

New Work Visa Rules and Regulations aim to Simplify Attracting Foreign Skills

By **David Hepburn** (Partner),
Jayna Hira (Senior Associate) and
Savera Singh (Associate)

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An insight into the Draft Second Amendment to the Immigration Regulations, 2014

On or about 8 February 2024, the Minister of Home Affairs, Dr. P.A Motsoaledi (“the Minister”) released the Draft Second Amendment of the Immigration Regulations, 2014 (“the Draft Regulation”) for comment until 29 March 2024.

The content of the Draft Regulation aimed at making it easier for foreigners to better facilitate the nature of their employment and business dealings with and within the Republic of South Africa (“the Republic”). The Draft Regulation encompassed the following pertinent areas of focus:

- The revision of positions contained on the critical skills list based on the shortages identified in the Republic on an ongoing basis, as and when same becomes relevant.
- The introduction of the new remote working visas in favour of foreign nationals whom are in the employ of foreign employers, which enable them to work remotely within the Republic, with one of the proposed requirements being that the foreign national must earn no less than one million Rand per year.
- The implementation of a point-based system which will be taken into consideration during the assessment of eligibility and the issuing of general work visas based on a multitude of factors which include but are not limited to:
 - The foreigner’s age;
 - The foreigner’s qualification level;
 - The foreigner’s work experience; and
 - The foreigner’s ability to adapt within the Republic.

The implementation of a system of this nature serves to replace the requirement that a prospective employer was ordinarily required to obtain, in that a certificate from the Department of Employment and Labour confirming that it was unable to employ

a South African citizen or permanent resident for the employment position prior to the foreign national being able to apply for a general work visa, despite a diligent search of the South African job market having been conducted is no longer necessary.

- The introduction of the Trusted Employer Scheme (“Scheme”) which has been implemented as a means by which to provide a flexible and expeditious pathway for foreigners to obtain work visas in the Republic. This Scheme is implemented with the intent of changing the focus of prospective employers and encouraging them to collate documents on behalf of foreigners to be utilised in support of their work visa applications.

In order for a prospective employer to be registered with the Scheme, such employer must meet the following requirements which include but are not limited to:

- Employers which have a staff complement of over 100 employees are to ensure that 60% of such complement are South African citizens or permanent residents.
- Employers are required to invest a minimum of one million Rand in the Republic.
- Employers are to remove the requirement to submit radiological reports as a supporting document in the administrative process of applying for a visa of this nature.
- Employers are to be responsible for the compilation and preparation of a competency-based transfer plan or graduate program which aims at developing skills for the benefit of the South African citizens as well as permanent residents that such employer holds in its employ.

The above regulations which are available via Department of Home Affairs – Immigration Act, 2002: Draft Second Amendment of the Immigration Regulations, 2014 (dha.gov.za) were Gazetted and came into operation on or about 28 March 2024 which was

one day prior to the closing date for comments.

As such and in light of the above, the Minister advised that the Draft Regulation would subsequently be withdrawn in his press release of 09 April 2024 so as to ensure that the error in publishing the Draft Regulation one day too early – was adequately remedied.

It was however highlighted that despite the withdrawal of the Draft Regulations, the substance and essence of such Draft Regulation will remain the same.

The republishing of the Draft Regulations is still to be confirmed.

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David Hepburn
(Partner)



Jayna Hira
(Senior Associate)



Savera Singh
(Associate)