



INFORMATION SHEET

Law and taxes

EMPLOYMENT OF THIRD-COUNTRY NATIONALS

As a general rule, third-country nationals, in other words individuals who are not nationals of an EU member state or of EFTA countries Iceland, Liechtenstein, Norway and Switzerland, require a residence permit in order to be able to stay in Germany and, where applicable, take up employment. The rest is largely determined by the Residence Act (Aufenthaltsgesetz, AufenthG) as well as the Employment Regulation (Beschäftigungsverordnung, BeschV). This information sheet gives details of what we consider to be the most significant residence permits pursuant to these provisions, as well as the precise requirements for third-country nationals wishing to take up self- or paid employment.

Contents

- I. GENERAL 2
- II. RESIDENCE REGULATIONS 2
 - 1. Residence permit 2
 - a) Residence permit 2
 - b) Permanent residence permit 3
 - c) Permanent residence permit - EU 3
 - d) Blue Card EU 4
 - 2. Application and proceedings 4
- III. STAY FOR THE PURPOSE OF EMPLOYMENT 6
 - 1. Salaried employment 6
 - a) Employment Regulation at a glance 6
 - b) Approval of the Federal Employment Agency 8
 - c) Issuance, form and duration of the approval 9
 - 2. Self-employment 10
 - a) Obligation to obtain a permit 11
 - b) Legal standards 11
 - c) Founding an affiliation/branch 12
 - d) Possible privileged status 13
- IV. ADDITIONAL INFORMATION 14

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I. GENERAL

Among other things, the Immigration Act (Zuwanderungsgesetz) is intended to encourage labour migration and attract self-employed people to Germany. Accordingly, the Act includes regulations, whereby provided certain requirements are met, third-country nationals can take up employment in specialist and managerial positions under simplified conditions or, inasmuch as it is deemed to constitute an economic benefit for the Federal Republic of Germany, work in a self-employed capacity.

In principle, third-country nationals wishing to work on a self-employed basis or wishing to enter an employment relationship in the Federal Republic of Germany require a corresponding residence permit and, where applicable, a work permit.

While the issuance of a residence permit is governed by the **Residence Act** (AufenthG), authorities tend to refer to the provisions of the **Employment Regulation** (BeschV) when deciding whether or not a work permit can be issued. Above all, this regulation determines which cases require the **approval** of the Federal Labour Office in order for a residence permit to be granted. As far as employment is concerned, **BeschV** (Employment Regulation) fundamentally differentiates between immigration on a permanent basis, especially that of specialists, and temporary immigration, for instance to find employment, and entails procedural regulations. It also regulates the authorisation to take up employment for **foreigners already living in Germany**.

II. RESIDENCE REGULATIONS

1. Residence permit

To enter Germany and remain there for the purpose of exercising a self-employed or salaried position, third-country nationals require a residence permit (section 4 AufenthG (Residence Act)), which authorises them to exercise the employment in question. Depending on the requirements and intent and purpose of the stay, this residence permit can be issued in the form of a residence permit, a permanent residence permit or a permit for permanent residence - EU. From 1 August 2012 onwards, it can also assume the form of the Blue Card EU.

a) Residence permit

The residence permit (section 7 AufenthG (Residence Act)) is a fixed-term residence permit, which is generally only issued for a **specific residence purpose**. In other words, it is

for a **specific purpose and for a limited period**. For this reason, issuance of the permit often imposes a restriction that does not allow the bearer to exercise any form of self-employment or salaried employment. This means, in turn, that each residence permit must indicate whether and which form of self-employment or salaried employment may be exercised by the foreigner in question (section 4 AufenthG (Residence Act)).

In particular, the residence permit is issued for the following purposes:

- **Studying, language courses, school attendance (section 16 AufenthG (Residence Act))**
- **Other training purposes, on-the-job and further training (section 17 AufenthG (Residence Act))**
- **Employment (section 18 et seq. AufenthG (Residence Act))**
- **Self-employment (section 21 AufenthG (Residence Act))**

b) Permanent residence permit

The permanent residence permit (section 9 AufenthG (Residence Act)) is an indefinite residence permit and permits the bearer to take up employment. It is not subject to any **temporal or geographical** restrictions and may not have any conditions imposed on it. A third-country national can only receive a permanent residence permit if there is sufficient evidence indicating that the foreigner has integrated into the German society. In particular, the key deciding factors in this case include the duration of his/her stay in Germany, means of subsistence and knowledge of the German language and Germany's legal and social system. The scope also includes consideration of whether the foreigner has adequate accommodation for him/herself and his/her family and whether he/she has a criminal record (section 9 para. 2 no. 1 – 9 AufenthG (Residence Act)).

In special cases, a permanent residence permit can also be issued to highly qualified employees (section 19 AufenthG (Residence Act)).

c) Permanent residence permit - EU

The permanent residence permit - EU (section 9a AufenthG (Residence Act)) is an **unrestricted residence permit** largely similar to the permanent residence permit. Those holding a permanent residence permit - EU can enter virtually all EU nations with requirements eased. This is intended to promote mobility within Europe. Another **advantage** is that the permanent residence permit - EU only expires after a certain consecutive period, usually 12 months, has been spent in a third country or in Great Britain, Ireland or Denmark. For residence in another EU state, with the exception of those listed above, the permanent

residence permit - EU only expires after six years. Key factors dictating issuance include the duration of stay, means of subsistence, adequate accommodation, language skills, basic knowledge of Germany's legal and social system and the issue of whether previous convictions exist (cf. section 9a para. 2 no. 1 - 6 AufenthG (Residence Act)).

d) Blue Card EU

The Blue Card EU (section 19a AufenthG (Residence Act)), newly created in the course of implementing the so-called **Hochqualifizierten-Richtlinie**¹, permits university graduates to enter Germany and stay for a maximum period of four years, provided they take up relevant employment. The Blue Card EU is initially issued for a limited period of four years. If the contract of employment is concluded for less than four years, the Blue Card EU will be issued or extended for the duration of the contract of employment, plus an additional three months.

Prerequisites for issuance of the residence permit include evidence showing the existence of a concrete job offer as well as a specific level of remuneration.

For more information, please refer to our 'Blue Card EU' information sheet.

2. Application and proceedings

In principle, any third-country national without a residence permit to live in Germany must submit an application to the **German mission abroad** in his/her respective home country **before he/she travels** to Germany. Immigration applications should also specify **a contact person in Germany** to handle any further questions.

Please note: Nationals of Australia, Israel, Japan, Canada, Republic of Korea, New Zealand and the USA do not require prior approval to enter Germany. They can enter Germany **without an entry visa** and obtain the required residence permit to exercise a self-employed or salaried position in Germany.

Nationals of the **EFTA countries** Iceland, Liechtenstein, Norway and Switzerland can enjoy **freedom of movement** in Germany. This means they can enter Germany without submitting any applications and take up a self-employed or salaried position. Nationals of these countries do not require a residence permit to stay in Germany.

¹ "Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment"

Third-country nationals who already have a place of residence in Germany as well as a **residence permit** that specifies that they may not exercise a self-employed or salaried position must apply to **extend** the scope of their residence permit if they wish to exercise any form of self-employment or salaried employment. The corresponding application must be made to the **immigration authorities at the foreigner's place of residence**.

The relevant agency abroad and the immigration authorities specify the additional documents required on their websites. As a rule, these must at least include:

- a completed application form requesting the issuance of a residence permit
- a valid national passport
- a biometric photograph that complies with the German standards for passport photographs
- Evidentiary documents showing the source of means for subsistence
- Documents explaining the purpose of residence

The application form can usually be found on the website of the respective organisation. Fees are normally incurred when submitting an application.

If the purpose of entering Germany is to exercise a salaried position, an approval by the local immigration authorities is not required for the issuance of the visa (cf. section 31 AufenthV (Ordinance Governing Residence)). The waiver of the approval requirement is independent of the length of stay and, where applicable, the approval required from the Federal Labour Agency. If, however, doubts arise during the visa issuance process regarding facts relevant for the decision and how these are evaluated, it is safe to assume that the local immigration authorities will be involved.

If a self-employed position or a position for the public benefit is envisaged, or if the individuals in question have already been saved in the memory of the central register for foreign nationals, for instance as a result of previous residency in Germany over a longer period of time, the local immigration authorities must be involved. Where applicable, the immigration authorities will then involve other bodies, such as the Industry of Chamber and Commerce.

Once the foreigner has entered Germany, he/she must apply for a relevant residence permit to be issued by the local immigration authorities before the validity period of the visa expires. Responsibility on the local level lies with the immigration authorities of the district in which the foreigner tends to reside.

III. STAY FOR THE PURPOSE OF EMPLOYMENT

As indicated above, **EU citizens** wishing to take up employment in Germany do not require either a residence permit or a work permit. They can take advantage of the **freedom of establishment** or **freedom of movement for workers**, the fundamental freedoms underlying the European Union.

A third-country national, on the other hand, generally requires a residence permit for the purpose of employment². When deciding which residence permit is required, it must subsequently be possible to differentiate whether a **self-employed** or a **salaried position** is to be taken up. In this respect, the following prerequisites must be taken into consideration:

1. Salaried employment

Pursuant to section 18 para. 3 AufenthG (Residence Act), a foreigner may only be issued with a residence permit allowing him/her to exercise employment that requires **no qualified vocational training** if this is expressly permitted in accordance with the provisions outlined in BeschV (Employment Regulation), a supplement to the Residence Act, or by intergovernmental agreement.

If a third-country national intends to enter Germany to take up employment requiring authorisation, for which **qualified vocational training is required**, pursuant to section 18 para. 4 AufenthG (Residence Act), he/she is only entitled to the issuance of the residence permit provided the activity or the occupational group concerned are amongst those permitted in the BeschV (Employment Regulation).

a) Employment Regulation at a glance

BeschV (Employment Regulation) enumerates the types of employment eligible for authorisation and determines whether the type of employment in question requires the **approval of the Federal Labour Agency** (BA) pursuant to section 39 AufenthG (Residence Act). It also differentiates according to the foreigner's qualifications and whether immigration took place with a permanent or temporary occupation in mind.

Activities which **do not require the approval** of the BA (Federal Labour Agency) can be exercised by third-country nationals immediately, provided they have a corresponding residence permit and have been granted permission to take up such work. If they are not permitted to take up employment and wish to take up an activity for which authorisation is required, an application for a **work permit** must be submitted in addition to the residence permit application.

²Please note our remarks for nationals of EFTA countries under II.2. on page 4.

aa) Approval-free activities

BeschV (Employment Regulation) contains a specific list of occupations that are **exempt** from the obligation to obtain approval of the BA (Federal Labour Agency) pursuant to section 39 AufenthG (Residence Act). For national companies, the following options may be of particular interest:

- **Highly qualified employees (section 2 BeschV (Employment Regulation))**³
- **Managers (section 3 BeschV (Employment Regulation))**⁴
- **Science, research and development (section 5 BeschV (Employment Regulation))**⁵

bb) Activities requiring authorisation

In accordance with the statutory provision, for activities requiring authorisation the initial distinction to be made is whether the activity in which the foreigner wishes to engage requires a **professional qualification**⁶ or whether there is scope for the activity to be exercised without it.

Accordingly, fixed-term residence permits may be issued with the approval of BA for the following occupational categories:

- **Seasonal workers (section 15a BeschV (Employment Regulation))**
- **Showman assistants (section 15b BeschV (Employment Regulation))**
- **Au-pair employment (section 12 BeschV (Employment Regulation))**
- **Domestic help and domestic workers of seconded employees (sections 15c, 13 BeschV (Employment Regulation))**
- **Language teachers and speciality chefs (section 11 BeschV (Employment Regulation))**
- **Executive staff and specialists (section 4 BeschV (Employment Regulation))**
- **Employment as part of an international personnel exchange programme (section 10 BeschV (Employment Regulation))**

³ According to section 19 para. 2 AufenthG (Residence Act), the definition of 'highly qualified' encompasses, in particular, scientists with special technical knowledge, teachers or scientific staff in key positions. Pursuant to section 2 BeschV (Employment Regulation) this also includes, amongst others, holders of the Blue Card EU and, subject to exercising employment appropriate to their degree, domestic university graduates.

⁴ This regulation particularly concerns managerial staff, to whom general power of attorney or procuracy has been issued, authorised representatives of a legal entity or individuals working at the level of the Board of Management and head office.

⁵ This regulation concerns scientific personnel of universities and research institutions as well as teachers responsible for language instruction at universities. This regulation may also apply to guest scientists, engineers and technicians, subject to specific requirements.

⁶ In this respect, section 6 para. 1 BeschV (Employment Regulation) assumes an activity which requires at least two years of vocational training.

Please note: Foreign specialists wishing to take up an activity in their field of expertise may be favoured according to sections 6 and 8 BeschV (Employment Regulation). A key requirement is that they have a **domestic** or, under certain circumstances⁷, an **equivalent**⁸ professional qualification from a **foreign** institution in a trade that has been officially recognised by the state or regulated in a similar manner. In this case, priority review, normally required for approval procedures, does not take place, provided the specialist has applied for a position within his/her field of expertise.

cc) Other activities requiring authorisation

In particular, the BeschV (Employment Regulation) deems **special-order contract provision** and the regulation for employment of guest workers to be included under the scope of other activities requiring authorisation. As a result of existing international agreements, nationals of Turkey, Serbia, Bosnia-Herzegovina and Macedonia to be employed on a special-order contract may, subject to the approval of the Federal Employment Agency, obtain a residence permit for the duration of the employment (section 29 para. 1 BeschV (Employment Regulation)). Pursuant to section 29 para. 2 BeschV (Employment Regulation), guest workers may be employed by a German employer for language and professional training for up to 18 months.

Please note: Since inter-governmental agreements for employment of workers on special-order contracts and of guest workers impose specific quotas, authorisation of those on special-order contracts is commensurate with the development of the labour market in Germany.

b) Approval of the Federal Employment Agency

The involvement of the Federal Employment Agency is initially commensurate with section 39 AufenthG (Residence Act). As a result of this provision, the Federal Employment Agency is obliged to carry out a **priority review and an assessment of working conditions**. Pursuant to section 39 para. 2 AufenthG (Residence Act), this approval may generally only be granted if

- **employing a foreigner does not have any detrimental impact on the labour market,**
- **no German employees, EU nationals, nationals of EFTA countries or foreigners who have the same legal status as German employees as far as accepting a job is concerned, are available to take up the position (priority review),**

⁷ cf. in detail section 6 para. 2 BeschV (Employment Regulation).

⁸ BA specifies these in a positive list published at www.zav.de/positivliste.

- **the foreigners concerned are not employed under less favourable conditions than comparable German employees (assessment of working conditions)**

or

- **after checking the abovementioned points for individual occupational groups or business sectors, the Federal Employment Agency has ascertained that filling vacancies with foreign candidates can be reconciled with the labour market and integration policy and**
- **that the foreigners concerned are not employed under less favourable conditions than comparable German employees.**

Pursuant to section 35 para. 5 BeschV (Employment Regulation), approval required to carry out an employment activity may be issued **without the need for a priority review** if the activity in question is continued with the same employer following the expiration of the validity period of an approval that had been issued for a minimum of one year. This does not apply to employment activities that are of a temporary nature as stipulated by this regulation or an inter-governmental agreement.

c) Issuance, form and duration of the approval

If an approval of the Federal Employment Agency is required, it is obtained at the request of the relevant immigration authorities from the relevant local employment agency. If there is scope to issue the work permit, the latter is recorded as an ancillary clause to the foreigner's residence permit and issued by the relevant local immigration authorities. This method permits newly arrived foreigners, for example, to apply for residence and work permits in a single step (**one-stop government**).

Sections 34 et seqq. BeschV (Employment Regulation) determine the scope, duration and issuance of the approval. The approval required to carry out an employment activity is issued for the **duration of the activity in question**, or a **maximum of three years**, respectively.⁹ It is **considered to be granted** if the Federal Employment Agency does not, within **two weeks** after the request for approval has been put forward, inform the unit responsible that the information submitted does not suffice for an approval verdict to be reached, or that the employer has not provided the information required, or has provided it late (section 36 para. 2 BeschV (Employment Regulation)).

⁹ cf. section 34 para. 2, section 35 para. 1 BeschV (Employment Regulation)

Please note: The approval of the Federal Employment Agency can be restricted with regard to the professional activity, employer, the district for which the employment office is responsible, as well as the location and distribution of the working time. Restrictions included in the approval of the Federal Employment Agency must be carried over into the residence permit by the relevant immigration authorities or the German agency abroad. Consequently, the impact of a change of employer or a change in working conditions should be clarified with the relevant immigration authorities before these changes come into effect.

Before the request for approval for a foreign worker is actually transmitted, employers can let the Federal Employment Agency assess whether labour market regulations may require an approval for this employment activity to be granted at a later date (**preliminary check procedure**). Generally speaking, this can be carried out even if the name of the job applicant is not yet known. A description of the preliminary check procedure, along with application forms, can be accessed via the Federal Employment Agency website [here](#)¹⁰ (available only in German).

Further **general** information on the requirements for and the course of employment of foreign citizens is provided by the Federal Employment Agency in its [Leaflet 7](#)¹¹.

The Federal Agency for Employment is offering a preliminary case-specific guidance as to whether a work permit can be issued in its "[Migration Check](#)"¹² portal.

The Central Placement Office for Foreigners and Specialists (ZAV) is primarily responsible for granting approvals within the Federal Employment Agency. ZAV can also **act as mediator** between **foreign employees** and domestic employers on request.

ZAV would be happy to answer any questions via its **hotline** 0228/713-2000
or via e-mail at zav@arbeitsagentur.de.

2. Self-employment

Third-country nationals are entitled to engage in self-employment subject to the requirements specified in section 21 AufenthG (Residence Act). Section 21 AufenthG (Residence Act) not only benefits company founders or individual entrepreneurs, but also managers and legal representatives of joint-stock companies or partnerships.

¹⁰ www.arbeitsagentur.de/arbeitsmarktzulassung

¹¹ www.arbeitsagentur.de/web/content/EN/index.htm > Working and Job-Seeking > Working in Germany

¹² www.arbeitsagentur.de/web/content/EN/index.htm > Working and Job-Seeking > Working in Germany > Migration Check

a) Obligation to obtain a permit

Non-EU nationals are only granted a residence permit to take up a self-employed position provided that the requirements of section 21 AufenthG (Residence Act) have been met. This provision stipulates that a residence permit to take up a self-employed position can be issued to foreigners, if

- **there is an economic interest or a regional requirement,**
- **the activity is likely to benefit the economy and**
- **the implementation can be funded by equity capital or a credit commitment.**

The assessment of requirements is particularly focused on the sustainability of the underlying business concept, the foreigner's entrepreneurial experience, the amount of capital investment, the impact on the employment and training situation and the contribution to innovation and research. The assessment should involve the competent bodies in the area of the planned activity, for example the CCIs for Munich and Upper Bavaria, as well as the relevant trade authorities, the public and judicial trade associations and the authorities responsible for professional licensing.

The authorities involved give an expert opinion on the proposal presented by the foreigner, although only the immigration authorities are authorised to make the final decision on the application. The findings set out in the reports of the chambers which are relevant to the decision must be taken into consideration by the immigration authorities when making their discretionary decision. In these instances, the chambers exercise a task of public authority. There is no scope to provide an advisory opinion to the applicant or company.

Provided the requirements listed above are met, the new arrivals are issued with a residence permit to take up a self-employed position. Third-country nationals holding a residence permit with a restrictive ancillary clause for Germany, on the other hand, will have the scope of their residence permit extended.

b) Legal standards

The establishment of a company by a foreign company or national is not subject to any specific restrictions in Germany. The respective industry and company law provisions apply, which German nationals must also observe.

If any owner, executive staff member or managing director intends to stay in Germany, the corresponding residence permit must be obtained. Regardless of the legal form the company founder opts for, he/she must, in principle, provide evidence of economic benefit or regional requirement within the meaning of section 21 AufenthG (Residence Act), concern-

ing both the founding of the company and his/her stay in the Federal Republic of Germany, in order for a residence permit to be issued. In detail:

aa) Sole proprietorship/partnership

If a sole proprietorship or partnership (German Civil Code – company, OHG (general partnership), KG (limited partnership)) is founded, the **owner** of the sole proprietorship or each **shareholder** of a partnership requires a residence permit which allows the **activity applied for** to be exercised, e.g. as managing director of XY – OHG. The **limited partner** of the KG (limited partnership) only requires a residence permit if he/she is involved in management duties.

bb) Limited liability company (GmbH)

The **managing director** or **authorised signatory** of a GmbH also requires a corresponding residence permit if he/she is a third-country national and wishes to engage in this activity in Germany in the longer term or permanently. If the managing director or authorised signatory does not intend to settle in Germany permanently or in the longer term, instead merely wishing to enter Germany for the purpose of business travel, a business travel visa will suffice.

Third-country shareholders who are not active as managing directors or authorised signatories may only enter and stay in Germany for the purpose of business travel.

Please note: Please note that **merely holding shares in the capital** of a company or acquiring shares of a company does not constitute a key economic motive within the meaning of section 21 AufenthG (Residence Act). In this respect, individuals who only inject capital into a company without simultaneously becoming involved in its management may not generally be issued with a residence permit to take up a self-employed position.

c) Founding an affiliation/branch

An **independent branch** is defined as a business clearly separated from the main branch in terms of its location, with independent organisation, specific business assets and separate accounts, with a manager authorised to independently conclude and execute business transactions of the same type as those handled by the main branch.

A **dependent branch** refers to any fixed local installation or permanent body which is set up to exercise an established business, or which should help facilitate the processing of business transactions concluded by the main branch. Examples of a dependent branch include subsidiaries (a dependent point of sale, which is subordinate to the main business overseas in every respect and which also houses the administrative headquarters, for instance a delivery warehouse) or a representative office of an overseas company (repre-

sentative offices either have market exploration and observation duties, but do not engage in their own business activity, or provide customer services, e.g. transmitting technical information free of charge via a delivery programme of the parent company, but without the employee of this representative office having authority to conclude contracts).

The municipality at the location of the future business premises must be notified when both independent and dependent branches commence operations. Only the independent branch is entered into the trade register.

Third-country nationals who work in a **managerial position** at a branch established in Germany by a foreign parent company or dependent branch, require a corresponding residence permit in order to exercise their function. Shareholders of a foreign main branch are exempted from having to obtain their own residence permit, provided they are not actively engaged in a business capacity for their branch in Germany.

To obtain a residence permit, the applicant must prove to the immigration authorities that both the establishment of the branch itself as well as his/her employment as its manager lies in the **economic interest** of the public.

d) Possible privileged status

Section 21 AufenthG (Residence Act) provides for certain types of business projects to possibly obtain a privileged status. These opportunities for a privileged status arise, for example, for freelance positions and for employment activities linked to a university qualification obtained domestically.

Please note: Clarification of the issue of residential status alone does not entitle the foreign company founder to engage in business. There is also a need to ensure the requirements imposed under trade and company laws are met. Consequently, provided the activity does not fall under the category of freelance work, in principle, a business registration at the relevant local community must be completed at the start of employment. It is also necessary to examine the question of whether an entry in the trade register is actually required or whether it can be processed on a voluntary basis. Requirements presented by self-regulatory organisations must also be fulfilled, where applicable.

As is the case with other residence permits, the first port of call when submitting an application is either the German agency abroad responsible for the applicant's place of residence, or the immigration authorities responsible for his/her place of residence in Germany. In this respect, we would like to draw your attention to our remarks under II.2. on page 4.

IV. ADDITIONAL INFORMATION

As well as having to comply with requirements under aliens law, a third-country company founder must also take the copious regulations in other legal fields into account. As a supplement to the current document, we also recommend the following information sheets from the Chamber of Commerce and Industry for Munich and Upper Bavaria¹³:

- **Blue Card EU**
- **Commercial law**
- **Company constituted under civil law**
- **How to found a GmbH**
- **Legal standards at a glance**
- **Branches**
- **Entering details in trade registers**
- **Calculating trade tax**
- **Taxes for entrepreneurs**

In addition, we also recommend the CCI brochure for business founders “**Setting up one’s own business**”.

You can download this information via www.muenchen.ihk.de/en/business-departments/startup/index.html or make enquiries by phone to 089 / 5116 – 0 or by e-mail to iszihkmail@muenchen.ihk.de.

Note: This information sheet should serve as initial guidance and does not claim to be exhaustive.

Although greatest care was taken when compiling it, no liability can be accepted for the correctness of its content.

This information sheet has been translated from German. For inaccuracies that could arise from the translation, also no guarantee can be given.

The publication of information sheets is a service provided by the Chamber of Commerce and Industry for Munich and Upper Bavaria and is not intended to replace legal advice in individual cases.

¹³ As far as not yet available, English translations will follow soon.