

IRCC Announces New Changes For Intra-Company Transferee Work Permits



On October 3, 2024, Immigration, Refugees, and Citizenship Canada (IRCC) announced a [Program Delivery Update](#) which included significant reforms to the [Intra-Company Transfer \(ICT\)](#) work permit category under the [International Mobility Program \(IMP\)](#). These updates clarified the eligibility criteria, operational requirements, and program objectives and will make it more difficult for foreign employers to move their workers to Canada.

What is the ICT Program?

Under the IMP, employers can obtain Canadian work permits for their foreign employees through ICTs without first applying for a [Labour Market Impact Assessment \(LMIA\)](#). LMIAs ensure that there is a legitimate need to hire foreign workers so as not to take away jobs from Citizens and permanent residents of Canada. Obtaining a LMIA takes additional time and effort for employers. Pathways that do not require LMIAs, such as the IMP, offer a quicker and easier option.

ICT work permits under the IMP allows foreign enterprises to transfer qualifying employees to Canada on a temporary basis.

Who Can Qualify for an ICT Work Permit?

To qualify for an ICT work permit, applicants must meet several stringent requirements, including:

- Being currently employed as an **executive, manager**, or as an employee with **specialized knowledge** by an enterprise of a multinational corporation (MNC) outside of Canada;
- Been continuously employed at the foreign enterprise of the MNC, in a similar position, full-time for at least **one year** in the previous 3-year period prior to the date of application;
- Be transferring for a temporary period in the **same capacity** from the foreign enterprise of an MNC to the Canadian enterprise;
- Be transferring to a Canadian enterprise that:
 - (a) has the qualifying relationship of a parent, subsidiary, branch, or affiliate of their current employer; and
 - (b) is actively engaged in the business in respect of which the offer is made; and

- Comply with all other immigration requirements for temporary residence.

The legislative authority for ICT work permits comes from two different regulations: R204(a) and R205(a) of the [Immigration and Refugee Protection Regulations](#):

- **Free-Trade Agreement (FTA) ICTs under R204(a)** apply where Canada has an FTA with another country which includes an intra-company transfer provision, such as the [Canada-United States-Mexico Agreement](#), the [Canada-European Union Comprehensive Economic and Trade Agreement](#), and the [Agreement on Trade Continuity between Canada and the United Kingdom of Great Britain and Northern Ireland](#). Eligibility depends on the nationality of the applicant and their foreign employer.
- **General ICTs under R205(a)** are available to all foreign nationals, regardless of citizenship, who meet the ICT criteria so long as their transfer to Canada would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

The IRCC's policy update has implemented more changes to the General ICTs than the FTA ICTs.

New Eligibility Requirements for Both Categories

I. Stricter Interpretation of "Specialized Knowledge"

Following the policy update, a "specialized knowledge" worker must have both advanced proprietary knowledge and an advanced level of expertise. The applicant's specialized knowledge must be unique and uncommon in the global workforce of the enterprise. Applicants now must show that they are key personnel with unique product knowledge or skills, not merely highly skilled.

2. Position Outside of Canada Must Remain Available

The applicant now must demonstrate that their position at the foreign branch remains available throughout their period of employment in Canada such that they can return to the position after their assignment, thereby affirming the temporary nature of the transfer.

3. Movement Between ICT Categories

Transitions from one ICT category to another (i.e. from a specialized knowledge worker to a manager) are restricted unless the applicant has at least one year of experience in the intended category during the three years prior to the transfer.

New Eligibility Criteria for General ICTs

1. Location of Employment and Remote Work

Before this update, IRCC offered more flexibility for ICT workers performing fully remote work or working for employers that operated out of shared co-working spaces. The guidelines now state that businesses with no physical commercial premises or virtual businesses using a mailing address in commercial locations are not eligible to transfer ICTs to Canada

Employers may still operate out of shared co-working spaces but applicants will be strictly scrutinized to ensure the business has a legitimate presence in Canada.

Additionally, for work that can be completed remotely, then the applicant must provide a reasonable explanation as to why they must be in Canada. A time difference between Canada and the foreign employer's location is not a sufficient reason for a transfer. Remote work is only allowed under the ICT program under certain conditions, such as meeting specific business needs.

The requirement that ICT workers must work in-person at their employer's physical commercial premises has not been included in the FTA ICT guidelines; it is not clear if the IRCC intends to apply less restrictive work location rules for applicants under FTA ICTs.

2. Definition of a Multinational Corporation (MNC)

Prior to this update, the ICT program had some flexibility when it came to start-ups and small enterprises, including corporations aiming to establish their first international branch in Canada.

Now, to qualify for a General ICT, corporations must prove that they are an MNC with revenue-generating operations in at least one country besides its home country. This will make it more challenging for small start-ups to qualify for the ICT program. It is important to note that this change has **not** been adopted for corporations applying for FTA ICT work permits under R204(a).

3. Skill Level of Occupation for Specialized Knowledge Workers

The guidelines now state that an employee applying as a specialized knowledge worker under the General ICT category should be employed in a high-skill occupation. The guidelines define this as one which falls under TEER category 0, 1, or 2 of the [National Occupation Classification \(NOC\) 2021](#) system:

- **TEER 0** includes legislative and senior management occupations.
- **TEER 1** includes business, finance, and administration occupations.
- **TEER 2** includes natural and applied sciences and related occupations.

Applicants whose occupations falls under a lower tier in the NOC system may still qualify as specialized knowledge workers but will be subject to greater scrutiny

New Operational Requirements

1. Wage Standards

The guidelines now state that wages must be reasonable for the occupation in question. Wages for ICT workers should not be lower than the prevailing wage for the occupation in the location of work. The "prevailing wage" is the median wage published by Employment and Social Development Canada on the [Job Bank site](#) for the NOC code of the position and location of work.

Although the prevailing wage has always been considered for ICT workers it appears that applicants will be subject to greater scrutiny to confirm that the wages are reasonable for the occupation, especially for workers in the specialized knowledge category.

2. The Duration of Work Permits

The duration of work permits for each ICT category remains the same: work permits for executives and managers are granted for an initial maximum 3-year period, and renewable for up to seven years total, and work permits for specialized knowledge workers are granted for an initial maximum of 3 years, and renewable for up to five

years. Under the prior policy, permits for start-up companies were allowed extensions based on the progress of the Canadian operations. Now, permits for start-up workers are limited to one year.

New Purpose of ICT Program

Under the previous policy, ICT work permits were often used for workplace flexibility and allowed for the indirect movement of general workforce roles.

Now, the IRCC has emphasized that the ICT program is to be used exclusively for temporary business needs that involve highly skilled professionals or key personnel. Transfers of general workforce roles are strictly forbidden.

What Do These Changes Mean for Start-Ups?

The new definition of an MNC means that an enterprise outside of Canada that only has business operations in its home country **cannot** become an MNC by using General ICT work permits under R205(a) to establish their first foreign enterprise in Canada. This new definition does **not** apply to FTA ICT applications under R204(a).

Employees of foreign enterprises of MNCs may also be eligible for the ICT program under Exemption Code C61 to establish a start-up in Canada on behalf of their employer. In addition to meeting the other requirements for ICTs, applicants under C61 must:

- Be an executive, manager, or employee with specialized knowledge.
- Be entering Canada to secure physical commercial premises for the new enterprise. Until a physical premise is secured, the enterprise can use its counsel's address.
- Provide reasonable human resource plans to maintain or hire staff for the new enterprise. These plans must show that the Canadian enterprise will be large enough to support an executive, management, or specialized knowledge function throughout the duration of the applicant's work permit.
- Provide a realistic and comprehensive business plan and financial documentation to demonstrate that the foreign enterprise has the ability to establish and operate an enterprise in Canada. Following the policy update, the business plan must include:
 - Clear milestones and a timeline for establishing Canadian operations;
 - Details about how the transferred employee will achieve these goals in their role; and
 - Evidence that the new enterprise will economically benefit Canada.

C61 ICT work permits are issued for a one-year period. Extensions to C61 ICT work permits will not be approved unless there are extenuating circumstances beyond the applicant's or their employer's control which delayed the establishment of the new enterprise. Applicants must show that they have secured physical premises for their Canadian operations, they are continuing to work to establish the Canadian enterprise, and the foreign enterprise has the financial ability and resources to ensure the viability of the Canadian operation. If all requirements are met, an extension **may** be granted for an additional six months.

Previously, the requirements of C61 were less stringent, business plans were minimally enforced, and companies faced less scrutiny over the viability of their Canadian operations and the necessity of the transferred employee. The new requirements highlight the need for increased accountability for foreign enterprises seeking to establish Canadian operations and comprehensive, clear, and detailed documentation.

What Do These Changes Mean for Employers?

- The new guidelines are stricter, and applicants, particularly specialized knowledge workers, should expect greater scrutiny.
- More robust documentation and evidence is required for applications and extensions going forward. When submitting new applications, you must consider the new guidelines and cannot simply rely on what was accepted previously.
- The general ICT provision under R205(a) underwent more significant changes than the free trade agreement ICT provision under R204(a). If both routes are open to you, you should carefully consider the benefits and consequences of each option.
- If you only have business operations in your home country and do not qualify as an MNC, then you cannot obtain a General ICT work permit under R205(a) to establish your first international operation in Canada.
- If you are applying for a C61 ICT work permit, then you must provide a detailed and comprehensive business plan and be prepared to follow through and be held accountable for it.
- Seek professional advice if you are unsure about the application process and documentation, eligibility requirements, and the regulatory pathways available to you.

These changes reinforce the ICT program's intent to prioritize legitimate business purposes while simultaneously preventing misuse and abuse of the immigration system. This update aligns with Canada's recent policies aimed at scaling back temporary resident programs and immigration.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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