

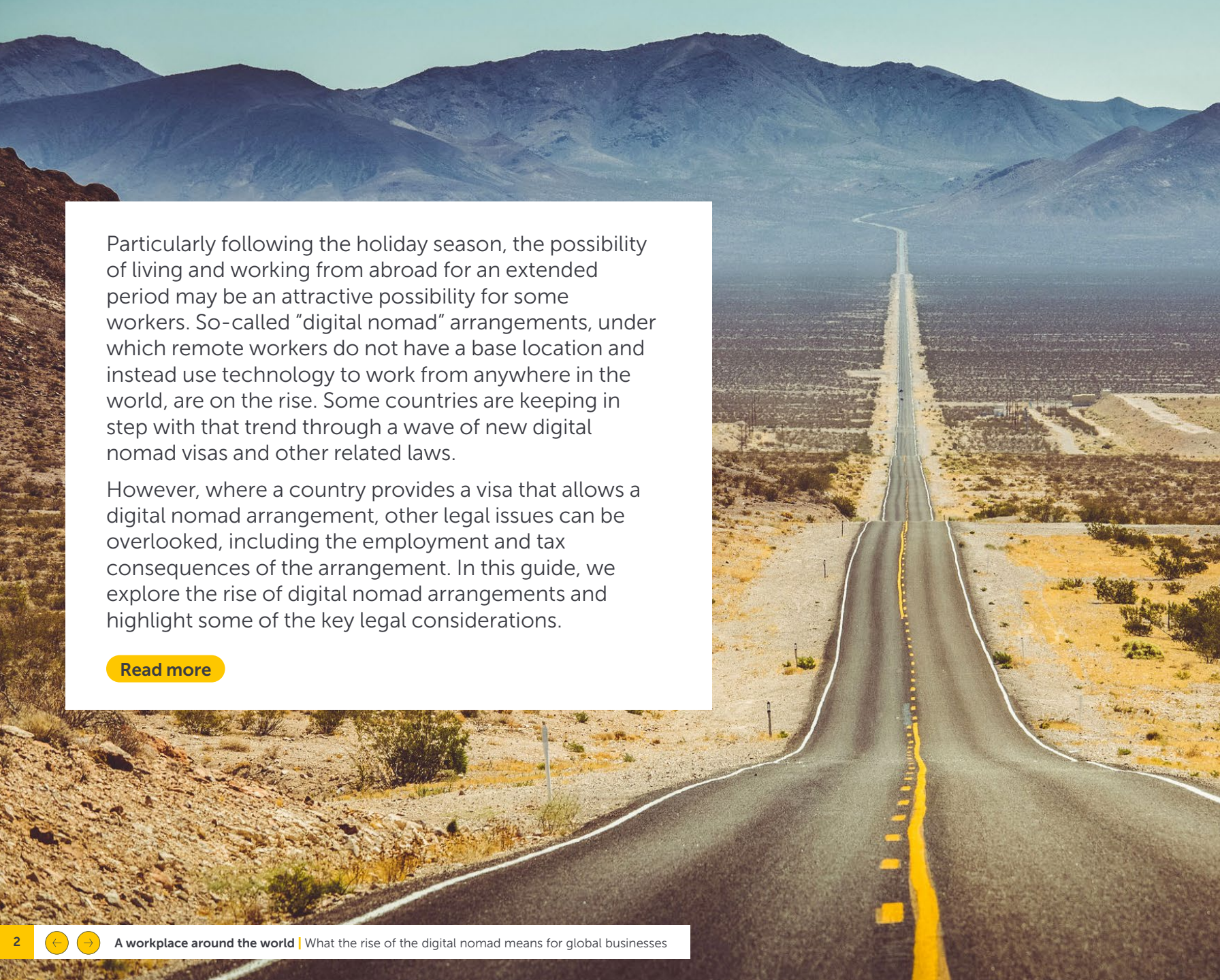
# EVERSHEDS SUTHERLAND



## A workplace around the world

What the rise of the digital nomad means for global businesses





Particularly following the holiday season, the possibility of living and working from abroad for an extended period may be an attractive possibility for some workers. So-called “digital nomad” arrangements, under which remote workers do not have a base location and instead use technology to work from anywhere in the world, are on the rise. Some countries are keeping in step with that trend through a wave of new digital nomad visas and other related laws.

However, where a country provides a visa that allows a digital nomad arrangement, other legal issues can be overlooked, including the employment and tax consequences of the arrangement. In this guide, we explore the rise of digital nomad arrangements and highlight some of the key legal considerations.

[Read more](#)

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# Digital nomad visas

## A comparative view

Over 50 countries worldwide now have some form of visa or immigration arrangement supporting digital nomad models.

In some jurisdictions, the requirement for any traditional work-related visa for digital nomads has been waived or varied, sometimes replaced with a new type of work permit. For example in Italy, where a new permit has been released for non-EU national digital nomads, who can stay in the country for up to 90 days without a visa. In Canada, "long distance work" (either by telephone or internet) done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada, is not characterized as work requiring a work permit under the Temporary Foreign Worker and International Mobility Programs.

And in Australia, digital nomads who use technology to work remotely while travelling between different locations (who are either self-employed or employed by a company without an office in Australia), can apply for a visa for short stay periods as a tourist or business visitor.

In those countries where digital nomad visas exist, the conditions of such visas vary significantly across jurisdictions. In many countries, there will be a minimum earnings threshold, as well as other requirements and checks. For example, in the Cayman Islands where there is a minimum annual salary requirement of \$100,000, or \$150,000 for couples. Police background checks, COVID-tests and private health insurance requirements are common features, as well as proof of employment by a company based outside of the jurisdiction.



The costs and length of such visas also vary significantly. For example, in Bermuda where the visa fee is \$263, compared to \$2,000 in Barbados. In Indonesia, a digital nomad visa can last for up to 5 years, whereas in Bermuda it is limited to 12 months only.


To demonstrate the different arrangements that currently exist, we've created an interactive guide with details of digital nomad visas or immigration arrangements for employed workers across a sample of jurisdictions around the world.

[View guide](#)

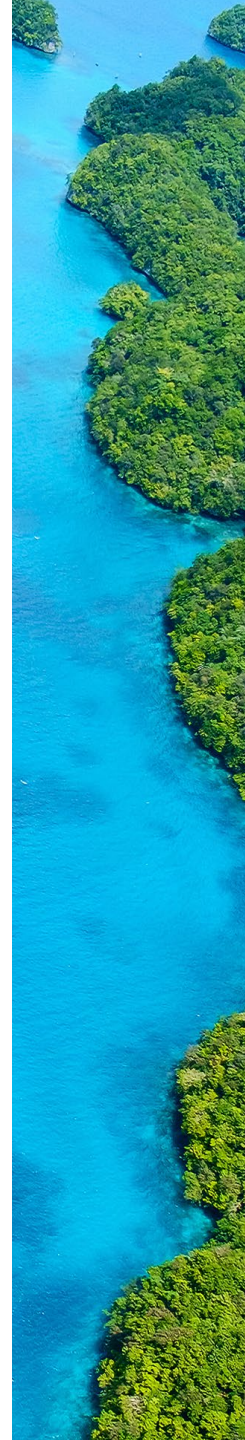


# Digital nomad visas map

## Jurisdictions with Digital Nomad Visas

Click on the flags to find out more 

- |   |  |   |  |  |   |   |   |  |  |  |   |  |  |
|---|--|---|--|--|---|---|---|--|--|--|---|--|--|
| <br>Anguilla | <br>Antigua and Barbuda | <br>Barbados | <br>Bahamas   | <br>Bermuda | <br>Brazil | <br>Cayman Islands | <br>Costa Rica | <br>Croatia | <br>Curaçao | <br>Cyprus  | <br>Czech Republic | <br>Estonia | <br>Georgia |
| <br>Greece   | <br>Hungary             | <br>Iceland  | <br>Indonesia | <br>Latvia  | <br>Malta  | <br>Mauritius      | <br>Montserrat | <br>Norway  | <br>Panama  | <br>Romania | <br>Seychelles     | <br>UAE     |  |



# Rise of “digital nomads”

Historically, the possibility of living and working from another country or countries for an extended period was mostly limited to self-employed freelancers who had maximum flexibility and control over when and where they worked. However, with employers and workers alike embracing more remote location-independent working arrangements enabled by technology, that possibility also now increasingly extends to employed workers.

Permanent remote working arrangements are rising. Consistent with evidence that workers increasingly value and expect more flexible working arrangements and the commercial benefits that can be gained for businesses through such arrangements, some studies have estimated that within the next few years, one in every five workers will be remote workers.

In addition, many countries are starting to legislate for workers' right to request more flexible work locations, some of which go beyond the country in which the worker is employed. In the Netherlands, the Dutch House of Representatives has recently adopted a revised version of the so-called 'Work where you want' Act, which includes an obligation on employers to consider a request to work from the employee's home address within the territory of the EU.




# Applicable employment laws

The fact that a country permits digital nomad arrangements from an immigration perspective does not address the separate issue of other laws that can influence the arrangement, such as employment, tax, social security and health and safety.

The question of whether local employment and other relevant laws will apply to the digital nomad arrangement will be critically important, often directly impacting the cost and risk of an organization's people strategy in respect of such workers and informing the legally correct approach when an employer recruits, rewards or dismisses a digital nomad worker. Particularly for digital nomads who are working across several jurisdictions, it also determines the extent to which workers can validly "forum shop" or "cherry pick" the jurisdiction that offers them the most beneficial position.

Due to the location-fluid nature of digital nomad arrangements, establishing the applicable employment laws can be a challenge. However, any choice of governing law expressed in the contract of employment will often be the starting point for determining the applicable law, although some laws (typically including statutory employment rights) may be mandatory, regardless of what the contract states. Further, other rights and benefits might arise in collective agreements that may be automatically applicable to employees because they are working in a particular location or sector.

Within the EU, where the governing law of the employment contract has not been chosen, the so-called Rome I Regulation will determine the applicable law, taking account of where the work is habitually carried out, the place of business and/or the closeness of connection with a particular country. Other jurisdictions have similar choice/conflict of law rules, including in the US where, subject to some exceptions, applicable employment protection laws are generally deemed to be territorial to the location of employment.



***The question of whether local employment and other relevant laws will apply to the digital nomad arrangement will be critically important...***



# Taxation and social security issues

Despite the availability of visas and work permits for digital nomads, in many countries this does not alter the tax and social security position, which can be complex for cross border arrangements. However, some countries are starting to link, or consider linking, special tax concessions or arrangements with the issue of digital nomad visas. For example in Spain, an anticipated new law (Startup Act) will allow digital nomads to reside and work in Spain for up to 5 years, with eligibility for a special tax regime, paying Non-Resident Income Tax. In the UK, the government has recently launched a consultation to review the emerging trends in hybrid and distance working and to consider any pressures those trends are putting on the UK's existing tax rules and guidance.

Where special tax arrangements linked to any digital nomad visa are not available, the question of whether there will be any liability to pay income tax in the jurisdiction in which work is being performed will be determined by several factors, including local laws on tax residency. Further, some countries have special domestic rules for taxing employment income, which may result in certain other administrative obligations being imposed on employers.

The application of local tax laws may sometimes result in tax being payable both in the original/home location and in the country in which the employee is actually working. In that case, it will need to be considered whether any double taxation treaty applies or whether there is any other relief available. Further, some countries have agreements between them on tax, including in many European jurisdictions. The rules are complex, but they often allocate taxing rights to the country where workers carry out their employment.

Where digital nomads, particularly those in management positions, are working in a location where the employer does not have an existing legal presence (to the extent this is permissible in the location in which the employee is working), the arrangement may risk creating a permanent establishment in the jurisdiction for corporation tax purposes, with risks of fines and significant unexpected tax expenses. Care should therefore be taken to ensure that potential triggers for such matters are understood, and the arrangements are routinely monitored to mitigate any risks.

Obligations to pay social security contributions should also be considered, including any local social security rules and the existence of any protocols, bilateral agreements or exemptions between the original/home country and the country in which the work is being performed.

# Engagement model

The identity of the employing entity should be considered and determined prior to the commencement of any digital nomad arrangement. Particularly in those jurisdictions that do not currently have special immigration arrangements in place for digital nomads, there can be legal and administrative restrictions that can dictate the necessary engagement model or prevent the individual working from that country at all.

Some countries have historically required a formal local presence to be able to obtain the necessary visa or work permit to allow a foreign worker to live and work in the country. Recognizing the shift to more fluid locations of work, several of those countries are now putting in place certain flexibilities to accommodate new ways of working.

For example, in the UAE, where it has been a long-standing requirement for all Employment Residence Permits to be sponsored by an entity that is locally licensed and incorporated in the UAE. However recently, a new remote working visa has been introduced that allows foreign nationals to live and work in the UAE while remaining employed by their home country.

To seek to circumvent the local presence and the tax risks highlighted above, as well as easing the administrative burden of employing workers overseas and giving more time to evaluate whether greater investment and presence in a country is necessary before setting up an overseas base, businesses sometimes use what are known as 'employers of record' (EOR). EORs (otherwise known as professional employer organizations (PEOs))

are organizations with a local presence that contract with the worker (formal employer), so that they are on record as the employer for administrative purposes and can operate functions such as tax filing, pension arrangements, benefits contributions and payroll arrangements.

However, some countries prohibit EOR arrangements, either expressly or as a result of other laws, with substantial penalties for breach for both the EOR and the business, including criminal penalties and fines. Despite the publicity around the ease of use of such EOR arrangements globally, caution should be exercised to ensure that the legality of such arrangements in the intended country of use is properly understood and monitored.

See our table giving a comparative overview of the legality of employer of record arrangements in a sample of jurisdictions around the world.



# The use of “work anywhere” policies



Recruitment and retention continue to be a challenge for many businesses worldwide, resulting in many organizations looking more creatively at flexible work options. With technology enabling work to be carried out from much wider geographical locations, many employers have announced ‘work anywhere’ policies to present an attractive proposition to existing and potential talent and to support digital nomad arrangements.

Generally, such ‘work anywhere’ policies will contain a number of limitations to seek to mitigate the legal risks highlighted above, or will be on the basis of permanent relocations and localization only. Where the policy is subject to limitations, those limitations often include a limited range of countries or regions in which the digital nomad worker may work (often including a prohibition on working in any countries subject to international sanctions), limit the number of days in any

particular country, and/or put the onus on the worker to secure the correct right to work authorizations.

One area of practical difficulty with digital nomad arrangements can be monitoring hours worked. On the one hand, employers may wish to (and in some jurisdictions, be required to) have in place a system that enables the duration of time worked each day by each employee to be measured or tracked. On the other hand, there are often significant data privacy obligations and restrictions that impact whether employee working time and performance can be monitored in certain jurisdictions and, if they can, how the data can be used.

It is important therefore that time recording, and the applicable rules taking account of any relevant local laws, are specified within the arrangements.

Cybersecurity is another major concern. More fluid working arrangements that rely on remote connectivity and the existence of a proliferation of personal devices can result in an organization’s control systems being stretched to the limits. It is essential that policies and procedures are adapted for a remote workforce and regularly tested to ensure they are sufficiently robust. Monitoring and surveillance systems should be adapted to local laws, but strong enough to detect where the employer’s confidentiality of information may be compromised.

Maintaining and developing culture, purpose and values can be a particular challenge with digital nomad arrangements. Having in place clear policies, ensuring important aspects such as health and safety and digital security are not overlooked, will be key. In addition, reinventing initiatives and processes that underline the company’s culture and values to

maximize their effectiveness in a remote environment, reinforcing key messages through effective communication and ensuring leaders model behaviours and values in their on-line presence, can all have an impact. Further, requiring some face-to-face contact, including a requirement for the worker to attend the physical workplace for specific events, in specific circumstances or after a specific period of time, can be beneficial.



# Practical issues and avoiding pitfalls

The use of digital nomad arrangements offer a significant opportunity for organizations to benefit from more agile working models. However, by their nature, digital nomads often operate under arrangements that are less defined than other working arrangements. Particularly where high numbers of such workers are engaged by a business, this can significantly impact the businesses' risk profile if not effectively managed, including in terms of immigration, tax, cybersecurity and employment litigation.

Ensuring clear arrangements, with supporting policies and procedures, will often be essential to the effective management and risk mitigation of digital nomad arrangements. Clarity around the arrangement will also have the advantage of avoiding some of the legal pitfalls that can result from such ways of working, ensuring appropriate protection both for workers and the business.

- ✓ **setting expectations:** upfront clarity should be established as to how and when the digital nomad worker should work, including taking account of time differences. This will be particularly important where collaboration is important for the role. In many cases, a written policy will be the most effective way of clearly communicating the requirements and will often include rules to effectively manage the location of work, cybersecurity, ways of working, health and safety, record keeping and the remote management of conduct and performance.
- ✓ **understanding immigration requirements:** it should be checked whether there is a lawful digital nomad visa route in the location(s) from which the digital nomad will work. If not, the possibility of other immigration routes should be considered. In some cases, it may be possible to minimize the risk/requirements by restricting the duration of the arrangement, for example to two or three months only.
- ✓ **establishing the appropriate engagement model:** the laws in certain jurisdictions place restrictions and, in some cases, prohibit particular models of engaging staff. One example is a prohibition on the use of Employer of Record arrangements. Any regulatory requirements in the jurisdictions in which the digital nomad worker will be working should therefore be checked to establish whether they may impact the proposed arrangement.
- ✓ **application of local employment and regulatory laws:** local employment laws may apply and override any intended laws governing the relationship, particularly for longer-term arrangements. As a minimum, an analysis should be undertaken of the employment laws in the home location versus the employment laws in the foreign location, to establish where the risks may lie. As a general guide only, written contracts are often put in place for digital nomad arrangements lasting six months or more, including local law mandatory rights and any specific legal contractual requirements.
- ✓ **carefully consider the tax and social security position:** cross-border tax and social security obligations are likely to arise, particularly for longer term arrangements. In those countries where there is no digital nomad linked tax exemption, issues for consideration will include whether there could be additional or double taxation; whether the length of the arrangement will impact the tax and social security position; what evidence employers and workers will need to maintain to ensure they receive any/all exemptions that apply; and whether there are any other concessions in place by revenue authorities.
- ✓ **don't forget benefits impact:** the location where an individual is regarded as legally working may also impact on the options and requirements which apply in relation to the provision of certain benefits, including retirement benefits. It may not be possible for an employee working in a jurisdiction outside their home country to continue participation in a benefits plan due to the terms of the plan or legal requirements, and certain jurisdictions may require participation in mandatory local benefit arrangements.



# How we can help

Our extensive global footprint means that we are well placed to help employers, wherever they have a presence.

Our teams across the world have significant experience of supporting employers to steer through the legal and practical implications associated with workers working remotely and across jurisdictions. The depth and breadth of our experience means that we are able to draw on the many areas of expertise within the firm, including our global employment law, immigration, tax and compensation and benefits teams, to offer a complete solution.

Our teams of expert lawyers are regularly assisting clients to structure digital nomad and other remote working arrangements correctly and to accurately assess any risk profile. In addition, our teams are assisting with documenting arrangements, including the contractual arrangements and appropriate policies and procedures to support the chosen model.



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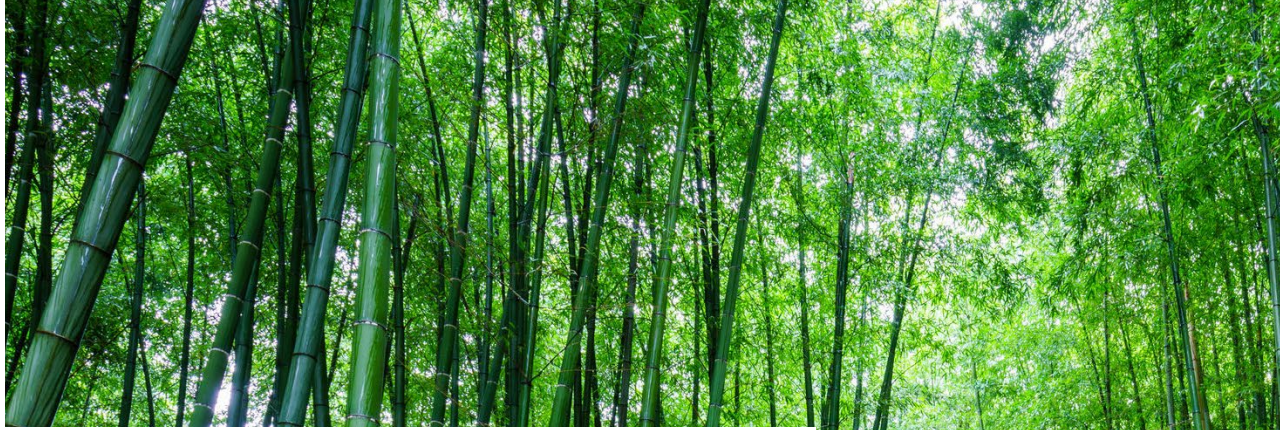
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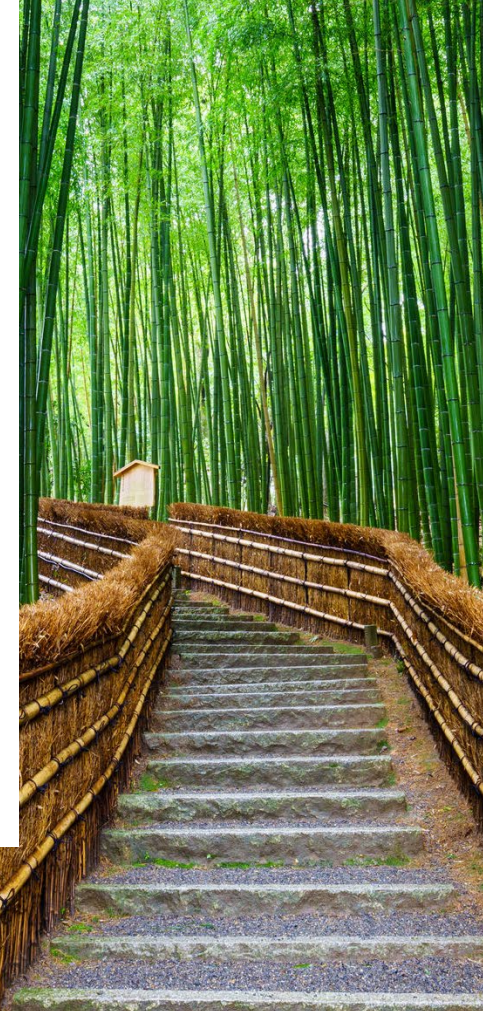
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### Useful links

- [New ways of working across jurisdictions guide](#)
- [Cross-border reorganization guide for employers](#)
- [Evolution of Work Report](#)
- [Use of technology in employment briefing](#)



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This guide is intended to give a comparative overview of some of the existing digital nomad visa arrangements at the time of publication. It does not set out a comprehensive picture of the law and is not tailored to any particular circumstances your company may be facing. It should not therefore be seen as a substitute for obtaining legal advice.

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