



Kemp Little LLP

Sponsorship Under the New Immigration Rules



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## Sponsorship Under the New Immigration Rules

The work permit system (along with 82 other routes to work or study in the UK) will be replaced from autumn 2008 with a new 5 tier points based immigration system.

Tier 2 of that system replaces the current work permit system and will take effect from November 2008.

Under Tier 2, non-EEA nationals wishing to work in the UK will receive points based on their qualifications, prospective earnings and the type of application being made (for example inter-company transfer, shortage occupation or application requiring advertising). If they are eligible for sufficient points and the job meets the necessary requirements for Tier 2 then employers may issue them with a virtual "certificate of sponsorship" using a unique reference number (rather than making a work permit application to the UK Border Agency). The onus is very much on the employer to ensure that the migrant and the post fulfil the criteria for a certificate of sponsorship under Tier 2.

The migrant will use the certificate of sponsorship reference number to apply for entry clearance to travel to the UK.

In order for employers to be able to issue certificates of sponsorship, they will need to be registered as "sponsors" with the UK Border Agency.

Our note below sets out the basic principles of the process for registration as a sponsor, however we strongly suggest that employers also follow the links to the websites set out in this document for further information, including in particular the standards expected of employers for acceptance onto the sponsorship register.

### Sponsor Registration

To become a sponsor, employers will have to apply for a licence from the UK Border Agency. Once the licence has been granted they will be registered on the sponsorship register with the UK Border Agency and will have access to an online "sponsor management system" enabling them to issue certificates of sponsorship.

Applications for admission onto the sponsorship register are now open. Although Tier 2 does not commence operation until November 2008, it is important that employers register now in order to avoid any backlog when the system goes live, especially if the employer needs to employ new non-EEA nationals as soon as the system commences in November. The UK Border Agency has said that applications received by 1 October 2008 will be guaranteed to be dealt with in time for the opening of the scheme on 1 November.

In order to register employers must make an online application:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/applyforlicence/applyonline/>

Employers must make the online applications themselves. The UK Border Agency's website says:

*"You must make the application yourself, although you can use a legal representative to help with your application. Any applications submitted by a legal representative will be rejected."*

Once the application has been submitted online, employers must then send the necessary fee and supporting documents by post within 10 days.

Every employer who wishes to bring non-EEA nationals to work in the UK from November or to renew current work permits must register to be a sponsor.

### Considerations before registration as a sponsor

Before proceeding to register as a sponsor, employers should consider the following:

1. **Number of certificates:** The application form requires the employer to specify the number of certificates of sponsorship which it is likely to issue in the next year. Consideration should therefore be given to the number of work permits previously applied for and number of non-EEA nationals whom the company is likely to want to bring to the UK from November. Employers should be aware that if this estimate is reached during the year the employer would need to contact the UK Border Agency and explain why further certificates of sponsorship are required.
2. **Access to Sponsorship Management System:** Employers must also consider which employees will have access to the Sponsorship Management System. All these individuals must be based in the UK and the UK Border Agency will conduct background checks on the Authorising Officer, Level 1 Users and the Key Contact. There are three levels of access to the Sponsorship Management System:

- a. **“Authorising officer”:** This is the person who has overall responsibility for immigration within the company. This would usually be the HR Manager/Director or, if none, the Operations Manager/Company Secretary or similar role. The UK Border Agency will conduct Criminal Records Bureau checks against this individual to ensure that they are fit and proper to hold this post. The Authorising officer is ultimately responsible for the activities of anyone acting on the organisation’s behalf to issue certificates and sponsorship.
  - b. **“Level 1 users”:** Level 1 users are responsible for administration of the company’s sponsorship. They will manage access to the sponsor management system by other employees, update organisation details, inform the UK Border Agency of any change of circumstances, apply for any sponsorship licence renewal, request additional certificates of sponsorship, withdraw sponsorship of any migrant and have access to all certificate and sponsorship activity. At present on the application for sponsorship the organisation may only specify one Level 1 user. However, once the sponsorship licence has been approved and the company has access to sponsor management system, that Level 1 user may set up a structure of users to manage the allocation of the certificates and sponsorship.
  - c. **“Level 2 users”:** Level 2 users have the ability to assign the certificates of sponsorship to employees, to report migrant activity, to track migrant applications and have access to their own certificate and sponsorship activity. The company may have as many Level 2 users as it wishes.
3. **Site Visit:** As part of the application process, the UK Border Agency will arrange a visit to the employer’s site by an account manager. This visit is designed to ensure that the UK employer genuinely exists and has appropriate HR and compliance systems in place to enable it to comply with its duties as a sponsor (see below). Once this visit is undertaken, the sponsor will be assessed either as an A rated or B rated employer. Employers will be B rated if they do not meet all of the criteria for HR and compliance. Further information about these can be found at:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/HRandcompliance/>

4. **Checklist:** The UK Border Agency has put together a checklist and top tips which employers should read through before making a sponsorship application, to ensure that they are ready and have the expected HR/Compliance systems in place:

<http://www.ukba.homeoffice.gov.uk/employers/points/areyouready/>

## Sponsorship duties

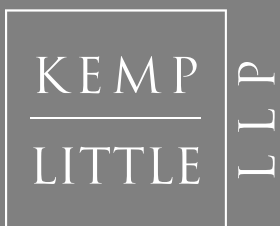
The sponsor’s duties are:

Record keeping;	The sponsor must keep a photocopy or electronic copy of the migrant’s passport together with the migrant’s up to date contact details and a copy of the migrant’s biometric ID card (when ID cards are implemented later this year).
Reporting;	<p>The sponsor must report the following events:</p> <ul style="list-style-type: none"> <li>■ If the migrant does not turn up for work within 10 working days;</li> <li>■ If the migrant is absent from work for over 10 working days (unauthorised);</li> <li>■ If the contract of employment ends (within 10 working days);</li> <li>■ If there are significant changes to the sponsorship circumstances such as a change of job or salary;</li> <li>■ If the sponsor has suspicions that the migrant is breaching conditions of leave;</li> <li>■ Any significant changes to the sponsor’s status such as if the sponsor becomes insolvent or is bought by another company; and</li> <li>■ Details of any third party that helped in the recruitment of employees.</li> </ul> <p>These matters are reported via the sponsor management system.</p>

Compliance;	<p>The sponsors must comply with the following obligations:</p> <ul style="list-style-type: none"> <li>■ Ensure that the migrant is legally allowed to do the job and has any registration or professional accreditation needed;</li> <li>■ Ensure that it does not employ someone whose immigration status does not allow them to do the job they're applying for;</li> <li>■ Ensure that the certificate of sponsorship is only issued to migrants who, to the best of the sponsor's knowledge, meet the requirements of the Tier and the category they're applying under.</li> </ul>
Co-operation with the UK Border Agency; and	<p>Employers must allow UK Border Agency staff access to premises on demand. Visits may be either prearranged or unannounced. Employers must stick to any sponsorship action plan set by the UK Border Agency and look to minimise the risk of immigration abuse by complying with any good practice guidance that it or any sector body may produce for employers in particular tiers or sectors.</p>
Additional duties specific to the relevant Tier	<p>Employers applying under Tier 2 must make sure that:</p> <ul style="list-style-type: none"> <li>■ The job is at S/NVQ3 skill level or above;</li> <li>■ The job is a genuine vacancy and meets the resident labour market test, is on the shortage occupation list or is an intra-company transfer; and</li> <li>■ The migrant will be paid the appropriate salary rate for the job.</li> </ul> <p>For inter-company transfer applications, the employer must also ensure that the migrant has been working for the overseas part of the employer's organisation for at least six months.</p> <p>We would advise that the employer keeps records to demonstrate all of these matters (such as copies of any advertising undertaken, where relevant), in case the UK Border Agency wishes to inspect any such documents during a site visit.</p>

The detailed guidance for Tier 2 and for issuing certificates of sponsorship has not yet been published by the UK Border Agency. In the meantime outline information can be obtained from the UK Border Agency website: <http://www.ukba.homeoffice.gov.uk/employers/points/> or by contacting Kathryn Dooks at Kemp Little on 020 7710 1660 or [kathryn.dooks@kemplittle.com](mailto:kathryn.dooks@kemplittle.com).

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Kemp Little LLP  
Solicitors  
Cheapside House  
138 Cheapside  
London EC2V 6BJ  
Tel: 020 7600 8080  
Fax: 020 7600 7878  
[www.kemplittle.com](http://www.kemplittle.com)

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