

Immigration Insights

by CDH Employment Law

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IN THIS ISSUE

KENYA

The Kenya Citizenship and Immigration (Amendment) Bill, 2023: Streamlining processes

Kenya is a vibrant nation and economy in East Africa, and has long been the home of diverse cultures, attracting immigrants from around the world. The country's immigration laws and regulations manage the entry, stay and exit of individuals in the country. These laws govern various aspects of immigration, including visas, work permits, citizenship and refugee protection. The country's main legislation on immigration is the Kenya Citizenship and Immigration Act 12 of 2011 (Act) and the regulations thereunder, which provide for matters relating to citizenship, issuance of travel documents, immigration and connected purposes.

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To streamline the country's citizenship and immigration framework, the Kenyan Government has introduced the Kenya Citizenship and Immigration Bill, 2023 (Bill) to amend the Act. The main aim of the Bill is to establish mechanisms for the protection of the interests of Kenyans living abroad and to ensure their active participation in the socio-economic development of the country, as well as to amend various sections of the Act. In this article we delve into the key provisions and implications of this Bill, discussing its potential impact on immigration in Kenya.

1. Protection of Kenyans living abroad

The Bill seeks to introduce various provisions to the Act that will ensure the protection and welfare of Kenyans living abroad. The Bill defines a Kenyan living abroad as "a citizen of Kenya who for the time being is domiciled in a country outside Kenya". This broad definition accommodates Kenyans who have

moved to foreign states for purposes of employment, education, treatment, civil unrest etc. Some of the proposed provisions for protecting Kenyan living abroad include:

Shift in the duties of the Cabinet Secretary

The Bill has shifted the responsibility for managing the affairs of Kenyans living abroad from the Cabinet Secretary for the Ministry of Interior and Coordination of National Government to the Cabinet Secretary of Foreign Affairs.

The Cabinet Secretary of Foreign Affairs will be mandated to develop and implement strategies for Kenyans living abroad to participate in the development process, enhance the safety and security of Kenyans living abroad, and establish frameworks for co-ordination. Some of the proposed mechanisms envisioned under the Bill include: (i) providing legal representation and adequate health services during an emergency in the country of



KENYA

The Kenya Citizenship and Immigration (Amendment) Bill, 2023: Streamlining processes

CONTINUED

residence, (ii) facilitating information sharing as a means of ensuring continuous engagement between the Government and Kenyans living abroad, and (iii) facilitating timely issuance, processing and renewal of documents required by Kenyans living abroad, i.e. passports.

Incentives to invest in Kenya

The Bill further seeks to establish mechanisms and frameworks to ensure the participation of Kenyans living abroad in the development of the country. The Government seeks to do so by developing collaborative frameworks with Kenyans living abroad to promote Kenya as an investment destination and incentivise them to invest in Kenya. One of the notable methods proposed for this is the establishment of a database setting out information on programmes and projects for investment in Kenya and offering incentives for investment in conjunction with National Treasury

and the Central Bank of Kenya. The Bill also proposes introducing a voluntary savings scheme for Kenyans living abroad in which favourable terms on the investments of any contributions that may be made shall be negotiated with financial institutions.

2. Regaining citizenship

Currently, the Act requires a person who is seeking to regain citizenship in Kenya to submit an application accompanied by proof of the applicant's previous Kenyan citizenship and proof of citizenship of the other country. However, the Bill proposes introducing a requirement to also submit a statutory declaration confirming a number of things, including: (i) that the person has not taken an oath, affirmation or formal declaration of allegiance to a foreign state or political subdivision thereof after turning eighteen years, and (ii) that the person has not accepted, served or been employed

under any government of a foreign state. It further states that in the event that they have, they must confirm that they have not done so in a place where making an oath, or declaration of allegiance is required. It is common practice (including in Kenya) for a person obtaining citizenship in a country through registration to be required to take an oath or declaration of allegiance. Therefore, if the Bill is passed, anyone who has taken such an oath, may be excluded from regaining citizenship in Kenya.

3. Restriction on permits and passes

The Bill proposes amending section 36 of the Act by introducing a provision that expressly prohibits holders of a dependent's pass, student's pass, intern or researcher's pass, visitor's pass, transit pass, prohibited immigrant's pass or a special pass from engaging in employment except where it is expressly provided for. The intention

KENYA

The Kenya Citizenship and Immigration (Amendment) Bill, 2023: Streamlining processes

CONTINUED

of this addition is likely to clarify the rights enjoyed under each class of the passes. Therefore, any foreign national who would like to engage in employment in Kenya will be required to obtain a work permit or a special pass. In the case of a special pass, it must be expressly stated in the pass that the holder is permitted to work, for it to be valid.

4. Permanent residence for holders of resident permits

The Bill proposes to amend section 37(b) of the Act to allow holders of resident permits in addition to work permits to obtain permanent residence in Kenya if they have held their permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the making of the application. This will be beneficial to holders of resident permits as it provides them with the

right to enjoy privileges accorded to permanent residents, such as the right to be employed in Kenya, the right to attend schools and other educational facilities, the right to legally own property in Kenya and the right to access and enjoy social services and facilities in Kenya, among other things.

5. Instant penalty for overstaying in the country

Currently, under section 55 of the Act, an immigration officer is only allowed to impose a fine on a departing foreign national for overstaying in the country at any port of entry or exit in Kenya. The Bill seeks to amend this by allowing immigration officers to impose such a fine anywhere and at any time. If the Bill is passed, we will likely see an increase in the number of investigations surrounding foreign nationals who have overstayed in Kenya.

6. Establishment of an immigration court

The Bill proposes giving the Chief Justice the power to designate a special court to handle immigration matters. This would be beneficial if implemented as it would provide another avenue for dealing with immigration matters as opposed to using the ordinary courts. This would in turn improve the efficiency of dealing with immigration disputes in Kenya and develop Kenya's jurisprudence on immigration matters.

Conclusion

From our review of the proposed amendments to the Act, it is clear that some of the amendments seek to clarify practice that has been ongoing but which was yet to be cemented in legislation i.e. in the case of passes, as discussed above. Although some of the amendments

KENYA

The Kenya Citizenship and Immigration (Amendment) Bill, 2023: Streamlining processes

CONTINUED

will be welcome additions that will contribute to the development of immigration laws in Kenya, such as the specialised courts which will ensure fair and just treatment for all individuals involved in citizenship and immigration matters, we are also of the view that it is unfair to completely lock out former Kenyan citizens who have taken an oath of allegiance to another country from regaining Kenyan citizenship, even after revoking the oath or declaration.

Therefore, the Bill should be amended to allow people who have revoked an oath or declaration of allegiance to another country to regain Kenyan citizenship. As this Bill progresses, it holds the potential to position Kenya as an attractive destination for talent, investments and diverse communities, fostering sustainable development for the future.

Abednego Mutie



OUR TEAM

For more information about our Immigration Law sector and services in South Africa and Kenya, please contact:



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E sammy.ndolo@cdhlegal.com



Alex Kanyi

Partner | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E alex.kanyi@cdhlegal.com



Gillian Lumb

Director:
Employment Law
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Hedda Schensema

Director:
Employment Law
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



Abednego Mutie

Senior Associate | Kenya
T +254 731 086 649
T +254 710 560 114
E abednego.mutie@cdhlegal.com



Taryn York

Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com



Mapaseka Nketu

Paralegal:
Employment Law
T +27 (0)11 562 1178
E mapaseka.nketu@cdhlegal.com



BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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