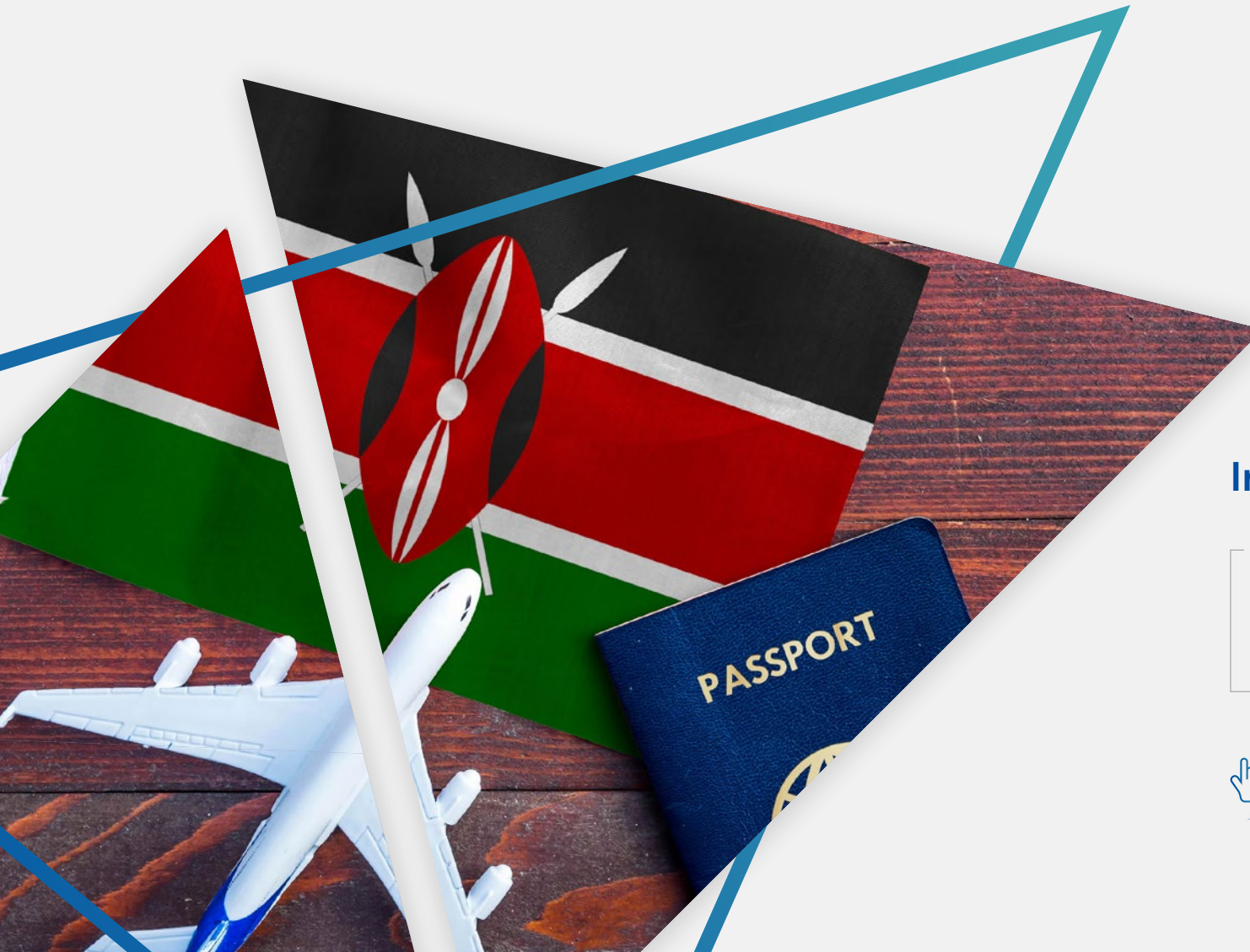


Immigration Insights

by CDH Employment Law

ALERT | 5 February 2024



In this issue

KENYA

- Electronic Travel Authorisation: Visa in disguise?



For more insight into our expertise and services

Electronic Travel Authorisation: Visa in disguise?

During Kenya's 60th independence anniversary celebrations on 12 December 2023, the president directed that Kenya will be a visa-free country, effective from January 2024. This development in the immigration sector is now implemented through the electronic Travel Authorisation (eTA) system that was unveiled on 5 January 2024. Notably, the eTA system departs from the public understanding of a visa-free experience as travellers (including infants and children) are required to obtain the document before embarkment. Travellers who expected a seamless entry into the country have aired their disappointment with the unexpected costs and additional documentation for persons from initially visa-exempt countries.

An eTA is a travel document that is preapproved by the Government before a person enters into Kenyan territory. With this development, Kenya has joined the Seychelles, the Gambia, Rwanda and Benin in allowing visa-free entry by African citizens. Globally, countries currently implementing the eTA include Australia, Canada and New Zealand.

Implementation of the eTA

The Kenya Citizenship and Immigration Regulations, 2012 have been amended by the Kenya Citizenship and Immigration (Amendment) Regulations, 2023 (Regulations) which were gazetted on 2 January 2024. The Regulations

breathe life into the president's directive by stipulating the legal requirements for an eTA application and the associated offences and penalties.

The Regulations place a high responsibility on airlines entering the country. Captains of aeroplanes and ships are responsible for ensuring that all passengers onboard their crafts hold a valid eTA. Further, any aeroplane or ship that brings a person into Kenya without a valid eTA must return that person to their port of last call or country of entry. In addition, any aeroplane or ship that conveys a passenger without a valid eTA will be liable to a surcharge of KES 1 million for every passenger, and in default of payment of the surcharge the aeroplane or ship will be liable to detention at its own cost.

The Directorate of Immigration Services has developed a digital platform (accessible [here](#)) to ensure that all visitors to Kenya are identified in advance through the eTA system (a semi-automated system that determines the eligibility of visitors to travel to Kenya) in compliance with the Regulations.

Exempted people

The online portal indicates that the following people are exempt from obtaining an eTA:

1. Holders of Kenyan permanent residence permits, valid work permits and passes.
2. Citizens of East African Community partner states, namely Burundi, the Democratic Republic of Congo, Rwanda, South Sudan, Tanzania and Uganda (who are exempted for six months).

Electronic Travel Authorisation: Visa in disguise?

CONTINUED



3. Holders of valid Kenya passports or one-way emergency certificates issued by Kenyan missions abroad.
4. Holders of valid United Nations Convention Travel Documents issued by the Government of Kenya.
5. Members of diplomatic missions and international organisations accredited in Kenya.
6. Passengers in transit through Kenya arriving and leaving by the same aircraft or transferring to another aircraft and who do not leave the precincts of airports in Kenya.
7. Passengers arriving and leaving by the same ship, and who do not leave the ship.
8. Members of the crew of any ship, aircraft, train, vehicle or carrier; whose name and particulars are included in the crew manifest of the ship, aircraft, train, vehicle or carrier and who are proceeding in the ship, aircraft, train, vehicle or carrier to a destination outside Kenya.
9. Owners of private aircraft stopping over for refuelling in Kenya and who do not leave the precincts of the airport.

eTA application requirements

The eTA application requirements vary depending on the applicant's reason for visiting Kenya and other factors such as the applicant's country of residence. Some of the application requirements include a conference invitation, an appointment letter from a referring doctor/hospital, an employment contract, an invitation letter from a company, family, or host, and a letter from a country of origin or organisation (for diplomatic travel), among others.

In a gazette notice on 14 November 2023, the Cabinet Secretary for Interior and National Administration notified the public that the State Department of Immigration and Citizen Services will revise charges and fees on its various services, effective 1 January 2024. The gazette notice indicates that the applicable fee for obtaining an eTA is USD 30. The eTA application is lower compared to its predecessor visa, which travellers paid USD 50 to obtain.

Data protection

The Regulations provide that the Data Protection Act, 2019 applies to the processing of eTA applications. Access to information relating to eTA applications is limited to people who need to know and are recognised and approved by the Government of the Republic of Kenya, which has determined that processing of data concerning eTA applications is in the public interest. The eTA system has a notice to its users on how data collected from applicants will be used, including contacting applicants before and after their travel into the country.



Electronic Travel Authorisation: Visa in disguise?

CONTINUED



Processing period

An eTA application will be processed in three working days. However, it is worth noting that some applications may take longer to process.

Travellers already in Kenya with valid visas

For people who were already in Kenya before the commencement of the Regulations and who are in possession of valid visas, their visas remain valid for their unexpired period except where they are revoked under the Kenya Citizen and Immigration Act, 2011. The validity of a visa may be extended by making an application to the Directorate of Immigration.

Conclusion

The eTA system that replaces the Kenya eVisa platform is very welcome. However, some industry leaders have expressed concerns about the eTA's impact on bilateral agreements and potential retaliatory measures from affected countries such as South Africa, Ethiopia, Mauritius and Malaysia, among others. Other concerns revolve around the operational challenges encountered with some travellers having to provide extensive documentation, including hotel and flight bookings.

It is worth noting that an eTA is valid for a single entry into Kenya. The implication is that once you have exited the country you will have to obtain a new eTA to reenter the country. However, your eTA remains valid for more than one entry if a person visits East African Community partner states (Burundi, the Democratic Republic of Congo, Rwanda, South Sudan, Tanzania and Uganda).

Holders of an eTA are not allowed to work in Kenya. Any foreign national who is offered employment in Kenya must ensure that they have obtained the relevant work permit or pass allowing them to work and live in Kenya.

The application process for an eTA is straightforward, quick and done entirely online. The application process typically involves submitting personal and travel information, and the approval is expected to be faster than a visa application. While the eVisa application was also made online, it was slightly more detailed compared to an eTA.

Lastly, travellers should always obtain advice and confirm the latest travel requirements before departure.

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

+254 204 409 918

+254 710 560 114

E sammy.ndolo@cdhlegal.com



Alex Kanyi

Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E alex.kanyi@cdhlegal.com



Abednego Mutie

Senior Associate | Kenya

T +254 731 086 649

+254 204 409 918

+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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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

©2024 13068/FEB