

Proposed emigration laws need input

By [Tasia Brummer](#)

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The White Paper for South African Migration was released on 28 July 2017 by the Department of Home Affairs. It aims to improve the management, security and influx and out flux of foreign and local nationals within South Africa and the current regimes thereof.



Not only will foreign nationals who are sojourning and those who wish to sojourn in the Republic be affected but also South African citizens who work abroad must also take note of important changes.

Whether you have foreign workers in South Africa, South African workers abroad or deal in any capacity with these changes, there is now a unique window to get your house in order and contribute to this important development in emigration law.

Points-based system

The Paper proposes that a 'points-based' system be put in place for migrants who hold skills, potential investments and/or have business interests within the Republic. Thus, we are adopting a more strategy based and flexibility approach. This system may be adjusted, considering the qualifications, experience, capital availability and willingness of the transfer of skills from foreign nationals.

Expats with scarce skills will be required to transfer their unique skills and experiences to citizens of South Africa. This will further fill the skills gap within the labour market and decrease the scarcity of the needed skills. The Critical Skills list will be reviewed to ensure that 'scarce skills' aren't over-capacitated.

This will make it far easier for the correct expatriates to access long-stay visas. Furthermore, expats' immediate family may apply as one unit and will thus enable the family members to conduct work and study without needing to apply for alternative visas. This is a large positive compared to current where accompanying family members are not allowed to work unless married to a South African citizen.

Toothbrush test is coming

It further proposes 'Marriage Clearance Certificates' to be issued to foreigners whom intend to enter into spousal relationships with citizens. This regime is only to ascertain the status of the marriage and to ensure that respective foreigners are not married in their home countries.

The process hereof is yet to be identified, but as in the American movies, this will be where they put you in different rooms and check that you know the colour of your spouse's toothbrush, who sleeps what side, is the pillow hard or soft and how you feel that your mother-in-law interferes in the marriage.

Permanent residency to be replaced

Permanent residency is proposed to be replaced with longer-term visas in order to dismiss the misunderstanding that expats may have in terms of progressing to citizenship by only taking into consideration the number of years they have spent in the country. The progression is thus aimed at expats who hold the necessary qualities of which will contribute to the South African economy.

Accordingly, the 'point-based system' will further monitor on whether a person may qualify for short- or long-term residency and will result on whether they may apply for permanent residency and/or citizenship. Consequently, process of residency and citizenship will be deemed to be delinked.

South African citizens

Although the White Paper focuses solely on the Migration to South Africa, it does however further mention that citizens in the Republic whom intend to emigrate for a period longer than three months will be mandated to apply for registration as per the Department of International Relations and Cooperation (DIRCO). This is to ensure that 'strong ties' are maintained together with the development agenda for the country, but we can see that SARS will probably also be very interested in this database.

Immediate actions

Although the White Paper focuses solely on the future, there are three immediate takeaways:

1. Where you have been part of the previous emigration law changes, you will freshly remember the painful the changeover. Perhaps there will be quicker policies and procedures in place this time, but this remains a gamble. The current VISA processes operate very smoothly where correctly done, so the bankable position is to secure your expatriate permits and status before the change. This means the new system can settle down before you have to apply again.
2. Where you are a corporate employer or have critical skill employees, the White Paper gives you a rare opportunity to comment now on the changes. This can either be directly submitted, or please email me and we will ensure this is added to our submission to the Minister.
3. The change to permanent residency will have significant impact on current expatriates planning to stay longer. Now is the time for them to assess their situation and consider application under the more lenient existing regime.

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