

Immigration Insights

by CDH Employment Law



ALERT | 10 April 2024



In this issue

SOUTH AFRICA

Draft Second Amendment to the Immigration Regulations, 2014



For more insight into our expertise and services

Draft Second Amendment to the Immigration Regulations, 2014

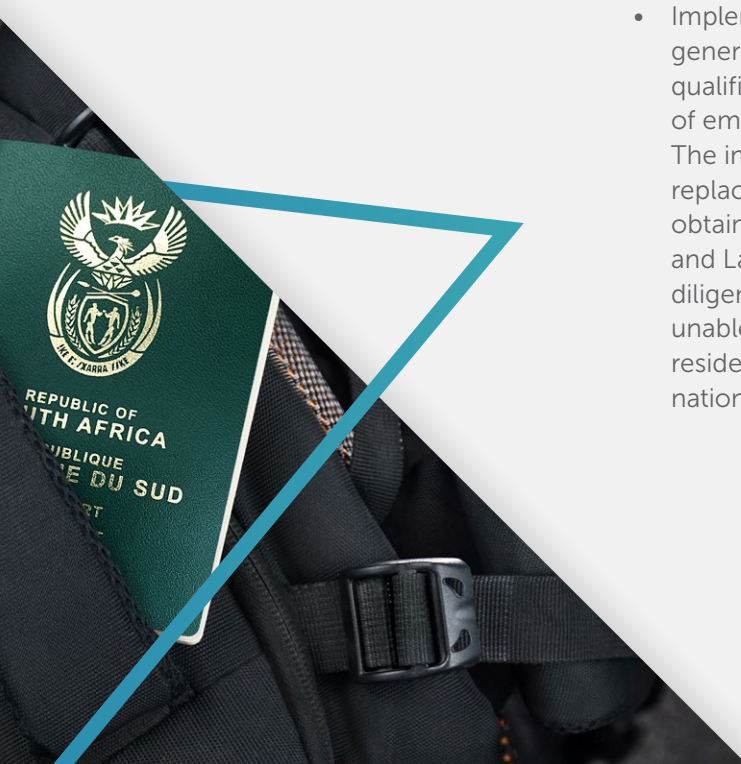
On 8 February 2024, the Minister of Home Affairs published the Draft Second Amendment of the Immigration Regulations, 2014 (Regulations) in order to make it easier for foreign nationals to travel to, work from, and conduct business within South Africa. The Regulations were open for public comment until 29 March 2024.

The Regulations sought to *inter alia* –

- Introduce a remote working visa in order to allow foreign nationals who are employed by foreign employers to work remotely from within South Africa. One of the proposed requirements for the remote working visa is that a foreign national must earn no less than R1 million a year.
- Implement a point-based system for the issuing of a general work visa based on a foreign nationals' age, qualifications, language skills, work experience, offer of employment and ability to adapt within South Africa. The implementation of the point-based system will replace the requirement for a prospective employer to obtain a certificate from the Department of Employment and Labour confirming that despite undergoing a diligent search of the South African job market, it was unable to employ a South African citizen or permanent resident into the particular position, prior to the foreign national being able to apply for a general work visa.

- Introduce the Trusted Employer Scheme (Scheme), which has already been implemented, in order to provide a flexible and expeditious pathway for foreign nationals to obtain work visas in South Africa. The Scheme is intended to shift the focus to prospective employers to collect documents, on behalf of foreign nationals, to be used in support of their work visa applications. In order for an employer to be registered with the Scheme, the employer must *inter alia* –
 - invest a minimum of R100 million in South Africa;
 - have more than 100 employees, with 60% of them being South African citizens or permanent residents; and
 - prepare a skills transfer plan or graduate development programme for the benefit of the South African citizens and permanent residents they employ.
- Update the positions contained on the critical skills list regularly, based on the skills shortages identified in South Africa, as and when they arise.
- Remove the requirement to submit radiological reports in support of visa applications.

The above Regulations were gazetted and came into effect on 28 March 2024 (a day before the closing date for comments).



IMMIGRATION INSIGHTS
by CDH Employment Law
ALERT

Draft Second Amendment to the Immigration Regulations, 2014

CONTINUED

Notwithstanding the above, the Minister confirmed that the Regulations would be withdrawn in his press conference on 9 April 2024 in order to *inter alia*: remedy the error in publishing them prior to the last date for public comments; and address any confusion in relation to the Regulations. In confirming the withdrawal of the Regulations, the Minister did however emphasise that the substance of the Regulations (as gazetted on 28 March 2024) would remain the same.

We will keep you updated on any further developments once the Regulations have been republished.

Taryn York and Mapaseka Nketu

Chambers Global 2024 Results

Employment Law

Chambers Global 2014–2024 ranked our Employment Law practice in:

Band 2: Employment.

Aadil Patel ranked by Chambers Global 2024 in **Band 1:** Employment.

Fiona Leppan ranked by Chambers Global 2018–2024 in **Band 2:** Employment.

Imraan Mahomed ranked by Chambers Global 2021–2024 in **Band 2:** Employment.

Hugo Pienaar ranked by Chambers Global 2014–2024 in **Band 2:** Employment.



Cliffe Dekker Hofmeyr

REPUBLIC OF SOUTH AFRICA
CERTIFICATE
OF PARTICULARS OF BIRTH
included in the Population Register
S.A. CITIZEN

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

Senior 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 cdh Stellenbosch@cdhlegal.com

©2024 13338/APR