

# GMS Flash Alert

## Immigration

2024-207 | October 23, 2024

### South Africa – New Work Visa Reform

On 9 October 2024, the newly-appointed Minister of South Africa's Department of Home Affairs<sup>1</sup>, Dr. Leon Schreiber, published the gazetted points-based system for general work visas and critical-skills work visas with immediate effect. The minister also gazetted the requirements for remote working visas, which would be applied to so-called “digital nomads.”

#### WHY THIS MATTERS

The aim of the new points-based system is to introduce a transparent framework to adjudicate work visa applications to address the issues of corruption and inefficiencies within the South African immigration system. The new system is expected to also encourage investments, tourism, and job creation in the South African market.

The points-based system to be allocated (for the visa application) will be determined according to:

- |                    |                             |
|--------------------|-----------------------------|
| a) Qualifications  | d) Offer of employment, and |
| b) Language skills | e) Salary.                  |
| c) Work experience |                             |

Where general work visas, critical-skills work visas, and remote working visas are concerned, individuals travelling to South Africa for work, companies bringing foreign nationals into the country for work, and their immigration advisers, should be aware of the new rules, as processes and requirements have changed, and they may have to adjust the way they approach their eligibility and making their applications.

#### The Principle

If a foreign national applies for a critical skills visa or a general work visa, he or she must:

- meet all<sup>2</sup> the requirements which are required for the purposes of **that visa classification** (for example, this includes the requirement to provide valid police clearances as part of the visa application to be lodged), **and**

- must accumulate **at least 100** points in relation to the five (5) evaluation criteria listed above.

*Note that although a police clearance is a mandatory supporting document, it does not contribute to the tallying of the points required.*

## KPMG INSIGHTS

It is important to note that if the occupation (being applied for) is not listed on the critical skills list, the default application would be to apply for the general work visa. Foreign nationals who qualify for any of the occupational categories listed under the gazetted critical skills list<sup>3</sup> will obtain 100 points, e.g., a foreign national applying for a critical-skills work visa under the occupational category of “biotechnologist” will be allocated 100 points automatically.

If the applicant (who is the foreign national) reaches the threshold of 100 points through a combination of points other than through the occupations listed under the critical skills list, the applicant will be issued with a general work visa. Along these lines, a foreign national applying for employment as an “Assistant Property Manager” (which is not part of the critical skills list) will have to accumulate a minimum of 100 points through a combination of points earned by the evaluation in relation to the five (5) above-listed criteria.

It is useful to understand that foreign nationals who are offered employment by corporate entities registered with the Department of Home Affairs’ Trusted Employer Scheme<sup>4</sup> will also be allocated points under the new system.

### Criteria for Work Visas Based on the Points-Based System

	Criteria	Points (%)	Criteria	Points (%)
<b>Occupation</b>	Occupation on the Critical Skills list	100 points		
<b>Qualifications</b>	National Qualification Framework (NQF) Level 9 and 10	50 points	National Qualification Framework (NQF) Level 7 and 8	30 points
<b>Offer of employment (mandatory)</b>	More than ZAR 976,194 gross per annum	50 points	Between: ZAR 650,796 and ZAR 976,194 gross per annum	20 points
<b>Work experience</b>	5-10 years	20 points	Above 10 years	30 points
<b>Employment Status</b>	Offer from a Trusted Employer	30 points		
<b>Language Skills</b>	Proficient in at least one official language	10 points		

Source: KPMG in South Africa

## Additional Waivers

### Certificate Requirement from the Department of Employment and Labour – Full Waiver

The Minister of Home Affairs has granted a waiver in relation to the requirement for the visa application to include a certificate from the Department of Employment and Labour confirming that a diligent search was conducted by the prospective employer and that:

1. the prospective employer was unable to find a suitable South African citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant;
2. the applicant has qualifications or proven skills and experience in line with the job offer,
3. the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or permanent residents occupying similar positions in the Republic; and
4. the contract of employment stipulating the conditions of employment, signed by both the applicant and employer, is in line with the labour standards in the Republic.

### Certificate of Evaluation from the South African Qualifications Authority – Partial Waiver

Applicants for critical-skills work visas and general work visas are required to provide a certificate of evaluation of foreign qualifications conducted by the South African Qualifications Authority (“SAQA”) and the documents must be translated by a sworn translator into one of the official languages in the Republic.

Due to the delays in obtaining a certificate of evaluation of foreign qualifications by SAQA, the Minister of Home Affairs has granted a partial waiver in relation to this requirement. Applicants will be allowed to submit proof of submission of the application to SAQA for the evaluation of their foreign qualifications.

Subject to meeting the other prescribed requirements, the Department of Home Affairs will issue the critical skills visa or general work visa for a period of 12 months, and once the SAQA evaluation certificate is secured, the work visa may be extended for the remaining four-year period from within South Africa. The extension may be applied for whilst the foreign national is still in South Africa.

## Remote Working Visas

The remote working visa will allow eligible foreign nationals to live and work in South Africa for a specified period. It is required that the foreign national can demonstrate that he/she will earn a gross remuneration<sup>5</sup> of no less than the equivalent of ZAR 650,976.00<sup>6</sup> per annum.

	Scenario A	Scenario B	Comments and observations <sup>7</sup>
What is required? <sup>8</sup>	The foreign national must register with the South African Revenue Service (SARS) <u>is only required</u> :	The foreign national must register with the South African Revenue Service (SARS) <u>is only required</u> :	The foreign national must register with SARS for income tax within 21 business days of becoming so obliged.
Criteria 1	- if the foreign national earns no less than the <i>equivalent</i> of ZAR 650,976 per annum;	- if the foreign national earns no less than the <i>equivalent</i> of ZAR 650,976 per annum;	The remuneration must be the <i>equivalent</i> of ZAR 650,976. Note: there appears to be no guidance as relates to the Immigration regulations for the exchange

	Scenario A	Scenario B	Comments and observations <sup>7</sup>
			<p>rate period that is to be applied to quantify the “equivalent”.</p> <p>For tax purposes, the taxpayer may elect to translate amounts in foreign currency by applying either the spot rate or the average exchange rate (for the tax year in question). It is unknown whether the equivalent includes or excludes fringe benefits.</p>
Criteria 2	- <b>and</b> the foreign national is tax resident in another tax jurisdiction with which South Africa has concluded a Double Tax Agreement.	- <b>and</b> the foreign national is not tax resident in another tax jurisdiction.	<p>The list of countries with which South Africa has concluded DTAs (rest of Africa) : <a href="#">DTAs and Protocols (Africa)   South African Revenue Service</a></p> <p>The list of countries with which with South Africa has concluded DTAs (beyond Africa): <a href="#">DTAs and Protocols (Rest of the World)   South African Revenue Service</a></p>
Criteria 3	- if the foreign national is present in South Africa for longer than an aggregate period of 183 days during any 12 months.		Note that different DTAs have different periods of reference relating to “any 12-months”.

Source: KPMG in South Africa

## KPMG INSIGHTS

### Tax Guidance

This immigration gazette provides tax guidance to foreign nationals who will be working remotely in South Africa. We strongly suggest that the foreign national and the seconding employer seek professional tax advice relating to the South Africa income tax consequences and filing compliance obligations for all parties (i.e., both employers and the foreign national). Stakeholders should not rely on regulations (guidance from an immigration perspective) as a basis or reference for South African tax compliance matters.

# Visa and Application Changes

The relief arising from implementation of the new points-based system for adjudication in respect of certain work visa applications and the full and partial waivers discussed above, is welcomed. It is hoped that the adjudication process for work visa applications will become more transparent by eliminating bureaucratic hurdles and inconsistencies, thereby streamlining the overall process.

The introduction of the new remote working visa is also welcomed by many industries and sectors, especially the tourism sector, since it is believed that it will help boost the local economy.

For foreign employers, this initiative purportedly offers the opportunity to send their employees to explore the South African market, potentially leading to expansion and investment opportunities.

## FOOTNOTES:

- 1 Appointed on 3 July 2024.
- 2 Department of Home Affairs, "[General Information about Visas](#)" webpage.
- 3 Government Gazette/Staatskoerant, Vol. 700 3 October / Oktober 2023, No. 49402 at: [https://www.dha.gov.za/images/PDFs/CriticalSkills\\_102023.pdf](https://www.dha.gov.za/images/PDFs/CriticalSkills_102023.pdf) .
- 4 Trusted Employer Scheme allow employers to be vetted and approved in advance to reduce the administrative burden for each visa application. The objective of the scheme is that a pathway would be created to employ skilled foreign labour more efficiently where there have been challenges from a visa process perspective, especially with regards to the unpredictability of outcomes, document requirements, and processing times.
- 5 It is uncertain whether the “gross remuneration” is only salary or whether fringe benefits are to be also considered.
- 6 Approximately USD 37,050 or EUR 34,135.
- 7 Income Tax Act No. 58 of 1962 (The ITA).
- 8 The government notice number 5398 (gazette number 51366).

\* \* \* \*

## RELATED RESOURCE

Government Gazette/Staatskoerant, Vol. 712 9 October / Oktober 2024. No. 51365. [Department of Home Affairs, “Points-Based System.”](#)

Government Gazette/Staatskoerant, Vol. 712 9 October / Oktober 2024. No. 51365. [Department of Home Affairs, "Third Amendment of the Immigration Regulations, 2014."](#)

Department of Home Affairs, "[Waiver letter - General Work Visa - 8 Oct 2024](#)" webpage.

ZAR 1 = EUR 0.052 | ZAR 1 = UDS 0.056 | ZAR 1 = GBP 0.043 | ZAR 1 = INR 4.71 (Source: [www.xe.com](http://www.xe.com))

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