



Western Cape Government submission on the Draft Remote Working Visa

1. Purpose

- 1.1 This submission proposes the introduction of a remote working visa category in South Africa through amendments to the Immigration Act 13 of 2002 Regulations.

2. Background and problem statement

- 2.1 In response to the damage by the coronavirus (Covid-19) pandemic on the international tourism market, alternative ways to attract international tourists should be identified which includes initiatives such as a remote work visa.
- 2.2 Globally, there has been a substantial increase in remote work visa provisions over the past year, with many countries seeing such adjustment to the immigration regime as a means to attract visitors in uncertain times. With the growing list of countries launching these schemes, economies are starting to compete for remote workers and tourists of a similar profile.
- 2.3 Remote workers are longer-term visitors who therefore pose a reduced Covid-19 risk. Furthermore, these visitors have a stable income from abroad, which they will spend in the local host economy.
- 2.4 As a direct response to the public health concerns raised by Covid-19, work-from-home policies have been implemented globally, noticeably increasing the number of people that can work from anywhere in the world and, consequently, launching a key new class of international traveller.
- 2.5 While precipitated by the global pandemic, remote working is not a temporary state. It is anticipated that well after the pandemic has ended, remote working arrangements will remain part of the mainstream way of working. Predictions by experts highlight the impact of technology on the evolution of work, which would result in as many as 1 billion remote

workers in the world by 2035.¹ These were pre-pandemic predictions, and this number is set to increase significantly as a result of the pandemic

3. Economic Impact on the Tourism Sector

- 3.1 According to the latest reports published by Stats SA (2021), foreign arrivals dropped by 71% from just over 15,8 million travellers in 2019 to less than 5 million travellers in 2020. The travel and tourism industry historically contributed 7% to the National GDP and made up 9.1% of total employment in South Africa in 2019, with Covid-19 all but destroying this vital source of income and jobs at a time when South Africa can least afford it.
- 3.2 Introducing a dedicated remote working visa programme can attract a significant number of long-term, financially independent travellers to South Africa, not only during this period of economic uncertainty but also in the long term. In addition to attracting remote workers, it is anticipated that such a visa would have the knock-on effect of encouraging remote workers to invite their family and friends to visit – with data showing that the main purpose for visiting South Africa among international travellers is to visit friends and relatives.²
- 3.3 In addition to tourism, encouraging remote workers to live in South Africa could have very positive spin-offs for foreign direct investment, and the promotion of South African goods and services exports.
- 3.4 There has been a significant escalation of countries around the world rolling out remote work visas to attract visitors. With the growing list of countries launching these schemes, nations are starting to compete for remote workers as well as tourists.
- 3.5 Indeed some of the benefits have been identified by some countries, with Dubai, Germany, Mauritius, Mexico, Portugal and Spain all having made the necessary adjustments to their visa offerings to maximise the benefits of the growing number of digital nomads requiring remote working visas.
- 3.6 By way of example, Mauritius – which consistently rivals South Africa as a tourist and investment destination, offers the “Premium Travel Visa”, which allows non-citizens to stay and work remotely for up to one year. Some of the conditions include the requirement for

¹ Pieter Levels. The future of digital nomads: How remote work will transform the world in the next 20 years. Oct 2015. <https://levels.io/future-of-digital-nomads/>.

² South Africa Tourism Performance Report. January-December 2018.

applicants to either work for themselves or companies outside Mauritius; for them to provide proof of long-term stay plans such as a rental home; as well as the more standard requirements of travel and health insurance.

- 3.7 Another example is Dubai which launched its own one-year “virtual working program” in October last year. This new remote working visa gives travellers the freedom to visit Dubai and work remotely all while remaining employed in their home country. Basic conditions include proof of employment from a current employer with a minimum one-year contract, or proof of ownership of the company; minimum of USD 5,000 per month salary, with three months’ payslip and three months’ bank statements as proof; as well as health insurance with UAE coverage validity.

4. Regulatory Review

- 4.1 A regulatory analysis has been performed, highlighting the relevant areas where existing Regulations can be adapted to duly account for a new class of international travellers. The relevant proposed amendments are as follows:

i. Definition of “work”

The Immigration Act, from which the Regulations were drafted, provide the definition of work as including:

(a) conducting any activity normally associated with the running of a specific business;
or

(b) being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward, within the Republic.

These definitions are relevant as they set the tone for what is considered work for the purposes of the Act and Regulations. The emphasis lies on ‘within the Republic’ which can simply be interpreted to mean that commercial activity which falls outside of the country, regardless of the beneficiary being in the country themselves, is excluded.

It is also important to ascertain the intention of the drafters here, by adopting a purposive approach to statutory interpretation. The intention, quite clearly, is to safeguard the interest of the domestic labour market and ensure that the influx of immigrants into the country does not adversely affect South Africans’ employability.

This approach allows us to deduce that workers who are employed by and for the benefit of foreign employers with no commercial activity within the country – workers who happen to work remotely from South Africa, were not included under the definitions for “work” when the Act and Regulations were drafted.

It is accordingly proposed that the existing definition for “work” under the Act neither expressly nor tacitly considers remote workers. Accordingly, they are not precluded from further consideration in the Regulations.

ii. Regulation 11 - Provisions on visitor's visas

Section 11 of the Act makes provision for visitor's visas, with section 11 (1) stating:

A visitor's visa may be issued for any purpose other than those provided for in sections 13 to 24, and subject to subsection (2), by the Director-General in respect of a foreigner who complies with section 10A and provides the financial or other guarantees prescribed in respect of his or her departure: Provided that such visa-

- (a) may not exceed three months and upon application may be renewed by the Director-General for a further period which shall not exceed three months; or*
- (b) may be issued by the Director-General upon application for any period which may not exceed three years to a foreigner who has satisfied the Director-General that he or she controls sufficient available financial resources, which may be prescribed, and is engaged in the Republic in-**
 - (i) an academic sabbatical;*
 - (ii) voluntary or charitable activities;*
 - (iii) research; or*
 - (iv) any other prescribed activity.**

Section 11 (2) further adds:

*The holder of a visitor's visa **may not conduct work**: Provided that the holder of a visitor's visa issued in terms of subsection (1)(a) or (b)(iv) **may be authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and terms and conditions to conduct work.***

It is submitted that both sections demonstrate the drafters' foresight – they attempt not to be too prescriptive, and to offer flexibility and discretion to the Director-General.

Regulation 11 (4) then provides:

An activity contemplated in section 11 (1) (b) (iv) of the Act shall be work conducted for a foreign employer pursuant to a contract which partially requires conducting of certain activities in the Republic and relates to –

- a) teaching at an international school;*
- b) in respect of films and advertisements produced in South Africa, including, but not limited to, an actor, cameraman, hairstylist, make-up artist or lighting and sound engineer;*
- c) a foreign journalist seconded to the Republic by a foreign news agency;*
- d) a visiting professor or lecturer or an academic researcher;*
- e) an artist who wishes to write, paint or sculpt: Provided that he or she submits a portfolio of his or her previous work;*
- f) a person involved in the entertainment industry, travelling through the Republic to perform;*
- g) a tour leader or host of such a tour; or*
- h) a foreigner who is required to stay in the Republic in order to testify as a state witness in a criminal court case: Provided that in such a matter, the application shall be initiated by the relevant Deputy Director of Public Prosecutions.*

The above exhaustive list appears to highlight work conducted for a foreign employer – all of which serve to install foreign travellers for a fixed period whilst they conduct their business. These examples also highlight the type of traveller permitted to stay in the country without burdening the state and there appears, on the face of it, very little to distinguish between this category of traveller and remote workers – who also conduct work for foreign employers.

The existing exclusion of remote work from the list can likely be explained by the relative novelty of the remote working trend. The Regulations can accordingly be updated to account for this new class of traveller, whilst still giving meaning to the purports of the principal Act.

It is thus proposed that remote workers who travel within South Africa whilst conducting work for foreign employers be added to the list provided in Regulation 11 (4) to give effect to the activity contemplated in section 11 (1) (b) (iv) of the principal Act.

5. Recommendations

- 5.1 It is proposed that application criteria, at a minimum, include -
- i. proof of satisfying the minimum threshold amount of income and/or savings on arrival;
 - ii. proof of accommodation/lease agreement for at least one year;
 - iii. proof that the applicant's source of income lies outside of South Africa; and
 - iv. proof of travel and health insurance.
- 5.2 It is proposed that a short-term remote work visa is provided for an initial one-year period, with the option to renew for an additional two years upon satisfying the necessary checks by the Department of Home Affairs (DHA).
- 5.3 It is ultimately proposed that remote workers who travel within South Africa whilst conducting work for foreign employers be added to the list in Regulation 11 (4) to give effect to the activity contemplated in section 11 (1) (b) (iv) of the principal Act. This would require an amendment to the Regulations, rather than the Act itself.

6. Conclusion

- 6.1 The introduction of a remote working visa will ensure that South Africa remains competitive against other global destinations in attracting digital nomads. This will boost a struggling tourism industry by generating significant economic opportunities.