



1 OCTOBER 2018

EMPLOYMENT ALERT

IN THIS ISSUE

THE NEW MULTIPLE ENTRY VISA - NOT NECESSARILY WILLY WONKA'S GOLDEN TICKET

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On 25 September 2018, the Minister attended a media briefing to discuss various visa-related reforms to South Africa's immigration system. The Minister affirmed that the Department of Home Affairs is "committed to managing immigration in a way that advances national development". The reforms to South Africa's immigration system seek to give effect to President Ramaphosa's plan to revive and stimulate economic development across the country.

This article discusses the introduction of different types of multiple entry visas and certain reforms which will simplify the visa application process (and their requirements).

Long-term multiple entry visas

The main aim of these visas is to facilitate easier movement of travellers into South Africa for reasons related to tourism, business and academia. The long-term multiple entry visa will be available to two categories of frequent travellers as follows:

Type 1: 3-year multiple entry visa for frequent trusted travellers to SA

Type 2: 10-year long term multiple entry visa for business people and academics from Africa


Special provision will also be made for foreigners (from the other BRICS countries – ie Brazil, Russia, India and China) who require multiple entry visas.



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CONTINUED

The long-term multiple entry visa, would in most instances, regulate the visa holder's duration of stay for a period of 30 to 90 days depending on the visa holder's country of origin, before he or she would be required to leave the borders of South Africa.



Such foreigners who apply for such a visa may be issued with a 10-year year multiple entry visa within five days of application. The aim of this provision is to encourage business people (and potential investors) to visit South Africa.

Simplifying the visa application process

For foreigners from countries such as India and China, the visa application will be simplified with effect October 2018. Essentially, such foreigners will be able to provide biometrics on arrival in South Africa which will allow for visa applications via courier and the issuing of 5-year multiple entry visas on arrival. BRICS foreigners applying for the 10-year multiple entry visa (described above) will also be able to use courier services to apply.

Permitted activities under the long-term multiple entry visa

The long-term multiple entry visa, would in most instances, regulate the visa holder's duration of stay for a period of 30 to 90 days depending on the visa holder's country of origin, before he or she would be required to leave the borders of South Africa.

Regulation 6 under the Immigration Act, No 13 of 2002 (Act) sets out the antenna against which an immigration officer must interrogate and examine a foreigner's admissibility into South Africa. The purpose of the examination is to satisfy the examining immigration officer,

amongst others that the foreigner is not in contravention of the Act by producing a visa commensurate with the activities to be undertaken by him or her in South Africa. It is imperative that the time intent for the foreigner's visit must be disclosed.

These long-term multiple entry visas may become abused as the distinction between "business purposes" and "working activities" creates uncertainty. This uncertainty could lead to confusion as to the permitted activities under these visas. The Act does not make a formal distinction between "business" and "work" activities.

"Work", however, does have a defined legal definition in terms of the Act, and does require a work visa, which will not be covered by the long-term multiple entry visa. A strict reading of the Immigration act, reveals that the meaning "work" is cast broadly.

"Work" includes but is not limited to conducting any activity normally associated with the running of a specific business or being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward, in South Africa.

It is clear from the definition above, that the holder of a multiple entry visa will not be entitled to "work" but may enter South Africa for business purposes, if his or her the visa makes provision for this.

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Foreigners who acquire the multiple entry visa would need to walk a fine line to remain compliant with the conditions endorsed on by the multiple entry visa.

Business purposes does not mean "work". In other words, the holder of a multiple entry visa would not be entitled to become employed in South Africa (or to open a business) without the requisite work authorisation.

Foreigners who acquire the multiple entry visa would need to walk a fine line to remain compliant with the conditions endorsed on by the multiple entry visa. This will ensure that they avoid falling foul of the potential restrictions that could be enforced (by the Department of Home Affairs).

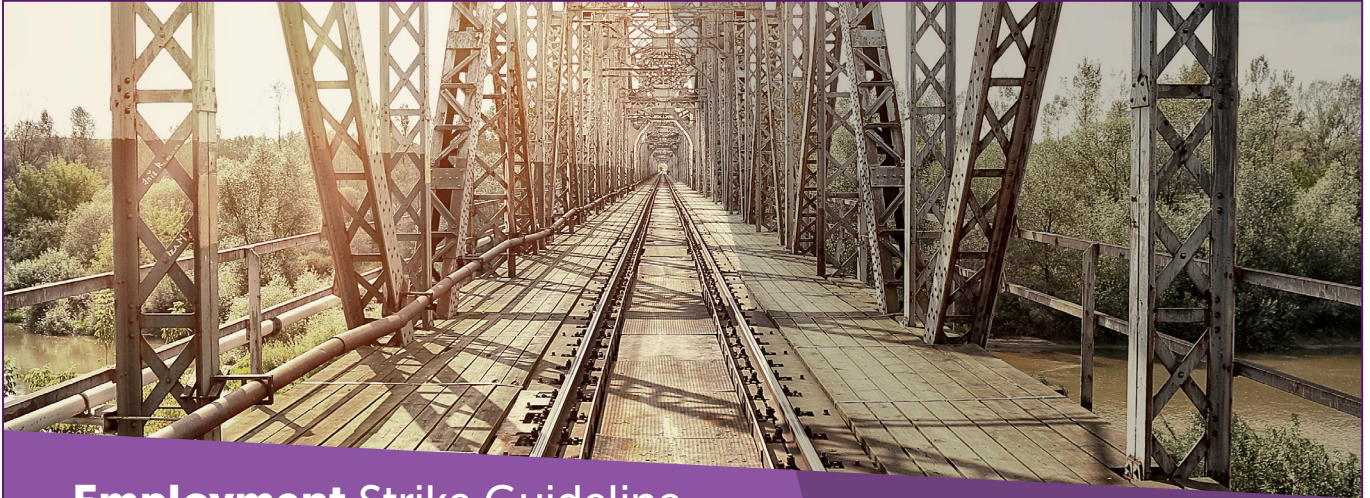
Typically, 'business purposes' have been held to involve attending business meetings or workshops, conferences or business-related events (unless specifically otherwise authorised). In conclusion, the newly proposed multiple entry visa will come with relatively strict conditions and will not constitute a "golden ticket" to any foreigner seeking to change his or her fortunes by working or conducting business in South Africa. Foreigners who apply for the long-term multiple entry visa should therefore, at the time of application, make it clear as to their intention in visiting South Africa. If circumstances change, an application for an appropriate work visa should be made.

Michael Yeates and Shane Johnson



Michael Yeates was named the exclusive South African winner of the **ILO Client Choice Awards 2015 – 2016** in the category Employment and Benefits as well as in **2018** in the Immigration category.





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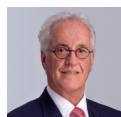
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