

## Migration - Japanese seconded employees

by Mr Erwin Vandervelde, Managing Partner, Laga and Mr Matthias Lommers, Associate, Laga

### Important administrative impact on the presence of Japanese seconded employees and self-employed persons working in Belgium

Last year, the Belgian Council of Ministers approved an e-government project relating to social security. The project aims to modernise the Belgian social security system management and the legal framework for monitoring and controlling the employment of foreign nationals (called LIMOSA).

The system, which will enter into force on April 1, 2007, consists in:

- A mandatory declaration for each seconded employee and all self-employed persons working in Belgium who are not subject to the Belgian social security system (comparable with the DIMONA-declaration for employees who are subject to the Belgian social security system).
- An information exchange system between the social security authorities, the Ministry of Employment, the different Regions (competent for the application for work permits), the Ministry for Middle Classes (for professional cards) and the Ministry of Internal Affairs (for residence permits). The information will become available and exchangeable between the different authorities.

In practice, the implementation of LIMOSA will entail that each Japanese employee who is assigned to Belgium without being subject to Belgian social security (even on a temporary and/or partially basis) and all self-employed persons who are working in Belgium need to be declared to the Belgian social security authorities before they start working in Belgium.

With this obligation, the Belgian authorities want to create better guarantees for the free movement of services and workers and want to obtain a better overview on the employment of foreign nationals in Belgium.

The application for the Limosa declaration can be filed by the employer, by his agent (e.g. Belgian lawfirm) or by someone appointed by him (e.g. the employee or someone of the HR department in Belgium). When filing the application for a Limosa declaration, the employee's name, contract details, place of employment, kind of employment (full- or half-time), the period of assignment and other information will need to be provided to the Belgian social security authorities through an online-application. The applicant receives a Limosa-1 certificate immediately after every application.

Exemptions to this mandatory declaration are created for, amongst others, the following categories:

- Short term assignees who attend scientific conferences or meetings in limited circles for maximum 5 days per month;
- Employees who are sent to Belgium for the initial assembly and/or the first installation of an item. It must concern qualified and/or specialised employees of the company delivering the item. The works may not take longer than 8 days;
- Specialised technicians of foreign companies who come to Belgium to carry out urgent repair or maintenance works to machines or equipment. It must concern machines or equipment that were delivered by their employer to the company where the repair works or the maintenance is done. These technicians may not stay in Belgium for longer than 5 days per month without Limosa declaration;
- certain categories of trainees.

The Limosa declaration is a legal requirement. Non-compliance can result in important penal and/or administrative sanctions. Both the employer, the person appointed by him or his agent can be punished with administrative and/or penal sanctions.

The one for whom or on whose premises the work is carried out in Belgium can also be prosecuted if he fails to declare the absence of a Limosa declaration to the government! In other words, the Belgian "user"/principal can be held liable for non-compliance of contractors who employ foreign nationals on the premises of the "user".

As mentioned, the mandatory Limosa declaration will come into effect on 1 April 2007. For activities that have already started, there is however a transition period of six months.

**Erwin Vandervelde**, Managing Partner Laga,  
evandervelde@laga.be

**Matthias Lommers**, Associate Laga,  
mlommers@laga.be