

GENERAL NOTICE

NOTICE 1298 OF 2003

DEPARTMENT OF HOME AFFAIRS Immigration Act, 2002 (Act No. 13 of 2002)

Draft Immigration Regulations

The Minister of Home Affairs has, in terms of section 7(1)(b) of the Immigration Act, 2002 (Act No. 13 of 2002), made the draft Regulations hereunder.

The Minister hereby solicits public comments in respect of the making of draft regulations, which public comments must be directed to, and reach the Minister on the 8th Floor of 120 Plein Street, Cape Town, no later than 40 calendar days from the date of publication of this notice in the Government Gazette.

Having considered the public comments received, the Minister will publish in the Government Gazette and table in Parliament final Regulations, together with a summary of the comments which have not been accommodated and the reasons for their rejection.

The Minister gives further notice that parties and stakeholders have the right to request their inclusion in a mailing list to be maintained by the Department of Home Affairs so that, to the extent possible and feasible under the circumstances, such parties or stakeholders may receive by mail or e-mail the aforesaid draft regulations and final Regulations and other communications in respect of which public input is called for by the Act, by its implementing regulations, or is advisable or expedient, as set out in section 1[1][xxxii] of the Act.

In order to assist the public the said draft regulations highlight, by means of underlined text for additions and **[bold text in square brackets]** for deletions, the differences in respect of the Immigration Regulations published in General Notice 487 of 2003 (Government Gazette No. 24952) of 21 February 2003 which are presently in force and of effect. Footnotes in said draft regulations have explanatory significance and are not meant to become part of the final regulations.

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Regulation 1

Definitions

(1) In these Regulations, unless the context indicates otherwise,

- (a) the definitions set out in section 1 of the Act shall apply within these Regulations;
 - (b) "days", means calendar days;
 - (c) "Department" means the Department as defined in the Act, taking into account, where applicable, sub-regulation 14(3) and (4) in respect of the functioning and structure of the Department for purposes of the Act and these Regulations;
 - (d) "examination" means an investigation as contemplated in sub-regulation 10(3);
 - (e) "good cause" means a balanced relation between the circumstances of the case and the action to be taken, in which the action is justified, equitable and consonant with the objectives of the Act;
 - (f) "mission" means a representative office of the Republic outside the Republic;
 - (g) "Region" means a structure of the Department referred to in sub-regulation 14(3);
 - (h) "Regional Director" means the person appointed by the Minister to be in charge of a Region;
 - (i) "the Act" means the Immigration Act, 2002 (Act 13 of 2002); and
 - (j) "these Regulations" means these regulations and includes the Schedules and Annexure thereto, provided that in case of any inconsistency, these regulations and its Schedules shall prevail over its Annexure.
- (2) These Regulations and the definitions set out herein, inter alia, regulate the implementation of the Act.

Regulation 2

Applications

- (1) The application referred to in section 1(1)(ii) of the Act shall, in respect of each category listed in column 2 of Schedule A, be in the form of and substantially contain the information set out in the corresponding Annexure listed in column 3 of Schedule A.
- (2) The documentation and information referred to in section 1(1)(ii) of the Act shall, in respect of each category listed in column 2 of Schedule A, be set out in column 4 of Schedule A, provided that in addition the Department may require any applicant to submit a full set of fingerprints.
- (3) A permit, or other document applied for, referred to in column 2 of Schedule A, shall be in the form of and substantially contain the information set out in the corresponding Annexure contemplated in column 5 of Schedule A.
- (4) The terms and conditions that may be imposed in respect of each permit or document listed in column 2 of Schedule A are those set out in column 6 of Schedule A.
- (5) An application listed in column 2 of Schedule A shall be lodged at the corresponding place listed in column 7 of Schedule A.
- (6) Any source document that accompanies an application shall be an original or a copy authenticated by the issuing authority or a certifying authority or entity of the country of origin, and shall, if applicable, be translated into one of the Republic's official languages, which translation shall be certified as a correct translation by a sworn translator, provided that in the case of a visa this requirement may be waived.
- (7) Where an application is to be submitted in a foreign country, it shall be handed or mailed to:
 - (a) the mission in the foreign country of the applicant's normal residence, which includes permanent residence and long-term temporary residence,

- or that in a foreign country of which the applicant validly holds a valid passport; or
- (b) such mission as may from time to time be designated by the Director-General to receive applications in respect of an adjoining or nearby foreign country in which a mission is not present
- provided that when submitted to a mission other than the one referred to in paragraphs (a) and (b), such mission may prior to consideration, refer the application to the mission envisaged in paragraph (a) or (b) for comment.
- (8) An application to be lodged within the Republic, shall be handed or mailed to the Regional Director in the area in which the applicant intends to work or study or, in respect of any permit for purposes other than work or study, where he or she sojourns.
- (9) An application for status does not provide a status and does not entitle the applicant to benefits under the Act nor to sojourn in the Republic pending the Department's decision in respect thereof.
- (10) The Department shall endeavour to finalise a decision flowing from a change of status within thirty days of its receiving a complete application, except when the applicant requests the Department to verify facts which, in terms of the Act or these Regulations, could form the object of a chartered account's certification.
- (11) When an applicant submits to the Department that a document required by his or her application is not available or could only be acquired or produced with undue hardship, the requirement of such document may be waived by the Regional Director concerned when
- (a) the information to be supplied by means of such document is proven by the applicant by means of his or her affidavit and the aforesaid non-availability or hardship in respect of such document is corroborated and explained by a representative of the foreign state concerned or by the foreign state where the applicant resides; or
- (b) the relevant Regional Director is satisfied that there is good cause to waive it.
- (12) The Department may not impose any additional requirement of documentation, information, reports or consultative steps with other *organs of State* or entities or person or other application requirements beyond what is provided for in the Act and these Regulations.
- (13) *Applications* in writing must be signed by the relevant applicant, and may be submitted through and handled by an immigration practitioner.
- (14) Without undue delay, the *Department* shall
- (a) process an application; or
- (b) inform the applicant when it cannot do so or when additional information or action is required on the side of the applicant.
- (15) An applicant does not need to submit documentation which is already in the possession of the *Department* and may be retrieved and/or copied from the *Department's* records, provided that when the *Department* is required to retrieve information in its possession, any deadline set out in these *Regulations* may be reasonably postponed.

- (16) The Department may issue a permit on condition that documentation required by the Act or these Regulations be supplied after the issuance of such permit as determined by the Department or as contemplated in these Regulations, in which case such permit shall lapse if the permit holder fails to produce such documentation within the applicable deadline and after the Department has given such permit holder 10 days to correct such failure.

Regulation 3

Customary union

For purposes of section 1(1)(ix) of the Act, a customary union shall only be recognised and documented,

- (1) in terms of the provisions of the Recognition of Customary Marriages Act, 1998 (Act No 120 of 1998);
- (2) in the case of a relationship established in a foreign country, where it is substantiated by an official certificate issued, or endorsed for authenticity by the consular officer of that foreign country in the Republic, failing which by the issuing authority, stating that
 - (a) a customary union is legally recognised in that foreign country and has the characteristics of an intended permanent relationship which calls for cohabitation and mutual financial and emotional support;
 - (b) the relationship of the persons concerned falls within the scope of jurisdiction of that foreign country; and
 - (c) having satisfied all relevant legal or factual requirements, the persons concerned are in a customary union; or
- (3) in the case of relationships established in the foreign countries listed in part 1 of Schedule H, the relationships cited in the corresponding second column shall be proven as stated therein, provided that for good cause a party to a relationship contemplated in this sub-regulation may invoke the procedure set out under sub-regulation (2).

Regulation 4

Appointment of immigration officers

- (1) An officer of the Department shall be an "immigration officer" if appointed as such by the Director-General or a Regional Director subject to the power of the Director General to revoke with immediate effect any appointment made by a Regional Director.
- (2) An appointment envisaged in sub-regulation (1)
 - (a) may be for all or for some of the powers or functions vested in an officer or an immigration officer in terms of the Act and subject to the person concerned having been successfully tested on his or her knowledge of the Act and these Regulations; and
 - (b) may be of an individual or a category; provided that in the case of an individual the appointment shall be confirmed by an appointment certificate.
- (3) Persons or categories of persons who are not officers of the Department shall only be appointed as immigration officers if their appointment is necessary for the execution of the Act, provided that such appointments shall comply with sub-regulation (2) *supra*.
- (4) Any legal person appointed as an immigration officer shall be duly contracted through public tender and held accountable to one or more Regional Directors and/or the Director General and shall be subject to any contract and other conditions which the Department may determine from time to time.

Regulation 5**Marriage**

The legally sanctioned conjugal relationship under the law of a foreign country referred to in section 1(1)(xxi) of the Act, other than a customary union, shall be deemed to be a marriage only if

- (1) proven by the documentation of the relevant foreign country as set out in part 2 of Schedule H showing that such relationship subsisted as per 6 months prior to its submission to the Department; or
- (2) in respect of countries other than those listed in part 2 of Schedule H, substantiated by an official certificate issued, or endorsed for authenticity, by the consular officer of that foreign country in the Republic, failing which by the issuing authority, showing that such relationship subsists as per 6 months prior to its submission to the Department

provided that the benefits in terms of the Act of such spousal relationship shall be extended to one spouse only.

Regulation 6**Passports**

- (1) A "passport" shall include a valid passport, emergency passport, emergency travel certificate, temporary passport, document for travel purposes, travel document and laissez-passer, including the laissez-passer issued to refugees in terms of the United Nations 1951 Convention Relating to the Status of Refugees.
- (2) The passport or other document referred to in sub-regulation (1) shall contain the following information and characteristics:
 - (a) the full name, date and place of birth of the bearer;
 - (b) a photograph clearly depicting his or her facial features;
 - (c) the name of the issuing authority;
 - (d) the date and place of issuance and the date of expiry;
 - (e) at least one unused page when presenting the passport for endorsements; and
 - (f) if issued to a non-citizen of the issuing country, the document may not in any manner limit the holder's re-admission to the country of issuance.
- (3) Valid documents issued by the following international, regional and sub-regional organisations recognised by the Government of the Republic shall be regarded as passports for the purpose of the Act when issued to a person who is not a citizen:
 - (a) the main laissez-passer of the United Nations, excluding the travel documents issued by the agencies of the United Nations;
 - (b) the laissez-passer of the African Union, or its predecessor, the Organisation for African Unity;
 - (c) the laissez-passer of the European Union issued to its officers on official duty;
 - (d) the laissez-passer of the Southern African Development Community; and
 - (e) the laissez-passer of the African Development Bank.
- (4) A person seeking admission by means of the document envisaged in section 1(1)(xxvi)(d) of the Act shall not proceed to a port of entry before having obtained approval to report there from the Director-General under such conditions as may be relevant for the implementation of the Act.

Regulation 7**Ports of Entry**

- (1) The ports of entry referred to in section 1(1)(xxvii) of the Act are the areas dedicated to the clearance of people or goods accompanying people entering and exiting the Republic within a place listed in Schedule B to these Regulations.

- (2) The Director-General shall determine the hours of attendance of immigration officers at these ports of entry, provided that different times may be determined for different ports of entry.
- (3) A notice stating the hours determined in sub-regulation (2) shall be posted at each port of entry in a place visible to the public.
- (4) When a person calls at a port of entry for the purpose of admission to or departure from the Republic outside the official hours determined in terms of sub-regulation (2) he or she shall be liable to pay an overtime fee calculated at the following rate:
 - (a) R100-00 per each hour or part thereof for each immigration officer who has to render such overtime services, when such person informed the immigration officer in control of the port of entry concerned, beforehand during the official hours of that port of entry, of the date and time of the intended call at that port of entry, and call at the port of entry concerned within the hours and the date so arranged; or
 - (b) R200-00 per each hour or part thereof in respect of each immigration officer who has to render such overtime services in all other cases.

Regulation 8

Other conveyance

The prescribed conveyance envisaged in section 1(1)(xxxv) of the Act shall to the reasonable and practical extent, be all other conveyances in respect of persons entering, seeking to enter or who have entered the Republic by means of such conveyances or on foot.

Regulation 9

Spousal affidavit

The affidavit required in section 1(1)(xxxvi) of the Act for a spouse who is a party to a permanent homosexual or heterosexual relationship shall prove a relationship with the features stated in such section of the Act and shall

- (a) show the exclusion of any other person from the spousal relationship; and
 - (b) state that both parties have never been married; or
 - (c) having been married, submit proof of legal divorce or decease of spouse
- and shall be in the form of and contain the information set out in Annexure 1.

Regulation 10

Visa and Examination

- (1) A visa or a transit visa, as the case may be, contemplated in sections 1(1)(xlii) and 24(2) of the Act shall
 - (a) be in the form and substantially contain the information set out in Annexure 3; and
 - (b) comply with the requirements set out under items 1 and 33 of Schedule A, provided that the fee referred to in paragraph (b) of column 4 shall only be applicable to the nationals of countries listed in Schedule D.
- (2) The provisions set out in Schedule C shall determine the foreigners who do not require a visa in order to report for an examination at a port of entry and the conditions of such exemption, provided that
 - (a) a foreigner who, in terms of these Regulations, would require a visa may report for an examination and, upon successful examination and the payment of a R800 fee, may be admitted without a visa if he or she makes a deposit of R14 000-00 in cash or by charge on a major credit card, which deposit shall be returned upon his or her departure or forfeited in case of his or her failure to depart on time or breach of the terms and conditions of his or her status; and

- (b) the foreigner referred to in paragraph (a) may not avail himself or herself of the option set out in paragraph (a) whenever the Department or the relevant immigration officer has reason to believe that his or her entry without a visa may not be in the interest of the Republic or conducive to the proper administration of the Act and the fulfilment of its objectives.
- (3) The examination of a foreigner in terms of sections 1(1)(xlii) and 10(2) of the Act shall include identification in terms of sub-regulation 17(1) and may include interrogation and fingerprinting, and such foreigner shall
 - (a) present himself or herself to an immigration officer at a port of entry;
 - (b) satisfy such immigration officer that he or she is not, nor is he or she likely to become
 - (i) an illegal foreigner;
 - (ii) an undesirable person;
 - (iii) a prohibited person; or
 - (iv) a foreigner with financial resources insufficient to maintain him- or herself and his or her dependants during the intended stay in the Republic and to undertake the return or onward journey;
 - (c) provide proof of settlement of any outstanding administrative fine imposed under section 50(1) of the Act;
 - (d) hand to the immigration officer, if required to do so, a form containing substantially the information prescribed in Annexure 4, provided that
 - (i) notwithstanding the fact that such form has been completed prior to reporting to an immigration officer, the immigration officer concerned may require of such person either to complete such form once again, or to make a declaration containing substantially the information prescribed in Annexure 5; and
 - (ii) if a person is unable to fill in or understand such form or declaration, the immigration officer must question him or her, if necessary with the help of an interpreter, and thereafter the immigration officer must fill in the form or declaration or cause it to be filled in and thereupon require such person to sign such form or declaration or to affix his or her left thumb print thereto; and
 - (e) when seeking admission into the Republic, submit, if so required by an immigration officer, to an examination by a medical practitioner designated by the Director-General if it is suspected that such person is afflicted with any infectious disease, which under this Act would render him or her a prohibited person, provided that the medical examination of such a person who has arrived in the Republic on a ship must take place either on such ship, or at such other convenient place as determined by an immigration officer, as soon as possible after the arrival of the ship.
- (4) Failure on the part of a foreigner seeking admission into the Republic to comply with the examination procedures contained in sub-regulations (a) to (e) supra or to answer any legitimate and pertinent question shall cause such foreigner to be dealt with in terms of section 34(8) of the Act.
- (5) The issuance of a visa to a person who qualifies for a temporary or permanent residence permit in terms of the Act and these Regulations may be refused only for good cause.
- (6) In the case of a person found to be inadmissible by an immigration officer after an interview, such immigration officer shall record the general contents of such interview substantially as set out in Annexure 5A.

Regulation 11

Certification by a person other than a chartered accountant

- (1) Whenever, in terms of section 1(2) of the Act, an applicant elects to furnish a certification by a person other than a chartered accountant, the full names, date of birth, status, identity document or passport number, position, capacity and qualifications of such person to whom the facts are known shall be made known and proven to the Department.
- (2) Pursuant to section 2(1)(k) of the Act, when the Department is required to verify such facts as envisaged in section 1(2) of the Act,
 - (a) an additional fee of R10 000-00 in respect of sections 15, 19, 21, 26 and 27 of the Act or
 - (b) an additional fee of R6 000-00 in respect of section 18 of the Act shall be payable on application, provided that where the costs incurred by the Department exceed this amount, such additional amount shall be paid by the applicant prior to the final consideration of the application; and
 - (c) all documentation required by the Act and necessary for verification shall be submitted to the Department together with the certification.

Regulation 12

Objectives and Structures of Immigration Control

- (1) In pursuance of sections 2(1)(n) and 2(2)(f) of the Act, the Department may
 - (a) place airline liaison officers at selected ports in foreign countries from which illegal foreigners regularly depart to the Republic; and
 - (b) establish and maintain liaison officers in foreign countries from which large numbers of illegal foreigners originate in order to liaise with the relevant authorities of the foreign states concerned to seek their cooperation to conduct programmes which deter illegal immigration towards the Republic and facilitate the return and resettlement of deported illegal foreigners.
- (2) In order to inspect workplaces as envisaged in section 2(2)(a) of the Act, an immigration officer may, after having appropriately identified him- or herself, enter workplaces without the need for a warrant to exercise the powers and perform the functions set out in the Act, and may inspect and make copies of employment and other relevant records.
- (3)
 - (a) The figure to be reported to Parliament and the Board and to be known as the training fund envisaged in section 2(2)(g)(i) of the Act shall include 60% of all funds received or collected from employers in the form of the training fees set out in regulations 28(3) and 30(8), and of fines levied against employers for violation of the Act.
 - (b) The figure to be reported to Parliament and the Board and to be known as the judicial assistance fund envisaged in section 2(2)(g)(iv) of the Act shall include 60% of all funds received or collected from fines, except those referred to in sub-regulation 3(a) above, and forfeited deposits and financial guarantees.

Regulation 13

Administering the Ports of Entry

- (1) In order to administer the ports of entry as envisaged in section 2(2)(l) of the Act, the Department shall appoint an official of the Department as the port manager at each port of entry, provided that the Department may appoint as such port manager an official employed by the South African Revenue Service or the South African Police Service in consultation, as the case may be, with the Commissioner of Revenue Services or the Provincial Commissioner of Police of the Province where the port of entry concerned is located.
- (2) The port manager shall perform all duties and functions necessary for the proper administration of the port of entry and the coordination of all the organs of State

- carrying out functions or exercising powers at the port of entry or in respect thereof, including, but not limited to ensuring the
- (a) maintenance of communal facilities within the port of entry, excluding roads, but including perimeter fencing, water and sewerage services;
 - (b) maintenance of security within the port of entry perimeter;
 - (c) provision and maintenance of communal information technology equipment and accommodation;
 - (d) provision and reticulation of electric power within the port of entry, including the provision and maintenance of emergency back-up power;
 - (e) promotion and maintenance of conditions facilitating the flow and processing of persons, goods and vehicles through the port of entry;
 - (f) provision of access control;
 - (g) any budgetary requirements related to the functions and responsibilities listed or referred to in this sub-regulation,
 - (h) interdepartmental and intergovernmental liaison at the port of entry; and provided that
 - (i) the office heads of all the other organs of State represented or operating at the port of entry shall report to the port manager for the purpose of the functions and responsibilities listed or referred to in this sub-regulation; and
 - (j) the Department may relieve a port manager of any of the functions and responsibilities listed or referred to in this sub-regulation when appointing him or her or at any time thereafter.
- (3) A port manager shall have no power in respect of the functional responsibilities and decision making of the officials employed by other organs of State represented or operating at the port of entry.
- (4) Unless otherwise determined by the Director-General, at ports of entry that are seaports, rail ports and airports, the owner of the premises shall fulfil any aspect of the responsibilities related to the functions listed in sub-regulations 2(a) to (g) supra as directed by the port manager.
- (5) In administering the ports of entry the Department shall give due regard to the recommendations of the committee contemplated in section 6 of the Act.

Regulation 14

Powers of the Department

- (1) The services envisaged in section 3(1)(d)(ii) of the Act are those services referred to in section 42(1)(b)(i) and (ii) of the Act.
- (2) Subject to sub-regulations (3) and (4) the Director-General may delegate any of the powers and functions vested in him or her, in terms of the Act or received through delegation from the Minister, to an appropriate officer of the Department.
- (3) For purposes of the Act and these Regulations, the Department shall be structured into Regions to be determined by the Minister after consultation with the Board and presided over by a Regional Director appointed by the Minister.
- (4) A Regional Director shall
 - (a) carry the primary responsibility of administering and applying the Act and these Regulations in respect of cases and applications in the Region, and may delegate his or her functions to other officials in writing and as he or she may decide from time to time, subject to ratification by the Director-General;
 - (b) subject to the Act and these Regulations, express the decision-making power of the Department in respect of cases and applications, and, in this respect, in his or her capacity, sue and be sued in the name and on behalf of the Department;

- (c) when requested, personally or through his or her appointed officials, give reasons for a decision of the Department before the Minister or the Board; and
 - (d) through his or her appointed officials, represent the Department before a Court
- provided that the Director-General shall
- (e) ensure the uniform application of the Act and these Regulations;
 - (f) ensure the efficient and effective operation of the Department;
 - (g) liaise or interface with organs of foreign states or international institutions dealing with migration or law enforcement; and
 - (h) exercise and perform the other powers and functions set out in the Act and these Regulations.
- (5) The Department may have immigration officers in missions to exercise the functions of the Department.

Regulation 15

Immigration Advisory Board

- (1) The Board may establish and operate standing committees, which shall report to the Board, to carry out its functions on
 - (a) border control and administration of ports of entry;
 - (b) investigations and enforcement;
 - (c) xenophobia and human rights protection;
 - (d) work and corporate permits and labour matters;
 - (e) temporary and permanent residence;
 - (f) international relations;
 - (g) security and liaison with law enforcement agencies; and
 - (h) general matters.
- (2)
 - (a) Subject to these Regulations, the Board may adopt rules governing its meetings.
 - (b)
 - (i) The Board shall be validly constituted when two thirds of its members have been appointed;
 - (ii) A meeting of the Board shall be validly constituted when half of its members are present; and
 - (iii) A decision of the Board must be adopted with the support of half of its members present, with the Chairperson having a casting vote in the case of a tie, provided that a decision relating to the advice contemplated in regulation 28(3) shall be supported by two thirds of its members present.
 - (c) The Chairperson shall convene the Board or a standing committee when so requested by the Minister or the Director-General and place on the agenda of such meeting or that of a standing committee, inter alia, any relevant matter requested by the Minister or the Director-General.
 - (d) The Minister may attend and address any meeting of the Board or any of its committees.
 - (e) The Minister may appoint the Chairperson of the Board on a full time basis if deemed necessary, and may determine the duration of his or her full time or part time appointment, which in any case, shall not exceed four years, subject to any renewal the Minister deems fit.
 - (f) Any member of the Board who has a direct or indirect personal interest of any nature in respect of any given matter considered by the Board or any of its committees shall declare such conflict and may not vote in any respect of any decision relating thereto
 - (g) The Minister may appoint a member of the Board to chair the Board as an Acting Chairman when the Chairman of the Board is not available or

abroad and such appointment shall last until the Chairman is again available or in the Republic as the case may be. Should the

Regulation 16

Adjudication and Review Procedures

- (1) The notification of a contemplated decision envisaged in section 8(1) of the Act, shall be in the form of and substantially contain the information set out in Annexure 6.
- (2) The notification of an effective decision envisaged in sections 8(2) and 84) of the Act, shall be in the form of and substantially contain the information set out in Annexure 7.
- (3) Subject to the provisions of sub-regulation 19(6), a person at a port of entry who has been notified in terms of section 34(8) of the Act by an immigration officer that he or she is an illegal foreigner, shall depart forthwith and, unless subsequently admitted, shall only have access to the review procedure in terms of sections 8(2) and 8(3) of the Act from a foreign country.

Regulation 17

Admission and Departure

- (1)
 - (a) In order to identify himself or herself in terms of section 9(2) of the Act, a citizen shall
 - (i) present himself or herself to an immigration officer at a port of entry; and
 - (ii) produce a passport or identity document issued in terms of the Identification Act, 1997 (Act No 68 of 1997), confirming his or her citizenship.
 - (b) In order to identify himself or herself in terms of section 9(2) of the Act, a resident shall
 - (i) present himself or herself to an immigration officer at a port of entry, and
 - (ii) identify himself or herself as such by means of a valid passport, as well as proof of his or her status contemplated in sections 25(2) or 31(2)(b) of the Act.
 - (c) The admission or departure of a resident shall be endorsed in his or her passport and recorded, except where bilateral agreements between the Republic and another country provide for the waiving thereof. The entry or departure of a citizen shall not be recorded, provided that the Department may conduct any relevant investigation, including passport scanning, in respect of such citizen's request to depart from or enter the Republic and, for good cause, may deny a citizen the right to depart from, but not the right to enter the Republic.
 - (d) When a foreigner enters the Republic as envisaged in section 9(4)(a) of the Act, his or her admission shall be recorded.
 - (e) A foreigner may only depart from the Republic if his or her departure has been recorded and his or her passport has been endorsed accordingly.
- (2) Any person who regularly crosses the border at a port of entry and in whose passport an immigration officer has, upon application, endorsed an exemption from the requirements of sub-regulations 10(3) or 17(1), shall only be required to report to an immigration officer upon the expiry of such exemption.
The application for and all matters pertaining to the application for and the issuance of such an exemption are contained in item 50 of Schedule A, provided that

- (a) an immigration officer may at any time during a crossing require a person to whom such an exemption was issued, to produce his or her passport; and
- (b) an exemption granted in terms of this regulation may at any time be withdrawn by an immigration officer.
- (3) The application for and all matters pertaining to the application for and the issuance of the certificate referred to in section 9(3)(a) of the Act in lieu of a passport shall be in the form of and contain substantially the information prescribed and be subject to the conditions set out in item 2 of Schedule A, provided that, in respect of a deportee, the application provided for in column 3 of item 2 shall not be required.
- (4) The application for and all matters pertaining to the application for and the issuance of an exemption certificate referred to in section 9(3)(c)(i) of the Act and the written permission or passport endorsement referred to in 31(2)(c) of the Act are contained in item 3 of Schedule A.
- (5) Those foreigners who, in terms of these Regulations, may report to an immigration officer without a visa shall be deemed to hold a transit visa contemplated in section 24(2) of the Act when in transit at a port of entry.

Regulation 18

Temporary Residence Permits

- (1) The application for and other matters relevant to the application for and issuance of a temporary residence permit referred to in section 10(2) of the Act shall be as set out under the relevant items of Schedule A.
- (2) A foreigner who wishes to enter the Republic for a purpose for which a permit which cannot be issued at a port of entry in terms of Schedule A is required, may be admitted on a visitor's permit valid for a period of up to three months, provided that he or she qualifies for such permit and on condition that he or she shall report within 14 days of entry to an office of the Department to apply, on the form substantially containing the information set out in Annexure 14, for the required permit.
- (3) The extension or renewal of a temporary residence permit may be refused only for good cause when the foreigner concerned would qualify for such permit in terms of the Act and these Regulations.
- (4) A temporary or permanent residence permit, except a permit issued in terms of section 23 of the Act, shall be valid for multiple entries within its validity period, provided that this sub-regulation shall not apply to any permits issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998).
- (5) (a) A foreigner who wishes to apply for a change of status or conditions relating to his or her temporary residence permit, or to renew the validity of a permit issued in terms of section 11 of the Act, or to apply for a subsequent permit issued in terms of sections 12 to 20 and 22 of the Act whilst inside the Republic, must submit his or her application at least thirty days prior to the date of expiry of his or her permit.
(b) In the case of a foreigner who does not apply at least thirty days prior to the date of expiry of the permit, but applies within the validity period of his or her permit, a visitor's permit not exceeding thirty days may be granted on application in order to allow such foreigner to await the outcome of the renewal or change of status or conditions application.
- (6) (a) In the case of an illegal foreigner who has not been arrested for the purpose of deportation or ordered to depart and who applies after the date of expiry of his or her permit, a visitor's permit may be issued or renewed on application, provided that such foreigner demonstrates, to the satisfaction of the Department, that he or she was unable to apply for the

- renewal or subsequent permit within the period specified in sub-regulation (5).
- (b) In the case of an illegal foreigner, excluding a prohibited person, who is the spouse or dependant, no older than 25 years of age, of a citizen or resident, who applies for a permit, a visitor's permit may be granted for a period not exceeding six months to enable such illegal foreigner to apply for any other temporary residence permit or permanent residence permit, within such period.
 - (c) The applications for the subsequent permits referred to in paragraph (a), which shall be in the form of and substantially contain the information set out in Annexure 15, shall only be required to comply with the requirements under item 1 of Schedule A, and, if applicable, produce a certification by the relevant institution or person who vouched for the applicant's purpose of stay in the Republic showing that such purpose has not changed since the issuing of the initial permit.
- (7) The application for the change of status or conditions envisaged in sub-regulation (5) shall be in the form of and substantially contain the information set out in Annexure 16, and the renewal of a permit or a subsequent permit envisaged in sub-regulation 6(a) shall be in the form of and substantially contain the information set out in Annexure 17.
 - (8) The Department shall, when approving an application for which more than one permit may be required, issue the relevant permit for the primary purpose of the applicant's stay and endorse such permit valid for any secondary purpose(s) as may be approved, subject to the provisions of the Act.
 - (9) During the period of its validity, a temporary residence permit shall entitle its holder to report to an immigration officer at a port of entry for multiple admissions in the Republic, except a visitor's permit, subject to section 11(4) of the Act and regulation 19(8).

Regulation 19

Visitor's Permit

- (1)
 - (a) The visitor's permit envisaged in section 11 of the Act shall be in respect of stays for all temporary purposes, not including work, other than those purposes for which the Act contemplates a different permit, and shall include but not be limited to tourism, business, education shorter than three months, medical treatment shorter than three months, visit of a relative shorter than three months, and working activities shorter than three months conducted in pursuance of an employment contract concluded abroad, remunerated abroad and partially calling for performance abroad.
 - (b) The visitor's permit envisaged in section 11 of the Act shall be in the form of and substantially contain the information set out in Annexure 18, provided that where a visa was issued outside the Republic, upon admission such visa shall be considered to be a permit for the purpose of section 11 of the Act and the period of validity of such a permit shall, for the purpose of Schedule A, item 1, column 6(e), be calculated from the date of admission. The application for and all matters relevant to the application for and the issuance of a visitor's permit are as set out under items 4 to 9 of Schedule A.
- (2) The foreign countries envisaged in section 11(1)(b) of the Act shall be those listed in Schedule C, provided that the Department may, for good cause, exclude any person or category of persons from the provisions of section 11(1)(b) of the Act and such person or category of persons shall be subject to the provisions of section 11(1)(a) of the Act.

- (3) The financial guarantee envisaged in sections 11(1)(b) and 11(5) of the Act shall be required if the person concerned is considered by the immigration officer likely to become a public charge and shall be in the form of a return or onward ticket, or proof of sufficient funds to purchase such a ticket, or a cash deposit or major credit card refundable charge equal to the cost of such a ticket and/or an amount not exceeding R10 000-00, to be returned upon his or her departure or forfeited in case of his or her failure to depart on time or breach of the terms and conditions of his or her status.
- (4) The activities and cases envisaged in section 11(1)(ii)(dd) are those listed in item 9 of Schedule A and shall be dealt with in accordance with sub-regulation (1) *supra*.
- (5) A visitor's permit issued to a spouse in terms of section 11(1)(ii)(dd) shall lapse upon the dissolution of the spousal relationship, and the Department may at any time satisfy itself that a good faith spousal relationship exists and/or continues to exist as prescribed in regulation 33.
- (6) (a) An immigration officer at the port of entry concerned may, after having dealt with an illegal foreigner in terms of section 34(8) of the Act, afford such illegal foreigner the opportunity to be further examined, upon which the illegal foreigner shall
 - (i) submit to such immigration officer a duly completed form substantially containing the information in Annexure 19;
 - (ii) pay the processing fee prescribed in Schedule G; and
 - (iii) submit to any examination contemplated in these Regulations, as well as further examination by means of an interview, calling for
 - (aa) supporting documentation;
 - (bb) particulars of the illegal foreigner's contact person(s) in the Republic;
 - (cc) any other information to establish the bona fides of the illegal foreigner and his or her purpose of visit; and
 - (dd) any other information that may be relevant under the circumstances.
- (b) Following the examination contemplated in paragraph (a), the immigration officer may maintain the refusal of the illegal foreigner's admission, if for good cause such examination failed to satisfy the immigration officer that such person is not or is not likely to become an illegal foreigner, or if the immigration officer is satisfied that good cause exists why such person, albeit an illegal foreigner, should nevertheless be admitted.
- (c) Failure on the part of the illegal foreigner to satisfy the immigration officer as contemplated in sub-regulation (b) shall result in a decision of the immigration officer in terms of section 34(8) of the Act, which decision shall be final in accordance with section 8(5) of the Act.
- (d) Following the examination contemplated in paragraph (a), if the relevant immigration officer has found the person concerned not to be or not likely to become an illegal foreigner, such immigration officer may admit such person.
- (e) Following the examination contemplated in paragraph (a), if the relevant immigration officer is satisfied that good cause exists for the person concerned to be admitted despite being an illegal foreigner, such immigration officer shall communicate the application to a designated official of the Department for final consideration.
- (f) If the designated official referred to in sub-regulation (e) approves the illegal foreigner's request for admission, the immigration officer concerned shall determine a deposit in accordance with the provisions of regulation 20

and the admission of the illegal foreigner shall be subject to such deposit having been paid.

- (g) If an illegal foreigner is admitted in terms of sub-regulation (f), such illegal foreigner shall be issued with a visitor's permit for the purpose and period and under the conditions listed in item 4 of Schedule A.
- (7) Any non-citizen or non-resident, who does not otherwise have a status, shall be deemed to hold a visitor's permit while in detention or imprisoned for reasons other than being an illegal foreigner, which permit shall be deemed to have lapsed twenty four hours prior to such person's release for any reason or cause.
- (8) Unless otherwise specified therein or in a valid visa, a visitor's permit does not allow the bearer to be admitted more than once, provided that when a visa is not required in terms of these Regulations, and in the absence of any indication that the visitor's permit is for a single entry only, the visitor's permit shall allow multiple admissions.

Regulation 20

Deposit and Financial Guarantee

- (1) The amounts and guarantees envisaged in regulations 19(6)(f), 28(10) and 30(7) shall be determined by the immigration officer for good cause and under the circumstances but shall not exceed the sum of the following amounts:
 - (a) the cost of a single ticket to the country of origin concerned;
 - (b) the cost of a return ticket to the country of origin of the foreigner for an escort;
 - (c) the detention and related costs of the illegal foreigner; and
 - (d) subsistence and travel costs and allowances for escort(s)
- (2) Any deposit or financial guarantee contemplated in these Regulations or in the Act shall be forfeited upon a material failure to meet the relevant condition, provided that when such condition is tied to a deadline a ten day grace period shall apply.

Regulation 21

Diplomatic Permit

- (1) A diplomatic permit envisaged in section 12 of the Act shall be in the form of, contain such information, and be subject to such conditions as set out in item 10 of Schedule A.
- (2) The international organisations referred to in section 12(1)(a) of the Act shall be those referred to in regulation 6(3).
- (3) The dignitaries of a foreign state envisaged in section 12(1)(e) of the Act, shall be those whom the Department of Foreign Affairs from time to time identified as such and notifies to the Director-General.
- (4) The Department of Foreign Affairs shall
 - (a) inform the Department of any failure of a diplomatic permit holder to comply with the terms and conditions of his or her permit and to depart when required;
 - (b) inform the Department if under the circumstances at any time it lacks the capacity to perform satisfactorily the function contemplated in this regulation; and
 - (c) ensure that the requirements, procedures and forms for the issuance of a diplomatic permit are complied with, including the processing of the relevant application on behalf of the Department, provided that
 - (i) copies of all processed applications shall be sent to the Department; and
 - (ii) at any time the Department may elect to process an application or issue a diplomatic permit.

- (5) The application forms, the permit specimen or other document to be issued by the Department of Foreign Affairs in respect of a diplomatic permit shall, upon their publication in the Government Gazette, be deemed to be part of these Regulations, may be amended on the same basis as these Regulations are amended, and may be used by the Department when processing and/or issuing diplomatic permits.
- (6) In issuing a diplomatic permit in terms of section 12(1) of the Act, the Department may use the application forms, permit specimen or other document contemplated in sub-regulation (5), or may use those approved by the Minister or the Director General under the circumstances.

Regulation 22

Study Permit

- (1)
 - (a) A study permit shall be issued by the Department in terms of section 13(1)(a) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 11(1) of Schedule A.
 - (b) A study permit shall be issued by the Department in terms of section 13(1)(b) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 11(2) of Schedule A.
- (2) For the purposes of the Act, study shall mean study at a primary, secondary or tertiary educational institution or any other bona fide institution of learning, including but not limited to professional, training, cultural, technical, research, vocational, sportive, language and entertainment institutions of learning.
- (3) The guarantees required in section 13(1)(b)(iii) of the Act shall mutatis mutandis be the proof of financial means referred to in item 1, column 4(d) of Schedule A, provided that the Department may waive this requirement in respect of nationals of specific countries.
- (4) The periodic certification required in terms of section 13(1)(b)(v) of the Act shall be in the form of and substantially contain the information prescribed in Annexure 20.
- (5) Validity of the study permit
 - (a) Permits for tertiary education may be validated for the duration of the course.
 - (b) Permits for primary and secondary education may be validated for the period for which the student has been accepted.
 - (c) Permits for other institutions of learning may be validated for the duration of the course.
- (6) The holder of a study permit may conduct work as envisaged in section 13(3)(a) of the Act, provided that the period that such person may undertake part-time work shall not exceed 20 hours per week, and provided further that this limitation shall not apply during academic vacation periods and that the registrar of the institution concerned consents to it in writing.
- (7) The holder of a study permit may be granted permission as envisaged in section 13(3)(c) of the Act, on application, to conduct work in the form of practical training in a field related to his/her studies, on submission of the following documentation:
 - (a) a letter from the educational institution confirming that practical training is required or advantageous to complete the intended study experience; and
 - (b) a letter from the prospective employer, offering practical training.
- (8) When a permit is to be issued in terms of section 13(1)(b) of the Act, the registrar's office or the designated official as envisaged in section 13(1)(b) of the Act may be authorized to submit an application for a study permit complying with the requirements of column 4 of item 11(2) of Schedule A on behalf of a prospective student. The educational institution may apply for such authorisation by submission of a written request that includes, when applicable, proof of registration with the Department of Education, or other relevant body.

- (9) The authorisation envisaged in sub-regulation (8) may be withdrawn upon non-compliance with the Act or unsatisfactory performance in fulfilling the obligations arising out of section 13(1)(b) of the Act.
- (10) Pursuant to section 2(1)(k) of the Act, where the applicant opts to apply for a study permit in terms of section 13(1)(a) of the Act in respect of a learning institution in respect of which a study permit in terms of section 13(1)(b) of the Act can be applied for, an additional fee of R6 000-00 shall be payable on application.

Regulation 23

Treaty Permit

- (1) A treaty permit shall be issued in terms of section 14(2)(a) of the Act by means of an endorsement in the passport of the applicant as prescribed in column 5 of item 12 of Schedule A.
- (2) The treaty permit may be issued by
 - (a) the Department;
 - (i) after having verified that such foreigner falls within the specifically intended class of persons covered by such agreement or treaty;
 - (ii) subject to terms and conditions which reflect the provisions and purposes of such treaty or agreement and of such foreigner's sojourn or activities in the Republic; and
 - (iii) in such a manner that such foreigner's compliance with the immigration laws and permit's terms and conditions may be monitored, or
 - (b) the Department of Foreign Affairs or the other organ of State responsible for the implementation of the treaty concerned under a delegation from the Department, provided that
 - (i) information relating to the failure of such foreigner to comply with the terms and conditions of the permit and to depart when required, is conveyed to the Department;
 - (ii) the organ of State concerned satisfies the Department that, under the circumstances, it has the capacity to perform this function; and
 - (iii) such organ of State ensures that the requirements, procedures and forms for the issuance of such permit are complied with, including the processing of the relevant application on behalf of the Department, provided that
 - (aa) copies of all processed applications shall be sent to the Department; and
 - (bb) at any time the Department may elect to process an application.

Regulation 24

Business Permit

- (1) A business permit envisaged in section 15 of the Act shall be in respect of qualifying investors and self-employed foreigners and the application for such permit shall be submitted in accordance with items 13 and 14 of Schedule A.
- (2) An application referred to in sub-regulation (1) shall include a certification by a chartered accountant to the effect that at least two of the following criteria are met, one of which shall be the one contemplated in paragraph (a) or paragraph (h)1,

1 Comments have been received that in respect of certain business the financial threshold was too high or not applicable. This concern has been coupled with the concern that the waiver process aimed at assessing viability through TISA is discretionary. Therefore, the amendment gives the applicant the option, to use an alternative avenue to secure the waiver, thereby ensuring that any viable business is accommodated.

- (a) at least R2 500 000-00 value to be invested as part of the book value of the business;
 - (b) business track record to prove entrepreneurial skill;
 - (c) proof that the business contributes to the geographical spread of economic activity;
 - (d) proof that at least five citizens or residents shall be employed;
 - (e) proof that the business in question is in one of the following sectors
 - (i) information & communication technology;
 - (ii) clothing & textiles;
 - (iii) chemicals & biotechnology;
 - (iv) agro-processing;
 - (v) metals & minerals;
 - (vi) automotives & transport;
 - (vii) tourism; or
 - (viii) crafts.
 - (f) the export potential of the business; or
 - (g) calls for or involves a transfer of technology not previously generally available in the Republic
 - (h) the business is viable when prudently considering its capital and other input requirements.
- (3) The financial or capital contribution envisaged in section 15(1)(a) of the Act for the establishment of a business shall originate from abroad and may include intangibles generally accepted in terms of accounting principles as business assets, and shall be in the form of foreign capital.
 - (4) The certificate envisaged in section 15(1)(c) of the Act shall certify compliance with the criteria set out in sub-regulation 24(2) and must be submitted in support of each application, as well as each application for a renewal of the permit.
 - (5) Business permits may be issued as valid for 24 months at a time.
 - (6) The work referred to in section 15(2) of the Act that may be conducted by the holder of a business permit shall be limited to any work related to the relevant business activities.
 - (7) A business permit may be withdrawn if the business no longer maintains the capitalisation set out in sub-regulation (2)(a).
 - (8) On application, the Department shall reduce the capitalisation set out in sub-regulation (2)(a) on the basis of a recommendation of either the Department of Trade and Industry or the Department of Science and Technology, or may do so on the basis of a recommendation of another competent organ of State.

Regulation 25

Crew Permit

- (1) The crew permit referred to in section 16 of the Act shall be in the form of and contain such information and be subject to such conditions as set out in items 15 and 16 of Schedule A.
- (2) Crew members who are on board or who have joined a ship open to the public of a foreign country in a port of entry and who have been entered into the articles of the ship shall be deemed to be in possession of crew permits envisaged in section 16 of the Act and, if required, of a visa, provided the owner or master of the ship has complied with the financial guarantees stipulated in this regulation in respect of such crew and has paid any outstanding fine.
- (3) The financial guarantees referred to in sections 16(1)(b)(ii) and (iii) of the Act respectively shall be in the form of an agreement with the owner of such ship whereby the owner undertakes or it is undertaken on behalf of the owner represented by an agent at the port of entry, that all crew who are entered in the articles of the ship shall be on board when the ship leaves such port of entry,

failing which the owner shall forfeit an amount of R5 000-00 to the Department in respect of each such crew member, as well as all costs related to the tracing, detention and removal of such crew member.

- (4) The predetermined area referred to in section 16(2) of the Act shall be the environs of the port city or the shortest route between the ship and the port of entry or the area where the permit holder indicates to the immigration officer he or she has planned to dwell while the ship is ashore or landed.

Regulation 26

Medical Treatment Permit

- (1) (a) A medical treatment permit shall be issued by the Department in terms of section 17(1)(a) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 17(1) of Schedule A.
- (b) A medical treatment permit shall be issued by the Department in terms of section 17(1)(b) of the Act by means of an endorsement in the passport of the applicant as stipulated in column 5 of item 17(2) of Schedule A.
- (2) For the purposes of the Act, medical treatment shall mean treatment at a private or public hospital or health facility or any other bona fide institution of treatment, including but not limited to health farms, sanatoria, old age homes, physiotherapy or rehabilitation centres and detoxification centres.
- (3) The periodic certification required in terms of section 17(1)(b)(iv) of the Act shall be in the form of and substantially contain the information prescribed in Annexure 20A.
- (4) When a permit is to be issued in terms of section 17(1)(b) of the Act, the admissions office or the designated official as envisaged in section 17(1)(b) of the Act may be authorized to submit an application for a medical treatment permit complying with the requirements of column 4 of item 17(2) of Schedule A on behalf of a prospective patient. The medical treatment institution may apply for such authorisation by submission of a written request that includes, when applicable, proof of registration with the Department of Health, or other relevant body.
- (5) The authorisation envisaged in sub-regulation (4) may be withdrawn upon non-compliance with the Act or unsatisfactory performance in fulfilling the obligations arising out of section 17(1)(b) of the Act.

Regulation 27

Relative's Permit

- (1) The application for and other aspects relevant to the application for and the issuance of a relative's permit as envisaged in section 18 of the Act, are as set out under item 18 of Schedule A.
- (2) The financial assurance required by section 18(1) of the Act shall consist of the following documentation
- (a) certification by a chartered accountant confirming the sponsor's and/or the joint means of support of the applicant and the sponsor, for the requested duration of the permit;
- (b) the minimum amount required in respect of sub-regulation (a) shall be R5 000-00 per month per person, which shall not apply in the case of a spouse or a dependent minor child.
- (3) The period of validity of the permit shall be determined by the financial assurance provided, but will not exceed a period of 24 months at a time.
- (4) A relative's permit issued to a spouse shall lapse upon the dissolution of the spousal relationship and the Department may at any time satisfy itself that a good faith spousal relationship exists and / or continues to exist as prescribed in regulation 33.

Regulation 28
Work Permit

- (1) A quota work permit envisaged in section 19(1) of the Act shall be issued by the Department by means of an endorsement in the passport of the applicant.
- (2) The application for and other matters relating to the application for and the issuance of a quota work permit are set out under item 19 Schedule A.
- (3) The employer of a foreigner who is issued with a quota permit as envisaged in section 19(1) of the Act shall pay a training fee in respect of each such employee, amounting to two percent of such foreigner's taxable remuneration to be paid quarterly and in advance, provided that, within fourteen months of the commencement of these Regulations, this amount may be changed in general or in respect of one or more identified categories of workers by public notice in the Government Gazette issued by the Minister acting in consultation with the Board. By public notice in the Government Gazette the Minister shall determine how such training fee is to be collected by the Department or by other organ of State or other entity of behalf of the Department.
- (4)
 - (a) A quota work permit may be issued to a foreigner provided that such foreigner's prospective employer has submitted to the Department
 - (i) the certification from a chartered accountant as set out in section 21(2)(a) of the Act, provided that a copy of such certification shall be conveyed to the relevant office of the Department of Labour, and if objected to for good cause by such office of the Department of Labour within fifteen days of its receipt, such permit shall lapse;
 - (ii) a certification from a chartered accountant
 - (aa) describing in general terms the job description;
 - (bb) certifying that the job position falls within a relevant category determined by the Minister in terms of section 19(1) of the Act;
 - (cc) certifying that the position exists and is intended to be filled by such foreigner; and
 - (dd) certifying that such *foreigner* possesses the legal qualifications required for the performance of the tasks called for by the job position, taking into account any applicable requirement of the South African Qualification Authority provided that, when rendering such statements, such *chartered accountant* may indicate that he or she has reasonably relied on an affidavit of a person with knowledge or expertise on the matter; and
 - (iii) an undertaking to notify the Department when such foreigner is no longer employed or is employed in a different capacity or role.
 - (b) A quota work permit shall lapse if, within nine months of its issuance, and within every year thereafter, its holder fails to submit to the Department certification from his or her employer's chartered accountant that he or she is still employed, of the terms and conditions of his or her employment, including the job description, and that such employer has made the payments referred to in sub-regulation (3).
 - (c) The fees envisaged in sub-regulation (3) shall be determined as the applicable fee at the time of issuance of the permit and shall not be increased in respect of that permit for five years and six months from the date of issuance of such permit, provided that subsequent quota work permits issued to the same worker in respect of substantially the same type of work shall be deemed one for purposes of this paragraph.
 - (d) The Department may reduce or waive the payment referred to in sub-regulation (3)

- (i) when so requested by the employer, after consultation with the Departments of Labour and Trade and Industry, if and for as long as it is satisfied that the employer concerned has in place a training programme for citizens and residents aimed at transferring skills from foreigners to nationals and/or reducing such employer's dependence on foreign labour;
 - (ii) when so requested by the Department of Trade and Industry in respect of foreign investments; or
 - (iii) when so requested by the foreigner concerned, provided that in such case the Department shall evaluate and verify the description and the requirements of the job position, the skills and qualifications of such foreigner as they relate to such job description, and efforts made by the employer, including those set out in sub-regulations (5) and (6), to hire a resident or citizen and determine that no resident or citizen is willing, ready and able to take up such position, and satisfy itself that no such resident or citizen exists.
- (e) The Department may also issue a quota work permit to a foreigner who has skills or qualifications which fall within a category determined by the Minister by public notice in the Government Gazette on recommendation of the Board and after consultation with the Ministers of Labour and Trade and Industry, provided that
 - (i) the number of quota work permits issued in terms of this sub-regulation may not exceed the quota set out in such notice for each category set out in such notice;
 - (ii) in making its recommendation, the Board shall give due consideration to the objectives of the Act, and satisfy itself that certain intense needs of the economy require resorting to quota work permits in terms of this paragraph rather than in terms of the other provisions of this regulation; and
 - (iii) the foreigner issued with a quota work permit in terms of this paragraph shall be authorised to conduct work
 - (aa) even when at the time the permit is issued he or she does not have a prospective employer;
 - (bb) outside of such category, unless the Minister determines otherwise in such Notice;
 - (cc) without complying with the requirements set out in this regulation, save that within thirty calendar days of such foreigner becoming employed, sub-regulations (4)(a)(i), (4)(a)(iii) and (4) (b) shall be complied with.
- (f) Subject to sub-regulation (4)(d)(iii), in the absence of extraordinary circumstances, compliance on the side of the relevant foreigner and his or her employer with their relevant respective obligations set out in sub-regulations (1) to (4) shall satisfy the Department that such foreigner's skills or qualifications match those required by the job position without need for further evaluations or assessment.
- (g) In determining categories and quotas in terms of section 19(1) of the Act, the Minister shall endeavour to provide for access to all foreigners potentially needed by the Republic's economy both at the lower and higher ends of the skills or qualifications spectrum, taking into account that often certain needed skills, such as entrepreneurship, craftsmanship or management, are not shown through qualifications, and, mindful of section 2(1)(b) and (j) of the Act, shall ensure that he or she determines quotas sufficiently large to ensure that in the absence of unforeseen circumstances

- the Department may issue work permits in terms of sub regulation (1) to (4) rather than (5) and (6).
- (h) The unutilised portion of an annual quota for each category determined by the Minister shall carry over into the following year's quota for the same category, or for one determined by the Minister if the same category no longer exists, and quota work permits shall be issued against such carried over balance from previous years, if any, before being issued against the current annual quota.
- (5) The manner in which the employer shall satisfy the Department as required under section 19(2)(a) of the Act shall be in the form of a letter, accompanied by documentary proof of the efforts made to obtain the services of a citizen or resident, including the original advertisement in the national print media, details of citizens and /or residents who applied and the reasons why they did not qualify.
- (6) (a) The application for a general work permit envisaged in section 19(2) shall be dealt with in accordance with item 20 of Schedule A.
- (b) The advertisement required in sub-regulation 28(5) shall be an original clipping from the national print media and shall comply with the following
- (i) the specimen must reflect the full particulars of the relevant newspaper/specialised magazine, as well as the dates on which the advertisement was published;
 - (ii) such advertisement must stipulate the minimum qualifications and experience required to fill the position as well as the remuneration and benefits offered;
 - (iii) the position offered and the responsibilities to be performed must be clearly defined;
 - (iv) such advertisement should measure at least 150 millimetres by 90 millimetres;
 - (v) the closing date for the application must be stated in the advertisement; and
 - (vi) the advertisement may not be older than 3 months at the time of application.
- (c) Occupations not requiring advertising are set out in Schedule E.
- (d) An employment contract referred to in column 4(c) of item 20 of Schedule A shall contain the signatures of both the employer and the employee and the applicable terms and conditions of employment.
- (e) The employer shall submit the certification by a chartered accountant as required in section 19(2)(b) of the Act to the Department in support of the application, as well as to the relevant office of the Department of Labour.
- (f) The employer shall produce independent and reliable certification of the foreigner's relevant skills, qualifications or experience and a statement explaining the correlation between the qualifications and requirements of the position and such foreigner's relevant skills, qualifications or experience, which certification may be included in the certification contemplated in section 19(1)(2)(b) of the Act.
- (7) The application for and all aspects related to the application for and the issuance of an exceptional skills work permit as envisaged in section 19(4) of the Act shall be dealt with according to item 21 of Schedule A.
- (8) Unless otherwise determined by the Department under the circumstances of the case, the immediate family members of the holder of an exceptional skills work permit referred to in section 19(4) of the Act shall be those who are dependent on such permit holder, provided that the Department may issue an extended visitor's permit to other members of such immediate family.
- (9) The application for an intra-company transfer work permit referred to in section 19(5) of the Act shall be dealt with according to item 22 of Schedule A, provided

that the requirement of being employed abroad shall be satisfied also when a foreigner, upon being transferred to the Republic, becomes employed by a person in the Republic on the basis of an intra-company transfer.

- (10) The financial guarantee described in section 19(5)(c) of the Act shall be in the form of a deposit as stipulated in regulation 20, or an undertaking to the effect that the amounts envisaged in regulation 20 shall be paid to the Department in the event of the foreigner's deportation from the Republic.
- (11) The measures required under sections 19(5)(b) and 21(2)(b)(i) of the Act shall be the following
 - (i) to ensure that the passport(s) of the foreigner/s are valid for no less than 30 days after the expiry date of the intended stay;
 - (ii) to ensure that foreigners are only employed in the specific positions as authorised by the corporate permit; and
 - (iii) to ensure the forthwith departure of such foreigners from the Republic on completion of their tour of duty.
- (12) The office contemplated in section 19(2)(b)(i) of the Act shall be the office Regional Director of the Department of Labour competent in respect of the workplace where the foreigner intends to work.

Regulation 29

Retired Person Permit²

- (1) The application for and other aspects relevant to the application for and the issuance of a retired person permit as referred to in section 20(1) of the Act, are set out under item 26 of Schedule A.
- (2) The minimum payment required in section 20(1)(a) of the Act shall be a pension with a minimum value of R20 000-00 per month, or an irrevocable retirement annuity or retirement account to the equivalent amount, which may include up to R10,000 of the rental value of housing owned in the Republic, and used by, the applicant.
- (3) The net worth envisaged in section 20(1)(b) of the Act shall be no less than R12 000 000-00 providing an income of at least R15 000-00 per month, which may include up to R10,000 of the rental value of housing owned in the Republic, and used by, the applicant.
- (4) The application for and other aspects relevant to the application for and issue of a retired person permit referred to in section 20(2) of the Act to enable such person to work, are as set out under item 27 of Schedule A.
- (5) The authorisation to conduct work envisaged in section 20(2) of the Act may be granted for a period of three years but shall not exceed the validity of the permit.
- (6) A retired person permit may be issued also when the applicant intends to stay in the Republic only for limited or seasonal periods during the validity of the permit.
- (7) The financial requirements set out in sub-regulations (2) and (3) may be met by the combined resources of two spouses who apply jointly.
- (8) Subject to item 26 or 27 of Schedule A, the spouse for the holder of a retired person permit qualifies for a retired person permit to be issued for the same period as the principal permit but subject to the condition of its lapsing three months after the spousal relationship terminates for any cause other than death.

² Comments have been received that the financial requirements set out in this regulation are too high. However, it has been since clarified that the long-term visitor's permit, which carries lower financial requirements, is also available for a purpose of stay which is effectively that of retiring in the Republic on a long-term temporary basis or on a seasonal basis. Nonetheless, in consideration of such comments, amendments have been made to clarify the matter and making this permit more broadly available.

Regulation 30**Corporate Permit**

- (1) The application for and other aspects relevant to the application for and the issuing of a corporate permit as envisaged in section 21(1) of the Act are as set out under item 28 of Schedule A.
 - (2) When processing an application for a corporate permit, the Department shall consult with the corporate permit applicant to discuss
 - (i) the best modalities under the specific circumstances which may ensure the success of the corporate permit;
 - (ii) the capacity of the corporate employer to manage the administrative requirements of the programme and any desirable improvements thereof; and
 - (iii) how the Department may best fulfill the objectives of the Act in the specific case.
 - (3) The application for and other aspects relevant to the employment of a foreigner in terms of the corporate permit envisaged in section 21(1) of the Act are as set out under item 23 of Schedule A.
 - (4) The application for and other aspects relevant to a foreigner employed in terms of a corporate permit issued in pursuance of an agreement with a foreign state are as set out under item 24 of Schedule A.
 - (5) The application for and other aspects relevant to a foreigner employed in terms of the corporate permit, in respect of seasonal or temporary peak employment are as set out under item 25 of Schedule A.
 - (6) The measures required under section 21(2)(b)(i) of the Act shall be those set out under sub-regulation 28(11).
 - (7) The financial guarantees required under section 21(2)(c) of the Act shall be those referred to in regulation 20.
 - (8) Mindful of the objectives of the Act, the Department shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant and, in general, their type of positions, after having considered the requirements set out in section 19(2) of the Act and
 - (a) the training programme provided by the corporate applicant for citizens and residents aimed, to the satisfaction of the Department, at reducing the corporate applicant's dependency on foreign labour and/or at transferring skills from foreigners to residents and citizens, if any; and/or
 - (b) the aggregate fee which shall be paid by the corporate applicant as determined by the Department, which shall
 - (i) not exceed the approximate sum of the fees such corporate applicant would be liable to if permits were to be issued in terms of section 19(1) of the Act read with regulation 28(3);
 - (ii) be reduced in consideration of the training programme referred to in paragraph (a), if any; and
 - (iii) be reduced or waived when so requested by the Minister of Trade and Industry, or Minerals and Energy, or Agriculture, as the case may be, especially to facilitate foreign investments, or accommodate industries or businesses, such as mining, when special economic circumstances exist, or for good cause, especially in respect of meritorious not-for-gain corporate applicants;
 - (iv) be capable of being increased in respect of a work permit issued under such corporate permit only after five years and six months from when such work permit was first issued, provided that subsequent work permits issued to the same foreigner shall be deemed one for purposes of this item; and
- provided that after consultation with the Department, the corporate applicant may elect to pay such fee without providing the training

- programme contemplated in paragraph (a), or may seek agreement with the Department for a combination of such a fee reduced in terms of item (ii) and a less than optimal measure of such training programme.
- (9) The holder of a corporate permit shall supervise the completion of the application of each person who is to receive a work permit under such corporate permit and transmit each of such applications to the Department together with its certification that to the best of its knowledge such application is consistent with the terms and conditions of such corporate permit, the Act and these Regulation, in which case, within fifteen days the Department shall
- (a) issue to such person a work permit under such corporate permit, subject to such person being admitted, and agreeing to the terms and conditions of such corporate permit; or
 - (b) notify such holder of a corporate permit of any defect in the application or of its determination that the application is inconsistent with the terms and conditions of such corporate permit, the Act or these Regulations, including any identified security consideration.
- (10) (a) The validity of work permits issued in terms of a corporate permit shall be as follows
- (i) not exceeding six months, in respect of foreigners employed as seasonal workers or for the purpose of peak period employment;
 - (ii) not exceeding eighteen months in respect of foreigners employed in terms of agreements with foreign states; and
 - (iii) not exceeding three years for all other categories
- after which subsequent applications may be lodged in respect of item (iii) on condition that the corporate permit holder certifies that the foreigner is still employed under the same conditions of employment and job description, and in compliance with these Regulations and the Act.
- (b) A corporate permit shall lapse if, within three years of its issuance, and within three years thereafter, its holder fails to renew its chartered accountants certification contemplated in section 21(2)(a) of the Act, or at any time there is a material failure to make the payments and/or conduct the training programme referred to in sub-regulation (8) as the case may be, when such failure is not remedied within thirty days of the receipt of a request from the Department to correct it.
- (11) (a) The following circumstances shall constitute good cause for the Department to withdraw or modify the corporate permit
- (i) a change in the material aspect taken into consideration at the time of issuing of the permit;
 - (ii) incorrect or false information submitted by the corporate applicant on application or at any time thereafter;
 - (iii) failure to comply with the Act or permit conditions.
- (b) In addition to other grounds set out in the Act or in these Regulations, the following circumstances shall constitute good cause for the Department to withdraw or modify a work permit issued in terms of a corporate permit
- (i) notification from the corporate applicant that the relevant foreigner is no longer in compliance with the Act or the conditions of his permit or is no longer employed; and
 - (ii) notification from the corporate applicant regarding changes in the internal structuring of the company or position of the foreigner within the company.
- (12) For the purposes of sections 21(4)(a), (c) and (d) of the Act, the Government shall be represented by the Department.

- (13) Permits issued under a corporate permit do not fall within the limits of, and shall not be deducted from, the quotas contemplated in section 19(1) of the Act.
- (14) At the request of a corporate permit holder, the Department shall issue a number of certificates, substantially containing the information set out in Annexure 53, equal to the number of foreigner authorised in terms of the corporate permit, so as to facilitate the application for work permits under such corporate permit and for record keeping. The provisions of this sub-regulation do not constitute an application requirement or other requirement for the permit holder or an applicant.

Regulation 31

Exchange Permit

- (1) The application for and other aspects relevant to the application for and the issuance of an exchange permit as envisaged in section 22(a) of the Act, are as set out under items 29 and 30 of Schedule A.
- (2) The programmes in respect of which the holder may not qualify for a subsequent status, as envisaged in section 22(a)(ii) of the Act, shall be those in respect of which such holder cannot obtain a no-objection letter from the organ of State responsible for such programme or with responsibility in the field in which the non-governmental institution responsible for such programme operates. The period of physical presence abroad contemplated in section 22(a)(ii) of the Act shall be two years.
- (3) The application for and other aspects relevant to the application for and the issuance of an exchange permit as envisaged in section 22(b) of the Act, are as set out under item 31 of Schedule A.
- (4) A permit envisaged in section 22(b) of the Act shall only be considered if the prospective employer guarantees the applicant's repatriation and undertakes to report to the Department the earlier termination of employment, provided that when an exchange is sponsored by an organization which, upon application to the Director-General, has received accreditation with the Department, such guarantees may be waived.

Regulation 32

Asylum Permit

- (1) All aspects relevant to the issuance of an asylum permit as envisaged in section 23 of the Act are as set out under item 32 of Schedule A.
- (2) An immigration officer may issue an asylum permit in terms of section 23 of the Act to a bona fide asylum seeker at a port of entry, to enable such an asylum seeker to report to a Refugee Reception Office in terms of the Refugees Act, 1998 (Act No. 130 of 1998) within a period of 14 days for the purpose of section 21(1) of such Act.
- (3) The validity of the asylum permit issued to an asylum seeker may not be renewed and shall lapse upon the issuance of a permit in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), or when its holder leaves the Republic. A subsequent permit shall not be issued to such a person.

Regulation 33

Permanent Residence

- (1) The application for a permanent residence permit envisaged in section 25(2) of the Act and other aspects relevant to the application and the issuance thereof envisaged in sections 26 and 27 of the Act are set out under items 34 to 48 of Schedule A.
- (2) Any resident who loses his or her residence for whatever reason shall relinquish and surrender to the Department his or her non-citizen South African identity documents issued in terms of the Identification Act, 1997 (Act No 68 of 1997).

- (3) Any permanent residence permit issued in terms of sections 26 and 27 of the Act shall lapse and the holder of the relevant permit shall be deemed to be an illegal foreigner if the holder of such a permit materially contravenes any terms and/or conditions attached thereto in terms of section 25(4) of the Act or has made any material misrepresentations in order to obtain such a permit.
- (4) A good faith spousal relationship shall be a relationship that was not entered into primarily for the purpose of gaining benefits under the Act and shall be confined to a relationship of two persons calling for cohabitation and intended to be permanent.
- (5) The Department may at any time satisfy itself as envisaged in section 26(b)(i) of the Act whether a good faith spousal relationship exists by
 - (a) interviewing the applicant and spouse separately;
 - (b) contacting family members and verifying other references;
 - (c) requesting proof of actual or intended co-habitation; and/or
 - (d) inspection in loco of the applicant's place of residence.
- (6) In order to determine whether a good faith spousal relationship subsists, the Department may, by means of a condition attached to the permit, require the permit holder and the spouse to
 - (a) arrange a date for an appointment with the Department within the three year period following the date of issuance of the permit, but before applying for a certificate of naturalisation in terms of the South African Citizenship Act, 1995 (Act No 88 of 1995);
 - (b) submit to the Department the confirmation prescribed in Annexure 1 when arranging the appointment referred to in paragraph (a);
 - (c) present themselves at the agreed upon office of the Department, unless the Department decides in the specific case that an appointment is not required; and
 - (d) identify themselves by means of an identity document or a passport and present any relevant documents the Department has previously requested them to produce.
- (7) The Department shall endeavour to issue a permanent residence permit within thirty days of its having received a complete application, except when the applicant requests the Department to verify facts which could form the object of a chartered accountant's certification.
- (8) In verifying whether an applicant is of good and sound character as envisaged in section 27 of the Act, the Department shall take into account any information the applicant may adduce in that respect and other objective and corroborated information, provided that the Department
 - (a) may make enquiries only into matters relevant to whether the applicant is
 - (i) law abiding; and
 - (ii) in the habit of fulfilling his or her legal obligations;
 - (b) may not inquire into, or take into account, any matter falling within the sphere of preferences or activities which the law allows to be decided by means of a personal choice, including but not limited to any of grounds referred in section 9(3) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);
 - (c) shall convey any relevant adverse information it has to the applicant and offer him or her the opportunity to respond or counter it;
 - (d) may request the applicant to provide any further relevant information;
 - (e) shall deem an undesirable person not to be of good and sound character, unless the Minister directs otherwise and subject to section 30(2) of the Act;