean that Canadian and EU business people can more easily enter into each other's respective markets for temporary stay and for longer periods of time, which is achieved through enacting new categories of business travelers.

CETA recognizes new categories of business travelers, which include contractual services suppliers, independent professionals, key personnel, and short-term business visitors. The category of contractual service providers and independent professionals (defined as Canadian professionals who have a contract to supply services in the EU, or vice versa) was designed for business persons travelling to Canada and the EU to complete a service contract for a permissible service sector, which is listed under *Annex 10-E*. These business travelers are eligible for a work permit up to 12 months, with an option to extend for an additional 12 months. Furthermore, CETA defines key personnel as business visitors for investment purposes, investors, and intra-corporate transferees who are senior personnel, specialists and/or graduate trainees. Key personnel who are intra-corporate transferees (specialists and senior personnel) can stay for up to three years, unless the length of

the contract is for a lesser time. Furthermore, business travelers who classify as contractual service suppliers, independent professionals, investors or intra-corporate transferees do not require Labour Market Impact Assessments (“LMIA”).^[1] The EU and Canada also extended the temporary stay provisions to spouses of intra corporate transferees, for whom the LMIA exemption also applies.^[2]

Secondly, as part of its long-term vision and a landmark feature to this bilateral trade agreement, CETA also developed a framework to facilitate negotiations between Canadian and EU regulators for agreements on mutual recognition of professional qualifications (“MRAs”) of regulated professional groups, such as accountants, engineers and architects. CETA encourages regulators in Canada and the EU to iron out technical details through the Joint Committee on Mutual Recognition of Professional Qualifications (“MRA Committee”). The MRA Committee consists of Canadian and EU government officials, and is to set to meet within a year after CETA enters into force, which will be in September 2018. The MRA Committee solicits joint recommendations from regulated professional bodies on proposed MRAs, which includes an assessment of their potential value using a set of criteria such as the existing level of market openness, industry needs and business opportunities. The MRA Committee then provides a basis for MRAs to be negotiated between the regulators, and will give the MRA legal effect if it is consistent with the obligations of CETA. Ultimately, recognition of each other’s qualifications lies with the regulatory bodies.

CETA breaks ground on several other aspects with respect to labour mobility in comparison to previous trade agreements. Taking into account that clearly defined and predictable rules are important to business, Canada and the EU agreed to use a “negative list” of service categories excluded from the labour mobility provisions rather than a “positive list” used in past bilateral trade agreements. This sense of clarity will benefit both Canadian and EU businesses. It is also noteworthy that Canada and the EU have enacted high levels of labour protection. CETA ensures that national laws of the host country respect fundamental principles and rights at work. Nonetheless, Canada and the EU have committed to effectively enforce domestic labour laws, which means that business travelers recognized by CETA will be governed by domestic labour laws of the host country. We recommend that EU companies and businesspersons working in Canada obtain employment and/or contractor agreements that reflect Canadian labour laws.

Prior bilateral trade agreements have included convoluted and unclear regimes on labour mobility, which has been problematic for businesses. CETA recognized this hurdle. Now, Canada and the EU can enjoy the immediate benefits to increased labour mobility and trade services, and in years time, apply mutually recognized professional qualifications across professional bodies. The CETA mobility provisions will make it easier for businesses to expand into Canadian and EU markets.

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[1] The Government of Canada, "*International Mobility Program: Labour Market Impact Assessment exemption codes.*"[ps2id id='1' target='']

[2] *Ibid.*[ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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