

# Immigration Law

ALERT | 30 May 2025



## In this issue

### SOUTH AFRICA

Cabinet approves key aspects on the employment of foreigners



For more insight into our expertise and services

## Cabinet approves key aspects on the employment of foreigners

Cabinet announced on 28 May 2025 that it has approved both the **National Labour Migration Policy (NLMP) 2025 White Paper** and the **Employment Services Amendment Bill, 2021 (ESAB)** for implementation and submission to Parliament.

The NLMP and ESAB have been under consideration for several years now and introduce significant changes to the employment of foreign nationals in South Africa, with direct implications for employers across key economic sectors.

The new framework aims to balance the need for economic growth and skills development while prioritising employment opportunities for South African citizens, permanent residents and refugees.

### **Key provisions of the National Labour Migration Policy 2025 White Paper**

The NLMP 2025 White Paper establishes a framework on the movement and employment of foreign nationals as a response to: (i) high domestic unemployment; and (ii) public concerns regarding the impact of foreign labour on job opportunities for South Africans.

Noteworthy aspects of the NLMP are:

- the introduction of quotas on the number of foreign nationals who may be employed in major economic sectors such as agriculture, hospitality, tourism and construction;
- a restriction on the allocation of business visas for foreign nationals in certain sectors; and
- a limit on foreign nationals establishing small, medium and micro enterprises, and trading in certain sectors of the economy.

### **The Employment Services Amendment Bill**

The ESAB will give effect to the NLMP through the regulation of foreign labour and seeks to achieve some consistency between the Immigration Act 13 of 2002 (Immigration Act) and the Refugees Act 130 of 1998.

The ESAB introduces Chapter 3A to the Employment Services Amendment Act, 2021 (Act). Noteworthy from this chapter is that section 12B empowers the Minister of Employment and Labour (Minister) (after consulting the Employment Services Board and considering public comments) to set maximum quotas for the employment of foreign nationals. These quotas may be sector-specific, occupational and/or geographical. Employers may only exceed the quota in cases where critical skills are required or where an exemption is granted by the Minister.



## IMMIGRATION LAW ALERT

# Cabinet approves key aspects on the employment of foreigners

CONTINUED



Once the ESAB is implemented, employers who wish to employ foreign nationals must: (i) determine if the foreign national is entitled to work in South Africa and to perform the specific work according to the conditions imposed on their work visa/permit; (ii) satisfy themselves that no other persons in South Africa (other than foreign nationals) possess the requisite skills to fill the vacancy **before recruiting** a foreign national; (iii) prepare a skills transfer plan for any position filled by a foreign national (unless exempted by the Minister); (iv) provide foreign nationals with terms and conditions of employment which are no less favourable to those provided to South African citizens or permanent residents; and (v) retain copies of all documents proving the foreign national's lawful entitlement to work in South Africa.

Under section 12BC, the Minister may make regulations regarding:

- measures employers must take to ensure that no suitable South African is available before recruiting a foreign national;
- requirements for using employment services to recruit South Africans;
- preparation of skills transfer plans; and
- criteria and procedures for applying for exemptions from quotas or other requirements.

## Implications for employers

Employers operating in the identified sectors (such as agriculture, hospitality, tourism and construction) should prepare for the introduction of sectoral quotas on the employment of foreign nationals by:

- reviewing their current workforce composition and recruitment practices;
- ensuring or implementing a robust verification process to ascertain the legal status of foreign employees;
- developing and maintaining skills transfer plans in the recruitment of foreign nationals; and
- monitoring regulatory developments and participating in public consultations on quota determinations which impact their sectors.



IMMIGRATION LAW  
ALERT

## Cabinet approves key aspects on the employment of foreigners

CONTINUED



The ESAB provides mechanisms to ensure compliance with the Act and the Immigration Act. These include the Minister and the Minister of Home Affairs concluding an agreement in terms of which labour inspectors, designated in terms of section 63 of the Basic Conditions of Employment Act 75 of 1997, may enforce the provisions of the Immigration Act. Non-compliance may result in enforcement action, including fines of up to R100,000 and other penalties as provided for in the ESAB.

These proposed amendments also need to be considered with the Employment Equity Amendment Act 55 of 1998.

The ESAB will proceed to Parliament for consideration and enactment. While the ESAB has not been implemented yet, employers are advised to monitor the legislative process and begin reviewing their employment policies and practices in anticipation of the new requirements in the employment of foreign nationals.

As part of the wider initiative and in parallel with these legislative developments, the Department of Home Affairs recently launched 'Operation New Broom', a technology-driven initiative aimed at combating illegal immigration which uses advanced biometric technology to verify the immigration status of individuals in South Africa, thereby reducing the risk of the use of fraudulent documentation. In its first phase, Operation New Broom has already resulted in the arrest of 25 suspects who had illegally occupied land in District 6, Cape Town.

**Imraan Mahomed, Taryn York and Sashin Naidoo**





## OUR TEAM

For more information about our Immigration sector and services in South Africa, Kenya and Namibia, 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](mailto:sammy.ndolo@cdhlegal.com)



**Imraan Mahomed**

Director:

Employment Law

T +27 (0)11 562 1459

E [imraan.mahomed@cdhlegal.com](mailto:imraan.mahomed@cdhlegal.com)



**Alex Muchira**

Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E [alex.muchira@cdhlegal.com](mailto:alex.muchira@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](mailto:abednego.mutie@cdhlegal.com)



**Taryn York**

Senior Associate:

Employment Law

T +27 (0)11 562 1732

E [taryn.york@cdhlegal.com](mailto:taryn.york@cdhlegal.com)



**Mapaseka Nketu**

Paralegal:

Employment Law

T +27 (0)11 562 1178

E [mapaseka.nketu@cdhlegal.com](mailto: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](mailto: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](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> 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](mailto:cdhkenya@cdhlegal.com)

**NAMIBIA**

1<sup>st</sup> Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

©2025 14721/MAY

