

→ Indian Employee Dispatchment to Germany

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>> As Germany's economy is experiencing growth it has become more and more attractive as receiving country for expatriates. The GMAC study of 2005 lists Germany as fourth in the most frequently selected locations for expatriate assignment. A growing number of expatriates belongs to the outsourcing industry since Germany's strong economy begins to face a new problem: The heavily export oriented German companies experience increasingly a shortage of engineering personnel. Indian offshore providers like Wipro and Infosys that already have a presence in Germany forecast a promising development for outsourcing providers: "Germany will have a gigantic lack of development engineers. This is our chance to overcome the German resistance to outsourcing," Wipro-Chef Premji declared in a February interview with Handelsblatt, the leading German business newspaper.

> Accordingly outsourcing becomes more and more popular in Germany, especially in the automotive, logistics, aeronautical and tourism industries. Now what are the issues the outsourcing industry faces when sending personnel abroad?

> As a member state of the European Union (EU), Germany entertains two sets of immigration rules: EU-law, which regulates the status of EU-citizens or employees of an EU-based service provider during their presence in another EU-country and national law for all other foreigners. But even national immigration permits are effected by the EU. As the EU-member states aim to create a geographic area without internal borders they agreed on provisions regarding border patrol, and some member states and their neighbouring countries – Germany, France, The Netherlands, Belgium, Denmark, Finland, Greece, Italy, Luxembourg, Austria, Portugal, Sweden, Spain, Iceland and Norway – even created the so-called "Schengenraum". Within the Schengenraum, all internal borders are largely un-patrolled, foreigners in possession of a Schengen-visa may travel freely within and those bearing a valid residence or settlement permit for one Schengen-country may travel on business or tourism for up to three months within each year to other Schengen-countries without a visa.

But although the Schengen countries are each able to issue a business visa with validity for all Schengen countries, they still decide individually and thus differently what activity may be performed during such a business trip. In Germany only few business purposes are perceived by the law as suitable activity during a business travel: The participation in negotiations, the sale of goods or the attendance of exhibitions or conferences. Trainings or meetings in preparation of the knowledge transfer that is part of every outsourcing project, do therefore require a residence permit.

> While some countries like U.K., Canada and Australia have introduced a points system that enables highly skilled migrants to acquire a residence permit, Germany went for a system of categories. These categories pay attention to the nationality of the applicant as well as the type of employment he or she wishes to take up.

> With few exceptions, all foreign nationals may take up employment only if their vocation fits into one of the listed categories or is part of an international exchange programme.

> The vocational categories mostly encountered by the German corporate immigration practitioner dealing with Indian clients are those of the Information Technology (IT)-engineer, the member of a statutory body of a company, the delivery and maintenance of software application and the intra-group personnel exchange programme.

> While employment as IT-engineer is only possible after a prior labour market check turning out with the job offered still vacant, employment as managing personnel with statutory representation rights or on the basis of an intra-group exchange programme is possible without the labour market check. The delivery of software applications category presupposes a contractual relationship between the offshore provider and a German customer but does not require a labour market check. Naturally, the proceedings that do not require the labour market check are about four to six weeks shorter than the other ones.

> Germany's economy relies on its strong international ties and the immigration laws therefore acknowledge that within international groups, the demand for employees migrating abroad occurs frequently. For the fast and efficient transfer within the intra-group exchange programme category the assignee needs to hold either a college or university degree and be assigned from one group company to the other. Another precondition is that the number of assignees coming to Germany under the programme should equal the number of employees assigned abroad. According to the central labour agency (ZAV), which is responsible for the issuing of the permits based on this category, 4,161 employees were assigned to Germany on personnel exchange programme in 2005. As the application process within such an exchange programme can be shortened to two to three weeks, this immigration possibility is considered as the most convenient way to obtain a permit.

> Generally speaking, most outsourcing providers have experienced a higher success rate penetrating the German market after establishing a German presence – as German customers usually prefer to deal with partners that entertain a legal presence in Germany. Such a presence also entitles the outsourcing provider to employ highly qualified foreign – mostly Indian – IT engineers under the IT-specialist category.

> Although currently only IT engineers are eligible for the privileged treatment under this category, media and political discussion within the last six months indicated a need to extend this category to other types of engineers as Germany is in dire need of qualified personnel. In his speech before the German Parliament in June 2006, Michael Glos, Federal Minister of Economics and Technology, claimed that 18,000 vacancies for engineers have been reported so far. The VDI, the German organisation representing engineers, has predicted, that in 2007 Germany will need extra 30,000 engineers – a demand that definitely will not be met by Germany's engineering graduates of 2006. India, with its vast number of qualified engineers and the declared intention to expand the outsourcing business into other engineering fields, may provide Germany with even more offshore services and qualified personnel in the future.

> Another lesser-known immigration law provision, that actually applies to many outsourcing situations, entitles foreigners to migrate to Germany for the installation or de-installation of ready-to-use machines, software applications, plants or exhibition stalls, their repair, maintenance or training on their use. The charming point of this provision is that it reduces the necessity of a regular permit application to a mere notification process if the duration of stay is less than three months. If the duration of the assignment in this category is already predicted to take more than 3 months, a regular residence permit application will be required under a similar category.

> The internationally-focused German industry also relies on a generous immigration law when it comes to the managing personnel. Members of the statutory body of a corporation located in Germany, or those endowed with a registered general power of attorney to represent the corporation, enjoy the possibility of obtaining a residence permit without a labour market check. Members of the junior management may obtain a permit after a labour market test if they have specific company-related knowledge.

> While the rules and categories of immigration are the same all over Germany, one should be aware, however, that Germany is not a centralised state. Each Bundesland, and sometimes each city, has its own way of structuring an authority and its administrative proceedings. Thus, applications have to be filed at the local immigration authority that works closely with the local labour authority. Due to the lack of centralisation resulting in multiple different immigration authorities handling applications the duration of the application process is somewhat unpredictable and generally the local immigration authorities only issue a permit that covers employment in the district of the local labour authority. Although it is possible to enlarge the range of an assignment to cover several districts, this has to be specially applied for, thus prolonging the process. With the individual categories having their different pros and cons, and the multitude of competent immigration and labour authorities a tailor made corporate immigration strategy is part and parcel of every successful outsourcing project. After the start of the project, co-operation between the German- and Indian-based immigration teams is crucial in order to ensure a speedy process and the continuous presence of key-personnel at the customer site.

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