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THE PRESIDENCY

No. 656

18 July 2007

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 3 of 2007: Immigration Amendment Act, 2007.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 28 June 2007.)

ACT

To amend the Immigration Act, 2002, so as to define certain words and to substitute a definition; to provide for the clarification and revision of procedures and permits with regard to admission to, residence in and departure from the Republic; to effect certain technical corrections; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 2002, as amended by section 2 of Act 19 of 2004

1. Section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), hereinafter referred to as the principal Act, is hereby amended—
- (a) by the insertion after the definition of “admission” of the following definition: 5
 “**‘affiliate’** means an associate member of a company or organisation;”;
- (b) by the insertion after the definition of “border” of the following definition: 10
 “**‘branch’** means a branch as contemplated in section 21A of the Companies Act, 1973 (Act No. 61 of 1973);”;
- (c) by the substitution for the definition of “depart or departure” of the following definition:
 “**‘depart or departure’** means exiting the Republic from a port of entry to another country in compliance with this Act;” and 15
- (d) by the insertion after the definition of “status” of the following definition:
 “**‘subsidiary’** means a subsidiary as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973);”.

Amendment of section 10 of Act 13 of 2002, as substituted by section 11 of Act 19 of 2004

2. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 “(2) Subject to this Act, upon application in the prescribed manner and on the prescribed form, one of the temporary residence permits contemplated in sections 11 to [23] 24 may be issued to a foreigner.”. 25

Amendment of section 10B of Act 13 of 2002, as inserted by section 12 of Act 19 of 2004

3. Section 10B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (4)(a), no person, other than a citizen or permanent resident, who is proceeding from a place outside the Republic to a destination outside the Republic, **[including making use of the transit areas of South African ports of entry,]** shall travel through the Republic, unless he or she is in possession of a transit visa issued for that purpose in terms of subsection (2).”.

Amendment of section 11 of Act 13 of 2002, as amended by section 13 of Act 19 of 2004

4. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A visitor’s permit may be issued for any purpose other than those provided for in sections 13 to 24, and subject to subsection (2), by the Director-General in respect of a foreigner who—

(a) complies with section 10A; and

(b) and provides the financial or other guarantees prescribed in respect of his or her departure: Provided that such permit—

{(i)}(a) may not exceed three months and upon application may be renewed by the Director-General for a further period which shall not exceed three months; or

{(ii)}(b) may be issued by the Director-General upon application for any period which may not exceed three years to a foreigner who has satisfied the Director-General that he or she controls sufficient available financial resources, which may be prescribed, and is engaged in the Republic in—

[(aa)](i) an academic sabbatical;

[(bb)](ii) voluntary or charitable activities;

[(cc)](iii) research; or

[(dd)](iv) any other prescribed activity.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The holder of a visitor’s permit may not conduct work [, unless]; Provided that the holder of a visitor’s permit issued in terms of subsection (1)(a) or (b)(iv) may be authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions to conduct work.”.

Amendment of section 15 of Act 13 of 2002, as amended by section 17 of Act 19 of 2004

5. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Director-General may reduce or waive the **[capitalisation requirements]** financial or capital contribution referred to in subsection (1)(a) for businesses which are prescribed to be in the national interest, or when so requested by the Department of Trade and Industry.”.

Amendment of section 19 of Act 13 of 2002, as substituted by section 21 of Act 19 of 2004

6. Section 19 of the principal Act is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) An intra-company transfer work permit may be issued by the Director-General to a foreigner who is employed abroad by a business operating in the Republic in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct work in the Republic for a period not exceeding **[two]** four years, provided that—”.

Amendment of section 20 of Act 13 of 2002, as amended by section 47 of Act 19 of 2004

7. Section 20 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The spouse and dependent children accompanying the holder of a retired person permit may be issued with an appropriate permit issued in terms of this Act.” 5

Amendment of section 27 of Act 13 of 2002, as substituted by section 28 of Act 19 of 2004

8. Section 27 of the principal Act is hereby amended— 10

(a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

“(ii) the application falls within the [**yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education**] specific professional category or within the specific occupational class contemplated in section 19(1); and”; and 15

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial or capital contribution to be part of the intended book value, and to the members of such foreigner’s immediate family, provided that— 20

(i) the Director-General may waive or reduce such [**capitalisation requirements**] financial or capital contribution for businesses prescribed to be in the national interest or when so requested by the Department of Trade and Industry; and 25

(ii) the permit shall lapse if the holder fails to prove within two years of the issuance of the permit and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial or capital contribution to be part of the intended book value is still invested as contemplated in this paragraph;” 30

Amendment of section 28 of Act 13 of 2002, as amended by section 29 of Act 19 of 2004 35

9. Section 28 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) is convicted of any of the offences—
(i) listed in Schedules 1 and 2; or
(ii) in terms of this Act;” 40

Substitution of heading to Schedule 1 to Act 13 of 2002

10. The following heading is hereby substituted for the heading to Schedule 1 to the principal Act:

“Offences [**referred**] relating to [**in**] section 28(a) [**and (b)**] of this Act”.

Substitution of heading to Schedule 2 to Act 13 of 2002 45

11. The following heading is hereby substituted for the heading to Schedule 2 to the principal Act:

“Offences [**referred**] relating to [**in**] section [**28(b)**] 28(a) of this Act”.

Short title and commencement

12. This Act is called the Immigration Amendment Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*.