

Draft Immigration Regulations open for comment

The draft Immigration Regulations, which were published for comment on 14 February 2014, mean that employers will now also be faced with further amendments to the legal landscape in relation to expatriate employees.



© jarek2313 – Fotolia.com

This is according to Michael Yeates, director in the Employment Practice at Cliffe Dekker Hofmeyr, who says that employers and skilled foreigners have been waiting with bated breath for the release of the regulations.

"The public has been invited to make written submissions to the Department of Home Affairs on the draft regulations by no later than 28 February 2014. Interested parties are encouraged to make submissions for consideration before the regulations are finalised," he explains.

Long awaited reform

Yeates says that by all accounts, the draft regulations ushers in the long awaited reform to the Immigration Laws of South Africa. "In August 2011, the Immigration Amendment Act, No 13 of 2011 was published. However it did not come into effect due to delays in finalising the accompanying regulations," he notes.

The Amendment Act, which seeks to streamline the process for issuing various permits in the Immigration Act 13 of 2002, has thus remained in limbo since 2011 - much to the frustration of those who seek to take advantage of some of the amendments.

"Some of the most salient changes of the Amendment Act include the proposed amendments to intra company transfer permits (ICT permits). Currently ICT permits are limited to a maximum period of two years. This is normally insufficient for most purposes. The Amendment Act will see an increase in the maximum period to allow ICT permits to be granted for periods up to four years in total," he says.

Abolishment of quotas

Yeates notes that the Amendment Act will also do away with quota permits under which a pre-determined quota of persons with scarce and critical skills (as determined by the Minister of Labour) can acquire authorisation to work. From the Amendment Act, the Director General of the Department of Home Affairs will have a wide discretion to determine what constitutes a 'critical skill' which is in line with the 'national interest'.

"It is anticipated that the Regulations will be finalised and the Amendment Act will come into force during mid-2014," Yeates says. "All employers who regularly employ expatriate employees should familiarise themselves with the proposed amendments and regulations in order to consider the impact on their current recruitment and employment practices."