

SUBSIDIARY LEGISLATION 217.21

CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONAL IN THE FRAMEWORK OF AN INTRA-CORPORATE TRANSFER REGULATIONS

24th January, 2017

LEGAL NOTICE 33 of 2017.

PART I General Provisions

1. (1) The title of these regulations is the Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer Regulations. Citation and scope.

(2) These regulations transpose Council Directive 2014/66/EU of the 15th May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

(3) The scope of these regulations is to determine:

- (a) the conditions of entry to, and residence for more than ninety days in Malta and the rights of third-country nationals and of their family members in the framework of an intra-corporate transfer; and
- (b) the conditions of entry and residence, and the rights of third-country nationals, referred to in sub-regulation (1), when Malta is not the Member State which first grants the third-country national an intra-corporate transferee permit on the basis of these regulations.

2. For the purposes of these regulations:

Interpretation.

"Act" means the Immigration Act;

Cap. 217.

"Board" means the Immigration Appeals Board constituted by article 25A of the Act;

"Executive Chairperson" means the Executive Chairperson of Identity Malta Agency, established under the Identity Malta Agency (Establishment) Order, or any senior official thereof so delegated;

S.L. 497.07

"family members" means third-country nationals as defined in regulation 4(1) of the Family Reunification Regulations;

S.L. 217.06

"group of undertakings" means two or more undertakings recognised as linked in the following ways where an undertaking, in relation to another undertaking, directly or indirectly:

- (a) holds a majority of that undertaking's subscribed capital;

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

- (b) controls a majority of the votes attached to that undertaking's issued share capital;
- (c) is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body; or
- (d) the undertakings are managed on a unified basis by the parent undertaking;

"host entity" means the entity to which the intra-corporate transferee is transferred, regardless of its legal form, established, in accordance with national law, in Malta;

"intra-corporate transfer" means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside Member States, from an undertaking established outside the Member State, and to which the third-country national is bound by a contract of employment prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in Malta, and, where applicable, the mobility between host entities established in other Member States;

"intra-corporate transferee" means any third-country national who resides outside the territory of the Member States at the time of application for an intra-corporate transferee permit and who is subject to an intra-corporate transfer;

"intra-corporate transferee permit" means an authorisation bearing the acronym 'ICT' entitling its holder to reside and work in Malta and, where applicable, in another Member State, under the terms of these regulations;

"manager" means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent, and that position shall include:

- (a) directing the host entity or a department or subdivision of the host entity;
- (b) supervising and controlling work of the other supervisory, professional or managerial employees;
- (c) having the authority to recommend hiring, dismissing or other personnel action;

"Member State" means any of the Member States of the European Union which apply the provisions of Directive 2014/66/EU;

"other Member State" means the Member State which first grants a third-country national an intra-corporate transferee permit other than Malta;

"permit for long-term mobility" means an authorisation bearing the term "mobile ICT" entitling the holder of an intra-corporate

transferee permit to reside and work in the territory of Malta under the terms of these regulations;

"regulated profession" means a regulated profession as defined in regulation 4(1)(a) of the Recognition of Professional Qualifications Regulations; S.L. 451.03

"single application procedure" means the procedure leading, on the basis of one application for the authorisation for residence and work of a third-country national in the territory of Malta, to a decision on that application;

"specialist" means a person working within the group of undertakings possessing specialised knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;

"third country national" means any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;

"trainee employee" means a person with a university degree who is transferred to a host entity for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer.

3. (1) These regulations shall apply to third-country nationals who reside outside the territory of the Member States at the time of application and apply to be admitted under these regulations, or who have been admitted to the territory of another Member State under the terms of Directive 2014/66/EU and, where applicable, under the terms of these regulations, in the framework of an intra-corporate transfer as managers, specialists or trainee employees. Applicability of these regulations.

(2) These regulations shall not apply to third-country nationals who:

- (a) apply to reside in Malta as researchers, within the meaning of Third-Country Nationals for Scientific Research Purposes (Specific Admittance Procedure) Regulations, in order to carry out a research project; S.L. 217.10
- (b) under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of Union citizens or are employed by an undertaking established in those third countries;
- (c) are posted in accordance with the Posting of Workers in Malta Regulations) and where applicable, Directive 96/71/EC; S.L. 452.82
- (d) carry out activities as self-employed workers;
- (e) are assigned by employment agencies, temporary work

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

4

[S.L.217.21]

agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking;

- (f) are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.

(3) These regulations shall be without prejudice to the right of the Executive Chairperson to issue residence permits, other than the intra-corporate transferee permit covered by these regulations, for any purpose of employment for third-country nationals who fall outside the scope of these regulations.

PART II

Conditions of Admission

Conditions of admission.

4. (1) A third-country national shall submit to the Executive Chairperson an application for an intra-corporate transferee permit, endorsed by the host entity and shall:

- (a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- (b) provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees;
- (c) present a contract of employment, and, if necessary, an assignment letter from the employer containing the following:
 - (i) details of the duration of the transfer and the location of the host entity or entities;
 - (ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in Malta;
 - (iii) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;
 - (iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings established in a third country at the end of the intra-corporate transfer;
- (d) provide evidence that the third-country national has the professional qualifications and experience needed in the host entity to which he is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;

- (e) where applicable, present documentation certifying that the third-country national fulfils the conditions laid down under the Recognition of Professional Qualification Regulations to exercise the regulated profession to which the application relates; S.L. 451.03
 - (f) present a valid travel document and an application for a visa or a visa, if required, whereby the Executive Chairperson may require the period of validity of the travel document to cover at least the period of validity of the intra-corporate transferee permit;
 - (g) provide evidence of having, or of having applied for, a sickness insurance for all the risks normally covered for Maltese nationals concerned for periods where no such insurance coverage and corresponding entitlements to benefits are provided in connection with, or resulting from, the contract of employment;
 - (h) present an address in Malta at the time when the intra-corporate transfer permit is issued.
- (2) The applicant shall present the documents listed in sub-regulation (1)(a), (c), (d), (e) and (g) in either Maltese or English.
- (3) The Executive Chairperson shall require that:
- (a) the terms and conditions of employment applicable to the intra-corporate transferee during the intra-corporate transfer, other than remuneration, shall be those which are given to posted employees in Malta in terms of the Posting of Workers in Malta Regulations; S.L. 452.82
 - (b) the remuneration granted to the third-country national during the entire intra-corporate transfer shall not be less favourable than the remuneration granted to a national of Malta where the work is carried out occupying comparable positions in accordance with the applicable law or collective agreements.
- (4) On the basis of the documentation provided pursuant to sub-regulation (1), the Executive Chairperson shall require that the intra-corporate transferee will have sufficient resources during his or her stay to maintain himself or herself and his or her family members without having recourse to Malta's social assistance system.
- (5) In addition to the evidence required under sub-regulation (1), any third-country national who applies to be admitted as a trainee employee shall be required to present a training agreement relating to the preparation for his or her future position within the undertaking or group of undertakings, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or in order to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.
- (6) Any modification during the application procedure that

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

6

[S.L.217.21]

affects the criteria for admission set out in this regulation shall be notified by the applicant to the Executive Chairperson.

(7) The Executive Chairperson shall not admit the third-country national if he is considered to pose a threat to public policy, public security or public health.

Volumes of admission.

5. These regulations shall not affect the right, as provided for in Article 79(5) of the Treaty of the Functioning of the European Union, of the Minister responsible for employment to determine the volumes of admission of third-country nationals entering Malta and on that basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be refused.

Grounds for refusal.

6. (1) The Executive Chairperson shall refuse an application for an intra-corporate transferee permit in any of the following cases:

- (a) where regulation 4 is not complied with;
- (b) where the documents presented were fraudulently acquired, or falsified, or tampered with;
- (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;
- (d) where the maximum duration of stay as defined in regulation 10(1) has been reached.

(2) The Executive Chairperson shall, if appropriate, refuse an application where the employer or the host entity has been sanctioned in accordance with national law.

(3) The Executive Chairperson may refuse an application for an intra-corporate transferee permit in any of the following cases:

- (a) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, employment rights or working conditions;
- (b) where the employer's or the host entity's business is being or has been wound up under the Companies Act or if no economic activity is taking place;
- (c) where the intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.

Cap. 386.

(4) The Executive Chairperson may refuse an application for an intra-corporate transferee permit on the grounds set out in regulation 10(2).

(5) Notwithstanding the provisions of sub-regulation (1), any decision to refuse an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

7. (1) The Executive Chairperson shall withdraw an intra-corporate transferee permit in any of the following cases:

Withdrawal or non-renewal of the intra-corporate transferee permit.

- (a) where it was fraudulently acquired, or has been falsified or tampered with; or
- (b) where the intra-corporate transferee is residing in Malta for purposes other than those for which he or she was authorised to reside;
- (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees.

(2) The Executive Chairperson shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law.

(3) The Executive Chairperson shall refuse to renew an intra-corporate transferee permit in any of the following cases:

- (a) where it was fraudulently acquired, or falsified, or tampered with;
- (b) where the intra-corporate transferee is residing in Malta for purposes other than those for which he was authorised to reside;
- (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;
- (d) where the maximum duration of stay as defined in regulation 10(1) has been reached.

(4) The Executive Chairperson shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law.

(5) The Executive Chairperson may withdraw or refuse to renew an intra-corporate transferee permit in any of the following cases:

- (a) where regulation 4 is not or is no longer complied with;
- (b) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, employment rights or working conditions;
- (c) where the employer's or the host entity's business is being or has been wound up under the Companies Act or if no economic activity is taking place;
- (d) where the intra-corporate transferee has not complied with the mobility rules set out in regulations 18 and 19.

Cap. 386.

(6) Without prejudice to the provisions of sub-regulations (1) and (3), in any decision to withdraw or to refuse an intra-corporate transferee permit, the Executive Chairperson shall take account of the specific circumstances of the case and respect the principle of proportionality.

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

8 [S.L.217.21

PART III

Procedure and Permit

Access to
information.

8.(1)(a) The Executive Chairperson shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence, including the rights, obligations and procedural safeguards, of the intra-corporate transferee and of his or her family members.

(b) The Executive Chairperson shall also make easily available information on the procedures applicable to the short-term mobility referred to in regulation 18(2) and to the long-term mobility referred to in regulation 19(1).

(2) The Executive Chairperson shall make available information to the host entity on the right of the Maltese authorities to impose sanctions in accordance with regulation 21.

Applications for an
intra-corporate
transferee permit
or a permit for
long-term
mobility.

9. (1) The application for an intra-corporate transferee permit shall be submitted to the Executive Chairperson when the third-country is residing outside Malta.

(2) The application for an intra-corporate transferee permit shall be submitted to the Executive Chairperson where the first stay shall take place or if the stay in Malta is the longest overall stay during the transfer.

(3) The applicant shall be entitled to submit an application in a single application procedure.

Duration of an
intra-corporate
transfer.

10. (1) The maximum duration of the intra-corporate transfer shall be three years for managers and specialists and one year for trainee employees after which they shall leave Malta unless they obtain a residence permit on another basis in accordance with Union law, the Act and any other national law.

(2) The Executive Chairperson may require a period of up to six months to elapse between the end of the maximum duration of a transfer referred to in sub-regulation (1) and another application concerning the same third-country national for the purposes of these regulations.

Intra-corporate
transferee permit.

11. (1) Intra-corporate transferees who fulfil the conditions of admission set out in regulation 4 and for whom the Executive Chairperson has taken a positive decision and following the notification to the Executive Chairperson of the issue of an employment licence by the pertinent authorities responsible for the issue of such licences, shall be issued with an intra-corporate transferee permit, which shall be deemed to constitute an employment licence issued under article 11(3) of the Act, and the intra-corporate transferee shall not be issued with any other work permits of any kind.

(2) The period of validity of the intra-corporate transferee

permit shall be at least one year or the duration of the transfer to Malta, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for trainee employees.

(3) The intra-corporate transferee permit shall be issued by the Executive Chairperson using the uniform format laid down in Regulation (EC) No. 1030/2002.

(4) Under the heading 'type of permit', in accordance with point (a) 6.4 of the Annex to Regulation (EC) No. 1030/2002, the Executive Chairperson shall enter 'ICT'.

(5) The Executive Chairperson may indicate additional information relating to the employment activity during the intra-corporate transfer of the third-country national in paper format, and, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No. 1030/2002 and point (a) 16 of the Annex thereto.

(6) Third country nationals whose application for admission has been accepted shall be granted by the pertinent authorities every facility to obtain the requisite visa.

12. The Executive Chairperson shall be notified by the applicant of any modification happening during the stay which affects the conditions for admission set out in regulation 4.

Modifications affecting the conditions for admission during the stay.

13. (1) The Executive Chairperson shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify the decision to the applicant in writing, as soon as possible and, in any event, not later than ninety days from the date on which the complete application was submitted.

Procedural safeguards.

(2) Where the information or documentation supplied in support of the application is incomplete, the Executive Chairperson shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in sub-regulation (1) shall be suspended until the Executive Chairperson has received the additional information required.

(3) Reasons for a decision declaring inadmissible or refusing an application or refusing renewal shall be given to the applicant in writing. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and to the host entity.

(4) Where the Executive Chairperson has declared inadmissible or refused an application, or refused renewal or withdrew an intra-corporate transferee permit, the third country national shall have the right to appeal to the Board within the time-limits listed in the Act.

(5) Within the period referred to in regulation 10(1), an applicant shall be allowed to submit an application for renewal before the expiry of the intra-corporate transferee permit. The

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

10 [S.L.217.21

Executive Chairperson may set a maximum deadline of ninety days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

(6) Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, the Executive Chairperson shall issue a temporary residence authorisation to stay in Malta until a decision has been taken on the application.

PART IV

Rights

Rights on the basis of the intra-corporate transferee permit.

14. During the period of validity of an intra-corporate transferee permit, the holder of an intra-corporate transferee permit, and as provided for in regulation 17, shall enjoy the following rights:

- (a) the right to enter and stay in Malta;
- (b) free access to the entire territory of Malta in accordance with national law;
- (c) the right to exercise the specific employment activity authorised under the permit in accordance with national law, in any host entity belonging to the undertaking or the group of undertakings established in Malta.

Right to equal treatment.

S.L. 452.82

15. (1) Without prejudice to the provisions of regulation 4(3)(b), intra-corporate transferees admitted under these regulations shall enjoy equal treatment with regard to the terms and conditions of employment in accordance with the Posting of Workers in Malta Regulations.

(2) Intra-corporate transferees shall be entitled to receive equality of treatment as the comparable nationals of Malta where the work is carried out as regards:

- (a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
- (b) recognition of diplomas, certificates and other professional qualifications in accordance with the Recognition of Professional Qualifications Regulations;
- (c) provisions in national law regarding the branches of social security as defined in Article 3 of Regulation (EC) No. 883/2004:

S.L. 451.03

Cap. 318.

Provided that family benefits payable under the provisions of the Social Security Act shall not apply to intra-corporate transferees who have been authorised to reside and work in Malta for a period not exceeding

nine months:

Provided further that equal treatment shall apply only to intra-corporate transferees who are not covered by the legislation of the country of origin by virtue of a bilateral agreement:

Provided further that the application of this regulation shall be without prejudice to more favourable provisions in bilateral agreements concluded between the Government of Malta and one or more third countries:

Provided further that in the case of intra-corporate transferees who are in a situation which is not confined in all respects within a single Member State, Regulation (EU) No 1231/2010 shall apply accordingly, without prejudice to bilateral agreements ensuring that the intra-corporate transferee is covered by the legislation of the country of origin:

Provided further that, without prejudice to Regulation (EU) No 1231/2010 and to bilateral agreements, intra-corporate transferees moving to a third country, or their survivors who reside in a third country and who derive rights from those workers, shall receive, in relation to old age, invalidity and death, statutory pensions based on the intra-corporate transferees' previous employment and acquired in accordance with the Social Security Act under the same conditions and at the same rates as Maltese nationals receive when moving to a third country;

Cap. 318.

- (d) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing as provided for by national law, without prejudice to freedom of contract in accordance with Union and national law, and services afforded by public employment offices.

(3) The provisions of this regulation shall be without prejudice to the right of the Executive Chairperson to withdraw or to refuse to renew the permit in accordance with regulation 7.

16. The Family Reunification Regulations shall apply with the following derogations from the provisions of the said regulations as follows:

Family members.
S.L. 217.06

- (a) the provisions of regulations 5(2) and 13 regarding family reunification in Malta:

Provided that this shall not be made dependent on the requirement of the intra-corporate transferee holder having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence;

- (b) the provisions of regulations 4(1) and 14(3) regarding the integration conditions referred to therein may be

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

12 [S.L.217.21

- applied only after the persons concerned have been granted family reunification;
- (c) the provision of regulation 9 regarding residence permits for family members shall be granted by the Executive Chairperson, if the conditions for family reunification are fulfilled, within ninety days from the date on which the complete application was submitted. The Executive Chairperson shall process the residence permit application for the intra-corporate transferee's family members at the same time as the application for the intra-corporate transferee permit or the permit for long-term mobility, in cases where the residence permit application for the intra-corporate transferee's family members is submitted at the same time. The procedural safeguards laid down in regulation 13 shall apply accordingly;
 - (d) the provisions of regulation 14(2), regarding the duration of the validity of the residence permits of family members in Malta, shall, as a general rule, end on the date of expiry of the intra-corporate transferee permit or the permit for long-term mobility issued by the Executive Chairperson;
 - (e) the provisions of regulation 15(b) and, without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity in Malta.

PART V

Intra-EU mobility

Mobility.

17. Third-country nationals who hold a valid intra-corporate transferee permit issued by the other Member State may, on the basis of that permit and a valid travel document and under the conditions laid down in regulations 18 and 19, and subject to regulation 20, enter, stay and work in Malta.

Short-term mobility.

18. (1) Third-country nationals who hold a valid intra-corporate transferee permit issued by another Member State, shall be entitled to stay in Malta and work in any other entity, established in Malta and belonging to the same undertaking or group of undertakings, for a period of up to ninety days in any 180-day period subject to the conditions laid down in this regulation.

(2) The Executive Chairperson shall require the host entity in the other Member State to notify him and the competent authorities responsible for the implementation of the provisions of Directive 2014/66/EU of the intention of the intra-corporate transferee to work in an entity established in Malta.

(3) The notification referred to in the sub-regulation (2) shall

take place either:

- (a) at the time of the application in the other Member State, where the mobility to Malta is already envisaged at that stage; or
- (b) if the intra-corporate transferee has already been admitted to the other Member State as soon as the intended mobility to Malta is known.

(4) The Executive Chairperson shall require that any notification shall be accompanied by the following documents and information:

- (a) evidence that the host entity in Malta and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- (b) the contract of employment and, if necessary, the assignment letter, which were transmitted to the other Member State in accordance with regulation 4(1)(c);
- (c) where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under the Recognition of Professional Qualifications Regulations to exercise the regulated profession to which the application relates; S.L. 451.03.
- (d) a valid travel document, as provided for in regulation 4(1)(f); and
- (e) where not specified in any of the preceding documents, the planned duration and dates of the mobility:

Provided that the Executive Chairperson may require, where relevant, that these documents and the information are to be presented in the English language.

(5) Where the notification has taken place in accordance with sub-regulation (3)(a), and where the Executive Chairperson has not raised any objection with the other Member State in accordance with sub-regulation (7), the mobility of the intra-corporate transferee to Malta may take place at any moment within the period of validity of the intra-corporate transferee permit.

(6) Where the notification has taken place in accordance with sub-regulation (3)(b), the mobility may be initiated after the notification to the Executive Chairperson immediately or at any moment thereafter within the period of the intra-corporate transferee permit.

(7) Based on the notification referred to in sub-regulation (3), the Executive Chairperson may object to the mobility of the intra-corporate transferee to Malta within twenty days from having received the notifications, where:

- (a) the conditions set out in regulation 4(3)(b) or in sub-regulation (4)(a), (c) or (d) are not complied with;
- (b) the documents presented were fraudulently acquired,

*CONDITIONS OF ENTRY AND RESIDENCE OF THIRD
COUNTRY NATIONALS IN THE FRAMEWORK
OF AN INTRA-CORPORATE TRANSFER*

14 [S.L.217.21

or falsified or tampered with;

- (c) the maximum duration of stay as defined in regulation 10(1) or in sub-regulation (1) has been reached;
- (d) the intra-corporate transferee is considered to pose a threat to public policy, public security or public health:

Provided that the Executive Chairperson shall inform without delay the competent authorities and the host entity in the other Member State about their objection to the mobility.

(8) Where the Executive Chairperson objects to the mobility in accordance with sub-regulation (7) and the mobility has not yet taken place, the intra-corporate transferee shall not be allowed to work in Malta as part of the intra-corporate transfer. Where the mobility has already taken place, the provisions of regulation 20(3) and (4) shall apply.

(9) Where the intra-corporate transferee permit is renewed by the other Member State within the maximum duration provided for in regulation 10(1), the renewed intra-corporate transferee permit shall continue to authorise its holder to work in Malta, subject to the maximum duration provided for in regulation (1).

Long-term
mobility.

19. (1) In relation to third-country nationals who hold a valid intra-corporate transferee permit issued by the other Member State and who intend to stay in Malta and work in any other entity, established in Malta and belonging to the same undertaking or group of undertakings, for more than ninety days, the Executive Chairperson may decide to apply the procedure provided for in sub-regulations (2) to (7).

(2) Where an application for long-term mobility is submitted, the Executive Chairperson shall require the applicant to transmit some or all of the following documents where they are required for an initial application:

- (a) evidence that the host entity in Malta and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- (b) a contract of employment and, if necessary, an assignment letter, as provided for in regulation 4(1)(c);
- (c) where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under the Recognition of Professional Qualifications Regulations to exercise the regulated profession to which the application relates;
- (d) a valid travel document, as provided for in regulation 4(1)(f);
- (e) evidence of having applied for sickness insurance, as provided for in regulation 4(1)(g).

S.L. 451.03

(3) The Executive Chairperson shall require the applicant to provide, at the latest at the date of issue of the permit for long-term mobility, the address of the intra-corporate transferee concerned in

Malta:

Provided that the Executive Chairperson may require, where relevant, that the documents and the information mentioned in sub-regulation (2) are to be presented in the English language.

(4) The Executive Chairperson shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible but not later than ninety days from the date on which the application and the documents provided for in sub-regulation (2) were submitted to the Executive Chairperson.

(5) The Executive Chairperson shall not require the intra-corporate transferee to leave Malta in order to submit an application and the said person shall not be subject to a visa requirement.

(6) The intra-corporate transferee shall be allowed to work in Malta until a decision on the application for long-term mobility has been taken by the Executive Chairperson, provided that:

- (a) the time period referred to in regulation 18(1) and the period of validity of the intra-corporate transferee permit issued by the other Member State has not expired; and
- (b) if the Executive Chairperson may require that, the complete application is submitted to him at least twenty days before the long-term mobility of the intra-corporate transferee starts.

(7) An application for long-term mobility may not be submitted at the same time as a notification for short-term mobility:

Provided that where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the Executive Chairperson may request that the application for long-term mobility be submitted at least twenty days before the short-term mobility ends.

(8) The Executive Chairperson may refuse an application for long-term mobility where:

- (a) the conditions set out in sub-regulation (2)(a) are not complied with or the criteria set out in regulation 4(1)(c)(i), (3) and (4) are not complied with;
- (b) one of the grounds covered by regulation 6(1)(b) or (d), (2), (3) or (4) applies; or
- (c) the intra-corporate transferee permit expires during the procedure.

(9) Where the Executive Chairperson takes a positive decision on the application for long-term mobility, the intra-corporate transferee shall be issued with a permit for long-term mobility allowing the intra-corporate transferee to stay and work in Malta. The permit shall be issued using the uniform format laid down in Regulation (EC) No. 1030/2002. Under the heading 'type of permit' in accordance with point (a) 6.4 of the Annex to Regulation

(EC) No. 1030/2002, the Executive Chairperson shall enter 'mobile ICT':

Provided that the Executive Chairperson may indicate additional information, as directed by the pertinent authorities, related to the employment relationship of the third-country national including the name and address of the employer, place of work, type of work, working hours and the remuneration, in paper format, or store such data in electronic format as referred to in Regulation (EC) 1030/2002.

(10) The Executive Chairperson shall inform the competent authorities of the other Member State where a permit for long-term mobility is issued.

(11) Where the Executive Chairperson takes a decision on an application for long-term mobility, the provisions of regulations 7 and 13(2) to (5) shall apply accordingly.

Safeguards.

20. (1) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen acquis in full and the intra-corporate transferee crosses an external border, the Executive Chairperson or the Principal Immigration Officer shall be entitled to require as evidence that the intra-corporate transferee is moving to Malta for the purpose of an intra-corporate transfer by submitting:

- (a) a copy of the notification sent by the host entity in the other Member State in accordance with regulation 18(3); or
- (b) a letter from the host entity in Malta that specifies at least the details of the duration of the intra-EU mobility and the location of the host entity or entities in Malta.

(2) The host entity in Malta shall inform the Executive Chairperson of any modification which affects the conditions on which basis the mobility was allowed to take place:

Provided that if the Executive Chairperson issues the intra-corporate transferee permit, the Executive Chairperson shall inform the authorities of the other Member State immediately.

(3) The Executive Chairperson may request that the intra-corporate transferee immediately cease all employment activity and leave Malta where:

- (a) he has not been notified in accordance with regulation 18(3) and (4) and requires such notification;
- (b) he has objected to the mobility in accordance with regulation 18(7);
- (c) he has refused an application for long-term mobility in accordance with regulation 19(8);
- (d) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;

- (e) the conditions on which the mobility was allowed to take place are no longer fulfilled.

(4) In the cases referred to in sub-regulation (3), the Principal Immigration Officer shall, upon the request of the other Member State, allow re-entry of the intra-corporate transferee, and where applicable, of his or her family members, without formalities and without delay. This shall also apply if the intra-corporate transferee permit issued by Malta has expired or has been withdrawn during the period of mobility within the other Member State.

(5) Where the holder of an intra-corporate transferee permit crosses the external border of a Member State applying the Schengen acquis in full, the Executive Chairperson shall consult the Schengen information system. The Executive Chairperson shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen Information System.

21. A host entity which fails to comply with the obligations provided hereunder shall be guilty of an offence against these regulations and shall on conviction be liable to a fine (*multa*) not exceeding five thousand euro (€5,000): Sanctions.

- (a) the host entity did not comply with the conditions of admission, stay and mobility of these regulations;
 - (b) the host entity has failed to notify the mobility of the intra-corporate transferee in accordance with regulation 18(2) and (3);
 - (c) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;
 - (d) the application for an intra-corporate transferee permit has been submitted to the Executive Chairperson but the longest overall stay does not take place in Malta;
 - (e) the intra-corporate transferee no longer fulfils the criteria and conditions on the basis of which the mobility was allowed to take place and the host entity fails to notify the Executive Chairperson of such a modification;
 - (f) the intra-corporate transferee started to work in Malta, although the conditions for mobility were not fulfilled in the case where the provisions of regulations 18(6) or 19(6) apply.
-