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**Zambia: Law & Practice
and Trends and Developments**

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ZAMBIA



Law and Practice

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1. Policy

1.1 Immigration Policy

In Zambia, immigration has become one of the key driving factors to economic development. Over the years, foreign investment and expatriates have become integral to the rapid growth of the Zambian economy.

The Zambian immigration policy has been crystallised in the Employment Code Act No 3 of 2019 (the “Employment Code”). Section 14 of the Employment Code provides that a company doing business in Zambia is required to employ a Zambian citizen, except where a citizen does not have the skills required for that job or a citizen does not apply for that job.

Scope of Immigration Policy

The immigration policy in Zambia covers, but is not limited to the following:

- defining and categorising permits;
- conditions for granting permits;
- enforcement actions; and
- regulations on personal representation and persons allowed to practise immigration consultancy.

Regulatory Body

The Department of Immigration (the “Department”) created by an act of parliament, is the government department mandated to enforce Immigration Law in Zambia. The Department falls under the Ministry of Home Affairs and Internal Security.

The Department aims to facilitate and regulate the movement of persons entering and leaving Zambia and controls the stay of immigrants and visitors so that they can contribute to the internal security and sustainable socio-economic development of the country.

Applicable Laws

The principal law currently in force on immigration is the Immigration and Deportation Act No 18 of 2010 (the “Principal Act”) as read with:

- the Immigration and Deportation (Amendment) Act No 19 of 2016;
- the Immigration and Deportation (General) (Amendment) (No 2) Regulations of 2022;
- the Immigration and Deportation (Immigration Consultants) Regulations, 2013 (SI 38 of 2013);
- the Employment Code Act No 3 of 2019;

- the Citizenship of Zambia Act No 33, 2016;
- the Passport Act No 28 of 2016; and
- other laws incidental to immigration-related matters.

1.2 Upcoming Policy Changes Technological Trends in Zambian Immigration Practice

The Department has over the past few years made significant strides in digitising its services such that most, if not all, permits can now be submitted and processed online.

The department has also introduced e-visas (usually short-term visas), which are an alternative to visas issued at Immigration Headquarters in Zambia. This enables applicants to obtain their visas electronically after entering the required information and making payment with a credit or debit card.

Significant Changes to Regulations

The government of the Republic of Zambia has over the last three years made several regulations and amendments to existing regulation which are read together with the Principal Act.

For example, the Immigration and Deportation (General) (Amendment) Regulations of 2020 were recently amended by the Immigration and Deportation (General) (Amendment) (No 2) Regulations of 2022. The amendments made significant changes such as the lifting of visa application requirements for the following countries:

Australia, Canada, Norway, Japan, South Korea, New Zealand, the United States of America, the United Kingdom of Great Britain and Northern Ireland, Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Lux-

embourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Oman, Saudi Arabia, Iraq, Kuwait, Bahrain, Qatar, the United Arab Emirates, and China.

The effect of the regulation in the listed countries is that people in those countries who wish to visit or embark on a business trip to Zambia do not need to make a formal application to have their visitor's visa or business visa granted.

2. Visa Options

2.1 Sponsor-Based Employment Visas Employment Permits in Zambia

Employment permits in Zambia fall into two categories, which are: (a) employment permits; and (b) temporary employment permits. These permits are only issued by a Zambian employer.

An employment permit is issued to a foreigner who enters the country to take up employment for a period exceeding six months. It is granted for a minimum period of two years and can be extended to a maximum of ten years. It is issued to a foreigner who is employed by an entity or employer resident in Zambia.

The applicant is required to demonstrate in the application that they are suited to the role by virtue of their academic or professional qualifications, standard of education, skill and financial resources. Furthermore, they also need to show that there is no applicant available in Zambia who meets the requirements of the job or who is better qualified to do it than they are.

The applicant must also demonstrate that granting them an employment permit is likely to be of benefit to the inhabitants of Zambia gener-

ally, as a result of the knowledge and skills they possess.

Requirements to apply for an employment permit

- a covering letter from the employer addressed to the Director General of Immigration;
- an employment contract or letter of offer;
- a police clearance from the applicant's country of residence;
- a curriculum vitae;
- a registration certificate from the relevant professional body in Zambia (where required);
- a certified copy of the applicant's qualifications (academic, professional);
- a copy of marriage and birth certificates (where available);
- a certified copy of a valid passport (with bio data and last endorsement stamp for Zambia);
- a certified certificate of share capital and list of directors;
- a copy of a succession plan which must include an understudy training programme to be conducted by the foreign national to transfer knowledge and/or skills to a Zambian worker;
- a copy of the Certificate of Incorporation;
- in the case of construction, mining sector, ICT, engineering and other project-based engagements, a covering letter specifying the project on which the expatriate will be employed, and a copy of the letter of award specifying the completion date and value of the project must be submitted;
- the original press advertisements for the job which have appeared in two leading newspapers in A5 size with the name of the newspaper and date of the advert clearly visible must also be submitted, in addition to the outcome of the selection exercise;

- one recent passport-size photograph; and
- the prescribed fee.

Temporary Employment Permits

A temporary employment permit is issued to a person who has obtained a business visa and intends to remain in Zambia for a period exceeding 30 days. The validity of the permit may not exceed six months within a period of 12 months. This permit is usually utilised by visitors who come into the country on a business visit and plan to extend their time in the country.

2.2 Unponsored Work and Investment Visas

An Employment Permit

While immigration law and regulations do not specifically provide guidance on whether an employee may sponsor themselves, employment permits in Zambia remain employer-sponsored to the extent that an application for an employment permit in favour of the applicant is only granted under a Zambian employer. The application process requires the employer's details as much as it requires the personal details of the applicant.

An Investment Permit

One of the key requirements for an investor's permit application is that the applicant must provide proof of personal investment, such as a bank statement, amounting to USD250,000 for a new business and USD150,000 if joining an existing company.

2.3 Restrictions on Visitors

Generally, all arriving visitors in Zambia must have at least six months' validity on their passports from the date of entry. The passport must also have at least three full blank pages. Apart from this, restrictions on visitors mainly depend on the type of visa obtained, in that a visitor is

only allowed to take part in activities covered by their visa or permit.

2.4 Remote Working

The Zambian immigration regulatory and legal framework does not currently provide for remote working visas or permits.

3. Visa Requirements

3.1 Prerequisite Language Requirements

Although most regulations relating to permits do not specifically and expressly stipulate prerequisite language requirements, the application process requirements of most, if not all permits, ask for information on the applicant's fluency in English or any language indigenous to Zambia.

3.2 Medical Certificates or Vaccinations

There are no medical or vaccination certificates required for foreigners entering the country. Travellers to Zambia are encouraged to be fully vaccinated against COVID-19 but this is not mandatory. On 21 March 2023 the Zambian Ministry of Health announced the lifting of all COVID-19 travel-related restrictions at points of entry with immediate effect.

Travellers to Zambia are no longer required to show proof of vaccination, recovery from or testing for COVID-19.

3.3 Minimum Thresholds: Sponsor-Based Employment Visas

The applicant is required to demonstrate their suitability for the job in the application by virtue of their academic or professional qualifications, standard of education, skill and financial resources. They also need to show that there is no applicant available in Zambia who meets the

requirements of the job or who is better qualified to do it than they are.

Furthermore, the applicant must demonstrate that granting them an employment permit is likely to be of benefit to the inhabitants of Zambia generally.

3.4 Employment-Based Visa Limitations

In Zambia, an applicant for an employment permit is required to specify the employer that is offering the employment and the actual place of employment. When the permit is granted, the applicant is restricted to only working for that specific employer and at the specific place indicated in the application as the place of employment.

In the event that an applicant desires to change their employer or place of employment or any other details on the employment permit, the person is required to make another application giving the new details, or write to notify the Director General of Immigration, of the change.

4. Immigration Process

4.1 Visa Processing Times

The application is completed and lodged online. Once the application is lodged, the applicant has to wait for the immigration committee sittings which take place every Tuesday and Thursday.

The applications are dealt with on a first in, first out basis which is affected by the volume of applications being processed. Although the Department of Immigration advises that the application will be processed within a period of 14 working days, practically, it takes anything between seven days and six weeks before the application status is advised.

4.2 Travel Restrictions Once Application Filed

Applicants are generally required to be outside the country at the time of applying for a permit and are only allowed entry when the application is approved. Only a few permits, such as a temporary employment permit, allow an applicant to be within the country at the time of making the application.

4.3 Expedited Visa Proceedings

Zambian immigration regulations do not currently provide for expedited/fast-tracked processing.

4.4 Post-visa Requirements

Once an application is approved by means of an approval letter from the Department, an applicant is required to appear before an immigration office upon entry into the country and present an original passport in order to be granted the actual permit card.

5. Immigration Costs

5.1 Typical Cost of a Sponsored Employment

The typical cost of permits ranges between USD60 and USD1,200, the most expensive being the long-term permits, such as a residence permit, employment permit or investor's permit.

5.2 Payment of Visa Costs

Zambian immigration regulations do not currently exclude an individual from paying the costs related to an employment permit. This means that both the employer and the employee can pay the costs in the case of employment permits.

6. Enforcement

6.1 Enforcement Action Against Individuals and/or Sponsors

Any foreigner who engages in any employment, prescribed trade, work, business or any other occupation without a permit is committing an offence under Zambian law. Furthermore, any sponsor who allows a foreigner to continue working when their employment permit has expired is committing an offence.

A person who contravenes immigration law is liable, upon conviction, to a fine or to imprisonment. Additionally, the person's permit may be subject to variation or revocation.

6.2 Employer Obligations

The Immigration and Deportation Act imposes a number of obligations on employers. According to the Act, the employer may not employ:

- an illegal immigrant;
- a foreigner whose status does not authorise them to be employed by the employer; or
- a foreigner on terms and conditions or in a capacity that differs from the terms and conditions or capacity allowed by the foreigner's status.

The following obligations also apply:

- An employer must make an effort in good faith to ascertain that no illegal immigrant is employed by them and to ascertain the status or citizenship of those in their employ.
- An employer must, on the termination of an employment contract or the resignation or dismissal of a foreign employee who is the holder of an employment permit, surrender the employment permit to the Director General of Immigration within one month of the

termination of the employment contract, resignation or dismissal of the foreign employee.

- An employer shall, on the termination of an employment contract or the resignation or dismissal of a foreign employee who is the holder of an employment permit, be fully responsible for the repatriation of the former foreign employee and other costs associated with the removal or deportation of that former foreign employee, if that former foreign employee fails to leave Zambia when no longer in employment.
- An employer who fails to surrender the employment permit or take responsibility for the repatriation of the former foreign employee and other costs associated with their removal or deportation, is committing an offence and is liable, upon conviction, to a fine.
- An employer employing a foreigner must keep the prescribed records relating to the foreigner's employment for two years after the termination of such foreigner's employment.
- An employer employing a foreigner must report the termination of such foreigner's employment, and any breach of status on the part of the foreigner, to the Immigration Department for two years after the termination of such foreigner's employment.
- If an illegal immigrant is found on any premises where a business is conducted, it will be presumed that such illegal immigrant is or was employed by the person who has control over the premises, unless prima facie evidence to the contrary is adduced.
- If a foreign employee is moving to work at a different location, the employer must notify the Director General of Immigration of such change of address, in writing.

6.3 Right to Work Check Requirements

In Zambia, the right-to-work check requirement is known as an inspection. Once an applicant has submitted their application for an employment permit, the Department can proceed to ascertain whether the sponsor actually exists and whether the nature of the work for which the application was made, corresponds with the work the sponsor is engaged in. Thereafter, the Department can proceed to grant or reject the application based on its findings after the inspection.

7. Accompanying Family Members/Dependants

7.1 Recognised Family Relationships

All long-term permits, such as residence permits and employment permits, recognise the family relationships of spouse, children and dependants. However, all persons who enter the country under someone else's permit are required to apply for individual permits if they want to work or do business in the country.

7.2 Dependant Visas

All persons who enter the country under someone else's permit are required to apply for individual permits if they want to work or do business in the country.

Trends and Developments

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ZAMBIA TRENDS AND DEVELOPMENTS

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“Zambianisation” for Foreign Investors Who Wish to Do Business in Zambia

Business visa

Zambia has become a hotspot for foreign direct investment in the past few years as a result of several investment opportunities in the country. As a result, Zambia has become an integral place for investing and doing business in Africa.

Expatriates who wish to do business in Zambia within a short period of time (30 days or less) can acquire a business visa or permit. A business visa is a short-term permit and a person may apply for this visa if they have a short-term business agenda in the country.

The visa may be appropriate for those investors who have identified a business they would like to invest in, or who would like to spend a few days in the country to gain an impression of the business environment before making a big investment decision.

This visa is granted for a period of 30 days. The visa specifies the business the holder is to undertake; the person or public or private institution that has invited the business visitor, or the business visitor’s point of contact in Zambia; and the sanctions should the business visitor fail to comply with the terms and conditions of the permit.

Furthermore, should 30 days be inadequate to conduct their business, foreign nationals can proceed, upon expiration of the business visa, to apply for a temporary employment permit. This permit is issued to a person who has obtained a business visa and intends to remain in Zambia for a period exceeding 30 days.

The validity of the permit does not exceed six months within a period of 12 months. This per-

mit is usually utilised by visitors who come into the country on a business visit and then wish to extend their stay.

Investment permit

A foreign national who wishes to make a big investment decision which may entail spending more time in the country to ensure the smooth running of a business, would require an investment visa/permit. An investor’s permit is a long-term permit that is issued to a foreigner (above the age of 18 years) who intends to establish a business or invest in Zambia, or who has already established or invested in a business in Zambia, or who is joining an existing company.

The foreign national will have to show proof of personal investment amounting to USD250,000 for a new business and USD150,000 if joining an existing company (by means of a bank statement, money transfer or showing a description and value of the goods/equipment).

Once an investment has been made, there is usually a need for skilled labour in order to ensure the smooth running of the business. Investors are generally required to use local labour, except in special circumstances, such as the unavailability of local personnel in Zambia with the skills needed. However, it is at this point of providing employment opportunities that the law poses some challenges regarding who is prioritised by an employer.

“Zambianisation” and Employment Permits

“Zambianisation” is the most challenging and difficult law that most foreign nationals who have invested in Zambia, or who wish to invest in Zambia, face when it comes to employing expatriates. The ideology of the term “Zambianisation” is one that has been in existence from the time Zambia got its independence.

This term simply means that an employer should always prioritise a Zambian whenever there is an employment opportunity in relation to their company or business.

The requirement for Zambianisation is found in the Employment Code Act No 3 of 2019, which states that an employer should consider a Zambian for employment before engaging any expatriates. Where one seeks to engage the services of an expatriate, there is a need to demonstrate that they have skills or expertise that no Zambian applicant has offered.

As the term “Zambianisation” suggests to a certain extent, the government is looking at ways to include and strengthen the local workforce rather than allowing foreign staff to enter the country, do business and extract their gains without Zambia benefiting proportionately.

The Zambianisation policy is aimed at reducing the unemployment rate in Zambia, as the government has realised that there is a need to protect the local people amid the rapid investment growth that Zambia is currently experiencing. It is, therefore, a requirement of the law that where there is a vacant position and there is a qualified Zambian for that role, the employer must employ the local candidate before it considers engaging an expatriate.

Exceptions to Zambianisation

Despite the law being so stringent on the need to employ a Zambian first when providing employment in Zambia, the law also recognises that for Zambia to progress in its developmental and economic agendas there is a need for skilled expatriates to be employed in Zambia in order to disseminate their skills and knowledge to local Zambians.

The law in Zambia has provided the requirements or threshold for an employer to employ an expatriate in Zambia. According to the Employment Code Act No 3 of 2019 an employer who employs an expatriate in an undertaking shall, where practicable:

- designate an understudy to that expatriate; and
- submit a schedule of training programmes and the management succession of the understudy to the Labour Commissioner.

The law defines “understudy” as a citizen identified to work as a trainee under the supervision of an expatriate employee to improve the understudy’s skills within two years or a period determined by the Labour Commissioner, so that, where applicable, the understudy may eventually take over the job.

Where an expatriate is able to establish or prove that they have skills and expertise that are not available among local Zambians, the expatriate is at liberty to apply for an employment permit. This is issued to a foreigner who enters the country to take up employment for a period exceeding six months.

Furthermore, the applicant is required to demonstrate in the application that they are suitable for the role by virtue of their academic or professional qualifications, standard of education, skill and financial resources. Secondly, they must show that there are not already a sufficient number of persons available in Zambia who meet the requirements of the job or who have better qualifications than the applicant.

The employment permit is granted for a minimum period of two years and can be extended to a maximum of ten years. It is issued to a for-

eigner who is employed by an entity or employer resident in Zambia.

Once an expatriate has been granted an employment permit, the expatriate has an obligation to ensure that the necessary skills and knowledge are transferred to the understudy during the sojourn of the expatriate. Furthermore, the employer is mandated to submit a training schedule to the Labour Commissioner. The essence of the training programme is to outline how the necessary skill transfer to the understudy will be implemented by the employer.

The Appeal Process

In the event that an expatriate employment permit is rejected by the Department of Immigration and the expatriate is aggrieved with the decision, they can appeal to the Director General of Immigration within seven days of receipt of the rejection notice.

If the appeal is rejected, an expatriate can make a second appeal (complaint) to the Director General of Immigration. The period within which the applicant may again appeal to the Director General of Immigration, from the time the unfavourable decision is received, will be clearly indicated on the Notice of Rejection. This period should be within seven days. Any appeals tendered outside the indicated period are rendered null and void.

Furthermore, if the second appeal is rejected, a third appeal can be lodged with the Minister of Home Affairs. The appeal should contain compelling reasons explaining why the expatriate should be granted an employment permit, by demonstrating that they have special skills and expertise that are going to benefit the Zambian people during the expatriate's sojourn in the country.

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