



# STRENGTHENING PUBLIC PRIVATE DIALOGUE IN ACHIEVING THE UNITED NATIONS GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION (GCM)

## DEFINING THE BUSINESS NEEDS IN THE GOVERNANCE OF MOBILITY AND LABOUR MIGRATION

- DISCUSSION POINTS
  - THE BUSINESS CASE FOR RESPONSIBLE RECRUITMENT
  - SOUTH AFRICA PERSPECTIVE – LAW AND PRACTICE

# Discussion Points

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## Implementing Ethical Recruitment

- **Create a clear value proposition and business case for ethical recruitment**
- **Cognisance of the unintended consequences of over-regulating**
- **Enabling environment (compliance) to shift the non-compliant to compliance**
- **Ensure cost of compliance is low & benefits business (particularly SMEs)**
- **Seek to standardise the multiple compliance, ethical recruitment tools through a single set of key principles**
- **Advocacy campaign to integrate, replace industry compliance scorecards into a generic scorecard / framework**
- **Recognition that Developing and Developed economies may have different needs**

## Discussion Points

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### The Role of Governments as Responsive Social Partners

- Promote ratification of C181
- Migration policy development which is responsive to the Future of Work Trends – global skills mobility & on demand economy
- Ensure legislation / regulation vs inspections and enforcement balance
- Build strong effective labour inspections through PPPs
- Consider grading systems – Good Corporate Citizens – with ease of compliance reporting & rewards / incentives
- Consider principle of self assessment & random sampling
- Reduce red tape / bureaucracy
- Promote the value of PrEAs as valued labour market intermediaries

# Characteristics of the SA Labour Market

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- **Population: 55 million**
- **Employed: 16 million**
- **25% of employment (4 million): Elementary workers**
- **TU penetration: 27.4% (mining excessively high)**
- **Unemployment rate: 26.5%**
- **Expanded unemployment rate: 36.3%**
- **GDP 2016: 0.4%      2017 forecast: 1.2%**
- **Inflation: 6% (6 – 7% past 5 years)**
- **Social benefits: 17 million recipients**
- **Ongoing call to ban Labour Brokers**
- **Higher Education system ranked one of poorest in the world**

# South African Perspective: The Law

## Legislative Environment (Law)

- Constitution and Bill of Rights
- Employment Services Act 2014 (Regulates PrEAs)
- Sectorial determinations & Bargaining Councils
- Occupational Health & Safety Amended 2008
- LRA (Labour Relations Act) 1995
- Companies Act 2008 (Socio-Economic Development)
- Employment Equity: 1998 Act - No Unfair Discrimination
- BBBEE: Broad Based Black Economic Empowerment Act 2013
- BCEA (Basic Conditions of Employment Act) 1997 NMW (May 2018) National Minimum Wage (NUM) May 2018
- LRA Amendments 2014
- Skills Development Act 1998
- Unemployment Insurance Act 1996
- Immigration Act (White Paper 2017)
- POPI (Protection of Private Information)

**Highly regulated – most legislation applicable to all players in the labour market including foreign nationals**

## Employment Services Act

- **Statutory Board under the Minister of Labour**
- **Regulations being drafted**
  - **Registration of Workseekers**
  - **Registration of Private Employment Agencies & Temporary Employment Services**
  - **Procedure for the Employment of Foreign Nationals (with DHA) – 4 months of advertising evidence**
  - **Provision of Employment Services by persons outside of the Public Administration**

**Fair considerations to ensure suitably skilled South Africans have access to jobs but highly restrictive & bureaucratic, hampering labour market needs for high and low skilled labour**

# Policy Development

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## Department of Labour: Inspection Services

- **Extremely weak – lack of resources & inability to regulate the non-compliant**
- **Workers protected through inspection & enforcement of labour legislation**
- **Specific compliance, monitoring and enforcement services for PrEAs**
- **Penalties for non-compliance (EE) transformation and others**
- **Management of visas for foreign nationals and corporate visas, to prevent unfair competition between locals & foreigners (with DHA)**
- **Manage UIF (Unemployment Insurance Fund)**
- **Assist 4 million workseekers registered on ESSA to access employment opportunities**
- **No Public-Private partnerships**



# Policy Development

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## International Migration: White Paper March 2017

- Visionary policy – resource constraints (fiscal, system & HR)
- SADC Nationals: 14 million movements from neighbouring countries: 2016
- Visas:
  - Temporary Residence (Work Permit)
  - Permanent Residence
  - Corporate Visas
  - Asylum Seekers
  - Refugees
  - Scarce & Critical Skills
  - Study Visas
- High volumes of irregular migration – Border Management Authority

**In principle sound policy, in practice highly bureaucratic**

# Management of International Migrants with Skills & Capital: White Paper

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- **Institutional Arrangement & Responsive Policy Framework to be created**
- **Inter-governmental co-operation & collaboration**
- **Labour Market Intelligence System to identify scarce & critical skills**
- **Proposed: simplified, predictable migration regime – points-based system**
- **Transfer of skills strategy (understudies / funding of training of citizens)**
- **Training scheme: employees of foreign nationals to contribute to fund to train South Africans**

## **Compliance: Self Regulation (PrEAs) & Advocacy**

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- **ILO C181 – Alignment to C181 (not ratified)**
- **Self regulatory: Auditing function**
- **CAPES: Code of Professional Conduct for Private Employment Services (PrEAs) – No fees to workseekers**
- **CAPES: Charter for South African Private Employment Services (PrEAs)**
- **WEC: Code of Conduct – Guiding Principles (embedded in national code)**
- **Decent Work: Key role players in SA Decent Work Country Programme**
  - **Promote 4 pillars of Decent Work**
- **IRIS – Alignment**
- **Industry specific compliance frameworks**
- **BUSA: Business Unity South Africa (Key members in Business Association)**
- **NEDLAC: Tripartite forum for policy deliberations – Delegates includes International Migration, LRA, Skills Development & Employment Services**
- **Bilateral: Department of Labour & CAPES**
- **Education & Capacity building programme for new & existing members**

## South African Perspective: The Practice

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- Restrictive legislative environment for compliant operators
- High cost of compliance – limits growth of SMEs
- Growth of rogue operators – compliance avoidance
- Lack of effective public services inspection & enforcement
- Economic migrants (illegal)
- Vulnerable workseekers
  - any job vs decent work
  - Lack of utilisation of reporting mechanisms
  - No TU membership / protection
- Borders fluid – high volume of illegal migrants
- Illegal extension of limited duration work permits – no controls
- SA earnings 5x higher than SADC