

Home Affairs issues directive for the extension of ICT visas

By [Michael Yeates](#) and [Anli Bezuidenhout](#)

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If a foreign national wants to work in South Africa, they must be in possession of a valid work visa issued in terms of the Immigration Act, No13 of 2002. The foreign national can apply for a general work visa, a critical skills work visa or an intra-company transfer work visa (ICT visa). Each of these visas is geared towards various activities, depending on the intention of the foreign national and/or their employer.



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In terms of s19(5) of the Act, an ICT visa may be issued to a foreigner who is employed abroad by a business operating in South Africa in a branch, subsidiary or affiliate relationship. The ICT visa is relatively common and easy to obtain if all the supporting documents are in order.

Prior to the recent amendments to the Act, ICT visas were limited to a two-year period and were not extendable. In other words, the holder of an ICT visa would be required to return to their country of origin upon the expiry of the ICT visa.

On 1 June 2014, the Immigration Amendment Act, No 13 of 2011 came into effect. In terms of the amendments to the Act (and the accompanying regulations), the duration of ICT visas was extended from two years to four years.

Queries and frustration

The extended duration was, however, only applicable to new applicants. Accordingly, foreign nationals who obtained ICT visas under the 'old' Act, would still be required to return to their country of origin once the ICT visa expired. This caused an influx in queries and frustration from companies regarding the discrepancies in the duration of ICT visas issued in terms of the 'old' Act and under the 'new' Act. Many applicants were frustrated by these discrepancies as there was no clarity on whether one could apply for a new ICT visa afresh.

On 27 October 2014, the Department of Home Affairs issued Immigration Directive 19 of 2014 in order to clarify the operational inconsistencies that were being experienced with regard to the extension of ICT visas. In terms of the directive, a foreign national who is assigned to a South African company and who is currently in possession of an ICT visa issued under the 'old' Act may apply for a new ICT visa, which will, if granted, be valid for an additional period of four years. The application for the 'new' ICT visa must, however, be submitted at the South African Mission in the applicant's country of origin or of normal residence.

Additional obligations

This recent development assists South African employers who wish to retain foreign assignees for longer than two years. Employers should, however, note that they have additional obligations in terms of the Act. In terms of the recent amendments to the Act, an employer who employs a foreign national in terms of an ICT visa must submit an undertaking to ensure that a plan is developed for the transfer of skills to a South African citizen or permanent resident.

Employers must use the extended period to ensure that the relevant skills are transferred in accordance with the undertaking. It should also be noted that applicants will only be entitled to one ICT visa, where after they will no longer be eligible to apply for an ICT visa and would be required to apply for a different type of work visa.

ABOUT THE AUTHOR

Michael Yeates is a director and [\[\[https://www.bizcommunity.com/Profile/AnliBezuidenhout\]\]](https://www.bizcommunity.com/Profile/AnliBezuidenhout) is an associate in the Employment practice at Cliffe Dekker Hofmeyr.

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