



## IMMIGRATION AND TECH: WORKING TOGETHER FOR THE UK

Law firm Penningtons Manches LLP and Tech London Advocates (TLA) have been working together to examine how current immigration options are affecting the growth of the tech sector in the UK. We are focussing on what works and where change is needed to allow the sector to continue to grow. In this paper, we set out our proposal for helping young tech companies attract and retain the talent they need to succeed.

### THE PROBLEM: SKILLS SHORTAGE

There is a serious shortage of skills and experience in the UK tech sector.

The industry finds itself in the unique and dangerous position of growing quickly without the talent in place to support that rapid growth. It is estimated that there will be a shortfall of 300,000 digitally skilled employees in London alone by 2020<sup>1</sup>. While the ultimate goal is to grow this talent pool domestically through education, this takes time and there are insufficient graduates in the digital tech field to support the current rate of business growth.

Skills issues can reduce employers' ability to respond to customer needs and stay ahead of competitors, to adopt new technologies or to fully utilise existing equipment or ways of doing things.

Until this improves, the necessary talent has to be recruited from overseas to allow the UK's exciting start-ups and scale-ups to continue to evolve. This talent will also help to upskill the UK's own domestic workforce.

Current immigration policy, while working well for some sectors, remains a deterrent towards the recruitment of these skilled overseas workers for the tech sector and is considered a significant hurdle towards the growth of burgeoning tech businesses in the UK. We assert that this is because of the unique characteristics of tech start-ups and scale-ups.



This deadly combination of a serious shortage of home-grown talent with the right skills and high immigration hurdles to overcome for overseas talent means that one of the UK's high growth and fast-moving entrepreneurial sectors – technology and digital business – cannot expand at the required rate to be globally competitive.

### THE DIGITAL TECH SECTOR'S SIX DEGREES OF UNIQUENESS

#### 1. High-speed growth

Tech businesses – particularly start-ups – are lean, fast-moving and agile businesses for which time is of the essence. Simon Devonshire, director of Wayra Europe and an expert in the growth cycle of successful start-ups, calls this “exponentialism”, a unique kind of high-speed growth that sees small companies become goliaths in a heartbeat. This exponential growth is unique to the digital tech sector and must be fostered if UK-based start-ups are to become global competitors.

#### 2. Easy access to talent

To get funding, most early stage companies must demonstrate to potential investors that they can grow quickly if they receive their required investment. This means showing investors that they have access to the talent they need to scale-up effectively and, where that talent is not available in the UK, that they can recruit the necessary staff from overseas quickly and reliably. Current immigration policy, both in perception and reality, acts as a deterrent to achieving this.

#### 3. No high salaries

Further, tech start-ups often cannot offer high salaries at the outset and the highly skilled are not necessarily the most highly paid. Employees are often paid in equity or are willing to be part of a start-up just for the opportunity of being on the ground floor of an exciting business. The imposition of minimum salary requirements for Tier 2 visa often makes it an unusable system for tech start-ups and scale-ups, even when they are looking to recruit highly skilled individuals. For start-ups, a measure of skill beyond monetary remuneration needs to be in place.

<sup>1</sup>Research finding from Penningtons Manches LLP and TLA submission to MAC in response to call for evidence on minimum salary thresholds for Tier 2 – 3 July 2015



#### **4. Lean machine**

As well as the inability to pay high salaries at the outset, tech start-ups are also run “on a shoe string” while they ramp up. Operational costs must be tightly controlled so that the business can focus on developing its ideas, products and services.

Whilst we welcome the introduction of digital tech roles on the Shortage Occupation List, lean start-ups may not always be able to benefit from the new rules and are still faced with not only the time-consuming and expensive process of obtaining a sponsor licence but must also run a Resident Labour Market Test (RLMT) if they wish to recruit migrants. This is simply not feasible for many young companies

#### **5. Few operational resources**

A start-up may not have the robust HR systems and policies in place to apply for (or maintain) a sponsor licence. Forcing start-ups to obtain licences before they have the resources to comply with the licence duties diverts resources to systems they cannot afford.

Start-ups often rely on investors, accelerators and incubators to assist and advise them on operational functions such as HR and finance so that they can focus on development. Those businesses that are being provided resources by third parties to help them grow (e.g. office space, mentorship, funding) should also be able to rely on those third parties for support in recruiting migrants.

#### **6. Proliferation of support frameworks**

In recent years, the climate has changed for the most promising start-ups. Support frameworks such as incubators, hubs and accelerators set up by technology giants, business schools and universities have proliferated. Venture capital firms, large corporates and major global banks are also supporting start-ups through innovation programmes.

These large third party entities are thoroughly vetting all the start-ups with whom they engage as, in part, their goal is to grow these businesses for their own gain. Immigration support must be one of the resources that these entities can offer their selected start-ups in a controlled and low risk environment if we are to both encourage UK start-ups to flourish and drive the best and brightest businesses to the UK.

#### **NOT FIT FOR PURPOSE**

Although we recognise that several elements of UK immigration policy such as the Tier 1 (Graduate

Entrepreneur), Tier 1 (Entrepreneur) and the Tech Nation visas are designed to encourage migrants to the UK for the benefit of the UK economy, other aspects of the existing system do not work for the unique characteristics of tech start-ups and scale-ups.

#### **Tier 2 visas**

As explained, many start-ups are not in a position to obtain a sponsor licence. Either the cost is prohibitive, the process is too slow, they cannot afford to offer remuneration that meets the Tier 2 requirements or, perhaps most importantly, because they do not have the internal resources to support the licence once obtained. For these reasons, many start-ups are effectively precluded from using this category, even though they have a tremendous need for skilled labour in order to grow.

We welcome the introduction of digital tech roles onto the Shortage Occupation List. This does not fully address the problem for very new start-ups.

#### **Tech Nation Visa (Tier 1 Exceptional Talent)**

Based on direct feedback from the digital business community and organisations such as TLA, the Government has announced the Tech Nation visa. This is an evolution of the current Tier 1 (Exceptional Talent) route to help the digital technology sector to attract and secure world-class talent from outside the EU.

From November 2015, the Tech Nation Visa Scheme adds four new qualifying criteria to help ensure that the UK continues to maintain its position as a globally competitive digital powerhouse. These are a provision for building UK scale-ups; recognition of ‘exceptional promise’; fast-track application procedure for Northern Powerhouse cities; and recruiting entire overseas teams from outside the EU.

While this category is beneficial to specific individuals, and undoubtedly to the ecosystem overall, it does little to benefit the start-ups looking for coders and developers to help them grow.

The Tech Nation Visa is a welcome step and one for which the UK’s tech community is grateful but it does not represent a solution for start-ups who for example need to launch their product.

#### **A SOLUTION TO THE PROBLEM – THIRD PARTY SPONSORSHIP (TPS)**

Penningtons Manches and Tech London Advocates believe that the introduction of a Third Party



Sponsorship (TPS) visa could provide a solution to unlock the barriers to growth for tech start-ups. A TPS visa would allow overarching entities such as accelerators, incubators and venture capital firms to sponsor migrants on behalf of companies in which they have invested or for whom they are providing services/resources.

The Tech Nation visa will enable innovators to come to the UK to join an existing business but also to set up their own business. So what happens to the business if the migrant leaves to set up their own company?

The Third Party Sponsorship visa will allow start-ups through third party endorsement to bring the necessary skills to the UK for the benefit of that start-up.

#### **How would this work?**

- All sponsors would be approved via a rigorous application process, comparable to the current Tier 2 sponsor licence application process.
- Much like Tier 5 and the Tier 1 (Graduate Entrepreneur) programme, the sponsors will all be well-established entities in the business of providing support/finances/services to start-ups in the tech eco-system. They will be required to demonstrate not only their own ability to meet the obligations of sponsorship but will also be required to demonstrate their own vetting process for selecting start-ups with whom to work.
- Only start-ups with whom the sponsor has a demonstrable pre-existing relationship will be eligible to employ migrants via the programme and the sponsor will be required to demonstrate that they are providing services/support to the start-up beyond sponsoring of migrants. When the relationship between the start-up and the sponsor ends, the business will no longer be able to employ any migrants under the TPS visa programme.
- TPS would be a natural extension of the existing range of services/guidance/mentoring and monitoring provided by these organisations to start ups. Because of this, all the start-ups utilising the programme will already have been scrutinised by the sponsor providing the migrant

to them. This 'double vetting' process would be difficult to abuse.

- Third party sponsors will also be required to monitor start-ups closely once migrants are in place to ensure compliance. Given the pre-existing relationship between the sponsors and the start-ups, this monitoring will easily become part of the on-going support provided by the relevant third party.
- All migrants will be monitored to ensure they are doing only the role for which they have been sponsored and that the role is suitably skilled. This monitoring/reporting will be undertaken by the overarching sponsor in conjunction with the employer but the sponsor will have ultimate responsibility for compliance.

#### **AN EFFECTIVE SOLUTION WITH SAFEGUARDS**

We strongly believe that TPS can be an effective, evolutionary solution to allow the UK's most promising and proven start-ups to grow at the required speed to achieve success and global competitiveness. This is not a sea change to Tier 2 or a way to avoid it. This is a much-needed stopgap for start-up businesses who are not yet in a position to use Tier 2.

Most importantly, TPS is a natural evolution of current immigration policy and represents an extension of existing policy to ensure that young tech businesses in the UK are able to grow.

#### **FIND OUT MORE**

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